

ATLANTIC STATES MARINE FISHERIES COMMISSION

Ramada Plaza Hotel Alexandria, Virginia

ATLANTIC HERRING SECTION

January 11, 1999

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ATLANTIC STATES MARINE FISHERIES COMMISSION

Ramada Plaza Hotel Alexandria, Virginia

ATLANTIC HERRING SECTION

January 11, 1999

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Attendance

Herring Section Members:

David Borden, Rhode Island DEM, Chair
Phil Coates, Massachusetts DMF
Ernest Beckwith, Jr., Connecticut DEP,
Dr. Lance Stewart, Connecticut Gov. Appte.
Rep. Dennis Abbott, New Hampshire Leg. Appte.
Fred Frillici, proxy for Sen. Gunther, CT Leg. Appte.
Brian Culhane, proxy for Sen. Johnson, NY Leg. Appte.
Gordon Colvin, New York DEC

George Lapointe, Maine DMR
Bruce Freeman, New Jersey DFG&W
Sen. Jill Goldthwait, Maine Leg. Appte.
Pat White, Maine Gov. Appte.
John Nelson, New Hampshire F&G
Bill Adler, Massachusetts Gov. Appte.
John Connell, New Jersey Gov. Appte.

Ex-Officio Members:

Dr. David Stevenson, Maine DMR, TC Chair
Col. Joseph Fessenden, Maine Law Enforcement

Other Commissioners:

Tom Fote, NJ, proxy for Sen. Bassano

ASMFC Staff:

Dr. Joseph Desfosse
John H. Dunnigan

Guests:

Jeff Kaelin, Maine Sardine Council
Dr. Michael Armstrong, Mass. DMF
Charles Witek, New York
Harry Mears, NMFS/NERO
Alan Guimond, ASMFC

Dave Ellenton, World Wide Trading
Gerald Leape, Greenpeace
Bob Ross, NMFS/NERO
Charlie Bergmann, Lund's Fisheries

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

Atlantic Herring Section

January 11, 1999

SUMMARY OF MOTIONS

1. *Adopted by consensus the following language as Section 4.9 Recommendations to the Secretaries for Complementary Action in Federal Waters:*

“The Commission recommends to the Secretary that the Secretary implement the New England Council plan as proposed.”

2. *Move that the Herring Section determine that the New England Council Herring Plan is in substantial compliance with the Commission plan (thereby certifying Amendment 1 and finalizing the adoption of Amendment 1 to the Atlantic Herring Fishery Management Plan by the Commission).*

Motion by Mr. Nelson, second by Mr. Lapointe, motion carries 7 to 0.

3. *(Move) to approve (the following IWP allocations for 1999 fishing season:) 2,500 mt for the State of Massachusetts; 10,000 mt for the State of Rhode Island; and 5,000 mt for the State of New Jersey, with 2,500 mt kept in reserve for subsequent requests from any state in that area*

Unanimously adopted as a consensus position.

4. ~~*The motion is*~~ *(Move) that the Section approve the IWP request of Massachusetts for 5,000 metric tons to be harvested from Area 1B.*

Motion by Mr. Adler, second by Mr. Freeman, motion carries six to zero with one abstention.

ATLANTIC STATES MARINE FISHERIES COMMISSION
Ramada Plaza Hotel, Alexandria, Virginia
ATLANTIC HERRING SECTION MEETING
January 11, 1998

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The Meeting of the Atlantic Herring Section of the Atlantic States Marine Fisheries Commission convened in the Washington-Lee Ballroom of the Ramada Plaza Hotel, Old-Town, Alexandria, Virginia, Monday afternoon, January 11, 1999, and was called to order at 1:10 o'clock p.m. by Chairman David V.D. Borden.

WELCOME, INTRODUCTIONS

CHAIRMAN DAVID V.D. BORDEN: Can everybody have a seat, please. We're going to start. Welcome to the Atlantic Herring Section Meeting. The agenda has been distributed, and I intend to follow it. Let me start off, before we go through some administrative issues, and simply ask if there are any changes or deletions to the agenda that we have? If not, we'll take the items in the order that they appear. As far as process here, we will take a roll call, and when we take the roll call, what I would ask is that we call each state and then specifically ask all of the representatives that are present from that state, all of the commissioners from that state, to identify themselves on the record at that time. So let's start with -- call the roll, please. (Whereupon, the roll call was taken by Dr. Joseph C. Desfosse.)

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

APPROVAL OF AGENDA

CHAIRMAN BORDEN: All right. Thank you, Joe. The first order of business is to wish everyone a happy new year. Let's hope that the new year brings forth great things from this process. In terms of the agenda, as I stated before, I intend to follow the agenda the way we distributed it. We have minutes that have been distributed, I believe, from three different meetings. Are there any comments, changes, additions on any of the minutes that have been distributed? Bill.

APPROVAL OF MINUTES

MR. WILLIAM ADLER: There were only a couple that looked like typos. They're not serious ones.

I think one had to do with the number 65 instead of 165 in one place. And I can't remember right off. I can look it up if you want, but it's a minor thing. And there was another one that said "Bath," and I'm not sure whether they want Bath or Belfast. But those are the only things I noticed. They were just little technical things; they weren't real important things.

CHAIRMAN BORDEN: I suggest you can give those directly to Joe.

MR. ADLER: Yes, I can take care of that.

CHAIRMAN BORDEN: Any other changes, additions to the minutes? If not, can I have a **motion to approve the minutes?**

MR. PAT WHITE: So moved.

MR. PHILIP G. COATES: Second.

CHAIRMAN BORDEN: The motion's been made and seconded. Discussion on the motion. Before I call the question, in terms of voting procedures, I think, as everyone knows, we vote by state. If in fact anyone that's present requires a caucus with their other state representatives, we'll take a maximum caucus of two minutes. All right. Anyone require a caucus on the minutes? If not, no caucus, all in favor, signify by saying Aye; opposed. Abstentions? **The motion carries unanimously.**

PUBLIC COMMENT

The next item on the agenda is public comment. As we always do, we afford the public an opportunity early on in the meeting to come before the Section or boards to offer their thoughts. If anyone in the audience cares to comment now, they can do so. I would note, though, that we will be taking public comments throughout the meeting on the different items. Does anyone care to make a statement at this time? Jeff.

MR. JEFFREY H. KAELIN: Mr. Chairman, I'm Jeff Kaelin, Maine Sardine Council, and I drafted a brief letter this morning that you have in front of you, and I'd like to just take a minute and read the letter into the record, and I think that'll suffice for our public comment in the whole day, if I could do that?

CHAIRMAN BORDEN: Certainly.

MR. KAELIN: Okay. First of all, I want to say that we appreciate the many opportunities that the Section's made available to us throughout the planning process with the ASMFC and also with the Council to regularly provide our industry's comments. You really have done a good job of allowing for industry comment, and I want to say publicly I appreciate that. At the same time, though, we are a little disappointed that this joint planning process, which we thought we had embarked on some months ago, hasn't come to fruition, and that we don't really have one consistent Herring Plan. In fact, we have two Herring Plans. And although these plans are consistent for the most part, there are two very different approaches to protecting spawning herring that have been developed: one for federal waters, closing areas to herring fishing; and one for state waters utilizing a tolerance for possessing certain spawning herring.

Throughout the last several months, as you know, Mr. Chairman, we've worked with the State of Maine and the Section to continue to support the use of the tolerance method to protect the majority of spawning herring in the Gulf of Maine. Since this had been the approach that had been taken during the past 15 years, we were hesitant to give it up, because we believe that it worked to protect the majority of spawning herring, and we were unsure, frankly, what the impact on our industry would be. But now that it's become clear that there may be two different approaches to protecting spawning herring in Management Area 1, we've reevaluated our support for the tolerance approach and are now convinced that a discrete closure regime in Maine State waters at least should be implemented before the 1999 spawning season. Of course, that differs from the plan as it is before you.

We think a consistent total closure approach to protecting spawning herring will be easier for the state to enforce and easier for fishermen and processors to understand and comply with. In addition, the Coastal Conservation Association Maine Chapter has introduced a bill in the Maine Legislature that would establish discrete herring spawning closures to protect spawning herring in Maine waters. And we're now looking forward to working with the CCA, the legislature and the Maine Department of Marine Resources in response to this bill, which will be heard later this winter in Senator Goldthwait's committee. Our goal is to develop a system of discrete, rolling closures in Maine waters that would protect herring when they're occupying areas that define known spawning habitat during the three- or four-week periods of time when the herring are most likely to be spawning there. And as we work this winter to reevaluate Maine's approach to

protecting herring during this time, we look forward to working with the Section.

On the IWP specifications, we strongly support the decision that's already been made that no herring should be allocated to any IWP during the '99 fishing year from fish harvested from Management Area 1A. The domestic herring industry and the fishery's managers have agreed to implement a very conservative TAC in Management Area 1A to attempt to protect herring that originate from the coastal Gulf of Maine spawning stock. Clearly, all the herring that will be taken from Management Area 1A will be utilized in existing shore-side markets for fresh lobster bait and canned sardines. An IWP allocation from this area simply can't be justified.

Unfortunately, however, the Section's decision to significantly reduce IWP activity in the Gulf of Maine by restricting an IWP allocation to fish from Areas 1B or 2 does not go far enough in our view. And the decision to allocate any Atlantic herring to an IWP venture fails to recognize that there's already sufficient domestic processing capacity in the region to process all of the herring that can be caught within the specifications for the '99 fishing year, DAH equaling 224,000 metric tons.

We believe that both the ASMFC plan and the Council's federal plan seriously underestimates the amount of DAP. If the world market price for frozen herring or herring roe were to improve by only pennies per pound, there's no doubt that sufficient domestic processing capacity exists, primarily in the form of freezers, to fully utilize all of the herring that can be caught on a sustainable basis. It's our view this is the year to finally decide to "Americanize" the herring fishery by making no IWP or JV allocations.

The Council and ASMFC plans estimate DAP at 180,000 metric tons. In my letter, I add that up: 50,000 for sardines; 100,000 for bait; and 30,000 for new markets. After some research and thought, we are offering another summary that we think is more accurate in estimating DAP capacity in the region and better reflects the actual capacity to process herring that already exists in the region today, totalling more than 230,000 metric tons: 50,000 for sardines; 75,000 for fresh lobster bait; 25,000 tons for Massachusetts freezers, including fish already processed for bait and zoo food; 40,000 tons for Maine freezers.

The Atlantic Frost that we've located in Bath can process 20,000 tons of whole frozen herring on one shift. We think one shift is reasonable in the short term, but it could do more. Another 20,000 for Americold in Portland in the Winterport docks combined would -- you could do at least 20,000 in

those freezers. Twenty thousand tons minimum for the domestic freezer trawler fleet under 165, which has not been projected in the DAP allocations in the plan; 10,000 tons minimum for the Rhode Island freezers; and 10,000 tons minimum for the New Jersey freezers.

So I wanted to take a minute and go over that. I apologize for reading a letter. There's nothing more boring than that, but I thought it was important to read our views into the record, and I appreciate the opportunity to do so.

CHAIRMAN BORDEN: Thanks, Jeff. Anyone else in the audience care to comment at this time? If not, we'll move on to the next agenda item, which is an overview of the New England Council Herring FMP. Joe.

OVERVIEW OF NEFMC FMP

DR. DESFOSSE: I spoke with Tom Nies just to find out if there had been any major changes prior to Council's approval for submission of its FMP to NMFS, and he told me that there were only a few changes. One was a decision to limit at-sea processing by large domestic vessels to a defined amount called "USAP," and recommending that this be zero for the first year of the plan. The Council also decided not to specify a limit on the roe fishery until needed sometime in the future. He doesn't allude to that. The Council also adopted a provision to require processors to have a permit and submit an annual report on the herring products they produce. So since the time of the last Joint Section and Herring Committee meeting, there have not been any major changes to the document.

CHAIRMAN BORDEN: Okay. Comments or questions to that point? Yes, David.

MR. DAVID ELLENTON: Good morning. Dave Ellenton from Worldwide Trading. Could I just ask then, Joe, if that means that the draft document that is on the table is now the final document with the exception of those items that you just mentioned, or do those items need to be changed in here?

DR. DESFOSSE: I think those items would still need to be changed. I didn't go in and specifically look at the specifications that are listed here. I wasn't sure what Tom had done on the Council side, and I was going to talk to him next week.

MR. ELLENTON: And presumably then, from what you've said, nothing else would be changed in here.

DR. DESFOSSE: As far as I know. There's suggested revisions in there, editorialized comments in the new amendment.

MR. ELLENTON: The only point I would make

that you may want to clarify with the New England Council is that their list of objectives is slightly different to the list of objectives that you show here, and I think it's Objective Number 9 where this document says, "To maximize shore-side use and to encourage value-added product utilization." I believe the -- (difficulty with microphone) -- that the New England Council was to change that to maximize domestic use -- (end of difficulty) -- which is quite a major change.

CHAIRMAN BORDEN: Anything else? John Nelson.

MR. JOHN I. NELSON: Thank you, Mr. Chairman. The question I had, Dave, and maybe it doesn't really pertain to this particular document, but I understood, from looking at the Council's upcoming herring meeting that there was going to be a discussion on grandfathering vessels over 165 feet. Is that something that we need to be dealing with in this document? I mean, obviously, we have the size limits on Page 65 already in place. But is that something that needs a little enlightenment, and you, with your involvement on both ends, maybe you could provide that. Or is it not pertinent to this discussion?

CHAIRMAN BORDEN: Well, my own view is that it's pertinent to the discussion, but I don't think we need to modify the document at this point. That discussion of the New England Council will take place and evolve, and if in fact they look like they, you know, reach a consensus on it, then what I would suggest is we have a joint meeting so that we can put together similar positions on it. It's really a continuation of discussions that have taken place both before the New England Council and the Commission, and it's somewhat reaction to the request that was brought forth in a letter to the Council.

MR. NELSON: Okay. To that end, then, just so that I understand. There are discussions that'll take place, I think, in a week or two weeks, whenever it is. They wouldn't necessarily be making a final decision? It would be a recommendation to get together and have a joint discussion, further joint discussion on that item?

CHAIRMAN BORDEN: That would -- any action by the New England Council would have to be implemented through some type of framework process. So, I mean, there will be a period of months that would -- if in fact they agreed to change what currently exists in the document, it's going to have to go through a legal process to change it.

MR. NELSON: Okay. Thanks, Dave.

CHAIRMAN BORDEN: Other comments or questions for Joe? I guess a question to you, Joe, is, do you envision -- is it necessary for us to take action on

those items at this point or how would you suggest handling that in terms of having our plan essentially identical to the Council plan?

DR. DESFOSSE: Outside of the first item, changing the specifications -- that could be a minor change just to this document -- I don't think that anything else needs to be addressed. The Council has zeroed that USAP for the upcoming year.

CHAIRMAN BORDEN: Right.

DR. DESFOSSE: So, if the Section wants, they could add that as a place-holder as well.

CHAIRMAN BORDEN: Well, I guess a question of the Committee then: Is it desirable to have these changes incorporated into our draft before the staff completes the draft? And Joe, if you would, just itemize the changes once again, so everyone's clear.

DR. DESFOSSE: The changes that the Council made?

CHAIRMAN BORDEN: Right.

DR. DESFOSSE: Okay. There was a change to the specifications to include a category called "USAP." It would be at-sea processing by large domestic vessels. That was zero for the initial year of the plan. The Council decided not to specify a limit on the roe fishery until needed. And then there was the addition of a requirement on processors to have a permit and submit an annual report.

CHAIRMAN BORDEN: Okay. Let me just take these and try to expedite things. In terms of the annual report, this issue actually has gotten a great deal of discussion and debate in a number of our joint meetings. I would just offer the personal opinion that I think it's entirely consistent with all of those discussions to incorporate the annual report. We need that type of information if we're going to make an informed judgment. The annual report specification in terms of the industry was basically supported by the industry. But to start with, any objections to incorporating that into the document? No objections? Okay.

As far as the roe limit, same type of background. There was a considerable period of discussion during our joint meetings with the New England Council. The issue of actually leaving it at zero, I believe, was discussed at our last joint meeting, although there was no formal action on it. Anyone object to leaving it at zero? No objection. Bruce.

MR. BRUCE L. FREEMAN: A question. With the specification of zero the first year for the roe, or, let's say, for the first year for the roe fishery, the fact that there's no interest at the present time, how would that interest be generated? What is the mechanism? Someone would come to the Commission, the Council

with a request? I'm just curious as to how this would operate.

CHAIRMAN BORDEN: I think it's -- George might want to speak to this, but I would envision that as part of the annual specification process we could review and revise those numbers. George?

MR. GEORGE D. LAPOINTE: I was looking at the document that Joe handed out that's called "Alternative State Management Regimes and Adaptive Management," and I think that both changes in the roe fishery and what's called USAP could be accommodated through adaptive management and the addendum process, when those issues arise.

MR. FREEMAN: Well, that would be on an annual basis then. I'm trying to understand the scenario for some who would have an interest. Could that interest be raised at any time, or would there be a specific time that would be necessary to raise that issue for the following year?

MR. LAPOINTE: I would think, given the fact the plan now prohibits roe fish, does it not, roe and mealing?

CHAIRMAN BORDEN: It prohibits directed mealing. Roe fishery -- go ahead, Joe.

DR. DESFOSSE: For the amendment, herring may be harvested for roe as long as the carcass is not discarded.

CHAIRMAN BORDEN: So the fact that there isn't a specification there doesn't stop it. It just means you can participate in the activity. You have to use the carcass, the rest of the carcass.

MR. FREEMAN: Well then, I'm confused. If that's the case now, do we need a specification?

DR. DESFOSSE: There will be an annual specification for roe fishery. It's the second part of the -- on Page 65 of Amendment 1, Draft Amendment 1, Section 4.2.1.1. There's two provisions for a roe fishery. One is for a herring roe-on-kelp fishery, and the other is for harvesting of roe as long as the carcass is not discarded. The latter will be specified on an annual basis.

CHAIRMAN BORDEN: I think the confusion here, Bruce, is that when we say the specification is zero, this whole section was intended to be a cap on the roe fishery; in other words, set a maximum amount that could be harvested in this category. By setting it at zero, you don't eliminate it; you allow it completely. There is no limit to it. That's all. Any questions, then, to the Section? Any objection to including that in a format similar to the way the New England Council did it? Bill.

MR. ADLER: My concern on that, on an unlimited roe fishery, particularly in areas outside of -- or in areas that don't have spawning closures like Area 1 does, was

that I think this question: Does this open up the opportunity for a directed big-time roe fishery in those areas? I remember David Pierce telling me when I was concerned about that idea, he says, "Well, the spawning closures will keep that under control so it won't become a problematic situation." But then there are no spawning closures in those areas. And so could that be problematic?

My other further question was, is this -- you're asking whether the Atlantic states want to put that into their plan as well as, I believe, it's in the Council plan? Is that what you're saying?

CHAIRMAN BORDEN: Right.

MR. ADLER: And that -- I just have that problem, that would this result, could this result in a directed roe fishery big time in areas? I don't know. I'm not sure. But if it did, I would be worried about it. So I don't know whether that means we should put it in or not put it in. But that's my concern on that particular issue.

CHAIRMAN BORDEN: I think the answer to your question is it could result in a directed roe fishery, but I think I'd offer the opinion that with both plans, both plans between the emergency provisions that we have at the Council level and between all the framework and adaptive provisions we have at this level, I think we have a mechanism to relatively quickly cap it, if in fact it becomes a problem. The reason there isn't a specific number here is because we never got around to the discussion of should it be 5,000 tons, 10,000 tons, how do you pick that number without capping some performance to base it on?

MR. ADLER: All right. Well, just note that concern, and hopefully what you just explained would satisfy the idea that it could be controlled if it looked like it was getting out of control for some reason and was determined not to be a good thing.

CHAIRMAN BORDEN: Let me ask. Is there any objection to leaving it the way the New England Council has it? No objection? Then we'll move on to the last item, which is specification, and this is the at-sea processing specification which was set at zero. Phil Coates.

MR. COATES: Could somebody clarify what at-sea processing means? Would this be outside the boundaries of a harbor or beyond the state's territorial waters?

CHAIRMAN BORDEN: At-sea is federal waters.

MR. COATES: Federal waters. So there would be nothing to prohibit a vessel, large vessel from processing within the jurisdictional boundaries of the states?

CHAIRMAN BORDEN: That's correct.

MR. COATES: All right. I want to make sure everybody's clear on this, because I'm going to follow up with a point that was made at our Marine Fisheries

Commission meeting when they discussed this issue last week. But have you completed your response, Mr. Chairman?

CHAIRMAN BORDEN: Go ahead, Phil.

MR. COATES: This issue was raised as to whether or not it would be appropriate for a large domestic vessel to come in and process herring within the territorial waters of a state, preferably within areas that had been previously the sites of IWP operations. And basically our Commission was asking the question as to what procedures we ought to have to review such a process. And their conclusion was basically -- and Bill as a member of the Commission can certainly correct any misunderstanding I have on this, but basically, since these people would be operating as dealers, they would have to get a dealer permit and be certified HSAP and all the other requirements as contemporary fish processing dealers are required to have.

This would be merely an at-sea dealership, dealer operation. Not at-sea. A dealer operation away from the dock, as it were, and subject to the normal requirements of a dealer operation. And the commission suggested that if we feel there's a note of controversy associated with this, we could hold a public meeting on it. But it is something that I guess we didn't discuss during the development of this plan, or at least our side of this plan. So if we were to make any changes in that, we'd probably be required to go out to public hearing. But as long as the understanding is that at-sea is outside states' territorial waters, then I have no problem.

CHAIRMAN BORDEN: Anyone disagree with that interpretation that I offered? No disagreement. Then I think the record is clear. Further discussion on this? Any objection to leaving this specification at zero? No objection? Then we'll do that. Okay. In terms of -- yes, Bruce.

MR. FREEMAN: Just a point of clarification again. When you indicate that specification's set at zero, as you explained earlier on, that would be no restrictions; is that correct? Setting the specification at zero? What does that mean?

MR. COATES: You can't do it for Year 1.

CHAIRMAN BORDEN: Zero in this context is you can't do it.

MR. FREEMAN: It's just the reverse.

CHAIRMAN BORDEN: That's right. It is. Glad you raised that point, Bruce. John.

MR. JOHN W. CONNELL: David, just for the record, what is Year 1? When does it start and when does it end?

DR. DESFOSSE: 1999.

MR. CONNELL: January to December?

DR. DESFOSSE: Yes. This plan has already been

adopted and approved by the Commission, and we're just tweaking it a little bit prior to certification.

CHAIRMAN BORDEN: Okay. So those changes will be incorporated in the draft. Let's move on to the -- and I have not intentionally not taken up the issue of certification of Amendment 1, because I want to go through the next couple of items before we do that. Review of the compliance dates. Joe.

REVIEW OF EDITORIAL CHANGES TO AMENDMENT 1

DR. DESFOSSE: Let me review the changes that have been made to Amendment 1 since the last draft that was approved by the Commission, and at the end of that, we'll get right into the compliance section. It just flows right down there. Just some general comments. If you don't have a copy of the updated version sitting in front of you, we have more around the table. I have a couple sitting up here. If you don't have a copy, just raise your hand.

General comments concerning the document itself. There were some major last-minute revisions that were sent in this past week. So this document is missing some tables and figures. Executive summary still needs to be drafted. Tables and figures are -- some of them are referenced as E.#, something which means they're referring to the New England Council plan. They just haven't been formatted for this amendment.

I'm waiting on some additional habitat information from Dianne Stephan and additional protected species information. That section has been beefed up, Section 7. There's been a little snafu at the New England Council office, and we should get some protected species information from them shortly.

The suggested revisions are in bold and italic font, and the old text that was in the last version is struck out. A lot of what has been struck out will be incorporated into the source document for Amendment 1, which hopefully will be done in the next three to four months. Specifically, there were major revisions to Sections 1.2.1.3 through 5, Pages 2 through 6. These are life history, spawning, reproduction, stock structure, migration, basic life history information.

Section 1.2.2 on Pages 8 through 18. Stock Assessment Summary has been replaced with a section called "Abundance and Present Condition." It's more a reflection of what's out there right now than the history of stock assessment on herring.

Section 1.3, Description of the Fishery, in Pages 18 to 22 suggested revisions are in bold and italics.

Section 1.5, Impacts of the FMP. This whole section is new. It's taken from the New England Council Plan. It's just a summary of the impacts of the

management measures. There are no social and economic impacts identified as yet, but if there are, we will incorporate them into this document and the source document.

Section 2.1.1, Pages 34 to 35 is a condensed version from the earlier draft. This is the History of Prior Management Actions.

Section 2.4, the Overfishing Definition, Pages 40 to 46, is a major revision. I'd like the Section to take a look at it and tell me if they want to go with the new language or if they would rather stay with the short version that was in there previously. It starts on Page 40.

CHAIRMAN BORDEN: Comments on that?

DR. DESFOSSE: I realize that you haven't had a chance to review this. But is it your preference to keep this document as short as possible and go with a shortened version of the overfishing definition, or would you like the explanatory text to go along with it?

CHAIRMAN BORDEN: What's your preference? Jill.

SENATOR JILL GOLDTHWAIT: Thank you, Mr. Chairman. My first reaction, absent an opportunity to read it, is that this particular section of any plan is often the crux of the anxiety for the fishing community. So usually being in favor of shorter, I think when we're talking about the overfishing definition, we need to take whatever time or space it takes to make that clear to the fishing community.

CHAIRMAN BORDEN: Any objection to that? Okay. Go ahead, Joe.

DR. DESFOSSE: Section 4.3.2, Habitat Restoration, Improvement and Enhancement, Pages 69 through 71. These are suggested revisions to the habitat recommendations, and they are provided by Dianne. They are not compliance criteria. They're phrased more like state agencies should consult with so-and-so. They should do such-and-such. They're just -- if there's no objection, we'll keep on going.

CHAIRMAN BORDEN: Any comment or objections? If not, Joe --

DR. DESFOSSE: Section 4.8, Pages 76 to 77. This is the Recommendations to the Secretary. I'm not sure that this section is required due to the development of the New England Council plan. I was hoping Jack would be here to give us his opinion on this. Since the Council and NMFS have not adopted a plan for the federal waters, I'm sort of in a gray area whether or not we still need this section in the Commission's plan.

CHAIRMAN BORDEN: A question. What harm would it do if we just put it in there anyway? Any? Any disadvantages of including it at this stage? Any objections to including it? John.

MR. NELSON: Not an objection, Mr. Chairman, but on Page 77, it says, you know, we're going to recommend that the Secretary take the following actions, and then it's -- that area basically is empty as far as what recommendations. And so we don't know what -- do we know yet what we're going to make as recommendations?

CHAIRMAN BORDEN: You mean in terms of compliance?

MR. NELSON: In terms of the compliance actions, yes.

DR. DESFOSSE: The compliance measures for this plan were adopted September 23rd, and those are on Page -- they're in the next section, Page 78, Regulatory Requirements.

CHAIRMAN BORDEN: Section 5.1.1.1., the bottom.

MR. NELSON: How would you tie it in, though? Maybe I'm just missing the point here. How would you tie 4.8, where we're talking about recommending the Secretary take the following actions -- are we going to have a listing of possible actions in there? See on Page 77, the second paragraph?

MR. LAPOINTE: Doesn't the Atlantic Coastal Act say something to the effect that we make recommendations to the Secretary absent a federal plan, and so we will only kick this in if in fact the Secretary rejects the federal FMP?

CHAIRMAN BORDEN: Yes, I believe that's correct. Other comments? Everyone want to take 30 seconds here and read through the paragraph and then make sure that everyone understands John's question? Just take a minute.

MR. NELSON: Is it that the section is not necessary? Is that Section 4.8 necessary then or not? You've got a federal plan in place, the Council, via the Council.

CHAIRMAN BORDEN: Well, we hopefully will have a federal plan in place. We won't know that for some time. It may not be in place --

MR. LAPOINTE: Till next year.

CHAIRMAN BORDEN: -- until next year, depending upon the way the National Marine Fisheries Service react. My suggestion here, barring another one, is to see if we can contact Jack and borrow some of his legal expertise on this, get some insight on it and then come back to it before we break for the day. But I'm not trying to pre-empt anyone. Anyone have another course of action they want to suggest here? Okay. Then let's do that and move on. Joe.

REVIEW OF COMPLIANCE CRITERIA

DR. DESFOSSE: Moving on to the compliance section on Page 78, the Regulatory Requirements. I had a couple of questions specifically on Number 3. Was it the intent that we're prohibiting the directed fishery for herring in state waters when the TAC has been attained, and should directed be specified in there, or should we just leave it as generic, "prohibit fishing for herring"? It's more of a legal question. I'm not sure --

CHAIRMAN BORDEN: Comments? Bill Adler.

MR. ADLER: All right. Now, once again, this may require Jack, but if the federal plan is in the stages of being adopted but has not been adopted yet because of what it has to go through, and it has a provision for an allocation of domestic processing at zero, but it's not in effect until that plan gets approved, is domestic processing in at-sea waters allowed until the federal plan is approved? And if that is the case and we have the wording, the same wording as the feds do we have in our plan, shouldn't -- is our plan going to be in place basically before the federal plan?

CHAIRMAN BORDEN: We have a plan in place right now.

MR. ADLER: And it will include the same wording as the Council's plan on that issue, as an example, and maybe in the other issues, too?

CHAIRMAN BORDEN: Ideally.

MR. ADLER: Okay. So, since that is the intent of whatever was approved in both plans for the managing of herring, since the federal herring plan is sort of up there somewhere, hasn't been approved, so it isn't in yet, shouldn't we therefore make sure that our plan is there on line to hold until the federal plan takes its place, so we don't have this void?

CHAIRMAN BORDEN: Comments to that point. George, you had your hand up?

MR. LAPOINTE: I don't see where the void is, to tell you the truth. I mean, we've been operating under the Commission plan and setting specifications jointly with the Commission and the Council for quite a number of years. So I need a little explanation, Bill.

MR. ADLER: All right. Whatever we set forth as this is the right thing to do in the federal plan, and everybody debated it and voted it in, boom! But it's not in, and in the ASMFC plan, we've got all this stuff in here which we figure is the best way with the --the appropriate rules are all in here and we all said, you know, this will be good, but is this plan in place now and therefore protecting the herring or doing whatever the allowance is until the federal plan gets on line? Is it?

CHAIRMAN BORDEN: Let me answer it this way, Bill. If at the end of this discussion, we certify that this plan is essentially in compliance with the New England Council plan, then it goes into effect, and it may be six

months or nine months until the Federal Government approves, hopefully, their plan, but this will be a backstop. This is in place.

MR. ADLER: So all the rules that we have in here - I use that one as one example, is the domestic processing at sea set at zero for '99 as an example. We just put that into our plan. The Council had it in their plan. That would be in effect the minute we certify that, and all these other rules that we've put in here would also be in effect. As you say, the ASMFC is the backstop until the federal thing. Is that the way this will work?

CHAIRMAN BORDEN: That's my interpretation. If somebody disagrees with that, please speak up. Phil.

MR. COATES: I guess I have to ask the question: Does the ASMFC have jurisdiction over a processing vessel that may not even be from any of the ASMFC member states processing in the EEZ? Is there a jurisdictional question that's raised here? I'm curious about this, because that's why I asked the other question specifically to get clarification. But I now wonder if we have the authority and whether or not the authority of ASMFC or the plan contained provisions when we went to public hearing for us to extend our jurisdiction over these ships out in the EEZ? Or is this specifically the domain of the federal plan? I don't know.

CHAIRMAN BORDEN: Comments to that point? Jeff Kaelin's got his hand up.

MR. KAELIN: Doesn't the plan say that if you want to fish for herring, which is either fish for or process herring, you have to have a permit? And you can't fish, take or process, or whatever the language in the plan is, if you're over 165 feet, no matter where you come from. So I think that that issue's already been addressed by restricting the ability of the states or the Federal Government to permit the vessels under the criteria in the plan. So the idea that some big boat's going to come from some other state and come and fish in state waters when the ASMFC plan has a 165-foot limit on it, how's that going to work? I think that you've closed the loop by structuring the permitting requirements the way you have with the vessel size limit, haven't you?

CHAIRMAN BORDEN: Phil, did that allay your concerns?

MR. COATES: I don't know the answer to the question. I'm just raising the question whether or not, in the absence of the federal plan being implemented, the ASMFC has the authority to stop a processing ship from processing in the EEZ? I mean, I would think that we would want to be able to address this, but I just have to raise the question. And I guess --

MR. KAELIN: Mr. Chairman, there's one other thing to keep in mind and that is there's a federal moratorium on any of those vessels operating through

October 1 of 1999. And between now and then, these plans ought to be in place.

CHAIRMAN BORDEN: Yes. That was the point that I was going to make is that the federal action, Congressional action is still in place until October.

MR. COATES: And is the fish processing question -- fishing is -- it may cover it. I just -- you know.

CHAIRMAN BORDEN: Now, after that date, I would have the same concern that Phil has got, because if the vessel is not registered or licensed in any of the member states, then I think we would have very little flexibility to try to regulate them in federal waters. Have to use some other avenue to do that. George.

MR. LAPOINTE: If it's a big issue and the plan, the federal plan is still in limbo at that date, we could -- and it's a serious enough issue -- we could ask for an extension on the prohibition, could we not? I mean, if we saw it as --

MR. COATES: I would think that -- I mean, if we're confident that we have the jurisdiction, then I'm certain we can take whatever action necessary to extend it if there's a void coming up.

CHAIRMAN BORDEN: Okay. Anything else on this issue? Joe.

DR. DESFOSSE: Back to the third compliance criteria. It's just the wording. Should "directed" be specified in Number 3? Yes? I see nods of agreement. Then on Number 5, I had a question about what the intent of the Section was in requiring reports from fixed gear fisheries, whether it was an annual report by the states or was a requirement of the fishermen to report on a weekly basis? I'm not sure it was made clear back at the September 23rd what the intent of the Section was.

CHAIRMAN BORDEN: I offer my own interpretation here. Since we're functioning with what will be viewed as hard TACs, the only way you're going to make those work is if the industry has to tabulate and record their landings basically on a daily basis based on the activity in the fishery, and then record and transmit that information to the states on a weekly basis, which --

MR. LAPOINTE: And if you come from a state where we don't have a system like that yet, you're setting us up for noncompliance. That's a big change from 5 to 5A.

DR. DAVID STEVENSON: Could I ask a question?

CHAIRMAN BORDEN: Before you do that, David. The question, though, is that if we just get annual reports of landings, if that's what our intent is, how will this Commission make a TAC work? It has to be on a more timely basis. And I would offer that weekly may be too aggressive, but there has to be some way for us to tabulate our landings from the different gear types,

otherwise we're going to have quota overages, and that will detract from our ability to manage the fishery effectively. David.

DR. STEVENSON: What are we requiring of the mobile gear fishermen in terms of how frequently they have to submit reports? Isn't it monthly?

CHAIRMAN BORDEN: Weekly. Tabulated daily and then report weekly, I believe.

DR. STEVENSON: My own feeling, I guess from the Technical Committee standpoint or the point of view of monitoring TACs, is whatever we're requiring of mobile gear fishermen we ought to require of fixed gear fishermen.

CHAIRMAN BORDEN: Mobile gear requirements, Joe, are?

DR. DESFOSSE: On a weekly basis.

CHAIRMAN BORDEN: Weekly basis. While everyone's collecting their thoughts, this was a major issue with the NMFS in terms of us moving towards hard TACs, us having the ability to document the landings and then take actions at appropriate times. If it's weekly for one user group, I think it's logical to have it weekly for the other user group.

And I'm not trying to minimize the State of Maine's problems in terms of the burden that that puts on the State of Maine. They have to develop some type of phone system or whatever to allow the industry to call in. As an example, we have done it with summer flounder, and it seems to work well. The industry just gets right in the mode of calling into the office once a week, and they keypunch the numbers. George.

MR. LAPOINTE: David, can we do this?

DR. STEVENSON: It won't be easy. Most of the fixed gear catch goes into the canneries, but the little bit that goes into the bait market would be awfully hard to track on that frequent a basis. So you may be dealing with some fairly accurate estimates, but it may not -- you know, we'll do the best we can, but it may not be a hundred percent accurate right away.

MR. LAPOINTE: And what's the compliance date on this section? We've not talked about that yet, have we?

CHAIRMAN BORDEN: Joe.

MR. LAPOINTE: And the reason I say that, Mr. Chairman, is that I view the change from 5 to 5A as a big change, and I understand all the development, and that's something that I don't mind working on with our technical staff and the fishermen in Maine at all. But this is something they've not talked about, have they, David?

DR. STEVENSON: No.

MR. LAPOINTE: So, I mean, I think that's a fairly major change, and again I don't mind working on the issue, but I don't want to be pinned down to a compliance

date that's going to put the State of Maine out of compliance for something that's a fairly substantive change. I mean, one report a year compared to 52 reports a year is a major change.

CHAIRMAN BORDEN: I'll ask Joe to correct this. My memory of our joint discussions on this is that this really is not a major change from the way we discussed it at the joint meeting. In other words, we all recognized that we had to have up-to-date, fairly up-to-date reports. The fact that it was characterized in the document as annual reporting, I don't think is necessarily indicative of the way we discussed it.

MR. LAPOINTE: I understand that, but we didn't go to public hearing with that. And again, it's a major change and it will impact the State of Maine a lot. And so I'm reluctant to get pinned down to a compliance date for which, I mean, we're just going to have trouble, potential trouble. And I don't know that yet because I haven't talked to staff about it.

CHAIRMAN BORDEN: Other comments here? David.

MR. ELLENTON: I appreciate the State of Maine saying that that's a major change, but this plan is a major change, too. There is a TAC of 45,000 tons for the inside area of the Gulf of Maine, and there are some steps to be taken based on mandatory days out of the fishery, depending on how much fish has been caught. And if we don't report on a regular weekly basis, all sectors of the industry should be reporting on a regular basis so that we can actually put these management measures into act. I agree with what David Stevenson said earlier on: If it's good for one sector, it's good for everybody.

MR. LAPOINTE: And I'm not arguing that it's not good for the sectors. I'm not arguing that it's not good for the plan and not needed for the plan. But if I read from 5 to 5A, that's a big change. David, if you were to report once a year, I mean, that's what you went to public hearing about, and then you saw that you were supposed to report weekly, I see that as a major change. And I'm not saying I don't want to work on it. I can get David on it as soon as he gets back to Maine. And I'm entirely willing to meet with the industry to try to make this work. But that's a big change.

CHAIRMAN BORDEN: Jill.

SENATOR GOLDTHWAIT: Thank you. I agree with George that this is important to make the plan work in terms of knowing where we are in the course of the season. So I don't have a problem with the weekly reporting. But I'm trying to sort out quickly how long it would take us to implement that, because I think for us in a state with a high volume of license holders in most fisheries, we are probably talking some budgetary

changes. That process is already under way. In fact, the budget from the Governor's point of view is finalized. So I don't think that we have any disagreement from this delegation that that is the goal, but particularly if it's going to take a change in what has already been submitted for the budget, which I suspect that it will, it's going to be difficult to see how implementation would be possible for us in a short span of time.

CHAIRMAN BORDEN: Just to refresh my memory. How many fixed gear businesses do you have in the State of Maine, herring, that land herring?

DR. STEVENSON: Right now, the fixed gear fishery in Maine is barely identifiable. There are only four or five weirs still being used, and hardly anybody stop-seining. Well, I shouldn't say that. There are a few stop-seiners. The problem is, that could change very quickly, and you could -- I think that's what we're all -- that's what I'm most worried about is that if we have a resurgence of the fixed gear fishery, we're looking at 5- or 10,000 tons coming out of that sector of the fishery again. There's some, not only question of reporting that comes up, but I don't think this group has really had a thoughtful enough discussion of effort controls and how they would apply to the fixed gear fishery. Does it mean nobody stop-seines on Saturdays and Sundays? That may not be so hard. But does it mean they don't take fish out of their weirs if they've got them in there? They can't pull their weirs out of the water on the weekends. And those kinds of things are kind of -- we don't need to worry about at this point with a catch of 2- to 3,000 tons a year probably. But if it were to turn around overnight, we'd have some major problems.

CHAIRMAN BORDEN: What's the preference of the Committee? John.

MR. NELSON: Well, let me just make sure that we're talking about February 1st, is it, that the plans would have to be in place to be in compliance, of '99?

DR. DESFOSSE: That's the next section.

CHAIRMAN BORDEN: The next issue -- setting the deadline is going to be the next issue.

MR. NELSON: Okay. But as it stands right now, for example, Maine would have to have something in place by February 1st. And I guess we're hearing that George is concerned that -- is it regulatorily that you might have a problem, George, or logistically?

MR. LAPOINTE: All of the above. I mean, Jill mentioned the budgetary process, and our budget is in to the legislature. Talking to people about how we would do it. And again, I mean, there's a big difference between an annual report and a weekly report.

MR. NELSON: I guess we do concur that, you know, I think there is general concurrence of if we're going to do it, that we want to do it on a weekly basis so

that we have adequate information in a timely fashion. So then what it boils down to is, you know, if states have a problem with putting something in place, what would be a reasonable time frame for them to do that? And I guess going to the next section probably gives a few more minutes to think about that and come up with some reasonable answer, other than February 1st, Mr. Chairman.

CHAIRMAN BORDEN: Let me ask this: Any comments or suggestions on the first four items on that Page 78. All the discussion is focused on Item 5, 5A. Any comments? Then let me suggest this, that we let Joe go through the rest of the document, and then I'll take, like, a five or ten-minute break, and what I'd like to do is to find Jack and get that previous question answered, and maybe it'll give us a chance to discuss some of these issues with some of the participants at the meeting, including the industry advisers. Joe.

DR. DESFOSSE: Okay. I only have a few more items here. In Number 6 in the compliance criteria on Page 79, do we want to specify what other types of data should be included in the report? Right now it's the amount and weight in pounds or metric tons of herring processed into meal or meal-like product. Should there be any other data, such as where the fish were caught? That was the only one I could think of off the top of my head. Or is it sufficient to just require a report on the amount of herring that was meal?

CHAIRMAN BORDEN: Comments? George.

MR. LAPOINTE: Shouldn't the landings show where they're caught, Joe? I mean, you could have 100,000 tons of landings, and if somebody, notwithstanding what's written in the plan, meal 20,000, the landings location should already be in the data.

DR. DESFOSSE: Ideally, yes. I wasn't thinking clearly on it.

CHAIRMAN BORDEN: You're going to have to have the catch area, even if it's grossly aggregated, state waters versus federal waters, otherwise we're going to get into a situation where there's going to be double counting. Bruce.

MR. FREEMAN: I think certainly an important component would be the size. If you're going to meal fish, then you need to know what size you're dealing with. That's going to be very important.

DR. DESFOSSE: The size of the individual fish, that type of --

MR. FREEMAN: Yes. Age or size would have to be quite important.

DR. DESFOSSE: Would we need some biological data collected on that?

MR. FREEMAN: Yes. And I agree on the former comment about area. It doesn't have to be very specific, but there are designated areas that NMFS has as far as statistical areas, and at least to that level.

CHAIRMAN BORDEN: Other comments? Yes, Bill.

MR. ADLER: Maybe this was covered, I'm not sure. If we could just go back for a minute to Number 2, could you explain to me one more time what each jurisdiction shall prohibit the landing of herring from management area or subarea where the TAC has been attained in that area -- when you say "prohibit the landing of herring from," is this complete prohibition or wasn't there a bycatch allowance?

DR. DESFOSSE: Up to 2,000 pounds.

MR. ADLER: Yes, that one. Does that continue in that area, or is that prohibited from that area as well?

DR. DESFOSSE: I think the bycatch allowance is still allowed.

CHAIRMAN BORDEN: It continues.

MR. ADLER: Okay. I just wanted to clarify that. Thank you.

CHAIRMAN BORDEN: Other comments? Gil.

MR. GIL POPE: That was one of my questions about the directed, what you meant by directed in Number 3. There's still going to be that 2,000 pounds, or is that still allowed after you've reached the TAC, total TAC?

DR. DESFOSSE: It's still allowed after the TAC is reached. I think if we go back to Section --

MR. POPE: I didn't find that anywhere.

DR. DESFOSSE: -- 4.2.8.2 --

CHAIRMAN BORDEN: In fact, I can answer that before you get to the section. It is allowed, even after you get to the TAC. And this was a major point of discussion at the New England Council meeting that it was going to result in overages. And the way it was handled was that the Council basically agreed to compile an estimate of the bycatch rate, which I think was like five percent. And they took that off the top and set that aside. And then you work on your TAC, and if in fact, based on an annual calculation you exceed it, you would remedy the situation in the following year. Comments, questions? What else, Joe?

DR. DESFOSSE: Let's see. The compliance schedule dates. When this document was originally written and approved by the Commission, it was that states would submit their state programs by February 1st, 1999 and begin to implement them on March 15th, 1999. Are those dates still valid, since there's been three months, four months?

CHAIRMAN BORDEN: What dates would you prefer as opposed to the dates here? I think February 1st

is a little bit unrealistic to expect the states to prepare their proposals in that short a period of time. March 1st for the submission of state plans? This is nothing more than the state proposal. Doesn't have to go to public hearing. You just sit down with your constituents and craft the proposal and submit it. Any objection? March 1st, 1999. Compliance deadlines. This obviously relates back Question 5, so let me put this issue on hold just temporarily. What other issues have you got?

De minimis status

DR. DESFOSSE: Two things. I think I mentioned before that the protected species section, Section 7, has been beefed up. It was pretty lacking in information in earlier drafts. And the other would be *de minimis* status, if I could find the correct section here. I think we have to go back in Section 4. Yes. It's on Page 72, Section 4.4.3, *De Minimis* Fishery Guidelines. The standard has been one percent of the previous two years' landings would be the *de minimis* status. I handed out updated tables, the state landings from 1976 to 1997, domestic herring landings. It's Table E.10. And the last two rows of this table are the percentages for the domestic landings for '97 and '96. Does the Section want to skip a step now and grant *de minimis* to those states below one percent, or do we want the states to submit a request?

CHAIRMAN BORDEN: Comments on Joe's question to the Section?

MR. LAPOINTE: Fill me in on E.10 again. Where's the percentages?

DR. DESFOSSE: The last two rows at the bottom. (Inaudible comments from the floor.)

DR. DESFOSSE: I believe it's a yearly basis. Let me read this again.

CHAIRMAN BORDEN: It is, Joe.

DR. DESFOSSE: It has to be for the last two years. It's just standard boiler-plate language.

CHAIRMAN BORDEN: Yes, George.

MR. LAPOINTE: With a fishery of this magnitude, a percent is still a lot, and I'm just asking the question, because clearly Maine will fall in as *de maximis* regardless of what we decide. Was there discussion on -- you know, one percent of 100,000 tons is 2.2 million pounds. Did the Section have that discussion?

CHAIRMAN BORDEN: No.

MR. LAPOINTE: Because we've used other standards, haven't we, Joe?

DR. DESFOSSE: I believe it's been down to half a percent in some cases.

CHAIRMAN BORDEN: I mean, one percent, I agree with you, it's a fair amount of fish, but in the scheme of things when you look at the overall TAC, it's

really quite insignificant.

MR. LAPOINTE: But if you put that in the context of our discussion on fixed gear just a moment ago, we were going to put weekly reporting on a pretty small fishery as well, and I'm just asking the question.

CHAIRMAN BORDEN: Comments. What's your preference? Stick with one percent, change the number? John.

MR. NELSON: We've had the discussion before, and I think that, you know, we've used other numbers before that are higher. We've been up to five percent for coastwide landings for other fisheries. And so one percent was pretty well down there. I mean, what do we capture if we go to half a percent? I think the states that are *de minimis* are still going to be *de minimis*, so you may as well leave it really at the one percent, Mr. Chairman.

CHAIRMAN BORDEN: Bill Adler.

MR. ADLER: Getting a little to what John just said, do we have any reading as to if you kept it at one percent, would that be close to some states or where's the range here? Do the ones that we know what the intent is, we really figure they should be *de minimis*, are they down at a quarter percent right now? Is there any range that we know of? Is one percent on the borderline for some states, Yes or No? Do we have any reading on that?

CHAIRMAN BORDEN: As I understand it, the percentages on the bottom of --

MR. ADLER: Oh, okay.

CHAIRMAN BORDEN: -- Table E.10, you have the actual percentages. And if it's calculated, if *de minimis* is calculated based on the last two years then what you have is you have the State of Maryland, which is zero, would qualify for it, and that's the only state. Correct? No. Delaware would. Okay. So the only states that don't qualify, so everyone's clear, are Maine, Massachusetts and Rhode Island. All the other states would have the right to petition for *de minimis* status.

MR. LAPOINTE: All right. Let's carry on. My question's been answered. I apologize for taking the time.

CHAIRMAN BORDEN: Ernie.

MR. ERNEST E. BECKWITH, JR.: This is somewhat new to me. Eric has been attending the Herring Board meetings. And just as a point of clarification, because this is important to me, if we are granted *de minimis* status looking at Section 5.1.1.1, Requirements, what would a *de minimis* state have to do? My best guess is 2, 3 and 4?

CHAIRMAN BORDEN: That's correct. Other comments? Gil.

MR. POPE: George, to your point, are you saying that there's a possibility that some people's fixed gear

requirements may be less than one percent? Was that your point, kind of? For now.

MR. LAPOINTE: I was just putting it in context.

CHAIRMAN BORDEN: All right. What's the preference of the Section on this? John.

MR. NELSON: I think your question earlier was, should we declare those states that are eligible for *de minimis* as *de minimis* or have them submit reports in the future? Wasn't that what you had requested as your --

CHAIRMAN BORDEN: That may have been the question I asked. I think the question is, should we ask them to submit plans or should we ask them to submit a request for *de minimis* status?

MR. NELSON: Or declare them *de minimis* at this time and not have all this paperwork.

CHAIRMAN BORDEN: Or declare them *de minimis*.

MR. NELSON: I guess -- well, I never like to do more reporting than necessary. I must be a fisherman at heart. And so **I would suggest that those that are eligible for *de minimis* be declared *de minimis* at this time and not submit proposals for *de minimis* in the future.**

MR. LAPOINTE: **And then they'd fall into the annual cycle of reaffirming their *de minimis* status.**

MR. NELSON: That's right. Correct.

MR. LAPOINTE: I like that.

CHAIRMAN BORDEN: Any objection to that? Everyone understand what we're doing? Essentially we're going to declare -- I'll just repeat so everyone's clear. We're going to declare the majority of the states, with the exception of Maine, Massachusetts and Rhode Island, to be *de minimis* status. They could always fight us in court, I suppose, but I doubt it. Unless we have objection, that's the way the plan will read. Any objection? Jeff.

MR. KAELIN: Mr. Chairman, I don't necessarily have an objection. I'd just like to ask a couple of questions --

CHAIRMAN BORDEN: Go ahead.

MR. KAELIN: -- because I'm not clear enough about the ASMFC process to understand this. Can a state be found to be in *de minimis* status and still have an interest in the fishery?

CHAIRMAN BORDEN: Yes.

MR. KAELIN: Okay. And if you declare some of these states *de minimis* status, that means they don't have to file a plan that demonstrates they're in compliance? Is that what you're getting at here? They don't have to file a state plan to demonstrate they're in compliance with the Herring Plan, if they're declared to be in *de minimis* status? Is that where you're going.

CHAIRMAN BORDEN: They won't have to file a

management plan to be in compliance with the requirements in 2, 3 and 4.

MR. KAELIN: Right. Yet they can have an interest in the fishery and a vote in the management plan.

CHAIRMAN BORDEN: That's correct.

MR. KAELIN: I mean, what does this do to the long-time agreement between the states on IWP allocations, for example? I mean, if a state can certify that it's going to live within the IWP allocations that are made -- and it's basically a gentlemen's agreement, you know -- I mean, I guess I'm just not familiar with ASMFC process, and I apologize to those of you who are and can't understand why I'm asking these questions. But it just seems odd to me that we'd have a situation here where some of these states, particularly New Hampshire, perhaps, and New York might not have to even certify through their state regulations and statutes that they're going to be in compliance with this plan.

MR. LAPOINTE: The main thing *de minimis* --

CHAIRMAN BORDEN: George.

MR. LAPOINTE: Excuse me. One of the things *de minimis* has been used in the past, and certainly I would think about it in the context of this plan, is if we have states at a half a percent, do we need weekly reports from them? It doesn't exempt them from minimum size limits and prohibition on mealing and all those other sorts of things. What it does is say that they need to report less than the State of Maine does, for instance, because they're less than a percent of the fishery. Not that they're -- I mean, they don't get off scot-free from other compliance measures.

MR. KAELIN: Okay. I'll take your word for that. I'm going to do a little research just to understand what they have to do and what they don't have to do, and I'll find that out later. I don't want to take your time up now. Thanks.

CHAIRMAN BORDEN: Okay. Other comments. The suggestion's been made to declare those states with *de minimis* status. Any objection? Bill.

MR. ADLER: That doesn't mean you get kicked off the Section, does it?

CHAIRMAN BORDEN: No.

MR. ADLER: Oh, okay.

DR. DESFOSSE: As long as you still have an interest in the fishery.

CHAIRMAN BORDEN: Okay. So any further discussion on that? George

MR. LAPOINTE: In the ASMFC Bylaws, there are three or four criteria for interests in a fishery. I mean, Florida can't, for instance, just say, "Gee, I want to be on the herring fishery" all of a sudden. So there is a context by which states declare an interest.

CHAIRMAN BORDEN: Other comments on this?

Bruce.

MR. FREEMAN: David, just for clarification. If in fact a state -- as we indicated, most of the states are less than one percent -- in a particular year, let's say hypothetically, they have an IWP where there's a large catch. They would then be required that following year to have a plan in place, even though they may not desire to have an IWP. As I understand this, they'd be required to do that. Or maybe even for two years, depending on the amount they harvest, so long as it was larger than the one percent. That's my interpretation. I just want to make certain that is the correct interpretation.

CHAIRMAN BORDEN: Joe.

DR. DESFOSSE: And this requirement -- the *de minimis* standards was based on just the domestic landings. It did not take into account the IWP landings. That's a separate category. This is just the domestic fishery.

MR. FREEMAN: All right.

CHAIRMAN BORDEN: Other comments on this? Gil.

MR. POPE: So in other words, you're scared that there might be a loophole where one year there could be a giant influx of -- in other words, that's what you're aiming at?

MR. FREEMAN: Yes. If I may, I neglected to recall the IWP. What I'm thinking about, Gil, you know, go from a very, very low catch to a very high catch, and that would occur through an IWP. The probability of doing that, because you have a developing fishery, will not happen that dramatically, that quickly. And therefore, with the IWP provision, this tends not to be a problem in my --

MR. POPE: Should that specifically be addressed that this is not an area for a loophole necessarily, so that somebody could come in and just dump a whole bunch of fish in one year? You know what I'm saying? And have it -- in other words, I think that was your concern as to why you asked that question, right? Should it be addressed further, specifically addressed or what? No?

CHAIRMAN BORDEN: George.

MR. LAPOINTE: I think, I mean, if we start trying to close loopholes, we'll be here till Christmas. We have a process for allocating IWPs through the Section process. So if Delaware wants to apply for some, they're going to have to go through the process, and we could get a handle on that, couldn't we?

CHAIRMAN BORDEN: Yes. Any other points here? Joe.

DR. DESFOSSE: One last thing under the compliance schedule. It was drafted so that the actual compliance reports would be submitted to the Commission by each of the jurisdictions on an annual

basis no later than October 1st of each year, beginning in 1999. Is that still valid as well?

CHAIRMAN BORDEN: Any objections to that? If not, no hands up, that's all right. Anything else?

DR. DESFOSSE: No.

CHAIRMAN BORDEN: Okay. So we've got a couple of additional issues here to deal with. Let's take a ten-minute break, and then we'll come back and deal with those issues that are still outstanding. And what I would urge you to do is to talk among yourselves, particularly on the IWP allocations, because that's going to be the next item of business after we dispose of these three issues. Ten-minute break. We'll reconvene at twenty of. (Whereupon, a short recess was taken.)

CHAIRMAN BORDEN: All right. The first item we're going to take up is on Page 77, which was the issue of that last sentence on the top of the page, second paragraph. And we did talk to Jack. What Jack says or what he suggested was that if in fact, as my current interpretation is, that the Commission basically feels that the New England Council is substantially in compliance, their plan is substantially in compliance with our plan, then -- well, what Jack's suggestion was, that we take that last sentence and simply change it to a sentence which would read that, "**The Commission recommends to the Secretary that the Secretary implement the New England Council plan as proposed.**" Any comments? Page 77, second paragraph, second sentence in the paragraph, the italicized sentence. We would simply change that to say that "The Commission recommends to the Secretary that the Secretary implement the New England Council plan as proposed." Comments on that? Any objections to that?

If not, then we'll move on to the next item. The next problem that we delayed action on was on the next page, 78, Item 5, and it was a problem that the State of Maine delegation had brought to our attention, and really where that becomes most pivotal is when you relate it to the compliance schedule, which is on the bottom of Page 79. And the question is, as I understand the State of Maine, they would like additional time to bring their state into compliance, and we had talked about March 1st. I had heard a suggestion during the private conversations here during the break that someone might suggest April 1st for the first deadline and then amend the second deadline to follow that by a couple of months. Comments to that? Any comments? March 1st for the plan submission date, is that still all right? And then -- John, go ahead.

MR. NELSON: Mr. Chairman, I guess maybe I wasn't following that closely. I thought you were talking about submitting the plans would be April 1st, and then at some month and a half or two months later would be the implementation date. Did I misinterpret that?

CHAIRMAN BORDEN: No. That's what I said, and it was based on what individuals said to me. But I'm just thinking it may be desirable here to -- the March 1st deadline is nothing more than a state preparing a written document and submitting it. There are no hearings. There's simply a consultation with their industry. And they certainly would have enough time between now and March 1st to do that. The aspect of this that really requires the time is the second one. And what I would actually suggest is we leave March 1st as the submission date, but delay the implementation date until May 1st, which would provide a significant amount of time if states had to take regulatory action. Yes, Pat.

MR. PAT WHITE: I guess I'll defer to George if he's here. I still am a little concerned about March 1st instead of April 1st. If it's the intent of Maine to go out to public hearing with this and notice time, I think I'd be more comfortable with April 1st. Maybe I'm misunderstanding something.

CHAIRMAN BORDEN: Well, other comments? Gil.

MR. POPE: Possibly in this first year maybe there ought to be a lot of leeway allowed in strict implementation of this thing, because we don't know -- they don't even know what it's going to entail at this point, and maybe they do. But it might take more than what you consider, so there might be a lot of leeway allowed in this particular issue. I don't see it as being a particularly tough one or hard one at this point.

CHAIRMAN BORDEN: Other comments? Phil Coates.

MR. COATES: We have no objection to April 1. You know, what you're going to submit is what gets implemented, so you've got together with your people, and you've got to get more than just submit a document. You've got to get their agreement that this is a reasonable time frame. So April 1-June 1st would be, to us, a fairly reasonable time for submission and implementation.

CHAIRMAN BORDEN: All right. Any objection to April 1-June 1st? Bruce.

MR. FREEMAN: It would seem to me on the implementation, if a state submitted its plan and may want to implement quickly, that they should be given the option to implement sooner. I mean, what we're doing is the state has a submission, and the submission we find is adequate, then we're saying they can't implement that for two months.

MR. LAPOINTE: No. You're saying you must implement it by --

MEMBER: Implement it **by** two months.

MR. FREEMAN: All right.

CHAIRMAN BORDEN: But what I would suggest here is we add another sentence here that would

essentially allow states to implement the proposal prior to that, subject to a review by the Commission. In other words, they have to submit a plan. If they can do that in two weeks and we can get the Section to approve that and the Technical Committee to approve it, they could go off and implement prior to the deadline. Any objection to doing that? No objection. Jill.

SENATOR GOLDTHWAIT: A question. Is it fair to assume that the implementation date assumes approval by the Section? In other words, if for some reason a state submits a plan by April 1st but doesn't have approval from the Section by June 1st, that they wouldn't be expected to implement the plan?

CHAIRMAN BORDEN: Well, I'm not sure how we've handled that in the past. Jack, can you enlighten us as to when there's -- well, Jill, would you just state your question again?

SENATOR GOLDTHWAIT: Sure. In a case where the state has submitted a plan according to the compliance date, but the Section has not completed the approval process by the implementation date, is it fair to assume that one would not be required to implement it until the Section has given approval?

EXECUTIVE JOHN H. DIRECTOR DUNNIGAN: Yes.

SENATOR GOLDTHWAIT: Thank you.

CHAIRMAN BORDEN: Okay. Other -- so we've got the dates, April and June 1st. Any other discussion on the compliance deadline? Okay, Joe, anything else?

DR. DESFOSSE: No, I don't have anything else.

Certification of Amendment 1

CHAIRMAN BORDEN: The next thing on the agenda -- we've taken up *de minimis* and we've taken up the compliance deadlines. Then the issue is certification that -- well, let me back up. The Commission, when they approved this plan at the Annual Meeting, essentially placed a caveat on the endorsement that it was subject to certification by the Section, that the New England Council Plan was substantially in compliance with our plan. I believe that is the case. If anyone does not believe that's the case, then please speak up. If there's no objection, then what I would suggest is someone make a motion to that effect, so the record will be clear. First, let's take discussion on the point. Any discussion? Someone care to make a motion?

MR. NELSON: Do you want to restate yours, Mr. Chairman?

CHAIRMAN BORDEN: I would **move that the Herring Section determine that the New England Council Herring Plan is in substantial compliance with the Commission plan.**

MR. NELSON: So move.

CHAIRMAN BORDEN: Moved by John Nelson. Is there a second?

MR. LAPOINTE: Second.

CHAIRMAN BORDEN: Seconded by George Lapointe. Discussion on the motion? Any discussion? Bill Adler.

MR. ADLER: I'm listening to Phil here, with an ear going here. Is it in "compliance with" or "consistent with"? Which word would be better?

CHAIRMAN BORDEN: I think the term that the Section used at the time was "substantial compliance." Isn't that correct? Consistent with and in -- anyone have the actual motion? Jack.

MR. LAPOINTE: What meeting was it?

CHAIRMAN BORDEN: Annual Meeting in Georgia. Whether or not it's "compliant" or "consistent," you can put both words in there; **"substantially in compliance and consistent with"**. Any objection?

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Chairman, **just so that it's clear on the record, the Commission's approval of the FMP was dependent upon the Section making this determination, and that the passage of this motion removes the contingency and makes the Commission's approval of the Herring FMP final.**

CHAIRMAN BORDEN: That's correct. And that will be -- just so the record is once again clear -- that will be of a plan that is revised consistent with the discussions here today. George.

MR. LAPOINTE: And this doesn't mean we're going to get tied into a process like with the Fluke Plan where, if it gets changed by the Council or NMFS nine months out, we're forced to adopt those changes.

CHAIRMAN BORDEN: No. That is correct. Okay. Further discussion. There's a motion on the table. Anyone need a caucus on this? No caucus. Then we'll call a vote. Vote one vote per state. Joe.

DR. DESFOSSE: Maine.

MAINE: Yes.

DR. DESFOSSE: New Hampshire.

NEW HAMPSHIRE: Aye.

DR. DESFOSSE: Massachusetts.

MASSACHUSETTS: Yes.

DR. DESFOSSE: Rhode Island.

RHODE ISLAND: Yes.

DR. DESFOSSE: Connecticut.

CONNECTICUT: Yes.

DR. DESFOSSE: New York.

NEW YORK: Yes.

DR. DESFOSSE: New Jersey.

NEW JERSEY: Yes.

DR. DESFOSSE: The motion passes seven to zero.

It's unanimous.

CHAIRMAN BORDEN: All right. The motion passes unanimously. The next item of business is IWP specification. My hope is that we can go through these in record time, given the fact that we're getting close to the end of the agenda here, running out of time. Joe.

1999 STATE IWP ALLOCATIONS

DR. DESFOSSE: To refresh everyone's memory, there was a handout in the materials that were mailed to you. It's a one-pager. It says, "Joint Meeting of Section Committee 9/23/1998." It was a meeting where the specifications for 1999 were developed. At that time, the IWP allocations for Gulf of Maine were 5,000 metric tons for Area 1B in the Gulf of Maine, and 20,000 metric tons IWP allocation for Area 2, and no IWP for Area 3, obviously. With that, the only thing that remains to be done is to allocate it by the states that participate in the fisheries in those two different management areas.

CHAIRMAN BORDEN: Okay. Normal process here is that we normally start this off by taking each area and have states voice their interest in any allocation, and so let's start with the Gulf of Maine. Would the State of Maine care for any portion of allocation if there is to be one? Okay. The State of Maine is not interested. State of New Hampshire?

MR. NELSON: No.

CHAIRMAN BORDEN: No. State of Massachusetts.

MR. COATES: Yes, we are interested. We'd like -- and I'd like to discuss this 1A/1B thing. I hate to bring it up again, but I have a question. We'd like 5,000 tons for 1A or B and 3,000 -- was it 3,000, Bill, 2500? What was our other number.

CHAIRMAN BORDEN: Twenty-five hundred south of --

MR. COATES: Twenty-five hundred, I think. Thank you, David. The question I want to raise about 1A/1B is, as I understand it, 1A and 1B is one divided in half with the offshore component being entirely in the EEZ? How can one conduct an IWP within an area that's entirely within the EEZ? This goes back to the Bill Brennan concerns about the fact -- well, it's a different issue that he's raising, because the vessel is supposed to be located within state waters. Now, does this mean all the harvest has to come out of 1B, or is it -- I mean, I'm confused. Was that the understanding?

CHAIRMAN BORDEN: At the joint Council meeting, that was the discussion that it was the desire, at least at that point, that the harvest come from 1B.

MR. COATES: Okay. Well, that helps clarify it for me. It still raises the question.

CHAIRMAN BORDEN: Okay. Let's take south of the Cape, so we know -- Joe, have you got something further on that?

DR. DESFOSSE: Yes. I'd turn our attention to the minutes from September 23rd. I believe it was the intent of the Section to have the fish from IWP operation come from Area 1B. It did not refer to the location of the vessel. But the motion as passed on September 23rd as Motion Number 5 does refer to where the processing ship is located. I believe that was supposed to refer to the JV vessel, though, not the IWP vessel. Does the Section need to make it clearer or reaffirm that motion?

CHAIRMAN BORDEN: Comments to that point? Everyone clear what you're discussing here? There seems to be some ambiguity in the motion. Just state it again, Joe, so that everyone understands.

DR. DESFOSSE: The motion that was passed in September during the specifications was: "To adopt Option 1 of the Public Hearing Document and that JV/IWP activities are allowed in all management areas except JVs are not allowed in Area 1. The intent was that the fish can come from any specific area. The motion directs where the processing ship is located." I'm reading directly from the minutes. I think it's unclear as to whether that referred to a JV or an IWP vessel. To be more specific, I think the recommendation should say that it refers to a JV vessel, not an IWP vessel.

CHAIRMAN BORDEN: Comments on that before I offer my own interpretation on it? George, did you have anything?

MR. LAPOINTE: Don't IWP vessels have to be in state waters?

CHAIRMAN BORDEN: Yes, they do.

MR. LAPOINTE: Thank you.

CHAIRMAN BORDEN: My recollection here is that that was specific to JVs. If somebody disagrees or if somebody in the audience has a different interpretation, please raise your hand. David.

MR. ELLENTON: You threw me at the very beginning when you said that there are no IWPs for Area 3. I thought we had gone through this whole dialogue as to where the fish could come from, and I notice that on Page 68 of the draft plan, it still says, "If IWP allocations are specified by area or subarea, the IWP vessel must be in and all herring processed must be caught from that area." But that is not what was agreed.

DR. DESFOSSE: Based on the conversation that we just had, I will go back and change that in the document now. I wanted to be sure before I made that change that it referred to where the fish were coming from and not where the vessel was located.

MR. ELLENTON: So in theory, you can still have an IWP from Area 3.

DR. DESFOSSE: It would be located in state waters, but it could be accepting fish from Area 3.

MR. ELLENTON: Yes.

CHAIRMAN BORDEN: Yes.

MR. ELLENTON: So long as that's clear to everybody.

CHAIRMAN BORDEN: Other points? If not, let's go around the table here and have states express any interest in IWPs for Area 2. Massachusetts already indicated 2500 south of the Cape. Rhode Island.

MR. POPE: Ten thousand.

CHAIRMAN BORDEN: Connecticut.

MR. BECKWITH: None.

CHAIRMAN BORDEN: New York.

MR. GORDON C. COLVIN: No.

CHAIRMAN BORDEN: New Jersey.

MR. FREEMAN: Not for Area 2.

CHAIRMAN BORDEN: Excuse me, Bruce?

MR. FREEMAN: I'm confused as to the areas. I'm just looking for the map for Area 2. We want to apply for IWP for 5,000 metric tons, and I'm not sure which area. It is Area 2?

CHAIRMAN BORDEN: Yes, you are Area 2.

MR. FREEMAN: I'm just looking for the map, and I don't have it in front of me.

CHAIRMAN BORDEN: You want 5,000, Bruce? Are there any other requests for Area 2? That would total 17,250 if we granted all those. What the Section agreed to was 20,000. We could grant all of those requests and retain 2500 in reserve for all of the states in case a late request came in. Comments on that suggestion? Jeff.

MR. KAELIN: Could you just go through the requests again. I missed something.

CHAIRMAN BORDEN: The requests are 2500 for the State of Massachusetts south of the Cape; 10,000 by the State of Rhode Island; 5,000 by the State of New Jersey; total being 17,250. Oh, 17,500, excuse me. Any objections to those allocations? No objections? Any objection from anyone in the audience? Dave Ellenton.

MR. ELLENTON: I don't object. I just wonder if there's any flexibility in having a zero Area 3 allocation? I presume this is for the fishing year 1999.

CHAIRMAN BORDEN: Yes. We're going to get to Area 3 next, David. Okay? This is just Area 2. Bill Adler.

MR. ADLER: Just a question, which sort of relates to what Dave -- what did the Section allocate for Area 3?

CHAIRMAN BORDEN: Zero.

MR. ADLER: Zero. So if we approve all ten here and then we approve some for Area 1, do we have any left to approve Area 3 if we wanted to, or do we have to go back and reconsider some of this stuff?

CHAIRMAN BORDEN: I'd have to ask David Stevenson or Joe to answer that. I mean, if we're going to work off the same numbers that were previously adopted, I don't think that would leave anything. But please correct that if that's wrong.

DR. DESFOSSE: I don't know how you can go back and readdress it now without it being a joint meeting. You'd be changing the specifications for the upcoming year.

MR. ADLER: But I guess what I was getting at is let's say you approved what we just discussed for Area 2, and let's just say that we approve whatever we're looking for in Area 1 or 1B, then somebody says, "Well, what about Area 3?" Would we have to go back to discuss that which we are discussing right now, which is the 20,000 metric ton Area 2 and say, "Gee, we're going to take some out of there and throw it out in Area 3"? Would we have to do that?

DR. DESFOSSE: No.

MR. ADLER: We can't do that?

DR. DESFOSSE: The IWP operations can accept fish from Area 3. That's not a problem. What's been approved for Area 3 is a 5,000 metric ton JV allowance.

CHAIRMAN BORDEN: All right. Back on the suggestion. The suggestion was **to approve 2500 for the State of Massachusetts (ed. south of the Cape), 10,000 for the State of Rhode Island and 5,000 for the State of New Jersey, with 2500 kept in reserve for subsequent requests from any state in that area.** Any objection to that being approved? If not, **let the record show that it's been unanimously adopted as a consensus position.** Joe, anything else on IWP requests?

DR. DESFOSSE: No, that's it.

CHAIRMAN BORDEN: David. Now go back to your point, David.

MR. ELLENTON: No, I'm not going to go back to my point. Thank you for the opportunity. Are you going to address the dates when applications have to be submitted by? Because we've changed the fishing year.

DR. DESFOSSE: For the new year?

MR. ELLENTON: Well, for 1999. Under normal circumstances, we would have been operating on a 1st of July fishing year. I think letters of request had to be in by 1st of February or something like that.

CHAIRMAN BORDEN: March 1st, I think. Under the old plan, I think it was March 1st.

DR. DESFOSSE: It might still be valid for the new plan, because the specifications are supposed to be set in the summer. So if the requests are in by March 1st, that would give the Technical Committee and PDT, etc. ample time to work that into the deliberations.

MR. ELLENTON: March 1st for this current year or March 1st for the year 2000?

DR. DESFOSSE: For the fishing year 2000.

MR. ELLENTON: Okay. I mean, in practical terms, all you're going to do is get a letter from somebody saying we would like to have an allocation. I won't be able to tell you the nationality of the vessel, the quantity of the fish or the -- I mean, that's ten months before the fishing year starts. But I take your point. You know, you've got to make some decisions in July, too.

CHAIRMAN BORDEN: Right. Dave, are you clear then on --

MR. ELLENTON: Yes.

CHAIRMAN BORDEN: Okay. Anyone else? Then let's move on to the Gulf of Maine. We have 5,000 available, and one request for 5,000. Discussion. Someone care to make a motion?

MR. NELSON: Discussion. The motion that we had passed was that the 5,000 would come out of Area 1B, and Phil had raised the question, I believe that it was unclear whether the boat had to be in that area, and I think that has been answered, that the boat does not come from or is not in that area, since there's no internal waters in that area, but the fish would have to come from 1B. So if that's -- is that the understanding now, that they would not be coming out of 1A, though?

MR. COATES: If you say so.

MR. NELSON: You're never going to make sure that they don't come out of there.

MR. COATES: Actually, they're going to have some kind of GPS location devices that are triggered to some kind of a device that goes off if they stray from the area. Obviously it's our intent, if that's the desire of the Section at this point, not to allow any herring that may occasionally stray over that boundary line, which I guess was established this past year, then we would so charge these vessels with that responsibility, recognizing that many of these boats that are supplying herring for this IWP are very small vessels.

But I didn't know if the latitude was available for us to reconsider that whole issue, because I know it's late in the day in terms of our meeting, but it is an issue of significant concern that's been raised to us by the small Gloucester vessels that do operate and have in the past provided fish to these IWP operations. And this goes back to the issue, and it's a bigger issue, of course, that Bill Brennan once raised -- he didn't raise this once, it was a point he always raised -- was that how, if in fact an IWP is supposed to be a domestic processing operation, isn't there a sense that the harvesting should also be taking place from internal waters, an internal waters processing operation? That answer was never clarified, so I guess by specifying or mandating that these herring have to come from this offshore area, I think we're kind of straying from the so-called intent of an IWP operation

which, to me, was supposed to be kind of a close-to-home, you know, internal waters state close to the beach type situation.

I recognize the dilemma, the problems with Gulf of Maine herring, but I still think it's going to put a significant burden on the smaller operators that just don't have the wherewithal to get out there and harvest.

CHAIRMAN BORDEN: Other discussion on this? Anyone care to make a motion regarding the Gulf of Maine? The only reason I ask for a motion is I know we've got divergent views on it, and I think the record will be better served if we have a motion.

MR. ADLER: I'll make the motion.

CHAIRMAN BORDEN: You make the motion to?

MR. ADLER: To allow -- what have we got there?

MR. COATES: Can I have a point of clarification, Mr. Chairman?

CHAIRMAN BORDEN: Go ahead, Phil.

MR. COATES: Would it be possible to -- we've obviously voted on the opposite -- oh, it's a different meeting. Okay. Would it be possible to change this motion at this time with the Section, or was that done in conjunction with a joint meeting, under the auspices of a joint meeting where there was an understanding that any divergence from where the herring come from might be considered to be a problem?

CHAIRMAN BORDEN: Really, the allocations, the IWP allocation flowed out of the joint meeting, so I'm not sure that we would have the right to go back and change those.

MR. COATES: That's the question.

CHAIRMAN BORDEN: It was always the intent that we would come to this meeting and then simply, consistent with that agreement at that meeting, make the allocations. If we want to go back and change the fundamental arrangement, we should go back to the joint meeting then.

MR. COATES: Okay. Well, I'll yield to your opinion on this, Mr. Chairman. I don't want to cause a lot of problems and delay the meeting any longer. But I do want to express Massachusetts' objection to forcing basically the vessels to operate and take their herring from an area that's further offshore, and the fact that the so-called dividing line is one that I believe is biologically obscure.

CHAIRMAN BORDEN: It might be helpful, Phil, given the fact that I think you can pretty much anticipate we're going to have to have a joint meeting of the two committees at some point here in the next couple of months, for the State of Massachusetts to outline those points in a letter, and then we can put that on the agenda for consideration at that time.

MR. ADLER: I will move that motion then.

CHAIRMAN BORDEN: Would you read it, Bill, for the record?

MR. ADLER: All right. **The motion is that the Section approve the IWP request of Massachusetts for 5,000 metric tons to be harvested from Area 1B.**

CHAIRMAN BORDEN: Is there a second to the motion?

MR. FREEMAN: Second.

CHAIRMAN BORDEN: Discussion on the motion. Any discussion? Any comments from the audience? Dave Ellenton.

MR. ELLENTON: Yes. I just emphasize, re-emphasize what Director Coates said, that the small vessels in Massachusetts will be penalized by not being able to take fish from Area 1A and put them on board foreign vessels. And they expressed their concern that they see in the state to their north fish going onto foreign vessels and the Canadian transshipments, all of that fish coming from Area 1A. Thank you.

CHAIRMAN BORDEN: John Nelson.

MR. NELSON: I believe we're going to support the motion. We do not support the activity in Area 1A. It'd probably be better overall in Area 1 not to have any IWPs, but the Section has looked at allocating some, and so I think we can support this. The State of Massachusetts doesn't have to allocate it, and therefore the safety of the small boats certainly can be taken into consideration by that decision. And again, we have discussed this at a joint meeting, and I think that it's appropriate to keep it in line with what all sectors have discussed in the past, and that is Area 1A is considered overfished, and why should we overfish it more?

CHAIRMAN BORDEN: Further discussions? Anyone in the audience? If not, are you ready for the question? Anyone need a caucus on this? Jeff, excuse me. I didn't see your hand up.

MR. KAELIN: Thank you, Mr. Chairman. I want to identify ourselves with John Nelson's earlier comments. I think, you know, if we're managing the herring fishery based on whether or not the small boats in the Gulf of Maine can become herring boats, I think we're going down the wrong road. There's 5- to 700 displaced small groundfish boats we're hearing about. We already know that the herring fishery is overcapitalized. Certainly it is in the Gulf of Maine. You know, if these guys want to go offshore and be herring boats, they should invest the money in becoming an offshore herring boat. We shouldn't be subsidizing them on the backs of people who have done that, whether they're harvesters or processors.

And I think that, as I made the point earlier, we're at a juncture here where we've got to recognize that we already have adequate processing capacity onshore in

this fishery, and to continue to allow foreign hauls to come over here and process with a different cost structure, with different employment requirements, environmental requirements and so forth is retarding the growth of the onshore processing sector. It's just pure economics. The cost structure's different. Every pound that goes into those markets is one less pound that's going to be processed onshore. And hopefully this management body will realize that and get on the side of the people who have made the investments to process this fish onshore and also make the investments in the vessels to become offshore fishing vessels. Thank you.

CHAIRMAN BORDEN: Phil Coates.

MR. COATES: Thank you. I didn't want to get into a debate on this, but I'd point out that the vessels we're talking about are boats that have attempted to or participated in past IWPs. And we have had them with varying degrees of one's perception of success for many years now. And these are boats that have basically not decide to fish and land several hundred thousand pounds of fish at one time. They're small seiners that participate in bait fisheries and other things. But they have participated in these IWPs in the past. And, you know, I think it's only fair that they be given this opportunity.

And I believe -- I may be wrong, but I thought this whole thing was driven by a quota in Area 1, and once that's reached, then we shut down. So I think the conservation needs, if the quota's in fact set for conservation purposes, then the conservation needs are certainly being met.

CHAIRMAN BORDEN: Any other comments? If not, I'm going to call the question. Anyone need a caucus? No caucus? Joe, please call the vote.

DR. DESFOSSE: Maine.

MAINE: Yes.

DR. DESFOSSE: New Hampshire.

NEW HAMPSHIRE: Yes.

DR. DESFOSSE: Massachusetts.

MASSACHUSETTS: Yes.

DR. DESFOSSE: Rhode Island.

RHODE ISLAND: Yes.

DR. DESFOSSE: Connecticut.

CONNECTICUT: Abstain.

DR. DESFOSSE: New York.

NEW YORK: Yes.

DR. DESFOSSE: New Jersey.

NEW JERSEY: Yes.

DR. DESFOSSE: **Motion passes six to zero with one abstention.**

CHAIRMAN BORDEN: All right. Motion passes. Any other business to come before the Section? A hand up in the back.

OTHER BUSINESS

MR. GERALD LEAPE: Gerry Leape with Greenpeace. Just a couple of quick points. With your last vote, we now saw the problem that was noted earlier about what if, through an IWP allocation, a state does in essence become more than a *de minimis* participant, not in the sense that you've been using it, but in essence they will be taking more than one percent of the fish, and are you going to come up with new requirements that will force or encourage states to submit plans and become an active part of this new management plan? And two, just for clarification, we're assuming herring bycatch in other fisheries are counted in determining whether a state is more than a *de minimis* participant in the herring fishery?

CHAIRMAN BORDEN: Joe, do you want to respond?

DR. DESFOSSE: Two things. All of the domestic landings of herring, I believe, are captured in that table we looked at before, including the bycatch. The second issue is this IWP allocation went to the State of Massachusetts, which is nowhere near being a *de minimis* state, unfortunately. No offense.

MR. LEAPE: (Away from microphone) It was one of the other allocations that you voted on.

DR. DESFOSSE: I wasn't clear on that.

CHAIRMAN BORDEN: All right. Any other business? David Stevenson.

DR. STEVENSON: Just a piece of information. There's been -- everyone knows, I think, is very much aware that 1998 was a very poor year for herring fishing in the Gulf of Maine, and we don't have complete 1998 landings figures yet because of the time delay in getting the data together and getting it in. So what we did to try to characterize the change between 1997 and '98 was to go to our data base, the VTR data base, and we found six boats, individual boats that have accurate and complete data for 1998, and compared the performance of those boats between 1997 and '98.

And there's a great deal of variation boat to boat. In fact, one boat in fact caught a little bit more herring in 1998 than it did the year before. The other five boats caught substantially less. One boat caught 60 percent of what they caught in '97, and another boat caught -- I'm sorry. One boat caught 40 percent of what they caught in '97 and one boat only caught 30 percent of what they caught in '97.

Overall for the six boats, the catch in '98 was down by 37 percent compared to 1997. And this is probably pretty symptomatic of the whole fleet, because remember that this is a fishery in which ten boats account for over 90 percent of the total catch. And these are major boats in the fishery. So we could be looking at something on

the order of a 40 percent reduction in the catch in '98 once we get all the figures in.

CHAIRMAN BORDEN: Okay. Thank you. Anything else? Bill.

MR. ADLER: Could you just go over one more time what did we do with Area 3 on the IWP?

CHAIRMAN BORDEN: Zero.

MR. ADLER: We did a zero there?

CHAIRMAN BORDEN: It's a zero directed allocation. If vessels want to go into the State of Massachusetts under the allocation and have landings that come out of Area 3, that's acceptable. Okay. Anything else? Gil Pope.

MR. POPE: David, there was a point mentioned by the gentleman from Greenpeace back there that -- are you referring to New Jersey now with 5,000 pounds? Okay.

CHAIRMAN BORDEN: Anything else? The meeting is adjourned, then. The Winter Flounder Board will meet in five minutes. I apologize for the delay here, but I would point out for the record that that is the shortest period of time that this Commission has ever discussed IWP allocations. Normally they go on for about 24 hours.

(Whereupon, the meeting adjourned at 3:25 p.m., January 11, 1999.) - - -