

**PROCEEDINGS OF THE  
ATLANTIC STATES MARINE FISHERIES COMMISSION  
ATLANTIC HERRING SECTION**

**Crowne Plaza Hotel  
Old Town, Alexandria, Virginia  
May 3, 2010**

Approved: November 2010

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1. **Motion to approve agenda** by Consent (Page 1).
2. **Motion to approve proceedings of February 1, 2010** by Consent (Page 1).
3. **Move to adopt Option 3 from Issue 1, consistent with Table 5 on Page 23, specifications consistent with the New England Fisheries Management Council Amendment 4, including the removal of joint venture processing total, JVP, IWP, TALFF and the reserve** (Page 6). Motion by Douglas Grout; second by Terry Stockwell.  
  
**Move to amend the motion for Option 3, to strike the language “consistent with MSRA” and insert in its place “consistent with Council Amendment Number 4”** (Page 7). Motion by David Pierce; second by Seth Macinko. Motion carried (Page 7).  
  
**MAIN MOTION REWORDED ON PAGE 10: Motion to adopt Option 3 of Issue 1, consistent with Council Amendment 4, with Table 5 on Page 23, specifications consistent with New England Fisheries Management Council Amendment 4, including the removal of JVPT, JVP, IWP, TALFF and the reserve** (Page 7). Motion carried (Page 7).
4. **Move to adopt Option 3 on Issue 2 to establish a specification-setting process that is complementary with the New England Fisheries Management Council’s Amendment 4** (Page 7). Motion by Douglas Grout; second by Bill Adler. Motion carried (Page 8).
5. **Move to adopt Option 2 of Issue 3 requiring annual paybacks of TAC/ACL overages** (Page 8). Motion by Douglas Grout; second by Terry Stockwell. Motion carried (Page 8).
6. **Motion to postpone approving Addendum II as modified today until the ASMFC Annual Meeting Week in November 2010** (Page 8). Motion by Douglas Grout; second by Terry Stockwell. Motion carried (Page 8).
7. **Move to adopt the following options: Under Issue 1, Option 3 modified to allow small-mesh bottom trawl holding a C permit a maximum possession limit of 10,000 pounds and small-mesh vessels holding a D permit a maximum possession limit of three metric tons per landing day. Small-mesh vessels may not land in excess of the 2,000 pound allowance on a no-landing day. Issue 2, adopt Option 4, different landing days for small-mesh bottom trawls plus two additional landing days; Issue 3, Option 1, status quo; Issue 4, Option 1, status quo; and Issue 5, Option 1, status quo** (Page 17). Motion by Douglas Grout; second by David Pierce.  
  
**Move to amend so that for Issue 2 to select Option 3, which is small-mesh bottom trawl vessels with a C or D permit may land on different days than the rest of the fishery, and they’re allowed one extra landing day** (Page 20). Motion by David Pierce; second by Terry Stockwell. Motion carried (Page 20).
8. **MOTION REWORDED ON PAGE 34: Move to adopt the following options: Issue 1, Option 3, modified to allow small-mesh bottom trawls holding a C permit a maximum possession limit of 10,000 pounds and small boat bottom trawl vessels holding a D permit a maximum possession limit of three metric tons per landing day. Small-mesh bottom trawl vessels may not land in excess of the 2,000 pound bycatch allowance on a no-landing day. Issue 2, adopt Option 3, may include different landing days for small-mesh bottom trawls plus one additional landing days; Issue 3, Option 1, status quo; Issue 4, Option 1, status quo; and Issue 5, Option 1, status quo.** Motion failed (Page 24).
9. **Motion to adjourn by Consent** (Page 24).

## ATTENDANCE

### Board Members

Terry Stockwell, ME, Proxy for G. Lapointe (ME)  
Pat White, ME (GA)  
Sen. Dennis Damon, ME (LA)  
Doug Grout, NH (AA)  
G. Ritchie White, NH (GA)  
Rep. Dennis Abbott, NH (LA)  
David Pierce, MA, proxy for P. Diodati (AA)  
William Adler, MA (GA)  
Rep. Sarah Peake, MA (LA)  
Mark Gibson, RI (AA), proxy for Bob Ballou (AA)

William McElroy, RI (GA)  
Seth Macinko, RI, proxy for Sen. Sosnowski (LA)  
Dave Simpson, CT (AA)  
Pat Augustine, NY (GA)  
James Gilmore, NY (AA)  
Brian Culhane, NJ, proxy for Sen. Johnson (LA)  
Peter Himchak, NJ, proxy for D. Chanda (AA)  
Tom Fote, NJ (GA)  
Gil Ewing, NJ, proxy for Asm. Albano, (LA)

(AA = Administrative Appointee; GA = Governor Appointee; LA = Legislative Appointee)

### Ex-Officio Members

#### Staff

Vince O'Shea  
Robert Beal

Chris Vonderweidt  
Kate Taylor

#### Guests

Jeffrey Marston, NH F&G  
Jeff Kaelin, Winterport, ME  
Lori Steele, NEFMC  
Mary Beth Tooley, Small Pelagic Group  
Charles Lynch, NOAA  
Bob Ross, NMFS  
Peter Burns, NMFS  
Bob Sadler, NMFS

Janice Plante, Commercial Fisheries News  
John Tulik, MA Env. Police  
Joe Fessenden, ME Maring Matrol  
Tom McCloy, NJ DFW  
Patrick Paquette, MSBA/RFA  
Raymond Kane, CHOIR  
Ben Martens, CCC HFA  
David Ellenton, Cape Seafoods, Inc.

The Atlantic Herring Section of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, May 3, 2010, and was called to order at 4:00 o'clock p.m. by Chairman Dennis Abbott.

### **CALL TO ORDER**

CHAIRMAN DENNIS ABBOTT: I would like to call the Atlantic Herring Section to order.

### **APPROVAL OF AGENDA**

CHAIRMAN DENNIS ABBOTT: The hour is 4:00 o'clock, and at this time I would like to have approval of the agenda. Does everyone have a copy of the agenda? Is there anything that anyone needs or would like to add to the agenda?

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN DENNIS ABBOTT: Seeing none, I would like to approve the proceedings from the February 1, 2010, meeting. Does anyone have any comments? Pat Augustine.

MR. PATRICK AUGUSTINE: No comments; move to approve, Mr. Chairman.

CHAIRMAN ABBOTT: Thank you. Without objection, the minutes are approved.

### **PUBLIC COMMENT**

CHAIRMAN DENNIS ABBOTT: Public comment; is there anyone in the public who would like to speak on a subject that is not on our agenda? Seeing none, we will move along.

### **DRAFT ADDENDUM II**

#### **REVIEW OF OPTIONS**

The next topic will be Draft Addendum II for Final Approval, and at this time I would like to recognize Chris Vonderweidt to go over the addendum.

MR. CHRISTOPHER VONDERWEIDT: I'm just going to review the options that included in Draft Addendum II to start out Agenda Item Number 4 and then take any questions on that. Just as an introduction, this addendum was initiated to deal with

the specifications currently. The specifications were established through Amendment 1, and I'll go into more detail on these acronyms that are up there in a bit.

They are listed on Page 5 with the definitions and everything if you want to just cut ahead and look at them now. Then Amendment 2 established the research set-asides. This addendum has been designed to have consistency between the ASMFC, the New England Fisheries Management Council. The original specifications were designed for consistency as well; and then just a side note, 97 percent of harvest from federal waters by federal permit holders, so it is about 3 percent state waters.

For a statement of the problem, the Magnuson-Stevens Reauthorization Act and National Standard 1 require councils and the National Marine Fisheries Service to establish annual catch limits and accountability measures. In response the council has developed Amendment 4 to comply with these new standards. Simply, it is going to change the definitions associated with setting the specifications, the quota, all those things, and I'll go into a little bit more detail.

It is not going to change the overall management scheme. There is still going to be an overall quota that gets divided amongst three management areas and then two sub-management areas, 1B and 1B. Once NMFS publishes the final rule for Amendment 4, the ASMFC and council will have a different set of acronyms and definitions associated with those. There is also like to be an annual payback provision with their Amendment 4.

The ASMFC – currently the process established an Amendment 2 specifying a suggested – it is just a suggested process to actually go through and review the science and get together and establish the specifications. We have never actually followed that, and it was actually taken pretty much verbatim language through the New England Council's Amendment 1.

Now the New England Council is not even going to follow the language on that, so there is this process that we haven't really followed, which is going to be changed, so that has been included as well. For the current terms – and, again, the definitions for these are on Page 5, and what is up there right now are the approved specifications for 2010 and 2012. They were approved by NMFS last week or the week before, but very recently.

There is an allowable biological catch at the top, which is you remove the forage needs of the ecosystem and you end up with a U.S. optimal yield, and that is the number that gets divided amongst the different management areas and then each management area has its own total allowable catch, TAC. There is an amount of border transfer that has been allocated.

Research set-aside was not allocated this year, but it has been in previous years. Then there is a fixed-gear set-aside which is up to 500 metric tons. This was scaled back with the same ratio that the Area 1A was scaled back, so it's 295. These are the specifications that are routinely set by the council and the ASMFC, but we've got five in here which are consistently set to zero. That would be the first four here, Joint Venture Processing Total, Joint Venture Processing, Internal Waters Processing, Total Allowable Level of foreign fishing.

These are all kind of remnants of when the Magnuson-Stevens Act was originally enacted and there was a lot of foreign fishing effort. Now there is none, so it is consistently set at zero. Then there is a reserve which is a reduction from optimal yield for a risk-averse approach. The new specifications take scientific and management risk into account, so that is really no longer necessary, and these will be removed from Amendment 4. I will go into that a little bit more.

Our actual specification process – I'm not going to go into great detail – the language begins on Page 15. We have never followed this process. It is taken from Amendment 1, like I said before, and the New England Council Amendment 4 is establishing a new process, which is listed I believe on Page 19 of the document.

Also included in Amendment 4 is the establishment of OFL, overfishing level, which is simply the fishing mortality rate, MSY times the stock size currently. Previously it was allowable biological catch or currently it's allowable biological catch. They are establishing acceptable biological catch, which is OFL minus the scientific uncertainty, so this would be a new specification. There is really nothing that would be equivalent to that in the specifications now.

Then there is the ACL, annual catch limit, which just takes management uncertainty from the ABC, and this was previously optimal yield. This is the number that gets divided amongst the management areas, the number that the fishermen can harvest. They also

proposing to remove the foreign JVP total, IWP, TAL and the reserve, like I mentioned before.

Also included are the accountability measure paybacks, which would include an annual deduction for any overage from the ACL or sub-ACL. This would actually happen in not the following year but two years down the line when you have the finalized landings, so there would be a one-year lag, but there would paybacks.

Then there is also included in the council's Amendment 4 a haddock bycatch cap. It is simply a number that is specified and if you go over it, it would be paid back. It doesn't really apply to our plan so it hasn't been included. Specifically what are the management measures, and this is on Page 22 and 23, and probably the easiest thing to look at is this table, which you will find on Page 23.

Issue 1 is specifications and these are the definitions and associated acronyms. It is not going to change the management scheme. Option 1 would status quo. Option 2 would be consistent with National Standard 1 of the Magnuson-Stevens Reauthorization Act. I misspoke; that is on Page 23. The table on Page 19 is not the one you want to look at. At the top of the table there is Option 1, the status quo; middle of the table, Option 2 and Option 3 so you can kind of look right to left what would be included, what would become what and what would be removed.

Option 2 would be simply to change the specifications to be consistent with the Magnuson-Stevens Reauthorization Act, but it does not remove any of the specifications associated with foreign fishing, like total allowable level of foreign fishing, joint venture processing total, and the ones that I mentioned a second ago.

Option 3 is the one that mirrors the preferred alternatives of the council's Amendment 4, and this would be consistent with the Magnuson-Stevens Reauthorization Act. You remove the ABC that is in there now, and that becomes the OFL and would establish a new ABC, the acceptable biological catch; and establishing a U.S. optimal yield would become a stock-wide ACL.

I would like to note that in the language on Page 22 it includes removing U.S. at-sea processing and border transfer. This is incorrect. It was a typo, but the table on Page 23 is correct; so when talking about the management options, you can see the acceptable biological catch under Option 1, status quo, becomes

the overfishing limit. The overfishing limit carries on to Option 3 as well.

Then if you go down to joint venture processing in the middle, you can see it is retained in Option 1, it is retained in Option 2, and there is a blank box there for Option 3, so that would be removed and I think that is the easiest way to look at it as far as what is included and what is changing to what and what is going to be removed.

As far as the specification process, there are three options here, and the plan development team only really feels like there are two viable options here, but one was included just as an exercise. Option 1 is status quo; we wouldn't change the process. Option 2 would be identical to the council's Amendment 4, using the same language.

The problem with following this to a "T" is that there are more tiers at the New England Council hierarchy. There is the SSC, which we don't have. There is the plan development team, which is kind of like our technical committee. Then there is the Herring Committee which is the group that we've met with jointly. Then there is the full council that takes the final vote.

We basically have the technical committee and then the section, so it doesn't really jive to include because there are four layers versus two layers. Option 3 on Page 27 would be complementary to the Amendment 4. It is suggested process but basically the technical committee reviews the best available science and the stock assessment SAFE report and makes recommendations on all the specifications to the section, and then the section votes and establishes the specifications.

The final issue, Issue 3, accountability measures, is just two options, status quo or it establishes paybacks for an overage of a sub-ACL or ACL from one year to the next; so as you get the data from one year, it gets removed from the following year's TAC. Now there is the question of what is the best course of action for the section to take today concerning Addendum II being that we expected to know what the final rule was or at least have in hand the final submitted Amendment 4 from the council.

That document has been submitted to the National Marine Fisheries Service but it is not available on the website or to the public yet, so we don't really know what the final options that will be selected or not selected will be. I have contacted NMFS staff and asked them what a reasonable timeline might be.

They need to review it, publish it in the Federal Register, and typically it will have a 30-day comment period. They can forego that, but being that it only applies to the January 1, 2011, fishing season, they felt that it was going to be six to eight months from when I talked to them last week. We could postpone and review the Amendment 4 and then final rule at a later meeting when we know what the Amendment 4 contains as an option.

CHAIRMAN ABBOTT: Thank you. I think we have a possibility of adopting on the issues whatever options we want and wait to make a final determination on adopting Addendum II until whatever meeting that we have results from the feds; is that not true?

MR. VONDERWEIDT: Yes.

CHAIRMAN ABBOTT: Chris says that is true, so we will stop there.

MR. VONDERWEIDT: It might work best to go through the public comments and the written comments.

## **REVIEW OF PUBLIC HEARING AND WRITTEN COMMENTS**

CHAIRMAN ABBOTT: Yes, next on the agenda would be to probably recognize Chris to go on with the public hearing and written comments section, and I believe you also will be doing the technical committee report in Matt Cieri's absence?

MR. VONDERWEIDT: Correct. Most of the comments at the public hearing were for Addendum III, so I'm going to go back over those comments in a lot greater detail than these. We had some on Addendum II. There is a more thorough report that was on the CD. The Maine Hearing – and I'll just go north to south – the participants generally supported Addendum II because they think it is a good idea to establish complementary specifications and the definitions and the process. There were a few comments to adjust the alternatives that are in there right now. One would be to in fact remove U.S. at-sea processing and also remove border transfer.

There was some support to retain internal waters processing. There was some support to retain the total allowable level of foreign fishing. The TALFF as specifically written, the reasoning behind that is that the Magnuson-Stevens Act requires that quota that can't be – if domestic capacity is insufficient to

harvest a maximum sustainable yield the amount of fish, then you can allocate that to foreign vessels.

It seems pretty unlikely given today's fishery climate, but if in the future the domestic capacity was unable to harvest the full amount, the full TAC, then the council can specify that just through provisions of the Magnuson-Stevens Act; so if we remove that, we would have to do an addendum to again allocate it.

They were in favor of a complementary specification-setting process although there was some concern that there was going to be potential state waters overages if the ASMFC sets a higher TAC/ACL than what the SSC recommends; and then if there is an overage, the federal permit holders will have to pay that back because it will be an overage from the federal quota and not our quota.

Because of that, they supported actually Option 2, which is the one that is identical to Amendment 4, but the main reason for that was because they were worried about overages going higher than the SSC. They also support an accountability measure of paybacks, again to prevent overages. Along with that, they would support adding any quota rollover if there are underages.

New Hampshire was pretty easy; there were no comments on Addendum II. Massachusetts' participants supported adjusting the specifications for consistency. They wanted to retain the total allowable level of foreign fishing and internal waters processing. One participant pointed out that the language reads "Magnuson-Stevens Act"; it should read "consistent with National Standard 1 of the Magnuson-Stevens Act".

Then also they supported a modified Option 3 which would have a complementary specification-setting process, but hold the section to the recommendations of the SSC. In addition, they also supported the accountability measure paybacks. As far as common themes, the participants generally felt that the specifications should be consistent, stay within the ACL recommendations of the SSC, and they support the accountability measure of paybacks.

CHAIRMAN ABBOTT: Thank you, Chris. Now you can take a drink of water and go with the technical committee report.

#### **TECHNICAL COMMITTEE REPORT**

MR. VONDERWEIDT: Like Dennis said, Matt couldn't be here, so in his absence I will give the

report. The technical committee unanimously supported Draft Addendum II. They are supportive of consistent regulations between state and federal waters or it might end up with unintended consequences as far as overage and things along those lines.

Specifically, the technical committee supports Issue 1, Option 3, which are the specifications consistent with the council's Amendment 4. This is the option that removes the joint ventures, the total allowable level of foreign fishing and the reserve. Issue 2, they support Option 3, which is the complementary specification-setting process. Issue 3, they support accountability measure, annual paybacks, which is Option 2. The discussion was that accountability measures are necessary to prevent overages of the federal TAC. Overages that result in state water fishing are going to force federal permit holders to pay it back, which are larger cuts from the already reduced Area 1A TAC and also the other areas. That is all of the discussion on Addendum II from the technical committee.

CHAIRMAN ABBOTT: Thank you, Chris. We'll right along and we'll ask Dave Ellenton to comment for the advisors. Excuse me, Dave, would you hold up. I was going to wait for comments, but go ahead, David.

DR. DAVID PIERCE: Well, whatever you like, Mr. Chairman, I just had a question regarding the technical committee report, the positions that they have taken and recommendations to us. Clarification in particular from Chris; Chris, the second recommendation that they had made, Issue 2, is that correct, they actually have recommended that we go with Option 3 and not Option 2; the specification-setting process, that they actually indicate that we should go with the complementary specification-setting process that potentially would have us set the OFL and ABC higher than the recommendations of the SSC? That surprised me; I thought they were going to go with Number 2, but they went with Number 3? Are you in a position to elaborate as to why they selected that strategy?

MR. VONDERWEIDT: Well, I was staffing the call so I can try. I guess that is the best answer. I think that if there was a – there is no specific option that says go higher than the SSC – you know, if there was an Issue 4 that was the SSC recommendation, the discussion might have been a little bit different, but the discussion revolved around the four different levels at the council versus the two at the ASMFC, and that they would be specifying the same OFL,

ABC, ACL and reviewing the same information. There was a lot of talk about the overages.

CHAIRMAN ABBOTT: Is that good, David? Any other comments since we're taking them? Seeing none, David Ellenton.

### **ATLANTIC HERRING ADVISORY PANEL REPORT**

MR. DAVE ELLENTON: The Atlantic Herring Advisory Panel had a conference call meeting on April the 6<sup>th</sup>. That conference call covered both Draft Addendum II and Draft Addendum III. The number of advisors – I usually tell you this so that you know who was present and absent – the number of advisors that we have for this advisory panel is actually seventeen, but the participants in the conference call, in addition to myself, was only an additional four people.

We had a small group of people. Those folks who did participate, as I said in addition to myself and Chris who was administrating the meeting, Peter Moore from the midwater trawl company, Norpel in New Bedford; Jennie Bichrest, who is a major bait distributor from Maine; Jeff Kaelin, who represents the midwater trawl and purse seine fishery out of Cape May, New Jersey; and Al West who at the time of the meeting was employed Connors Brothers, the sardine people up in Prospect Harbor. He is still employed by them but his position is slightly different now because his responsibility is to dispose of the equipment since the factory is now closed.

Some of the folks who didn't attend have actually contacted me to say that they hadn't been contacted and advised of the date of the meeting, but it seems that they were. I just wanted let you know that one or two folks were a little bit upset that they hadn't managed to participate in the conference call because they thought they hadn't received notice of it.

Very simply, our discussions of Draft Addendum II left us with exactly the same decisions as the technical committee. We considered that this was an administrative addendum, and we weren't prepared to spend much time on it other than just to quickly go through and support the various options for the various issues that kept us consistent with the New England Fishery Management Council Amendment 4.

All three issues, we went with the options that kept us consistent with the council Amendment 4. There

were a couple of other comments that came up. One of the advisory panel members wanted to remove the U.S. at-sea processing line item, but said that if the section did not remove that, that the AP would recommend establishing a maximum cap, and all of those present supported that position.

One member of the AP recommended the border transfer because that member felt that it only benefits the Canadian processors, but there was a bit of a disagreement between the four of us and we didn't come to any conclusive decision. Thank you.

CHAIRMAN ABBOTT: Thank you, David. Does anyone have any questions for Mr. Ellenton? Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: With regard to the advisors that didn't receive notification and weren't aware, we sent e-mails out, Mr. Chairman, so after this meeting maybe staff will get with Dave and see if we can get the names of the folks that didn't get those e-mails or didn't get communicated, and we would like to go back to them and touch bases and make sure that we know what is the best way to communicate with them. We did make an attempt to get hold of them. Thank you.

CHAIRMAN ABBOTT: Thank you. Law enforcement, go ahead.

### **LAW ENFORCEMENT COMMITTEE REPORT**

MR. JEFF MARSTON: On April 9<sup>th</sup> the Law Enforcement Committee convened a teleconference on both Draft Addendum II and III of Amendment 2 of the Atlantic Herring Plan. Very briefly, there were no law enforcement issues associated with the proposed Draft Addendum II for public comment. Thank you.

### **BOARD DISCUSSION**

CHAIRMAN ABBOTT: Thank you, Jeff. Are there any comments from the board, Bill.

MR. WILLIAM A. ADLER: Mr. Chairman, a couple of things here; first of all, I got a little confused here. Issue 2, between Options 2 and 3, which one was the one that gave us a little independence from the federal world; was it Option 2 or Option 3 of Issue 2; can you answer that, Chris.

MR. VONDERWEIDT: Yes, it would be Option 2 that would require that the section cannot specify a higher quota ACL amount than what the SSC recommends. Option 3 does not constrain us to that.

MR. ADLER: Okay, if I may, Mr. Chairman, because I think when this discussion started, it sounded like the one where you go with the feds had an awful lot of layers whereas we had a little less; is that correct, my reading on that?

MR. VONDERWEIDT: Yes, absolutely; and if you look at the different options, Option 2 starts on Page 23. This is the one that would bind us by the SSC's recommendations and also follow the NMFS process. It continues on Page 24, 25, 26 and the top of Page 27. The Option 3, which is complementary, does not hold us to the SSC's recommendations. It starts on the top of Page 27 and goes halfway down 28, so it kind of –

MR. ADLER: That was less confusing for us.

MR. DOUGLAS GROUT: Mr. Chairman, if you're ready I'm prepared to make a motion on the various options here.

CHAIRMAN ABBOTT: Hold on, I'm just going to recognize Mary Beth Tooley quickly.

MS. MARY BETH TOOLEY: Mr. Chairman, I guess I have just a question. When we discussed the different options and the consistency with the council's process at the public hearings, the staff indicated that Option 2 was really not doable under the commission's plan because it does describe how the council goes about the process, the commission doesn't have a PDT, you have a TC. There is just some variation there, so it seemed like Option 2 was not doable.

CHAIRMAN ABBOTT: Mary Beth, which issue are you talking about, Issue 1, 2 or 3?

MS. TOOLEY: It is the one that Chris was just outlining.

CHAIRMAN ABBOTT: Issue 2.

MS. TOOLEY: Yes, I believe it is Issue 2 with the difference between Option 2 and Option 3, so if Option 2 is – now perhaps Chris is saying that it is doable because I have thought Option 3 was really the process that you all wanted to consider, but you might want to just amend that slightly to say that you would utilize the consistent ABC that the council

uses. Perhaps I don't have it correct, so it is a question; is Option 2 doable now or should you be considering Option 3 slightly amended?

MR. VONDERWEIDT: I can answer that as far as Option 2 was included to show sort of the different levels and how it doesn't jive with the two levels with the commission and our process. As far as what section members might be thinking as far as amended options, I can't speak to that.

MS. TOOLEY: The way it was described to the public hearing, Chris, Option 2 was really not something that the commission could do; is that correct or incorrect?

MR. VONDERWEIDT: That's correct; it was kind of to show the different levels in there.

MS. TOOLEY: Okay, well, thank you very much for that, because I think that Option 3 slightly amended to include a consistent ABC with the council would be probably the best to go.

CHAIRMAN ABBOTT: Thank you, Mary Beth. Doug, I guess at this point we can go one or two directions. We can go through issue by issue or are you going to make a motion for the three issues? I'll listen to your motion.

MR. GROUT: My intent was to go one issue at a time.

CHAIRMAN ABBOTT: Okay, go ahead.

**MR. GROUT: Mr. Chairman, I move to adopt Option 3 from Issue 1, consistent with Table 5 on Page 23, specifications consistent with the New England Fisheries Management Council Amendment 4, including the removal of joint venture processing total, JVP, IWP, TALFF and the reserve.**

CHAIRMAN ABBOTT: Thank you, Mr. Grout; do we have a second? Seconded by Mr. Stockwell. Do we have any discussion on the motion? Would you care to discuss the motion that you just made first?

MR. GROUT: No, Mr. Chairman, I think it is pretty self-explanatory based on Chris' comments here.

CHAIRMAN ABBOTT: Thank you. Dave Pierce.

DR. PIERCE: I support the motion; however, I would suggest a slight change in the wording of the option, Option 3, to make it correct. We went to

public hearing with a bit of a misleading statement; and if this document is to be adopted by us, it needs to be correct. If the maker of the motion is willing, I would suggest that instead of our leading off with the language of Option 3, “being consistent with MSRA that is consistent with federal law”; it more correctly should be stated “consistent with council’s Amendment Number 4”.

It is all about being consistent with the National Standard Number 1 Guideline, which is what the amendment is doing and not to be necessarily be consistent with the Magnuson Act – of course, we are – in keeping with the federal law, but I continue to be concerned that we mislead ourselves into thinking that some of the things we do we have to do because it will make us consistent with the Magnuson Act. It is the National Standard Number 1 Guidelines.

That is what is driving the bus in this particular case, and that is why the council adopted all the particular approaches that we now see before us laid out here in Option 3. The OFL, the ABC, the ACL, those are National Standard Number 1 Guidelines’ so-called requirements. They’re not supposed to be requirements, but they’re treated that way.

We’re narrowly obligated to go in that direction. The Magnuson Act does not require those specific descriptions, OFL, ABC and ACL. That is the National Marine Fisheries Service interpretation of the Magnuson Act that is represented in the guidelines. If the maker is willing to go with that, “consistent with council’s Amendment Number 4”.

MR. GROUT: I understand your concern, Dave, as Option 3 is read. I think the intent with the motion discusses specifications consistent with NEFMC Amendment 4; so if you feel more comfortable with us stating that twice in the motion, I’m more than happy to do that.

DR. PIERCE: You could just cross off “consistent with MSRA” and just remove ABC.

MR. GROUT: But the motion doesn’t say that if you look at the motion up –

CHAIRMAN ABBOTT: Could we have a time out just for a matter of process. We quickly get confused here. Doug has made a motion. If you would like to make an amendment, then I would ask you – put the motion back where it was – and I would ask you below to make a motion to amend as a new motion and we will act on that motion. If the section decides

that they want to go in your direction, then that will be part of the main motion.

**DR. PIERCE: Fine enough; it’s not accepted as a friendly so I’ll make it as a motion to amend, and the amendment would be for Option 3, to strike the language “consistent with MSRA” and insert in its place “consistent with Council Amendment Number 4”.**

CHAIRMAN ABBOTT: Do we have a second to that motion? Seeing no second, the motion does not pass.

DR. SETH MACINKO: I’ll second it.

CHAIRMAN ABBOTT: Seconded by Mr. Macinko. Any discussion now on the amendment? Mr. Stockwell.

MR. TERRY STOCKWELL: It says the same thing to me, so I could vote for either one of them.

CHAIRMAN ABBOTT: Any further discussion on the motion? Would you like to vote? We’ll call the question. Do you need time to caucus? Okay, all those in favor of the motion signify by raising your right hand, 7 people in favor; all those opposed; null votes, abstentions. **The motion carries.** We will change the language of the main motion; we’re back to the main motion. Is there any further discussion on the main motion?

Move to adopt Option 3 of Issue 1, consistent with Council Amendment 4, with Table 5 on Page 23, specifications consistent with New England Fisheries Management Council Amendment 4, including the removal of JVPT, JVP, IWP, TALFF and the reserve. Motion by Doug Grout; seconded by Mr. Stockwell. All those in favor of the motion signify by raising your right hand; all those opposed; abstentions; nulls. **The motion carries eight to zero.** Doug Grout.

**MR. GROUT: I have a motion for Issue 2, to move to adopt Option 3 on Issue 2 to establish a specification-setting process that is consistent with the New England Fisheries Management Council’s Amendment 4.**

CHAIRMAN ABBOTT: Seconded by Bill Adler. Any discussion on the motion? Seeing none, we will call the question. Dave Pierce.

DR. PIERCE: Mr. Chairman, do you need to have the language as shown in the document – it may not make a big difference, but it does say

“complementary specification-setting process” as opposed to “complimentary”. If it’s not a big deal, fine, but I just wanted to know what the maker of the motion intended.

MR. GROUT: I would accept that as a friendly amendment by saying “the process that is complementary”.

CHAIRMAN ABBOTT: Call it whatever we want, it is still Option 3 of Issue 2 is the bottom line. Any further discussion? We will call the question. All those in favor raise your right hand; all those opposed; null votes; abstentions. **The motion carries six to zero.** Doug Grout for a motion.

MR. GROUT: **For Issue 3 I move to adopt Option 2 of Issue 3 requiring annual paybacks of TAC/ACL overages.**

CHAIRMAN ABBOTT: Terry Stockwell seconds the motion. Is the language okay, Dr. Pierce? Is there any discussion on the motion? Seeing none, we’ll call the question. All those in favor kindly raise your right hand; all those opposed; null votes; abstentions. **The motion carries six to zero.** Go ahead, Doug.

MR. GROUT: **I have a final motion and this relates to the information that Chris provided at this meeting that the Amendment 4 will likely not be adopted for another six months. Just in case there is some kind of modifications that the National Marine Fisheries Service decides that they might want to add, before the final rule comes out, I would make a motion to postpone approving Addendum II as modified today until the ASMFC Annual Meeting Week in November 2010.**

CHAIRMAN ABBOTT: Motion by Mr. Grout; do we have a second? Seconded by Mr. Stockwell. Is there any discussion on the motion? Dr. Pierce.

DR. PIERCE: Do we have any good reasons to assume that the numbers will come out differently? Have any signals been sent by the National Marine Fisheries Service that there might be a change, the numbers might be different? I haven’t heard anything and I’m just wondering. I thought things were pretty much on track and there would not be any changes, but perhaps someone has heard –

CHAIRMAN ABBOTT: I think as a member of the council you’d probably be in the best position to answer your own question.

DR. PIERCE: So I’ll answer the question; I haven’t heard a word, but so is Doug and he may have heard something I hadn’t heard.

MR. VONDERWEIDT: Well, one main difference even if the options were the same would be that language would change. Between the original submission, which a couple of times NMFS considered an informal submission, and then talked to Lori and said we need these things changed for process, and being that we have not seen the submitted final Amendment 4, so we don’t know what that language is at this time, so it is kind of a question mark if things are going to change.

The language is likely to change here or there. One example would be if you saw the letter from the National Marine Fisheries Service, and it had concerns that Amendment 4 was going to retain total allowable foreign fishing and those other specifications, that they could be included annually. I have talked with NMFS staff and they said that they had talked with Lori and they were concerned with the ambiguity of that sentence, so that has changed right there. It will be little tweaks like that, I think, and then potentially other things and potentially not accepting something I think would be the concerns.

CHAIRMAN ABBOTT: Does that satisfy you, David? Thank you. Doug Grout.

MR. GROUT: My whole purpose here was just to make sure that – because it is somewhat of a lengthy process by the commission to make changes after we have approved them and that since we’re applying these to the 2011 fishing year, we do have time and it would be nice to be able to see the final rules that are proposed the National Marine Fisheries Service before we make a final approval of this. I’m just trying to cover our bases right here.

CHAIRMAN ABBOTT: Further discussion? Seeing none, we’ll call the question. All those in favor of the motion please raise your right hand; all those opposed; nulls; abstentions. **The motion carries six to zero.** That concludes action on Addendum II for the day. We’ll be back to it in November, presumably. At this time we would like to move right along into Draft Addendum III for final approval. At this time I would like to recognize Chris to go over the options, public hearing and written comments and also technical committee report.

## DRAFT ADDENDUM III

### REVIEW OF OPTIONS

MR. VONDERWEIDT: This addendum, you might remember that there were some questions about some data that could be generated by the technical committee as people's time became available. The technical committee and the plan development team were going to go back and they were going to try and include as much new information as they could up until about a month after the last meeting, and the addendum would be finalized and sent out for public comment.

There is a lot of new information in here and also included with that, the plan development team tried to address some of the concerns that were raised here by members of the advisory panel and industry at the last meeting and adjust language accordingly to make this document as neutral as possible. Those changes were reviewed by the ISFMP Director, the Section Chair, and the final document, as it is represented, was weighing the comments on that that were submitted and putting it forth. There is a lot of new information in here.

For the introduction, this addendum proposes modifications to Amendment 2 to allow small-mesh bottom trawl vessels to land herring on days out of the fishery in Area 1A. Note this is only Area 1A. It does not apply to the other management areas. For the statement of the problem, days out may have disproportionately reduced landings for small-mesh bottom trawl vessels in Area 1A because they have small holds, don't have refrigeration, can only fish for one landing day per landing event.

Midwater and purse seine have the ability to fish for more than one day prior to landing. The small-mesh bottom trawl herring fishery is historic and important to local communities. For a background I think everybody here is pretty familiar with days out. You can't land more than 2,000 pounds on a day out. It is designed to prolong the supply of herring and make it available when it is most valuable and allow businesses to set long-term strategies and shift fishing pressure from an overutilized area to an underutilized area. The Area 1A TAC was reduced 25 percent from 2006-2008 and has been further reduced I think 46 percent, but this time series that we're talking about, 2006-2008, it was significantly reduced.

We went from average five landing days, four landing days to about two landing days, maybe a little bit more than that. In the document, if you want to see exactly what we did, Table 1 at the top of Page

5 you will see that there were about six meetings in '08 and '09 where the days out were tweaked a little bit.

The concerns of small-mesh bottom trawl fishermen are that they can only fish for one day per landing event because they don't have refrigeration and they don't have big holds while midwater and purse seine can fish more than one landing day because they have refrigeration and larger holds.

They also were concerned that days out concentrates all landings of two days of the week where they have to compete with these larger, more efficient vessels, which lowers price. You will notice there is an asterisk at the bottom there. There has been no economic analysis conducted to support or refute this claim. These are the concerns of small-mesh bottom trawl fishermen. This is kind of the crux of the reason this addendum was initiated.

The next slide, federal permits necessary to land herring in 1A – I'm just going to go through the background information of who can land herring and what are the current restrictions. There are three permit types. There is A, C and D. The current permit categories were only implemented in the spring of 2007, so we don't have very much data on the landings.

Category A is the limited access, all areas, with no possession limit. A vessel qualified if it landed more than 500 metric tons in a single year between 1993-2003. These vessels are required to report through the IVR System, the VTR System, and they also have vessel monitoring on board their boats.

Category C is the limited access incidental permits. They have a maximum possession limit of 25 metric tons. They qualified if they landed 15 metric tons in one year between 1988-2003. These boats have IVR, are required to report weekly through IVR, monthly through VTR and they also are required to have VMS on board.

Category D is an open access incidental; anybody can get one of these permits. There is a three metric ton maximum possession limit. There is no qualification criteria. These vessels are required to report weekly through the IVR Reports if they land more than 2,000 pounds, monthly through VTR, and they're not required to have VMS on board.

If you look at the numbers of A, C, and D permits, there were over 2,000 combines permits in 2009; however, fewer than 100 of these vessels landed

herring with bottom trawl gear – this is not separating it by mesh size – in 2007 and 2008, so you will see there is a total of 86 in 2007, a total of 67 in 2008.

There is that category of no permit, and I think that was vessels that didn't know there was a permit required, so it is kind as they're learning they're becoming compliant, and there were probably less no permits in 2009 when those figures are available. If you want fish using small-mesh bottom trawl gear, which is less than 6-1/2 inches, you are only allowed to fish in four designated small-mesh exempt areas. It doesn't matter what you're fishing for, if you're using the small-mesh bottom trawl gear you have to fish in these designated areas. They're restricted seasonally and by area.

It doesn't matter, even if you just want to catch herring, you're required to get one of these permits and you're bound by the seasonal and area restrictions. However, fishermen that want to retain other species can get an open access Category K or A through F, which are limited access, but it doesn't mean that they're going to bycatch or it's not going to lead to bycatch.

They can retain other species through an open access permit. Here is a picture of these areas. I apologize that the font is small. This was taken from a PDF that I couldn't manipulate the actual font itself, so it is like a picture. What I'd like you to look at is the area off New Hampshire there, Ipswich Bay, and it is restricted seasonally from July 15<sup>th</sup> through November 15<sup>th</sup>.

I'll show you in a second that 95 percent of the landings are coming from that area. This is on Page 7, too, if you want to look for yourself. There are actually 11 pages of specifics in the appendix for the gear restrictions for the other areas. The focus is Small-Mesh Area 1 off Ipswich Bay there.

Another restriction on herring fishing with small-mesh bottom trawls in Area 1A are the ASMFC spawning closures. Fishermen cannot land more than 2,000 pounds of herring during a spawning closure. The default start dates – and these can change depending on if a state is able to do their own sampling and look at the amount of spawned herring in the catch, but default start dates are listed here, and then the default go on for a month.

If you look at August 15<sup>th</sup> – on the next slide it shows the Eastern Maine closure on the top right, that is August 15<sup>th</sup>; the Western Maine closure starts September 1<sup>st</sup>, and the Massachusetts/New

Hampshire closure, which is the one to focus on, begins September 21<sup>st</sup>. Now if you look at the landings of small-mesh bottom trawls – and I will point out that this is all new information, and also the small-mesh exempt areas, that is somewhat new information.

We learned more about it after the last meeting. Vessels that have used -- small-mesh bottom trawl vessels have harvested than less than 2 percent of the Area 1A TAC since 2005. It has a high of 715 metric tons, comprising 1.59 percent of the Area 1A TAC in 2007, and there is a low of 65 metric tons in 2005, which is about 0.1 percent, so significantly less than 1 percent.

Now if you look at the catch seasonally – and we were not able to show this data at a higher resolution because of the rule that you need three or more landing events to include it, so a lot of these there is only one landing event or two, but if you look at the data – and this is on Page 9 and it is broken down by month at the best resolution that we could provide, which combines certain months.

The takeaway message is that greater than 95 percent of the small-mesh bottom trawl landings are in July, August and September from 2005 to 2009, looking at the VTR data. Now if you look at the distribution of landings, the red up there are the small-mesh exempt areas. I didn't make this figure, but you can't see Small-Mesh Area 1 off New Hampshire there because so many landings have happened there.

The black crosses up there, those are trips that landed greater than one metric ton, which can be taken as the cutoff between directed and incidental – 2,000 pounds is the bycatch allowance so one metric ton is slightly higher at about 2,200 pounds, but that was the resolution that this figure was given; but if you look, the majority of the big trips are taken in that area.

Now broken down by year – and this is actually 2,000 pounds, so is specifically the cutoff between greater than or less than 2,000 pounds. These are only trips that landed 2,000 pounds or greater. The majority of the trips are off of Ipswich Bay, in that Small-Mesh Area 1. There are some kind of very off points there. Like in 2008 there is one off of Downeast Maine. These are self-reported VTR, so that is likely to have been improperly reported coordinates, but the majority of these landings are coming from Small-Mesh Area 1.

Then if you look at the average in Quarter 3, which is that July, August, September period, and then Quarter 4, the majority of the landings are still coming from those areas. Stepping back and looking at the information of the new landings seasonally, spatially and the amounts, the seasonal and spatial distribution of the small-mesh landings coincides with the accounts of the small-mesh bottom trawl fishermen who said that the directed herring fishery only takes place in Small-Mesh Area 1 from July 15<sup>th</sup>, which is the beginning of Small-Mesh Exempt Area, when the season opens to the beginning of the spawning area closure default start date, which is September 1, so that kind of bookends the end of it, so it gives about a maximum of a ten-week fishing season where 95 percent of the landings have come from in 2005-2009.

The next table, I'm not going to really editorialize on this at all, is simply the number of trips divided by the total days absent, and it gives the average trip length. As you see there, some of the A permit holders, the average trip length is greater than a day. If you look at the bottom trawl – and this is not broken down by mesh size – without exception, it is one for the average trip length of C and D permit holders. That is on the bottom. You can also look at this table on Page 16.

As far as state landings are concerned, there are some questions about, well, what about an increase in state effort. Maine and New Hampshire prohibit this gear type. Massachusetts has a coastal access permit with limited access under moratoria. The language in the addendum concerning this was written by the Massachusetts DMF technical committee member, so I'm just reading the information that was provided.

There are 239 CAPs that were issued in '09; 30 applied for a sea herring endorsement. There were no landings in SAFIS from 2005 to 2008. There were three trips landing a small amount of herring, which can't be shown because it would breach confidentiality. The technical committee member was unsure if these vessels also had federal permits, and so they double reported.

Small mesh is prohibited in North and East Cape Cod with a couple of exemptions. The takeaway message is that given these constraints – and that includes being able to go in Massachusetts state waters only and catch herring – an increase in effort in Massachusetts state waters is extremely unlikely. That was the conclusion of the Massachusetts technical committee member.

River herring bycatch was the next issue to be considered in this addendum. The section asked the PDT and TC to include river herring bycatch analysis in the addendum. The best available data is in the New England Fisheries Science Center Observer Program Data Base, and that has a bunch of tables that are listed beginning on Page 20.

Unfortunately, there are a low number of observed trips. I think there are six bottom trawl trips and these aren't broken down by mesh size. Basically, the data is not good enough to extrapolate by catch rate and really know what amount of river herring is ending as bycatch in the small-mesh bottom trawl fishery. The technical committee cautioned against extrapolating it by catch rate because six trips over two or three years is making a lot of assumptions.

The tables on Pages 19 through 30 of the addendum were included because it is the best data that is out there, but the technical committee cautioned against using it for more than anything other than just a snapshot of what was landed in these trips.

CHAIRMAN ABBOTT: Bill, do you have a question before he finishes his presentation?

MR. ADLER: Yes, just one quick one; on these charts here, what is herring "NK"?

MR. VONDERWEIDT: Unknown. Given the new information, specifically new information about there being more than one small-mesh area exempt area – originally we thought there were two, Small-Mesh Area 1 and 2, where small-mesh bottom trawl vessels could potentially fish under these exemptions – it turns out that there are four that fall within Area 1A.

Because the plan development team told the section that it was constrained by area, new management measures were added to do what was intended by the previous regulations – and I'll talk you through that as we go – the management measures were rearranged to be in kind of two parts where Issues 1 and 2 are the parts that grant the actual exemptions, what the exemptions are, and then Issues 3 through 5 are designed to constrain who is allowed to fish under the exemptions, when and where, and to discourage new participation and try and keep landings from skyrocketing, as some people have been concerned about.

Issue 1, small-mesh bottom possession limits, Option 1 is status quo. Option 2 is small-mesh bottom trawl vessels who hold or a C or a D permit can only land – and you'll see how 6,667 pounds is crossed out there.

It is kind of amazing. This is from an original e-mail from maybe seven months ago, and nobody noticed, including some people that are a lot smarter than me, that doesn't actually equal three metric tons.

The intent here is that D permit holders can land a maximum of three metric tons, so it is actually 6,600 pounds equals three metric tons, but just to keep simple I'm just going to refer to that as three metric tons for this possession limit to try and keep from confusion, and I'll make sure to double check the math from now on. Option 3 is small-mesh bottom trawl with C can land 10,000 pounds and D can land three metric tons on a day out.

Issue 2 is small-mesh bottom trawl days out. Option 1 would status quo. Option is that C or D may land on different days of the week as established during a day-out meeting. Let's say the state representatives from the three states adjacent to 1A agreed to two landing days and they set it for Monday and Tuesday; the small-mesh bottom trawl vessels would also get two landing days, but they could specify that these are on Thursday and Friday.

They would have to be together because that is the way days out was designed to work. They can't be alternating days, but they would be different days. This is intended to decrease competition between small-mesh bottom trawl vessels and purse seine and midwater. Option 3, 4 and 5 do exactly the same thing, allow states to establish different days – open landing days for small-mesh bottom trawl vessels, but in addition to that it gives them one extra landing day or two extra landing days, which is Option 4, or three extra landing days, which is Option 5. Are there any questions on that; it is slightly confusing?

Okay, three through five are the restrictions on the exemptions. Because the small-mesh bottom trawl landings are historically harvested from July, August and September, this proposes to officially them from July 15<sup>th</sup> through September 21<sup>st</sup>. Even the regulations right now would restrict them to that, there could be changes in the opening date of the Massachusetts/New Hampshire spawning closure, so it could allow them an extra week or two of fishing, so this would restrict that.

Option 1 is status quo. Option 2 is restrict the exemptions from one and two as chosen from July 15<sup>th</sup> through September 21<sup>st</sup>, and Option 3 different start and end dates than listed here if something were to make more sense. Issue 4, small-mesh bottom trawl area restrictions, the spatial analysis showed that the majority, greater than 95 percent of the

landings over 2,000 pounds occur in Small-Mesh Area 1.

Option 1 would be status quo. Option 2 is that the exemptions in one and two are only in Small-Mesh Area 1, and Option 3 is that the exemptions would only be allowed in an area other than Small-Mesh Area 1 if there was another one that worked better for some reason.

Issue 5, small-mesh bottom trawl TAC allocation; you will notice there are two colors of the font there. Issue 5 would establish a small-mesh bottom trawl total allowable catch allocation, so give them their own quota. I would note that the technical committee reviewed this and said that weekly reporting is necessary in order to effectively monitor this.

The best current system that is already in place would be the IVR Reports, but currently IVR Reports do not include a requirement for gear type, so there would need to be some kind of a modification to include small-mesh bottom trawl vessels to identify themselves so you could pull their landings out. The VTR does include the gear but it is monthly, and so it wouldn't be effective to monitor it.

Option 1 is status quo. Option 2 is an unspecified amount that would be determined during the specification-setting process, which is what we went through before as far as setting the Area 1 TAC and all that. Option 3 is the average from 2005-2008, which is 0.66 percent. Option 4 would be 0.84 percent, which is the 2006-2008 average. Option 5 is 1.59 percent, which is the 2007 landings, and it is the highest value in the time series. Option 6 would be a different allocation that might work better.

One or more of the following of these could selected, so naturally it would be one of Option 1 through 6 which says the amount, and then Options 7, 8 and 9 say what happens once that amount has been landed. Option 7 would be that they're only granted exemptions until the total allowable catch is harvested.

Option is once the total allowable catch is harvested, they're allowed a 2,000 pound bycatch, which is consistent with spawning closures days out. 95 percent of the TAC is reserved to account for the 2,000 pound bycatch allowance already. Option 9 is prohibited from landing any herring once the amount is harvested. That's it.

CHAIRMAN ABBOTT: Thank you, Chris, that is a good job. Does anyone have any questions at this time? Dave.

MR. DAVID SIMPSON: Chris, if you could just catch me up on how – since it is a federal waters fishery with federally permitted vessels how we could include options that would allow them to exceed the TAC?

MR. VONDERWEIDT: As far as exceeding the TAC, it would be a small-mesh bottom trawl TAC, and it would be restrictions on landings for these vessels so we couldn't regulate their fishing activity, but we would prohibit them from landing more than 2,000 pounds or any amount.

CHAIRMAN ABBOTT: Do you have a followup, Dave? No. I think we still have the same TAC that we can't exceed the total TAC. That is the bottom line. They're working within that number. Dr. Pierce.

DR. PIERCE: Yes, clarification, Chris, in case you haven't already dealt with it; in the first issue, the proposed small-mesh bottom trawl possession limits, Option 2 specifically and Option 3, for that matter, mentions day out. We're not really talking about allowing them to land that amount of herring on a day out, correct? That would be an amount of landing that would be allowed on a day when we permit herring to be landed, am I correct?

MR. VONDERWEIDT: No, it would be in addition to the regular landing days. These vessels wanted to fish throughout the week. That was one of their main concerns. This would allow them to have a more profitable amount than 2,000 pounds on a no-landing day, so they would be restricted to that three metric tons or 10,000 pounds.

DR. PIERCE: We have discussed this before the meeting began, and I'm still confused regarding what the intent is since we had a different outcome when last we discussed this. Again, I'm seeking a clarification, Mr. Chairman.

CHAIRMAN ABBOTT: I think the clarification is – I'm not going to dispute what Chris said, but I'll ask Doug to explain because he has dealt with this a lot more than I have.

MR. GROUT: David, the intent here is – I have a series of motions here and one of the modifications to the options under Issue 1 would be that these trip limits would be applied to any landing days for the

small-mesh bottom trawl. That is my intent because I believe that would be most equitable here.

CHAIRMAN ABBOTT: So the simple answer to that is if they are allowed to land on any days – whatever we decide on the days-out meeting, if we decide there are two landing days for the purse seiners and we add a day or two for the small mesh, only on those days would they be able to exceed the 2,000 pound bycatch limit; correct?

DR. PIERCE: That clarifies it for me, Mr. Chairman, thank you.

CHAIRMAN ABBOTT: Do we have further comments on the presentation? Mr. Grout.

MR. GROUT: I just had a quick question for Chris. On Table 2, where you have the number of bottom trawl vessels with herring permit categories –

CHAIRMAN ABBOTT: What page are you on?

MR. GROUT: I'm on Page 6, Table 2. You indicated these were the vessels that had landed herring, correct, and is that for all areas or is that just Area 1A?

MR. VONDERWEIDT: That's a good question. This was taken from the draft specifications and let me see if I can pull that up for you during some of the presentations that are going to follow my next presentation and I'll get back to you with the answer.

MR. GROUT: The reason being based on my understanding here is that there is considerably fewer boats fishing in 1A that have landed herring, but if you can check on that for me I would appreciate it. I was just surprised that just applies to 1A.

CHAIRMAN ABBOTT: Thank you, Doug. It is 5:15 and we will force Chris to on with the public hearing and written comment summary.

## **PUBLIC HEARING AND WRITTEN COMMENT SUMMARY**

MR. VONDERWEIDT: The participants at all the hearings were by far more concerned with Addendum III than Addendum II. There was a hearing in Maine April 1; in New Hampshire April 12; and Massachusetts March 25<sup>th</sup>. I'm just going to go north to south. Maine, there were three participants who opposed to allowing exemptions for small-mesh

bottom trawls. They were in favor of status quo for all the options.

There was concern that these exemptions are going to start a new fishery. They noted that the quota has recently been cut in half and that the small-mesh bottom trawl exemptions that are being proposed would harvest the entire TAC. They noted that the small-mesh bottom trawls choose to fish for only one day, and they have chosen not to adapt like the purse seine and midwater trawl vessels have.

These purse seines and midwater trawls used to go out for only one day at a time, but they have changed their behavior because of reduced days out or more days out. They could use ice, they could use salt and they could use carriers. They noted that the average trip length – and that's towards the end of the addendum where it has the length of the trip divided – or total days at sea divided by the number of trips to get a number that was one for the small-mesh bottom trawl, so I think 4.4 for midwater trawls.

They felt that this was deceptive because they are going out for a couple of days early and then they'll catch their maximum amount that the boat can hold and then they come back to the dock on Saturday night or maybe Saturday in the morning, but they will sit tied to the dock for 24 hours if they need to because they want to make sure that they can land the full amount when landings are allowed at midnight on Sunday.

They felt that because this time that they're sitting at the dock is included or tied to a buoy, that it is skewing the number of the average trip length. Maine continued – they felt that it was inappropriate for the commission to create management measures which are going to have a market impact.

They felt that all gears should be able to choose their own days if small-mesh bottom trawls can. They also noted that variations in weather could make different days very inequitable. If you've only got two days and one group has good weather for their days and one group has bad weather, they're not going to be able to fish as much.

There were concerned that there is no way to monitor this or a TAC amount. They noted that the majority of landings are coming at a time when midwater trawl boats can't fish, which is the purse seine only, fixed gear only closure that ends October 1. They commented that this is a very dirty fishery with lots of bycatch. Even if the data doesn't show it, it is something that they felt fishermen understand.

The small-mesh bottom trawls catch groundfish by design. Ipswich Bay is a breeding ground for flounder and juveniles. They felt that everybody has been hurt by the TAC reduction, but small-mesh bottom trawls not more than anybody else. They felt that if there is a TAC put in place, a 2,000 pound bycatch allowance is fair because that is the amount you can land all the time regardless of closures.

Moving south to New Hampshire, there were 24 participants. These participants support the small-mesh bottom trawl exemptions. They wanted to keep it simple, and they said just giving two additional landing days to small-mesh bottom trawls doesn't have to be on different days, just give them plus two and that would probably work. Then they made some more comments.

They felt that small-mesh bottom trawls need to get back on par with the larger boats that are fishing for four or five days per landing day. They feel that small-mesh bottom trawls have been disadvantage the most by days out. They feel that they need more than 2,000 pounds and that the 2,000 pound bycatch allowance is creating herring bycatch in the whiting fishery, who needs a larger bycatch allowance.

The lobster industry needs small-mesh bottom trawl caught herring in these local communities. There were some tuna fishermen there who felt that this herring is an important source of tuna bait. They also noted that small-mesh bottom trawls can't fish in inclement weather because they're smaller and larger boats can go out in worse weather and still fish.

They felt that there is not going to be an increase in effort because 95 percent of the landings are in Small-Mesh Area 1 where the amount of time – it was said they only get three weeks to fish. They said that it is very hard for them to find a crew to even fish on these small-mesh bottom trawl vessels because it is such hard work, and that even right now the average age is 50, so they felt that it is unlikely that they they're going to get people who are going to come and start fishing.

They also noted that you can't make enough money with these low C and D permit limits of herring. Markets have already been established for these fish, and people have tried to cut into that market unsuccessfully in the past. They noted that 2,000 D permits is misleading because every tuna fisherman has a D permit so that they hold herring for bait.

They also noted that the landings in this addendum, which only go back to 2005, don't go back nearly far enough. In the nineties they said that the small-mesh bottom trawls were landing 4 to 6 percent of the Area 1A TAC, but when days out were implemented way back when, with Amendment 1, even, it just made herring fishing impractical, so a lot of these fishermen switched over to the bigger mesh size or began targeting whiting; and as a result the small-mesh bottom trawl landings decreased. They also felt that if there is a total allowable catch – small-mesh bottom trawl quota included, a 2,000 pound allowance is fair because it is the amount that you can land anytime.

Moving south to Massachusetts, there were eight participants. They are also opposed to exemptions for small-mesh bottom trawls. They want status quo for all the options. They were concerned that there is no analysis done on what the impacts of the exemptions are. 2,000 pounds is more significant for smaller small-mesh bottom trawls vessels than larger midwater and purse seine, so they felt that benefits them more.

They noted that latent C permits and also D permits could increase the small-mesh bottom trawl catch. They noted that small-mesh bottom trawls are not prohibited from fishing on a no-landing day. They also noted that midwater trawls cannot fish when 95 percent of these small-mesh bottom trawl landings are occurring, so any comparisons between these two gear types are completely irrelevant.

They noted that lobster fishermen can successfully hold their fish using salt and ice, so why can't small-mesh bottom trawl fishermen do this. They noted that different days will be difficult to monitor and enforce. There was strong concern that this addendum is biased against midwater trawlers and purse seiners.

They also noted that the purse seine fixed gear only area, which runs from June 1 until October 1, has disadvantaged midwater trawl more than any other gear type, so overall they have been disadvantaged the most. They noted that recent regulations in Groundfish Amendment 16 establishing sectors has freed up a lot of boats and fishermen who are looking for new ways to make a paycheck, and that they can rig up a small-mesh bottom trawl and take advantage of these exemptions.

They noted that the TAC reductions are going to increase the price of herring because there is less, so these exemptions are going to become more attractive

to people wanting to join the fishery. They noted that some years are particularly good for small-mesh bottom trawl vessels, so an increase in effort during one of these years could harvest a significant amount of the Area 1A TAC.

As far as the written comments, there are only five written comments, so hopefully people had a chance to read those. Last week this letter was handed out – and I think a lot of you were at the meeting – from the New England Fisheries Management Council. They sent us a letter and they are concerned about creating incentives for increased participating in the herring fishery. They felt that this is not consistent with the federal FMP and was not developed in coordination; and that if we are to develop regulations like this, it should happen through the council process.

CHAIRMAN ABBOTT: Thank you, Chris; just to give a little breath of air, we will move over to Dave Ellenton and ask him at this time to give the advisors report.

#### **ADVISORY PANEL REPORT**

MR. ELLENTON: Thank you, Mr. Chairman, he deserves a break. I'm going to be as quick as I can. I'm sure you've all got a copy of the conference call summary in front of you. There on the disk or in hard-copy form, and I've got the hard copy in front of me. This is a continuation of the conference call that took place on April 6<sup>th</sup> that addressed Draft Addendum II. This was our address of Draft Addendum III.

We spent the majority of our time discussing Addendum III during this conference call. The AP unanimously agreed that the small-mesh bottom trawlers have not been impacted more than other gear types and can't understand why these exemptions are being proposed. They noted that small-mesh bottom trawlers have more incidental catch of other fisheries even if the data is insufficient to show that quantitatively.

The AP also noted that the exemptions will create havoc with dealers and other fishermen. Comments on specific issues and options are as follows. Issue 1, the AP unanimously supports Option 1, status quo, and had the following comments. It is premature to allow exemptions before the final New England Fishery Management Council specifications have been approved by NMFS. These exemptions will create a new SMBT fishery and landings will increase past historical numbers as result.

Issue 2, the AP unanimously supports Option 1, status quo, and have the following comments. All gear types and not just SMBTs have been hurt by recent reductions in the fishery. If the section allows SMBTs to land when they want to land, all gear types should be allowed to choose their days. Midwater trawlers and SMBT vessels do not operate at the same time, so comparisons between these gear types are irrelevant.

SMBTs could use ice, salt or use carriers to hold fish for several days if they wanted to, but they have not adapted to the reduction in landing days like other gear types have. The length of trip is misleading and does not factor the time that purse seine and midwater boats spend tied up to the dock or buoy prior to a landing day.

These vessels go out several days prior to a landing day to ensure they fill their boat. Once they reach full capacity, they return to port and sit tied to a buoy or dock until 12:00 a.m. Sunday when they are allowed to land. It is not uncommon for a vessel to sit at port for an entire day before landing.

Issues 3 to 5, the AP is opposed to any exemptions, Issue 1 and 2, so they are opposed to any options other than status quo for Options 3 through 5. While they strongly oppose the exemptions, they commented on some of the options anecdotally as follows. One AP member commented that historical allocations of 0.66 percent based on the entire time series, 2005-2008, of 1A TAC could make the other exemptions okay, but this is contingent on adequate monitoring and management.

Using the historical landings is the only appropriate way to set a TAC percent allocation. The AP agreed that once a percent allocation is harvested, it makes sense the SMBT vessels could land 2,000 pounds, Issue 5, Option 8, because all fishermen can land this amount regardless of closure.

Other comments were made. It was important to promote small boat fisheries, but SMBTs have unacceptably high catches of bycatch. They have high bycatch rates compared to other gear types. Fishermen are well aware of how high the bycatch rates are even if there have not been enough studies to prove this. Increasing the fishery will increase bycatch. The discard rate of SMBTs are ten times those of other gear types. Only five AP members attended this call and the AP would ask that section members encourage their state representatives to call in and replace those who do not participate in the

process. That's something we covered earlier. That is, Mr. Chairman, thank you.

CHAIRMAN ABBOTT: Thank you, Mr. Ellenton. At this time I'll go to Jeff Marston for a law enforcement report.

## LAW ENFORCEMENT COMMITTEE

### REPORT

MR. MARSTON: As I mentioned earlier, the Law Enforcement Committee with representatives from New Hampshire, Maine and Massachusetts had a conference call on April 9<sup>th</sup>. We spoke on Addendum III. The Law Enforcement Committee agrees that the proposed measures in Addendum III are enforceable, but stress that the most enforceable regulations are simple and easy to understand.

The proposed exemptions and restrictions are complicated and will be another set of regulations that officers and fishermen have to memorize. Regulations in the Northeast Atlantic have been criticized as being overly complicated, and the exemptions in Draft Addendum III will increase their complexity.

Specifically, on Issue Number 1, the Law Enforcement Committee agrees that the different possession limits for different vessels is enforceable. The Massachusetts representative commented that his state does not have any small boats in this fishery. In talking with him and clarifying that, it was meant to say that there is no small-mesh fishery in state waters and there are a small number of boats with C and D permits, but that restrictions or different sets of regulations on them could be enforced because of the small number of vessels.

On Issue Number 2, the Law Enforcement Committee agrees that allowing small-mesh bottom trawl vessels an alternative days of the week is enforceable but more complicated. Issue 3, seasonal exemptions are enforceable as long as law enforcement officials are fully informed of the gear types and season dates.

The Law Enforcement Committee requests that staff provide a summary table of regulations if seasonal exemptions are included with Addendum III; for instance, a law enforcement aid. Issue 4, area restrictions are enforceable, but are easier to enforce when vessels are required to carry VMS. Federal Category D permit holders are not required to have VMS.

On Issue Number 5, a small-mesh bottom trawl TAC allocation is enforceable. The Law Enforcement Committee would recommend a 2,000 pound bycatch allowance once the TAC has been harvested to stay consistent with the bycatch allowance for spawning closures and when the overall TAC has been harvest.

Under other business, the Law Enforcement Committee noted that the spawning closures have been much easier to enforce since the 20 percent tolerance measure was replaced by zero tolerance. They also commented that fishermen will leave port and fish in dangerous weather and due to bad weather breakdowns fishermen have contacted law enforcement for permission to land and offload on days when not approved for landing. Finally, the Law Enforcement Committee commented that closed fishing days would be more effective than regulating as landing days out currently does. Thank you, that concludes my report, Mr. Chairman.

CHAIRMAN ABBOTT: Thank you, Lt. Marston. At this time we will go back to Chris to do Matt Cieri's work for him.

#### **TECHNICAL COMMITTEE REPORT**

MR. VONDERWEIDT: Again, this is Matt's presentation, so bear with me. For Addendum III, Issues 1 and 2, the technical committee noted that days-out exemptions could allow for an increase in effort by new participants. If they do allow for an increase, an increase in landings could occur as a result.

It was noted that Amendment 16 to the Groundfish Plan has recently been finalized, and as such it could increase. They also agreed that if landings increased, the quota is going to be harvested faster. They noted that days out are designed to prolong the total allowable catch; and so any regulation that increases the catch, this is the opposite of what days out are designed to do.

They also noted that the increase in catch might not coincide with peak bait demand, but again this is all "if" and "could", so there is just potential here, but no quantitative analysis of it. For the exemptions that shorten the fishing season will counteract management measures – they noted that if Maine changes their state laws, shrimp trawls could land herring under these exemptions. Currently Maine prohibits small-mesh bottom trawls, but this gear type could fish if the regulations were changed.

One person commented that setting different landing days for small-mesh bottom trawls will decrease competition between these gear types. For Issues 3 and 4, the small-mesh bottom trawl exemption and area restrictions, a concentration of effort could be problematic. Restricting the season to July 15<sup>th</sup> through September 21<sup>st</sup> only in Small-Mesh Area 1, it could mean localized depletion.

Another person on the technical committee said, well, the majority of small-mesh bottom trawl landings will come from Small-Mesh Area 1 regardless of the season, so I guess really if there is an increase in effort it is going to be concentrated in Small-Mesh Area 1. For the TAC allocation, setting a TAC may prevent an increase in small-mesh bottom trawls and avoid the problems that were just mentioned.

However, you need weekly reporting as a minimum by gear type to effectively monitor the small-mesh bottom trawl quota. IVR would be an effective system, but it would need a gear category added to it as a condition of their federal permit. VTR wouldn't be effective because of the lag.

As far as the river herring bycatch, it is really unknown if small-mesh bottom trawl vessels have a lower bycatch rate then this would decrease the bycatch and if they have a bycatch rate it would increase the bycatch, but there is not enough data to know if it is a high rate or a low rate, so it is kind of whatever you think might happen there. It could increase or decrease, but there is not enough data.

#### **FINAL APPROVAL**

CHAIRMAN ABBOTT: Okay, if everyone's eyes aren't glazed over yet, we will go to the board and ask if there are any comments on the reports that have been given up to this point? Seeing none, I'll recognize Doug Grout for a motion.

MR. GROUT: Thank you, Mr. Chairman, and thank you all for listening to all this information. It is quite extensive on this. I think we have studied this quite extensively and gotten a lot of input at various meetings. I would like to put forward a motion that I hope will get the discussion going on this. I'm going to try and make things simple here and try and address some of the issues that have been brought up here. If I can get a second to this motion, I would like to speak to it afterwards.

**I move to adopt the following options: Under Issue 1, Option 3 – and this will address Dr. Pierce's concern – modified to allow small-mesh**

**bottom trawl holding a C permit a maximum possession limit of 10,000 pounds and small-mesh vessels holding a D permit a maximum possession limit of three metric tons per landing day. Small-mesh vessels may not land in excess of the 2,000 pound allowance on a no-landing day. Issue 2, adopt Option 4, different landing days for small-mesh bottom trawls plus two additional landing days; Issue 3, Option 1, status quo; Issue 4, Option 1, status quo; and Issue 5, Option 1, status quo.**

CHAIRMAN ABBOTT: Thank you, Mr. Grout. Do we have a second to the motion? Seconded by Dr. Pierce. Doug, would you care to speak to the motion?

MR. GROUT: Yes, thank you. As has been described, this is a fishery that primarily targets whiting and herring in this area. They're primarily small boats with limited storage capacity, less than 50 feet in boat length, no refrigeration. It is not a new fishery. I want to emphasize that. It has been ongoing for 25-plus years. It is spatially limited by the areas that have been limited by the multispecies plan of the New England Fisheries Management Council to those areas.

The reason those areas were chosen was to limit the bycatch of regulated species. I believe Dan McKiernan and I were a part of some of the sea-sampling trips that identified Small-Mesh Area 1 that has a limited bycatch. It is also temporally limited; again, trying to be there when the bycatch of regulated species is minimized between July 15<sup>th</sup> and November 15<sup>th</sup>.

However, it is effectively limited even further because of our management measures as a section that imposes a spawning closure beginning, in most years, on September 21<sup>st</sup>. These vessels via the federal plan are limited, have trip limits already, three metric tons for D permits and 25 metric tons for C permits. This is a labor-intensive fishery, twenty cents a pound, they shovel the product into barrels and boxes. There are no fish pumps like on some of the other boats.

This a historically important source of fresh bait for local lobster and tuna fisheries during the summer as shown by having 25 people show up at our public hearing. Again, I want to reemphasize that we're talking about a very, very small portion of the total allowable catch. It has always been less than 2 percent and typically around 1 percent.

Now, if you look at Table 1 on Page 5, you will see that when we started the days-out management measures to try and extend the season we had originally a 60,000 metric ton TAC and then dropped to 50,000. During that time period we only had to have two days out or five landing days per week. Because of the gentlemen's agreement that we had with the industry, they had indicated they would not fish on those two other days of the week that we had days out on.

Then with the reduction in quota put in place by the Fisheries Management Council in 2008, we suddenly had to go with much more restrictive days out. We in general had to have five days out, either four or five days out of the fishery, which meant there were only two or three landing days for 2008 and 2009.

What that turned into, from 2005 to 2007 when we had five landing days a week, everybody was fishing five days and landing five days or had the opportunity to do that. Then in 2008 and 2009, with four to five days out of the fishery, there were, again, two to three landing days. If you look at Table 5 on Page 16, which Chris had referred to, you'll see the average trip length for a bottom trawl is one day, and the average trip length for a purse seine is two and a half days.

The simplicity of this is all they were looking for was to be on an equal par with the other vessels that were fishing at this time, and that is why we have proposed to do whatever we decide on for a number of landing days in our days-out meeting plus two, so that it would provide them with the same number of fishing days.

Finally, I would like you to take a look at Table 3, which gives the landing stream here, we did not have 2009 landings available at that time. However, if you look at Figure 8, it does provide some landings by month. It does not include December because at that time they did not have the VTR data in December; but given the fact that these boats aren't supposed to be fishing in December, typically you've had zero or one metric ton during that time.

If you total up the landings in those months and add maybe an extra metric ton or two to compensate for something that might occur in December, you would come up with 175 metric tons for 2009. Now, if you take average landings of small-mesh bottom trawls from 2005-2007, when we were fishing under five landing days, that is 342 metric tons,

If you take the average landings in 2008 and 2009, when we had landing days, that is 196 metric tons. That is a 42 percent reduction. By comparison, if you take the rest of the gear types, during 2005-2007 you have a little bit over 59,000 metric tons that have been landed. In 2008 and 2009 – again, in 2009 assuming the same total landings’ data – you had about 42,000 metric tons. That is roughly about a 29 percent reduction, which is what Chris had said the impacts to the other gears to everybody was going to be about 25 percent.

This shows me that there has been a disproportionate reduction in landings taken by the small-mesh bottom trawl. Finally to the motion, we have chosen an option under Issue 2 that provides two extra fishing days per week for the small-mesh bottom trawl to give them the same fishing opportunities as the other gears.

It also reduces the trip limit on the C permit holders to try and address some of the concerns of some of the other members of the industry here that there will be a large increase in the amount of landings. It decreases their trip limit from 25 metric tons down to about 10,000 pounds or less than 5 metric tons per trip, so it is a significant cut.

In response to the New England Fisheries Management Council concern about our ability to allocate a specific part of the quota to a gear without including them, I had proposed to have a status quo option where there would not be any specific small-mesh bottom trawl quota. Quite frankly, I just put that in as – I had suggested that be in as an option to try and alleviate some concerns of other industry members that we would have – in case we had a huge increase in landings.

I also have put in status quo for both the area and seasonal aspects of this because that is already regulated in federal waters by other plans, so that is already in place. I appreciate Dr. Pierce’s seconding the motion. I hope we will have a good discussion on this. As I said, we’re just trying to make things fair here.

I do want to make one other comment before we go on here for people to understand is that I have a second motion here to try and address some further concerns of the other members of the industry, and that motion will put these measures in place for only one year, so that we can evaluate it, see if we have in fact any increases in participation and landings.

The second motion, after we have dealt with the various options here, would provide the opportunity that this would only extend beyond this 2010 fishing year by a vote of the board at our winter meeting, when we’ve had the opportunity to look at some of the landing streams by then. Thank you.

DR. PIERCE: I paid attention to the technical committee arguments, their recommendations, their opinions regarding this particular addendum. Certainly, I spent a lot of time thinking about the public comment provided at the different public hearings, Massachusetts representation, New Hampshire as well as the state of Maine primarily.

Both side made very good arguments for and against the different strategies and options that are in this particular addendum, very good arguments, to say the least. There are a lot of unknowns, clearly, without a doubt. There are no analyses here that we can actually point to and use to give us a great degree of confidence that whatever we decided to do is the right way to go.

I’m certainly and other people are concerned about the potential increased effort that might go into this particular small-mesh fishery, small bottom trawl fishery, if we relax the rules and restrictions for that particular fishery. Is it a valid concern? I think it is, but I’m not sure whether or not there will be that increased effort. Time will tell, I suppose.

Bycatch concerns, sure, but again the bycatch information that I’ve seen doesn’t make a compelling case that we need to be concerned about a modest increase in the amount of effort that would be out there with the small-mesh bottom trawls. Doug has done a real good job, a great job describing all of the reasons why this section should go with what he has offered in the form of that motion before us now. I can support it if it is changed somewhat.

The reason why I would like this particular change is that we’re already giving – through this motion we would give more days of fishing – more days of landing, that is, more days of landing. We’re increasing the amount of fish that can be landed on those days when they can land. We’re giving them the opportunity to land on different days than the days for landing by midwater trawlers and by purse seiners.

I can’t forget about the very strongly worded statement or position offered up by the New England Fishery Management Council that was given to us today, and that is the fact that the council is deeply

concerned about creating incentives for increased participation in the herring fishery.

Now I'm a member of the New England Council, this motion was made and I supported this motion at the New England Council, so I have to take it seriously. I thought it made a lot of sense or at least part of it makes a lot of sense, enough so that I supported the motion. Anyways, with all that said, again I can support the motion if it is modified slightly to deal with the concerns expressed by the council, by the technical committee and by many segments of the commercial fishing industry that took the time to comment on this addendum.

**With said, I would move to amend, Mr. Chairman, so that for Issue 2 we select Option 3, which is small-mesh bottom trawl vessels with a C or D permit may land on different days than the rest of the fishery, and they're allowed one extra landing day – not the two but one extra landing day. That is my motion to amend.**

CHAIRMAN ABBOTT: Thank you for that. Normally I might say that I'd rather go through the real parliamentary process to do that, but it is six o'clock in the evening, and I would ask Doug if he would accept reluctantly changing the landing days.

MR. GROUT: Clearly, we feel that will not give the full fairness out of this, but as you said it is late and I understand where both Dave concerns and I guess Terry's concerns here, and I would reluctantly accept that as a friendly motion.

CHAIRMAN ABBOTT: Okay, we have the motion by Dave Pierce; seconded by Terry Stockwell. We will accept that. Is there any objection to the motion to amend? **Seeing no objections to the motion, we will change the main motion to "landing days plus one", which is Option 3.** Further comments? At this time I'll recognize Terry Stockwell.

MR. STOCKWELL: I've struggled with this addendum ever since it was proposed last fall and share many of the concerns expressed in the public comment, particularly that for the potential for increased effort due to the sectors in Amendment 16. I do share some concern for river herring. The entire industry is under a complete change this with the very low specifications. My support for Doug's motion was absolutely contingent upon Dave's amendment, and I can support it myself and will caucus with my fellow state members to see their thoughts.

CHAIRMAN ABBOTT: A question to you Terry; does not Doug's amendment also involve a reduction for the C permits from 25 metric tons to a maximum of 5 metric tons on a landing day or an 80 percent decrease in the maximum landings that they can make?

MR. STOCKWELL: We also have an open access category D fishery at 3 metric tons a day. My math puts it at about \$1,200 per fishing day. With the lack of opportunities that are going to be available in the Gulf of Maine this year, I'm going to be standing by to see what happens.

MR. G. RITCHIE WHITE: Doug did a great job on explaining the reasons to support this, and I just want to emphasize a couple, and that is this is a small boat fishery, owner-operated, community-based, mostly 40-foot vessels. They handle this catch with coal shovels. They don't have carrying vessels. For a matter of equity, they ought to be allowed to fish the same amount of days that the big boats fish, and that is what this is about. Thank you.

MR. ADLER: Mr. Chairman, a couple of things. First of all, the reporting to keep track of these smaller boats and what they're landing is of a concern to me, how we're going to keep track of that. The second thing was I didn't understand why one category gets 10,000 pounds and the other category gets 3 metric tons, and why they weren't converted to all the same.

My concern is how many of these small trawlers – how many are there? I know that some of them are open access and I lost the numbers of how many there are out there and how many could there be given this, and are they going to start adding up their 3 metric tons, and all of a sudden I'm trying to figure out how many trips per week, how long, 3 tons per trip, and does that add up to – I'm having trouble with my math, I guess, trying to figure out how it is less than 2 percent of the total quota that might be.

I didn't also know why there were two separate – for Cs and Ds why they didn't just keep at the straight whatever, 3 tons. My concern is more – you know, I want to see this happen but at the same time my concerns are how do you keep track of these people, are they multiplying, are we going to end up all of a sudden finding, oops, they're taking too much of the quota and we're in trouble. I do like Doug's idea, if this does pass, that it is a one-year look-see, but I'm still concerned with some of these things, and I'll just leave it at that.

MR. SIMPSON: First, I want to say I really appreciate Doug's efforts to make this palatable. I know it is an important issue for New Hampshire and you've worked very hard to make the bitter bill a little less bitter, but it doesn't get us away from the central issue for me, which is the commission, for lack of a better word, meddling in the federal fishery management plan.

Now it may be adjusting the things that the commission does and basically mitigate a problem that the commission caused in the first place by having days out. Again, to go back to the council letter, measures proposed in Addendum III are not consistent with the federal FMP and were not developed in coordination with the council, and the council believes that the allocation of federal quota to federal permit holders should occur in the council process consistent with the Herring FMP as well as the provisions of the Magnuson Act.

Now it is hard to disagree with that and I would feel very differently about this proposal if there were a state waters fishery and you were talking about access to this resource in state waters, but I really think it is inappropriate for the commission to be taking this action in federal waters with federal permit holders on a federal TAC.

CHAIRMAN ABBOTT: Doug, would you care to respond to that?

MR. GROUT: Yes, Dave, hopefully I can alleviate some of your concerns. One, clearly the commission has been involved with trying to manage the TAC for a number of years, and we took that TAC to the benefit – at least we thought we were to the benefit of everybody on this, so that the TAC would not be used up before the peak areas of the bait market.

Without that, there is a very good probability that it could have occurred. The main issue that the executive director of the New England Fisheries Management Council brought up was this allocation of a portion of the TAC to one gear type. Quite frankly, that had resonance with me when I heard that, and so that is why I am proposing a status quo for Issue 5 so that we would not be allocating a portion of the TAC.

We're just trying to get an equitable number of fishing days, and in response to try and compromise here we're taking the one C permit category that can land 25 metric tons – if we don't do anything, they can go out there on those landing days and they have

the ability to land 25 metric tons, and we're going to cut back on their ability to land that full amount.

Now, quite frankly, they rarely are going to land 25 metric tons. If you look at some of the documents that have come out of the council during the specification process, you can see that the average catch per trip for all these small-mesh bottom trawls is about 4,000 pounds per trip. Part of the thing that we're trying to deal with here, because they're fishing in the whiting fishery, and on a no-landing day they have to discard that 2,000 pounds, and that is why the discard numbers for small-mesh bottom trawls is so high is because 80 percent of that discard number is herring that they have to throw back on that. Yes, I understand and we've tried to address the main concerns of the council by going status quo.

MR. PETER HIMCHAK: Mr. Chairman, clarification on the motion, please. On Issue Number 2 I guess the advantage is that they would have different days out and they would get the additional landing day of up to 2,000 pounds. I assume I'm correct on that.

CHAIRMAN ABBOTT: Not by my reckoning. They would be allowed to land 10,000 pounds on that additional day. For instance, if Monday and Tuesday were the landing days that we choose next week – backing up a little bit – next week on the 14<sup>th</sup> the three states of Maine, New Hampshire and Massachusetts will be meeting to determine how the herring fishery is going to be prosecuted beyond June 1<sup>st</sup>.

We will be taking some action to either allow landings on one day, two days, three days. That will be determined by the three states. This motion would allow them to have an additional day tagged on to the end of those days. Assuming we choose, as we did in previous years, we'll say to land on Monday and Tuesday, then the small boats would be allowed to land on Monday, Tuesday and Wednesday. Go ahead.

MR. HIMCHAK: Okay, I'm with you on that. Now going to Issue Number 1, on the days out, which is a no-landings day, they're going from 2,000 pounds, which is the status quo, to 10,000 pounds or 3 metric tons, depending on the permit? Do I understand this correctly?

CHAIRMAN ABBOTT: No. I'll let Doug try to answer that.

MR. GROUT: Let me see if I can clarify this. If you look at the options in the document, you're correct, but what I did in my motion was I said on a no-landings day the trip limit will be 2,000 pounds. These trip limits of 10,000 and the 3 metric tons are the trip limits on a landing day.

The other thing that I will clarify here is if you look at Issue Number 2, the landing days for small-mesh bottom trawls will be on days different than what we provide for the other gear types. In the example Chairman Abbott was giving, let's say we allow two landing days for the other gears on Monday and Tuesday, then we would allow three landing days for the small-mesh bottom trawls; for example, it might be on Thursday, Friday, Saturday, they will have the trip limits that are identified in the motion of 10,000 pounds, which is again a significant reduction from what they're allowed with the C permit holders, and then the 3 metric tons for the D permit holders.

MR. GIL EWING: Mr. Chairman, I guess I'm confused, which is very easy for me. When you say that you're going to get an additional day out and you're going to allow landings on that day of only 2,000 pounds; isn't that the same as a bycatch day, anyway. Just for Ritchie's information, the small boats – when I was working on the docks, the small boats always used coal shovels for loading the ice and unloading the fish.

To say that a small boat can't carry ice, to me that's ludicrous because all the small boats, the day boats from years ago iced down their fish. If you can clarify the difference between a days out and a bycatch day, I would appreciate it. Thank you.

CHAIRMAN ABBOTT: Last try, Doug, please.

MR. GROUT: What we're proposing is not an extra day out but an extra landing day. If we didn't pass this addendum, what would happen is there would be two landing days for these boats, and the same days that the purse seiners would land, and they would have a trip limit of 25 metric tons and 3 metric tons on those landing days.

Then on the other five days of the week they would be limited to what is in the plan currently as a 2,000 pound bycatch. What we're essentially doing here is ending up giving them an extra day in which they can land under the trip limits, although the trip limits are reduced. You've got three days that will occur in which you have a 10,000 pound trip limit as opposed to a 25 metric ton trip limit; and then for D permit

holders it would be 3 metric tons. It is three landing days as opposed to two for them.

MR. PATTEN D. WHITE: Two questions, if I could, because that just unclarified something for me. Are two of the landing days that are proposed in this the same as the landing days for the – it's not; they're three separate ones. My second question is earlier on there was a discussion about how this was going to be monitored, but there is nothing in this motion or in that part of the amendment that explains that. Is there a proposal as to how this is going to happen?

MR. GROUT: The proposal I have is in the second motion; is that this will be good for only a year and at our winter meeting we will take a look at the landings data and maybe even the participation data and see what effect the addendum had on the landings. We'll be monitoring it but we will be monitoring it at the end of the season. The board will have the option at that point to continue this addendum with modifications or they can choose not to continue it if they find that there is the potential massive increase in effort that people are speculating might happen.

MR. P. WHITE: Followup, Mr. Chairman. Is this dockside monitoring or catch data or what?

MR. GROUT: It is the same as – for the C permit holders they have to report by VTR and IVR, also. They also have to have a monitoring system on the boat. For the D permit holders, they have to report by VTR. That is where the landing stream will come in from VTRs.

MR. STOCKWELL: I have a question for Doug, and that is in Issue 2 with the specification for the different landing days. It seems to me or at least it strikes me that by remanding this it is going to crimp the hands of the trawlers when we have our days-out meeting who might want the flexibility of having some landing days on the same day for market reasons.

I can think of a number of dealers that may want to have, for their benefit, to deal with the handling of the bait on one day and not spread it out during the course of a week. At least several of the ones I have spoken to say it is not cost effective or worth their time, everybody can make more money if the fish is handled together as well. I defer to your input here because you've had so much design in the addendum, but I'm concerned it might crimp a better decision at the days-out meeting.

CHAIRMAN ABBOTT: I think that what we decide at the days-out meeting will be decided by our best judgment; is that not true, Terry?

MR. STOCKWELL: But this addendum specifically specifies that they're on different landing days and that would take the flexibility out of the discussion at the days-out meeting.

MR. VONDERWEIDT: Just a point of clarification; the wording is that they may land on different days. If you look at the options on Page 31, it is not requirement. It is a tool in the toolbox, so you could specify, given the current motion, that would allow small-mesh bottom trawls and purse seiners and midwater trawlers all to have the same days out if that is what section members.

MR. STOCKWELL: Well, then, if that is the intent of the maker of the motion, then the motion ought to say that because he has amended the motion from the public document. If we're voting on this particular motion, it very specifically dictates to me how we're going to be making a decision in Portsmouth in another week.

CHAIRMAN ABBOTT: Terry, do you feel that this motion needs to be amended to alleviate your problem?

MR. STOCKWELL: Well, it is not my problem. I'm thinking of the industry as they're trying to make their best decision on how to squeeze the most amount of economic return on what is really a very small amount of fish. We've conceptually supported this concept in the name of flexibility, and this would be counterintuitive to that.

CHAIRMAN ABBOTT: Further comments from the board? Hearing none, I will recognize Mary Beth Tooley for a quick comment before we move the question.

MS. TOOLEY: Mr. Chairman, I will try to be quick; it's late. I would like to just comment that different landing days being Thursday, Friday, Saturday was not contemplated at any of the public hearings that I went to. The idea that people thought we were talking about is that the whole industry would have the same landing days and that this group would have a plus one or plus two under these measures.

To totally change that and say, well, you're going to make the rest of the industry land on Monday and Tuesday and then we're going to give some great advantage to some small group of people to land

Thursday, Friday and Saturday is absolutely ludicrous and not considered by the public. I think that we need to be consistent here. This has marked impacts that nobody in this room understands; certainly nobody at the table understands. We would not support that. It was not discussed at the public hearing. It was not explained to the public that would be an option, and I would strongly ask you to remove that from this motion.

CHAIRMAN ABBOTT: Thank you, Mary Beth. In fact, let me comment that it was my understanding as chair that the added day would be a day, as I explained to the gentleman from New Jersey, that if we were landing Monday and Tuesday, the added day would be Wednesday as an example, and that is how I understood the addendum to be formulated, and that is why I asked Mr. Stockwell if he was interested in perfecting the motion to so state that. I see that it took us a little bit of afield, and, again, it wasn't something that I was thinking of either when we started talking about it could be day here or there. Terry.

MR. STOCKWELL: If Doug would consider a friendly, I would add "may".

CHAIRMAN ABBOTT: You would do what?

MR. STOCKWELL: Chris just made the "may include different landing days". I think as Mary Beth just stated very clearly, and I've heard from other dealers there are significant impacts for everybody that could be the result.

CHAIRMAN ABBOTT: I agree with you. On Issue 2, what wording would you use; just remove the "may include different landing days".

MR. STOCKWELL: That was just added.

CHAIRMAN ABBOTT: Are you happy with the motion?

MR. STOCKWELL: Well, happier.

MR. THOMAS FOTE: I have grave concerns over this. I'm sitting here listening to a motion that has been crafted, and it went from a few pages to all of a sudden now it is a huge document. It takes a half an hour to explain the document. All of us are trying to understand the document. The technical committee doesn't like it. The advisors don't like it, and the New England Council doesn't like it.

I don't know what we're doing here, and I really have a serious difficult time with this. I basically can't support it. When it takes this long, when it is this complicated to try to figure out how you're going to do it, we know we're going to be regretting this next year when we start looking at what the impact of this is. I don't want to be sitting here saying I voted for something and then – first of all, you make a motion and say you're going to make a second motion; why didn't you include it in the first motion that it was going to be sunsetted. I just have a real problem with the way it is going.

CHAIRMAN ABBOTT: Thank you, Tom. At this point are we ready for the question? Dave.

MR. SIMPSON: There is one more person in the audience, Jeff Kaelin, that wanted to address this; and given the importance of it, I would appreciate the benefit of his comments.

CHAIRMAN ABBOTT: Because of the lateness of the hour and we've had plenty of public comment – go ahead, Jeff, come on, quickly, it is getting late..

MR. JEFF KAELIN: I just wanted to say I thought there was some kind of a federal restriction against management measures that have allocation as their sole purpose, and I think this thing clearly provides an advantage to one sector that others are not given, and I urge the board to vote no. Thank you.

**CHAIRMAN ABBOTT: Okay, thank you, Jeff. Do we need time to caucus? Take a minute. I'll read the motion while they're caucusing: Move to adopt the following options: Issue 1, Option 3, modified to allow small-mesh bottom trawls holding a C permit a maximum possession limit of 10,000 pounds and small boat bottom trawl vessels holding a D permit a maximum possession limit of three metric tons per landing day. Small-mesh bottom trawl vessels may not land in excess of the 2,000 pound bycatch allowance on a no-landing day. Issue 2, adopt Option 3, may include different landing days for small-mesh bottom trawls plus one additional landing days; Issue 3, Option 1, status quo; Issue 4, Option 1, status quo; and Issue 5, Option 1, status quo. Motion by Doug Grout; seconded by Dr. Pierce.**

Are we ready for the question? We will vote by a show of hands. All those in favor of the motion raise your hand; all those opposed. **The motion fails by a vote of three to three.** That being the case, are there any other motions to come before the board? Tom.

## ADJOURNMENT

MR. FOTE: I make a motion we adjourn.

CHAIRMAN ABBOTT: Adjourned.

(Whereupon, the meeting was adjourned at 6:25 o'clock p.m., May 3, 2010.)