

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

**The Francis Marion Hotel  
Charleston, South Carolina  
November 8, 2010**

Board Approved: January 2011

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4. **Move to send comment on behalf of the ASMFC Herring Section in support of the Amendment 4 Proposed Rule** (Page 3). Motion by Douglas Grout; second by Terry Stockwell. Motion carried (Page 4).
5. **Move to allocate the 2011 Area 1A TAC seasonally with 72.8 percent available from June through September and 27.2 percent allocated from October through December. The fishery will close when 95 percent of the seasonal period's quota has been harvested and underages from the June to September period may be rolled into the October-December period** (Page 8). Motion by Terry Stockwell; second by Douglas Grout. Motion carried (Page 8).
6. **Move to initiate Addendum IV to Amendment 2 to the Atlantic Herring FMP to allow small vessels (small-mesh bottom trawl and small purse seine) additional landing days per week** (Page 10). Motion by Terry Stockwell; second by Douglas Grout. Motion carried (Page 12).
7. **Move to recommend that the ACCSP Coordinating Council allocate funds for continuation of the shoreside herring sampling program** (Page 17). Motion by Terry Stockwell; second by Douglas Grout. Motion carried (Page 18).
8. **Move that the Section, in the interest of our continuing partnership with the New England Fishery Management Council in the management of Atlantic Sea Herring and our shared concerns about bycatch in the Herring Fishery, request the council determine; one, if the percentage of the haddock TAC for the Sea Herring Fishery Haddock Bycatch Cap can be increased in response to a recent increase in observer coverage; and, two, whether the boundaries of the area or areas to which the bycatch cap applies can be modified to prevent a closure of the Gulf of Maine Fishery when the cap is reached** (Page 21). Motion by David Pierce; second by Terry Stockwell. Motion carried (Page 26).
9. **Motion to adjourn** by Consent (Page 26).

## ATTENDANCE

### Board Members

George Lapointe, ME (AA)	Robert Ballou, RI (AA)
Terry Stockwell, ME, (AA proxy)	Rep. Peter Martin, RI (LA)
Pat White, ME (GA)	Dave Simpson, CT (AA)
Sen. Dennis Damon, ME (LA)	Lance Stewart, CT (GA)
Doug Grout, NH (AA)	Rep. Craig Miner, CT (LA)
G. Ritchie White, NH (GA)	Pat Augustine, NY (GA)
Rep. Dennis Abbott, NH (LA)	James Gilmore, NY (AA)
David Pierce, MA, proxy for P. Diodati (AA)	Peter Himchak, NJ, proxy for D. Chanda (AA)
William Adler, MA (GA)	Tom Fote, NJ (GA)
Rep. Sarah Peake, MA (LA)	Gil Ewing, NJ, proxy for Asm. Albano (LA)

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

### Ex-Officio Members

Dave Ellenton, Advisory Panel Chair

Matt Cieri, Technical Committee Chair

### Staff

Vince O'Shea  
Robert Beal

Chris Vonderweidt  
Kate Taylor

### Guests

Jeffrey Marston, NH F&G  
Emily Menashes, NMFS  
Lori Steele, NEFMC  
Charles Lynch, NOAA  
Bob Ross, NMFS  
Peter Burns, NMFS  
Shaun Gehan, Kelley Drye, DC  
Kristin Cevoli, PEW Group  
Janice Plante, Commercial Fisheries News

Wilson Laney, USFWS  
Joe Moran, USFWS  
Tom McCloy, NJ DFW  
Patrick Paquette, MSBA/RFA  
Raymond Kane, CHOIR  
Ben Martens, CCC HFA  
Arnold Leo, E. Hampton, NY  
Darren Saletta, Chatham, MA

The Atlantic Herring Section of the Atlantic States Marine Fisheries Commission convened in the Carolina Ballroom of the Francis Marion Hotel, Charleston, South Carolina, November 8, 2010, and was called to order at 8:00 o'clock a.m. by Chairman Dennis Abbott.

### **CALL TO ORDER**

CHAIRMAN DENNIS ABBOTT: Okay, the hour is 8:00 o'clock. I would like to welcome everyone to the first meeting our annual meeting here in Charleston, and we're all glad to be here. I would like to call the meeting to order.

### **APPROVAL OF AGENDA**

CHAIRMAN ABBOTT: Our first topic is the approval of the agenda. You are having a revised agenda passed you and you should have it in front of you at this time.

There have been a few things added to it and shuffled around simply because of what has been going on in the herring fishery; so in trying to accommodate everyone Chris and I, with the state directors, have been doing some adjusting over the past few weeks. Is there approval of the agenda? Moved by Terry Stockwell; seconded by Dave Pierce. Without objection? Do you have a comment, David, which I know what it is going to be.

DR. DAVID PIERCE: Yes, regarding the agenda, either under other business or perhaps under the addendum – preferably I think under other business – there is an issue that I would like to raise for the section to see indeed if the section would entertain a recommendation that I described in written form in a memo that I've made available to most people I think – more copies are being made – and at the appropriate time, Mr. Chairman, I would have a motion to make on that issue under other business.

CHAIRMAN ABBOTT: Thank you, Dave Pierce; I have added that we will fit that in under other business. Any things to be added? Mr. Stockwell.

MR. TERRY STOCKWELL: Mr. Chairman, under Discussion Item 9, portside sampling, I'd like to have discussion or make sure that section includes the ACCSP funding.

CHAIRMAN ABBOTT: I'll recognize you at that time. Also, under Item 5, probably, I think we're going to ask Bob Ross to give us an update on what

has been going in the past few days in the herring fishery, so we'll be doing that. Again, I consider the agenda approved.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN ABBOTT: We have the approval for the proceedings from the May 3, 2010 meeting. Are there any comments regarding that? Do we have a motion? Bill Adler would move that those be accepted; seconded by Doug Grout. The motion to approve the proceedings from May 3<sup>rd</sup> is approved.

### **PUBLIC COMMENT**

CHAIRMAN ABBOTT: Do we have public comment on any items that are not on the agenda? I see no hands. We will move along to Item Number, Draft Addendum II for final approval and final action. Chris.

### **DRAFT ADDENDUM II FOR FINAL APPROVAL**

MR. CHRISTOPHER M. VONDERWEIDT: The section probably remembers that it put forward Addendum 2, brought out for public comment and took some actions on the addendum but postponed taking final action at the May 3<sup>rd</sup> meeting, so I'm just going to go over the updated or the Proposed Amendment 4 Rule from the National Marine Fisheries Service and then also go over our final Addendum II.

You've got three things on the Briefing CD. One is the NMFS Proposed Rule. One is a draft for public comment of Draft Addendum II, and it has got a date of March 2010. That document has been updated to basically be the final addendum as it would appear in the commission documents, and that says draft for board review at the top, and that was provided just so you could sure everything in there was to your liking, but I'll go over all that.

Just as a recap, the Reauthorized Magnuson-Stevens Act requires councils and the Fisheries Service to implement annual catch limits and accountability measures and all the acronyms that go along with annual catch limits. The council initiated Amendment 4 to comply with the Reauthorized Act. What this does to the council management is it basically changes the definitions and the associated acronyms that go along with the fisheries management of herring.

It doesn't change the management scheme. At the end of the day there is a quota that gets divided amongst the three areas and two sub-areas. What is in Amendment 4 is a definition of overfishing level, which is the fishing mortality rate times the stock size. This was called allowable biological catch, which is the acronym ABC, in our previous management documents.

You'll notice that the next thing that is defined in Amendment 4 is ABC, so we would have two different ABCs, which makes it pretty confusing. What the new ABC is it is called acceptable biological catch, which is you take the overall stock size that can be removed from the population, and then you remove scientific uncertainty.

I apologize; I think everybody here has seen all this stuff about a million times. And then the annual catch limit is if you take the ABC and remove management uncertainty, you get the catch limit for the stock, and we previously called this optimal yield in our plan. Also what was proposed in the preferred alternatives of Amendment 4 was to remove all the specifications that were associated with foreign fishing; so joint venture processing, total joint venture processing, internal water processing, total allowable level of foreign fishing and the reserve, these haven't been set for I think over a decade, so that preferred alternative was to remove them.

It also included an accountability measure and payback. If there is an overage for an area or sub-area, it has to be paid back from that area. What the Atlantic States did was we initiated an Addendum II to address the inconsistencies; because once Amendment 4 was finalized, the Atlantic States and the New England Council would have a different set of definitions and acronyms for herring management; so when you get that piece of paper that says what the quotas are and the specifications, there were would be different acronyms with the same number probably and it would be very confusing.

We also don't have any kind of payback provision in there, so the section initiated the addendum and voted on measures on May 3, 2010, but postponed final approval because at that point the Amendment 4 document had been submitted to the National Marine Fisheries Service, but we didn't know if they're going to approve the measures and what was going to happen with that.

What is in Addendum II, the measures that the section voted on are the same measures that were the preferred alternatives that were submitted to NMFS,

which removes all the foreign acronyms and specifications that have to do with foreign fisheries. It defines overfishing level, allowable biological catch and annual catch limits and the TAC, total allowable catch, gets changed to sub-ACL. There is also a suggested process to set the specifications and accountability measure paybacks.

Just to go into these in a little more detail, if you look up on the screen, on the left is what the old specifications were; on the right is what they're going to become, so allowable biological catch becomes overfishing limit. Acceptable biological catch, there is nothing that is specifically related to scientific uncertainty, so that's something new, but you end up with U.S. optimal yield or a stock-wide ACL; and then on the left there, those five are removed; and then the TAC becomes sub-ACL.

The specification-setting process for the Atlantic States in our Addendum II is a complementary process. It is suggested and we're not bound by any recommendations of the SSC or any federal group, so the section can do what it wants at the end of the day. The suggested process is that the TC will recommend the specifications, OFL, ABC, ACL and will also evaluate if the ACLs were exceeded in previous years, and that will be presented to the section at the meeting before the section sets the specifications. The section will review those and set its own specifications.

For accountability measures, it is just an ACL overage deduction. Remember, sub-ACLs are the new TAC; so once the final total catch for a fishing year is determined; so let's say we get the final landings for 2010; we're going to get those in 2011; it will go against the following year, so that would be 2012 would be reduced the amount the 2010 had an overage of.

It is a little bit of a delay there, but you need to wait until getting the final landings. It doesn't propose in-season adjustments. The deduction equals the amount that was exceeded. It is pretty straightforward. What has happened since the section took action on that? Well, on October 15<sup>th</sup> NMFS published the Amendment 4 Proposed Rule.

They have a 45-day public comment period, which I think is December 2<sup>nd</sup> is the day that it closes. I have been advised that this is very unlikely to change. In the history it seems very unlikely to change. Everything in the NMFS Proposed Rule is identical to the council's preferred alternatives.

I have gone over this; Lori has gone over this, and it looks like it is a pretty good best-case scenario for what the commission was pushing for. The process is the same, too, so the process that we voted on would still be complementary. What I did was I updated the draft, and there is a draft for board review, and this includes all the measures.

There were a few wording changes that the section asked for during their meeting, so that is all in here in the draft for board review dated October 2010. The question is should we take action to move forward today or postpone until NMFS has put out the final rule. What action would we take? Well, one is that we could send a letter in support of the proposed rule if everybody feels the same way they did during the May 3<sup>rd</sup> meeting. We could approve Addendum II. The proposed rule closes December 2<sup>nd</sup>. Our next meeting isn't until March 21, 2011.

All the areas except for 1A open January 1, 2011; and actually depending on how the vote goes later Area 1A could open January 1, so we could have kind of delayed period where we have different specifications for this fishing season. Thank you.

CHAIRMAN ABBOTT: Thank you, Chris. Do we have any comments on Chris' report? Again, we said that we would wait for what we receive today, and at this point I would entertain a motion. Doug Grout.

MR. DOUGLAS GROUT: Mr. Chairman, **I would like to move to approve Addendum II as modified at the May 10, 2010, Section Meeting.**

CHAIRMAN ABBOTT: Seconded by Terry Stockwell. Discussion on the motion? Dr. Pierce.

DR. PIERCE: Chris, the addendum as it is written right now, once in place would oblige us to take any overage off of this year's quota not off of next year's quota but for the year after, 2012?

MR. VONDERWEIDT: That is correct; so, for example, if there is an overage in Area 1B, so that would be reduced from the 2012 1B quota.

DR. PIERCE: Okay, I just wanted to clarify that because I had thought initially, without reflecting on this addendum, that if indeed there happens to be an overage of the Area 1A quota for this year, we, that is ASMFC could deduct that overage off of next year's quota. That would give the National Marine Fisheries Service some additional level of comfort regarding reopening of Area 1A, an area that closes on Monday, today.

So unless we pass this addendum, we will then not have the option to do that. I just want to make sure that I understand where our options will be relative to our handling of any overage of Area 1A. Initially I thought we could just say to the feds, well, we'll take care of it in Area 1A; that is ASMFC will, but now we will not be able to do that once we adopt this addendum, correct?

MR. VONDERWEIDT: Well, the straightforward answer to what happens to Area 1A overages is if this addendum is approved today, any overages in 2010 fishing season would be removed from the 2012 1A quota, the equal amount that was overharvested.

CHAIRMAN ABBOTT: Any further comments or questions? Seeing none, we'll call for a vote. Move to approve Addendum II as modified at the May 10, 2010, section meeting. Motion by Mr. Grout and seconded by Mr. Stockwell. All of those in favor raise your right hand. **The motion passes 7/0;** thank you. Doug Grout.

MR. GROUT: Mr. Chairman, I also think that the council should also – or the section here should also send a letter in support of Amendment 4 to the council plan, so **I would like to also make a motion to send comment on behalf of the ASMFC Herring Section in support of the Amendment 4 Proposed Rule.**

CHAIRMAN ABBOTT: Second by Mr. Stockwell. Discussion on the motion? Dave Simpson.

MR. DAVID SIMPSON: Well, just for the record if you could give just a brief justification to clarify why the commission would want to do that.

MR. GROUT: Well, from my standpoint, as someone who is on the council, it was an important part of complying with the Magnuson Act in setting ABCs and ACLs for the fishery, and I think that is an important thing that we should be considering. Thank you.

MR. PETER HIMCHAK: I guess this question is directed to Lori. How did Amendment 4 deal with the management uncertainty of the Canadian catches?

MS. LORI STEELE: That is something I haven't thought about in a long time. Amendment 4 recognized several sources of potential management uncertainty; one being the Canadian catch, another being the level of discarding that may occur in the fishery. For the Canadian catch, the way the amendment deals with it is in a very general sense.

The amendment recognizes it as part of management uncertainty and basically authorizes a deduction to be taken from the ABC for management uncertainty, including Canadian catch. That is pretty much all the amendment says, and then we determine, through the specifications process, what that deduction will be.

The decision was made during the 2010 to 2012 specifications process to base it on – I believe it was a – I think it was about a 12-year average catch or a 13-year average catch with a high year and a low year dropped. That was justified through the specifications package. The amendment itself is relatively general and just recognizes that the Canadian catch will be part of the buffer for management uncertainty between the ABC and the ACL.

MR. HIMCHAK: Just as a followup, I just wanted to know if there was a strict formulaic approach to it before I voted to approve Amendment 4, because this is an issue that is coming up with the Mid-Atlantic Council on mackerel and spiny dogfish. From what I hear you saying, it is kind of like, yes, it negotiable every year. There is no set pattern of X-percent of the previous three-year mean or something. Okay, thank you.

CHAIRMAN ABBOTT: Further comments? Seeing none, need for caucus? I call for a vote. All those in favor of the motion please raise your right hand, 6 in favor; opposed; abstentions, abstention; nulls. **The motion carries 6-0-1 abstention.** We'll move on to the next order of business, and at this time we'll recognize Matt Cieri for an update of the 2010 Fishery. Bill Adler.

#### UPDATE OF THE 2010 FISHERY

MR. WILLIAM A. ADLER: Just a question; if we have a 2010 overage, it comes off of 2012; if you have a 2011 overage; does that come off of 2012 or do we skip to 2013?

CHAIRMAN ABBOTT: 2013 and so on.

DR. MATT CIERI: Good morning, everyone; my name is Matt Cieri, and I'm the chair of the technical committee. What I'm going to give you today is sort of a brief landings and catch update from the Atlantic Herring Fishery so far this year. As you may or may not be aware of, there are many different types of reporting in the Atlantic Herring Fishery.

IVR reporting is a cumulative weekly catch per vessel by management area. It does not give you trip level information, and it is usually only reported once

per week by each of the individual vessels. It doesn't include the state-only permit holders currently, but that's in the works for at least the state of Maine. It also doesn't include gear type. It is just a record of the vessels, where they were fishing and their cumulative catch for that week.

Dealer reporting usually through the SAFIS system records weekly trip level transactions, the buying of landings by dealer. It gives you a lot of economic information, but it doesn't normally include state-only permit holders as a rule. It doesn't deal with bycatch as opposed he VTRs, which we'll talk about in a minute. It also doesn't give a good idea of gear type or area that has been fished. This is just weekly transactions.

The VTR is monthly spatially resolved trip level information, so the individual vessels report on a monthly basis every single one of their trips. They give a much more detailed account of what was caught, specific lat/long areas in which they've caught those fish and lots of other pertinent information. However, because it is done a monthly basis, it is not normally used for quota monitoring.

The National Marine Fisheries Service uses a combination of IVR, the dealer SAFIS reports and VTRs for quota monitoring, relying mostly on the IVRs because they're weekly and in real time. With that out of the way, this is all IVR reporting that I'm going to be giving to you. VTR reports aren't normally finalized until March, April or May of the following year.

For right now what I'm going to give you is 2009 and 2010 so far this year, and that is current as of Halloween. There is the catch in metric tons, the percentage of the quota for 2009, for example; the catch in metric tons so far through Halloween; and the percentage. As you can see, in 2009 Area 1A caught about 97 percent of its quota, about 43 percent. Again, this is all according to the IVR reports.

As you can see, in 2010 there is a slight overage in Area 1B – well, a little more than slight. Right now currently we stand for Area 1A as of the last final IVR report at 60 percent of the TAC. Breaking it down and taking a look at where we've been this past year, as you can see Area 1A is in red. Area 1B, which is now officially closed, is in the pink. Area 2 is in the white and Area 3 is in the light blue.

And as you can see here, Area 1A has been about the same landing level as Area 1B up until very recently.

This is how the fishery has progressed so far. Note the scale on which we're talking here. We talking at the very top portion of the graph is 18,000 metric tons. For each of these areas, these are fairly light landings.

In fact, if you look at Area 1A landings by year, 2006-2010, and that would be the current week's reporting, you can see that Area 1A has been relatively slow much of the year. You can see generally by this portion, in 2006 Area 1A was completely closed, and it landed almost 60,000 metric tons whereas now we're hovering at around 16,000 metric tons, so there is quite a difference.

Even compared to last year, at this point last year in 2009 we caught nearly 30,000 metric tons, and this year again we're at about 16,000 metric tons. I know this graph is extremely confusing, but this is the cumulative catch by week; each one of those lines represents a year, the year 1960 to present. As you can see, a whole bunch of those lines are really, really bunched together, and they range at this point, which is we're on Week 45, and they range pretty much between 40 and 90,000 metric tons.

That has been the range so far of cumulative catch in Area 1A, 1960-2009. The red line at the very, very bottom is 2010. For comparison purposes, the two lowest lines of that group, a little bit down, these two lines right here, these represent 1983 and 1984. This is during the height of the collapse of the Atlantic Herring Fishery. This is where we are right now. Catch have rates have been significantly off in Area 1A for this year.

So, again, here is Area 1A of 2010 as of Halloween, and the blue line represents the quota for this particular year. As you can see, we've actually had quite a number of adjustments of our days-out regimes; moving from one landing day to two landing days; back to one landing day; over to four landing days; back to three landing days; over to seven landing days to landing days; and now we currently stand at four landing days.

These are all the management actions and the effort controls that we have done within Area 1A this year alone. Okay, I know this one is a little bit more difficult to read. Again, this is Area 1A landings. Each one of those boxes represents the spawning closures; the first one in light yellow for eastern, the middle one for western Gulf of Maine, and then the Massachusetts and New Hampshire in the light blue, so you can get a picture of what landings look like relative to each one of those.

Just wrap up, Area 1A catch has been well below what we've even seen in this fishery, 1960 to present because we've been keeping those types of records. It is kind of unknown what that means, whether or not it will repeat next year. This is the first year that we've seen this and it may be the last.

There has been an overage in Area 1B and that is probably the results of having a very, very small quota. Remember, the quota was reduced from 10,000 metric tons to 4,000 and we have a lot of capacity in this fishery. They have the ability to 4,000 metric tons in one week, and so an overage is not unexpected. However, that overage is subtracted from subsequent years, so it does get account for.

We've had a lot of changes in our days-out regime. There have been a lot of meetings in New Hampshire this particular year. As far as how the spawning has progressed, there has been an 11-day overlap basically between eastern Gulf of Maine and western Gulf of Maine spawning closures. There has been no overlap between western Gulf of Maine and the Massachusetts/New Hampshire closure, which started on the 1<sup>st</sup> of October and ended on the 28<sup>th</sup>. That's it.

CHAIRMAN ABBOTT: Thank you, Matt. Let me just take a moment to thank Matt for all the efforts that he went through in compiling charts and graphs we could make our decisions to make in-season adjustments. We also used telephone conference calls during this period of time between the three states to talk about adjusting our days out. I must say that Matt had a monumental task in his many looks at the wjeee board and whatever he did because the herring fishery year this has confounded the experts, I would daresay. Does anyone have any questions or comments? Dr. Pierce.

DR. PIERCE: A couple of questions, Matt. In showing the landings on a weekly basis since 1960, you made a very specific point to reference two years when we had a collapse when we had a Gulf of Maine herring resource, so to me you were inferring that it is likely that the Gulf of Maine resource has collapsed in light of the extremely low landings that we have had. Would care to comment on that? You said the situation is unknown and we don't really know what is going on, but again you inferred collapse, so would you elaborate a little bit since you're the tech guy.

DR. CIERI: Yes, certainly. I just wanted to keep it in terms of reference for you guys, that you understand this is the lowest. Everything I have given this sort of a presentation, people have asked,

well, where were those two years in which we know that the herring had collapsed, and so that is why I pointed them out. That is in reference to the historical catch and that low, low period that we saw in 1982, '83 and '84. I'm not inferring that the stock has collapsed, but what I am telling you is that catch rates are lower than what they were during that time period.

DR. PIERCE: Yes, indeed, they have been. Obviously, throughout the whole summer period we've heard from the fishing industry or at least what I heard was the fish are hard on the bottom. Well, I guess they're no longer hard on the bottom; they've come off the bottom, especially in light of recent catch levels and that gets me to my next question.

I kind of lost track as to what you gave us as an estimate of total landings of sea herring as of today; specifically landings that occurred last week, Sunday, Monday, Tuesday, Wednesday, Thursday, the days that we allowed for fishing because the catches were so low, the quota was not being attained, so we had to give the fishermen an opportunity to try to catch that quota. I understand from fisherman's individual reporting to the Service and to us that they may have caught like 5,500 metric tons in that period, maybe. I'm not sure of the figure. Do you have any updated information regarding where indeed do we stand with actual landings right now with last week's landings as best you can assess them included in the total.

DR. CIERI: Not included in the total. Remember, the Atlantic Herring Fishery does not have to report until Tuesday at midnight from the previous week; so anything that has occurred last week is not actually in the books officially yet. They have until Tuesday at midnight in which to do so. That said, I ran the IVR reports this morning.

Half of our boats have reported; half of the active boats have reported, roughly eight of the sixteen vessels fishing in Area 1A on a general basis. They have accounted for 2,000 metric tons. We have half of the fishery left to report, and we already have 2,000 metric tons that we know of from last week.

DR. PIERCE: Okay, again, I've gotten reports from individual fishermen, reports that were shared with the National Marine Fisheries Service to help them judge the wisdom of what was done; and that of the close today, in that one-week period of time almost 5,500 metric tones, which is a phenomenal catch in a short period of time, so the fish showed up for some reason.

I appreciate the problem. It is unofficial information provided directly from the fishermen to deal with the closure today. My last question is you showed the landings for Georges Bank, one of your earlier figures, and I don't recall what week it was, but suddenly the landings stopped, had leveled off. I would assume that the leveling off – okay, it levels off around Week 39, thereabouts; okay, so no landings or catch from that area at that time. I assume – this is my question – was that a consequence of the haddock bycatch cap and the fact that the industry knew that they were at around 80 percent; therefore, they stopped fishing on Georges Bank for fear that they would catch the cap; is that happened?

CHAIRMAN ABBOTT: We can conjecture that is the case. I don't think that Matt as a scientist could definitively answer that, and I wouldn't ask him to. I will say that Bob Ross is going to give us an update from NMFS about what is going on in relation to your comments and questions, David. Ritchie White.

MR. G. RITCHIE WHITE: Matt, can you talk at all about the size class makeup of the harvest this year and how that might compare with some other years or is that too premature to discuss that?

DR. CIERI: It is a little premature. As you know, the sampling actually goes into a date base and we have to take a look at all of this stuff. The general feel is that the fish tend to have been smaller this year than they have been in the past, but again that's a generalized statement. We won't know until we actually take our individual samples and expand them up into the catch-at-age matrix. To do that, we need the VTRs, which means that none that will happen until May or June timeframe.

CHAIRMAN ABBOTT: Further comments? Okay, seeing none, Bob Ross, at this time could you give us some information from the Service?

MR. BOB ROSS: I'm Bob Ross with the NMFS Northeast Regional Office. I know there has been a lot of communication since NMFS announced the closure of Area 1A effective today at noon. There has been some communication between our regional office and some of the interested herring participants, and I would like to just basically verbatim transmit the message that was provided by George Darcy, the head of our Sustainable Fisheries Division, relative to the logic as to why we moved forward with the closure effective today.

Because of the fishing pulse that put us over on the Area 1B TAC, we have been closely monitoring the VMS tracks to see where vessels are going and how many are on the grounds. Earlier last week there were 20 herring vessels in 1A. We knew there was significant catching capacity out there. Based on several scenarios of what the vessels could be catching, we were concerned that we would be very close to the 1A TAC if the vessels were on the herring.

That prompted the decision that we needed to close or reduce the limit to the 2,000 pound landing limit. Knowing that the states had days out of the fishery through Sunday, we decided noon Monday would allow at least one more landing, Sunday night/today. And just to clarify, I know there was some confusion as to catching and landing.

Vessels that are tied up at the dock by noon on Monday can still unload after that time. NMFS is doing everything we can to get actual landings for the last week. As Matt Cieri indicated, vessels are not required to – dealers are not required to report until tomorrow night. Industry has been very helpful in reporting to us early. While we yet don't have data from all the vessels that were fishing this week, herring landings appear to have been considerable, on the magnitude of the largest weekly landings reported.

And, again, bearing in mind there will also potentially be landings from yesterday and today, NMFS is working with the industry and our port agents to get this data as soon as possible. It is quite possible that we will be near the 95 percent closure trigger when all the numbers are in. In the meantime, we are prepared to reopen Area 1A for some period should the numbers indicate an underage that is large enough to allow for additional fishing.

We clearly intend to allow the industry to take the TAC while not allowing an overage. I hope that gives you a little more sense of what we saw at the end of the week; and again bearing in mind what Matt had indicated, there is a lot of capacity out there, and the numbers are still coming in at this point.

CHAIRMAN ABBOTT: Thank you, Bob. I think there is probably a few board members that might have some questions for you.

MR. ROSS: I'm not sure how far I can go down the path, but I will do my best.

CHAIRMAN ABBOTT: I think we understand that. Terry Stockwell.

MR. STOCKWELL: Thanks, Bob, for your report. Certainly, the end of last week was pretty active on the telephone and the e-mail world, but I understand why the agency initiated a closure, but what I'm concerned about right now is the process and timeline for the potential to reopen given that there is a one-week lag between the landings that were going to come in either last night or today, and the unknown – if I do my back-of-the-paper math here and you added the 5,000 tons onto what Matt just presented, it gives us about 4,000 tons of fish left to harvest before we reach the TAC.

The weather in New England is just abominable right now. I think the landings were probably fairly low, and I certainly don't want to exceed the TAC, but I would like to just know what – if you folks have been able to determine what process that you're going to work with to inform the industry and the states if you are going to reopen.

MR. ROSS: I know at this time it is literally a fire drill within our office scrambling to try to outreach to all the targeted vessels. We do obviously know which specific vessels were involved in the fishery last week. I know the initial analysis tunneled down to those vessels, looked at their specific fishing histories and their capacity and worked off of that.

I know that we do want to allow industry to take the full extent of the TAC and the office plans to do everything they can if the indications are that there is some room left to go forward, that we will attempt to reopen the fishery as quickly as possible. That is the best I can give you at this time.

MR. PATTEN D. WHITE: Again, projections, if you could; if the data isn't complete until tomorrow night, then the earliest – I don't know how long a timeframe is that you can reopen, but I would assume the earliest would be the following Wednesday or Thursday?

MR. ROSS: Pat, I know we will do our best. I believe that we have the package ready to move forward if there are indications that we need to reopen. How quickly we reopen I think we could do a little better than you indicated, but I can't give you any specific timeline as to when we would reopen. Our intent is once we have more confidence in actual landings, if the decision is to report, the paperwork is ready to go and would be filed immediately.

CHAIRMAN ABBOTT: Thank you, Bob. I'm sure there is going to be a lot of conversations between the Service and the states because the states also have their own process of closing and opening following all the announcements. I think you, Bob, for providing us with that information. Okay, moving along, I think the next item, Agenda 6, will be to set the 2011 quota allocation. We have action on that and I will recognize Chris.

## 2011 QUOTA ALLOCATION

MR. VONDERWEIDT: This is pretty straightforward. It is from actually Addendum I, which was provided on the CD; and if you want to see the specifics or the decisions, it is on Page 3 and 4 of that addendum. It is a pretty short addendum. If you remember, this is the tools in the toolbox addendum. The decision bullets are up there. It applies only to Area 1A.

There is a choice of quota periods; so, bimonthly, which is every two months; seasonal or trimesters. The cutoff dates for the seasons are June 1 and October 1. There is also the decision of whether or not to allow landings prior to June 1; whether or not to close when 90 percent or 95 percent of a quota period quota has been harvested or projected to be harvested; and then also inter-annual quota rollovers; so if there is an underage for, let's say, the first bimonthly quota period, that would get rolled into the next quota period. Essentially it would allow to not lose quota in the case of an underharvest. Those are the decisions.

CHAIRMAN ABBOTT: Okay, that's where we are. Terry.

MR. STOCKWELL: Mr. Chair, if you're ready for a motion, I have one.

CHAIRMAN ABBOTT: I would like a motion.

MR. STOCKWELL: Okay, **I move to allocate the 2011 Area 1A TAC seasonally with 72.8 percent available from June through September and 27.2 percent allocated from October through December. The fishery will close when 95 percent of the seasonal period's quota has been harvested and underages from the June to September period may be rolled into the October-December period.**

CHAIRMAN ABBOTT: Seconded by Doug Grout. I think this is essentially what we have done for how many years now? Two years, okay. Discussion on the motion? Doug Grout.

MR. GROUT: Just a brief justification for this; the whole purpose in 1A is we want to delay harvest until the demand for bait is there, which is in the summer months, and we've come up with an allocation system between the two periods that seems to work fairly well, and so I support this motion.

CHAIRMAN ABBOTT: Further comments? Seeing none, do you need time to caucus? No need to caucus, we'll call the question. All those in favor of the motion as presented kindly raise your hand; all those opposed; no nulls and no abstentions. **The motion carries 7-0-0-0.** Moving along, we'll now have a discussion of days-out exemptions for small boats, and we will start with Chris to give us a little update.

## DISCUSSION OF DAYS-OUT EXEMPTIONS FOR SMALL BOATS

MR. VONDERWEIDT: Basically, the background information can be found on the annotated agenda. If you remember, at the last section meeting there was Draft Addendum III for public comment, which proposed exemptions for small-mesh bottom trawl vessels. There were a lot of different options and a lot of moving parts, a lot of questions about the impacts to the fishery. At the end of the day the addendum failed to move forward by a vote of four to three against.

There has been continued interest in moving forward with an additional addendum that isn't specific to just small-mesh bottom trawl boats, but that would open up to kind of the smaller vessels which don't have the hold capacity or the refrigeration of the larger vessels so the number of landings' days equals the number of fishing days for these vessels. That is just the general concept. I think the details need to be worked out, and I'll let the people in favor of this speak to that.

CHAIRMAN ABBOTT: Okay, at this time, Terry.

MR. STOCKWELL: Maine was one of the states who voted against the Addendum III in part because of the complexity of the addendum and in part because at least from the state of Maine's perspective it wasn't going to help out the small purse seine vessels. We still have a fleet of 30- and 40-foot boats that are day boats.

After reflecting upon our discussion and all the work put forward into developing this addendum and the rationale and speaking with a number of small Maine purse seiners who are looking for equitable fishing opportunities for all vessels and gear types, I would

like to keep a simple approach. I have been working with staff to try to define what small boats are and the impacts of adding any additional landing days on particularly what has been a pretty turbulent fishery this last year.

If section discussion, I'm going to propose to initiate an addendum, but what we're going to need to do is to a special section meeting to review the document and the data that the state of Maine is going to provide into the document. Then we're going to need to go out to the AP and solicit public comment so that if this all does move ahead we could then vote on it in March for implementation the next fishing year. I would be interested in hearing what other folks might have to say before I have a motion for you, Mr. Chair.

MR. GROUT: As you all know, New Hampshire, it was very important that we try and address this issue within our fishery. We've gone and worked cooperatively with our two partners, Maine and Massachusetts, to try and develop a days-out system where we could try and control the harvest, which is harvested primarily by the A and B category vessels. We had a small fleet of bottom trawlers that fished in a very discrete area off of New Hampshire.

Originally when we were allowing five fishing days and only two fishing days out of the fishery, there wasn't much of a problem there; but once we had to, because of quota reductions, go back to one and two fishing days a week, that was really affecting their ability to be a viable fishery, and so that's why we originally brought this up.

As we saw earlier this year, this addendum did not pass the section; and in discussion with the state of Maine it turned out that there was some other vessels up in Maine that are in the same category where they're able to land on a daily – they have to land on a daily basis as opposed to some of the larger vessels that can fish for two and three days before they land. We're just trying to put these vessels on an equal footing between the larger vessels and these smaller vessels here. They also really don't amount to that much of the landings. As we saw it was less than 2 percent of the total harvest so the impact on the fishery is very small. I certainly would support moving with such an addendum. Thank you.

MR. R. WHITE: Doug made the case pretty well. I would just add that I know some of the concerns of the section, when we voted on the last addendum, were that there would be a large influx of small boats into the fishery. In talking to Matt, we won't have

that data until March, but from everything I saw that was not the case. I think we will see that we did not have a large influx, and the historic vessels that participated in it were the ones that participated this year.

MR. ADLER: I believe this was the small-mesh fishery bottom and they didn't even have access or wouldn't have had access until I think July or something like that, and I wasn't sure how long they had that access, so that was one question. If this thing comes up again and it gets approved, I would assume it would be the same type of a seasonal thing that they're allowed in. I was just curious with the way we had this year and the fish were hard on the bottom, as they said, whether or not they noticed any hard on the bottom in their fishery when they did go out to do this, and I don't know. Maybe they could answer that.

CHAIRMAN ABBOTT: Yes, I think Ritchie or I could answer that, but I'll let Ritchie do it because it was kind of interesting what actually did occur when – as you know, you saw the slide where we had a whole bunch of different days out; and at the time when the bottom trawlers were able to go fishing, we were having increased days and I think that we found that their catch ended up still being lower. Go ahead, Ritchie.

MR. R. WHITE: A number of the New Hampshire vessels I talked to, when we went to seven days, they didn't fish all seven days for two issues. One, the area that they're restricted to had some herring in it, but there weren't herring there all the time, so sometimes they had difficulty, sometimes they did well and sometimes they didn't, so it wasn't like an automatic go fill the boat every day.

The other thing that I found very interesting is that they fill their local markets and they get to the point where they couldn't sell their herring. With all the talk about the lobster industry collapsing without bait, some of these boats did not fish because they couldn't sell their catch, which was astonishing to me.

MR. PETER HIMCHAK: Doug, I admire your tenacity on this. As to the premise of the first Addendum III – and it was built on this disadvantage because of the days-out policy and now I see in Area 1A they're having four landing – you're back up to four landing days, so it seems like they're not going to be as disadvantaged, but there is no guarantee on how long those four landing days is going to stay

around, so the problem I guess is it could be good one year and not good another year.

I think what would really help on this new addendum is if they was unison from advisory panel on this very issue of these vessels being economically disadvantaged. Personally I like to stay out of Gulf of Maine issues, but I found it is very unsettling when the last addendum went out to public hearing and there was discussion at the table about a statement in there from the advisory panel, and although we'll look at it before it goes out as a public hearing document, so the whole premise of the addendum, of why we're doing it, it became a little unsettling for those not intimately involved in the fishery. I think that would be a big improvement this time. Thank you.

CHAIRMAN ABBOTT: Thank you, Pete. I understand where you're coming from, but I'd also like to comment that it is not Doug Grout's tenacity in this instant. This is beginning from the state of Maine. We took a beating and we accepted that, but the state of Maine in the interim – you know, things change and they learned more and I think that the state of Maine is looking out for their interests also, and what may be good for them may be good for us, but that is to be decided by the board through the possible development of an addendum.

Again, I think I heard Terry immediately say that we're looking to receive input from the advisors if we do decide to go forward. That is where we are. But, again, it wasn't Doug's Grout tenacity. Any further comments about this? Do we have a motion? We will make a motion and then we'll go to the public at some point to get some comments from the public, also.

MR. STOCKWELL: Mr. Chairman, you have to recognize we're sitting next to each other here. And to your point, Pete, we did reflect and my reluctance of putting any meat to the motion is that I want to fully address the AP's concerns and that of the section from the discussions before, and we don't have the data yet to provide the specifics to the addendum that needs to be developed. We're working on it and we should have it available by the latter part of the calendar year.

With that being said, Mr. Chair, **I would like to make a motion to initiate Addendum IV to Amendment 2 to the Atlantic Sea Herring FMP to allow small vessels, small-mesh bottom trawl and small purse seine an additional landing day or two per week.**

CHAIRMAN ABBOTT: Motion made by Mr. Stockwell; seconded by Doug Grout. Do we have any comments on the motion? Dave Pierce.

DR. PIERCE: We supported the earlier initiative to move forward to allow additional days for small-mesh bottom trawls. This is a refinement, and we expect additional information to be provided by Terry to help support this particular action. I see no reason why we should oppose this. It seems to be a reasonable approach to deal with what does appear to be a great disadvantage for the smaller vessels that are not capable of going out and fishing for many days and then landing their catch. I would support this motion.

MR. SIMPSON: I'm really encouraged that the states in the Gulf of Maine are of a single mind on this. I think that is a big difference from the last time. I was just going to suggest that maybe you would want to generalize the language a little more and to limit yourself to a day or two per week for a full addendum, but just a friendly suggestion to add additional landing days per week so that in the passage of time in the development of the addendum you have that flexibility.

CHAIRMAN ABBOTT: Does the maker of the motion have any comments?

MR. STOCKWELL: We could delete "two" and put just "s" in parentheses after "day", and that would leave it open enough to at least get the ball rolling.

CHAIRMAN ABBOTT: Doug, is that acceptable? Doug Grout agrees, so the motion has been amended. Further comments? Pete.

MR. HIMCHAK: Quick question, Mr. Chairman; Addendum III was never adopted, so shouldn't the motion refer to a new Addendum III or do I get this wrong?

CHAIRMAN ABBOTT: We figured that Addendum III died and we think it is not a subject that we should be talking about. Addendum III has run its course and it's gone, so we've gone to Addendum IV. Do we have any comments from the public? Dave Ellenton.

MR. DAVID ELLENTON: I would support the motion. We were vehemently against this proposal when it first came out, but as time has gone by there have been various discussions between industry and between the managers. Although we're still not on board fully supporting what these folks need for

various reasons, I would certainly support this motion. While I'm at the table, Mr. Chairman, will there be a possibility to come back to the table just to make a comment on a couple of the agenda items that gone by?

CHAIRMAN ABBOTT: I think maybe when get to other business – again, you know, we've got a lot going on, but I will try to fit you in. It will probably be determined by how much time Lori takes. She has quite a big chunk of time and a lot of business to do, but we'll do our best.

MR. ELLENTON: Yes, they would be short comments.

CHAIRMAN ABBOTT: Any need for further discussion? Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Before the section votes on this, I haven't heard anything about potential impacts on river herring that this action might or might not cause, so I'm wondering if the makers of the motion understand those impacts now or will that need to be developed in the document by the staff.

CHAIRMAN ABBOTT: I'm not sure if I'm following the impacts of river herring specific to this addendum; maybe you could help me out there?

EXECUTIVE DIRECTOR O'SHEA: Small-mesh trawl fishery; I think Matt has got some landings information to indicate there are interactions of bycatch of river herring in that fishery, so does this have any impact on the bycatch of river herring?

CHAIRMAN ABBOTT: Terry, do you want to address that?

MR. STOCKWELL: We're very aware of river herring. It has a lot to do with Lori's presentation and it has a lot to do with what we're talking about this afternoon. There was a section in Addendum III that addressed river herring, and I know that the work that I'm going to be doing with Matt and staff will address river herring for the development of this addendum as well.

MR. GROUT: Just a followup; I agree and actually one of the things, based on Matt's analysis that he has presented is that there has been no information in the Gulf of Maine on actual bycatch in the small-mesh bottom trawl because there weren't any sea-sampling trips that were taking place. Now, as I understand it, the state of Maine has been conducting sea-

sampling trips in those vessels in the past year so now we do have some data on that. I don't know if it is going to be at the point where – hopefully, it will be at the point where you can include that information within the addendum, the new information.

CHAIRMAN ABBOTT: Yes, and I'm sure river herring bycatch is obviously a big issue that we do have to concern ourselves with as we prepare any addenda or amendments regarding sea herring; no question about it. Further comments? Tom Fote.

MR. TOM FOTE: Because of the concern of river herring, you said the state of Maine is doing more observer trips on the small boats. Will New Hampshire commit to do the same thing to basically make sure that it is being sea sampled?

MR. GROUT: Just to let you know, the state of Maine has been sea sampling on New Hampshire vessel, so thank you very much for coming up with the funds in time to be able to that. We didn't have the funds to be able to undertake that.

DR. CIERI: Actually, the state of Maine got a grant from the National Fish and Wildlife Foundation. What we did was actually from my shop, we trained a person to actually be an at-sea sampler through the Observer Program for the National Marine Fisheries Service. She is been going on regular trips in the Gulf of Maine.

We also had enough money to actually contract back with the observer folks to put on more observer coverage on small-mesh bottom trawls going out of Block Island and the Rhode Island area as well. She is actually a certified National Marine Fisheries Service observer. We actually upload that data directly so it is a National Marine Fisheries Service sort of kind of a deal, but the money comes from the National Fish and Wildlife Foundation and actually funneled through the state of Maine. She is a state of Maine employee.

CHAIRMAN ABBOTT: And I must say I do recall her now attending some of our meetings that we've had in the northeast regarding herring. Followup, Tom?

MR. FOTE: How long is that grant for; is it just one year or is it for two years?

DR. CIERI: It is two years and she is hitting about – you know, she is going to be heading out for the next couple of years. We're hoping to get more funding

as time goes by. There is some limited information currently in the data base, about eight trips during the timeframe that we're looking at that aren't – that are already a part of the observer stuff. I'm hoping to get Melissa's stuff within our own data base. She has maybe like taken about eight trips this year alone. She has been very, very active, so we hope to have that information at least preliminarily for this addendum.

MR. FOTE: Yes, it would be nice to receive a presentation of this at the March meeting before we vote on the addendum.

CHAIRMAN ABBOTT: Okay, Matt will take care of that. Are we ready to move the question? I will read the motion; move to initiate Addendum IV to Amendment 2 to the Atlantic Herring FMP to allow small vessels (small-mesh bottom trawl and small purse seine) additional landing days per week. Motion by Mr. Stockwell; seconded by Mr. Grout. Is there a need to caucus? We will take few moments.

(Whereupon, a caucus was held.)

CHAIRMAN ABBOTT: Okay, let's call the question. All those in favor please raise their hand, seven in favor, which leaves none opposed, no nulls and no abstentions. **The motion carries seven, zero, zero, zero.** I thank you all. The next agenda item, update the council's Amendment 5 to the Herring FMP, Lori Steele.

#### **UPDATE OF NEFMC AMENDMENT 5 TO THE HERRING FMP**

MS. STEELE: Okay, for those of who don't know me – I think most of you probably already know me at this point – my name is Lori Steele. I am the Herring Plan Development Team Chairman and the Herring FMP Coordinator for the New England Council. As many of you are aware, we are in the midst of developing a major amendment to the council's FMP, and this would be Amendment 5 to the Herring Plan.

I think I've probably briefed you on this a few months ago – I can't even remember now; I think I did – when we were sort of getting underway with developing the alternatives. We're a little further along now and I'm just back to give you a status update and provide some additional information on some of the items in this amendment that may be of particular interest to the states and the Atlantic States Marine Fisheries Commission.

In your briefing materials, I believe on your CD is a copy of the latest version of the Amendment 5 discussion document, which includes a detailed description of all of the different management options that are under consideration right now. The document is a bit complicated if you've had a chance to take a look at it.

Hopefully, over the next couple of months we'll be simplifying and streamlining things a little bit. In Amendment 5 the council is trying to tackle several major issues; the first being a catch monitoring program for the Atlantic Herring Fishery. This is where we've spent a good deal of our time, and this is where I will spend a good deal of the time during this presentation.

The second issue is river herring bycatch, and the council may be developing some management measures in this amendment to deal with river herring bycatch. I will be focusing on that issue later this afternoon with the River Herring Board, if you're interested in some of the details of those management strategies.

Also, the council is considering establishing some criteria for mid-water trawl access to the groundfish closed areas; developing some management measures to address interactions with the Atlantic Mackerel Fishery; and potentially developing management measures to protect spawning fish. We've certainly bit off a lot in this amendment to try to tackle, and this is one of the reasons why it has taken a little bit of time to development the management alternatives.

It is a relatively complicated amendment, to say the least. For those of you who are on the council's herring committee, you're kind of getting a little bit of a look at what we'll be focusing more on at the November 30<sup>th</sup> committee meeting. One of the things that I want to do is bring the committee and the council members back to the goals and objectives that we approved for the catch monitoring program in this amendment.

Things have gotten a bit complicated and I think maybe we've lost sight of a few of the goals and objectives of the monitoring program. This is sort of a preview of what we will be going over at the next committee meeting. The catch monitoring program that the council approved has four specific objectives.

The first objective is to create a cost-effective and administratively feasible program for accurate and timely records of catch of all species in the fishery; emphasis on cost-effective and administratively

feasible. The second objective is to develop a monitoring program that will foster support by the industry and others who are actively involved in the management of this fishery.

The third is to design a robust catch monitoring program for adaptive management of the fishery. The fourth objective is to evaluate bycatch estimates from sea-sampling versus portside sampling. Now, the document that you have in your briefing materials is an October working version of the document. I am working on a major revision to the document for the upcoming November 30<sup>th</sup> committee meeting.

This is again sort of a preview of what the document is going to look like for the November 30<sup>th</sup> committee meeting. The major sections that we will be looking at in the document include sort of a larger section that is general and administrative type provisions. This includes changes to the permit provisions and some of the permit restrictions, changes to potentially some of the trip limits on the open access permits, changes to VMS provisions, establishment of some regulatory definitions like the definition of transfer at sea, things like that.

These are all things that are in the document right now. These will all be put into a section that is a more general sort of administrative section. Then the next section of the document will include options for trip notifications, call-in requirements, pre-landing notification, measures to address herring carriers and measures to address transfers at sea.

The next section will be the quota monitoring alternatives, and right now there are two alternatives for monitoring the quotas in the document. One is to maintain the current IVR program with some modifications. The second alternative for quota monitoring is to eliminate IVR and to implement a VMS catch reporting system for quota monitoring.

Then the next two sections of the document are sort of two major sections for the catch monitoring program, the at-sea component of the catch monitoring program, which deals with observer coverage, measures to maximize sampling, measures to address net slippage. Then the second element is the portside element of the catch monitoring program, which includes potentially a portside sampling program with coverage levels and protocol, as well as some measures to verify the accuracy of self-reported landings. Then there are some options in the document for funding.

This is sort of the overview of what the catch monitoring program looks like in the document. It is complicated. There are lots of elements to the catch monitoring program. This is just sort of a general overview of the major sections of it. Here highlighted in red are the ones that I think are probably most interesting or of most interest to the Atlantic States Marine Fisheries Commission and the Herring Section, and I will focus on those in this presentation. Certainly, if you have questions about the other elements, we can get into those, too, but for the purposes of today I think I'm going to just focus on the quota monitoring alternatives as well as the portside sampling to kind of the catch monitoring program; and then, obviously, related to that are the funding issues.

For the quota monitoring alternatives, as I mentioned just very briefly, two alternatives are in the document. One alternative would maintain the current IVR call-in program for the purposes of monitoring the management area quotas. There are modifications proposed under this alternative. One is to go to trip-by-trip IVR reporting instead of weekly and then, of course, to change the deadlines.

All of these options will hopefully, if we stick with IVR reporting, improve the timeliness of the reports that we're getting, so that we aren't well into the following week while we're still trying to tally the previous week's catch. A trip by trip would obviously help, changing the reporting deadlines would help. And there are some options for reporting for open access vessels.

The second alternative is to just scrap the IVR system and go with VMS reporting, because all of the limited access vessels that participate in this fishery already use VMS. There are options to monitor quota through VMS reporting, and that would be either a daily report or a trip-by-trip VMS report. And then there are options, of course, to incorporate the carrier vessels into that program and then address open access vessels in some form through a different kind of reporting.

Anyway, I'm sorry that I went quickly. Those are the two quota monitoring alternatives. I just wanted to let you know. Then I just wanted to focus some time right now on the portside aspect of the catch monitoring program, because I think that is really where the states may be able to be most involved with the catch monitoring program and certainly may be able to share some of the responsibility and the costs of monitoring the catch in this fishery since it is

a jointly managed – or at least a cooperatively managed fishery.

The portside sampling program, the primary objective is to sample enough landing events to aid in the accurate estimation of catch and bycatch in the Herring Fishery. The program is intended to supplement or enhance in some way the catch data that is collected at sea. As you saw from the goals and objectives of the catch monitoring program, a cross-check is needed to sort of evaluate the difference between catch data that is collected at sea and portside.

And then sort of the second aspect of the portside sampling program would be to confirm the accuracy of self-reported catch. There are some options in the document right now that look at confirming catch at the vessel level by potentially certifying the capacity of vessel fish holds. And then there are some options right now in the document to confirm at the dealer level through some sort of weighing or certification system for trucks.

The dealer-level options are much more complicated and probably don't meet that first objective of being administratively feasible or cost effective, so I'm not sure how far we're going to get into those options, but the options to confirm at the vessel level appear to be a little bit more feasible and may be something that we can incorporate into a portside sampling program.

This whole section of the document is being rewritten and will be addressed at the November 30<sup>th</sup> committee meeting. Some of these measures right now, if you look in the document, are separated. They're sort of in different categories, but we're going to kind of bring this all back together at the November committee meeting and talk about the portside component of the catch monitoring program a little bit more comprehensively.

When you look at portside sampling, some of the questions that the committee needs to really tackle and we need to really get answered as we develop this program is why are the bycatch estimates so variable for some species when you look at observer data versus portside data? This goes back to one of the goals and objectives of this catch monitoring program, which is to try to answer that question.

How can the most accurate estimates of river herring catch be derived? Portside sampling is obviously going to get incidental catch, which is your landed bycatch, so we need to look at that in combination

with the sea-sampling data, which is going to give you sort of your total catch and, of course, bycatch, any discards.

This is sort of another question; what data should be collected to enhance information about spawning fish? Spawning measures to protect spawning fish is another issue that the council wants to address in this amendment, so how can we do that through the catch monitoring program and particularly through the portside sampling program? That is something that I think the committee needs to talk about.

Question Number 4 is really probably Question Number 1; what are the sampling priorities and what sampling protocols need to be either developed or modified? We have sampling protocols from what the states are doing, but are those sufficient to answer all of the questions that we want to answer in a portside sampling program? Probably not, so we may need to talk about modifying or developing new sampling protocols.

In the portside sampling program and what we really need to get down to in this amendment and develop some options for are the coverage levels. Right now the options in the amendment are that we're going to have a hundred percent portside sampling, which I don't think is feasible, or we're going to have something less than a hundred percent. That obviously needs to be revisited by the committee, and so we're going to come back to that and hopefully develop some clear options on what the coverage levels may be or which particular trips may be covered in a portside sampling program.

Then, of course, we need to define the sampling protocols. As I mentioned, we may need to change those, depending on the objectives and what we're trying to sample. We need to address whatever issues there may be associated with funding and service providers. We've been informed by the National Marine Fisheries Service that they do not have the resources to administer a portside sampling program.

So, if we're going to have a portside sampling program in this amendment or in this fishery at all, we're going to have to do it through service providers. The states may be service providers; there may be other service providers, so we need to identify those in the amendment and sort out the issues associated with the funding, and then obviously the administrative issues.

If we do bring the states in as service providers, we need to have a little bit of coordination between the states and the feds in order to make that transition. So, the council and the herring committee, actually, discussed portside sampling in September when we geared up for the September council meeting; and the council did pass this motion that you see on the board to request that the states continue and expand their portside sampling programs provided funds are found for the program in support of the council's priority for portside sampling coverage and that the Herring Plan Development Team and the ASMFC Technical Committee jointly meet to review the states' shoreside programs in order to address the goals and objectives of the amendment.

I believe this was transmitted to the commission in the form of a letter from the council, and that's I guess why we're having this discussion right now. As I mentioned, the Herring Committee is coming back to this at the next meeting. The portside sampling program is going to be sort of a big issue to talk about at the November 30<sup>th</sup> Herring Committee meeting. We'd like to get this sort of wrapped up for the purposes of moving it forward at least at this stage.

This is a good time for the section to have this discussion and maybe provide some input or some suggestions or guidance to the committee for the November meeting. Some of the things to think about are what should the top sampling priorities be; how can the appropriate sampling design be determined; should there be requirements to sample specific vessels or specific trips or specific dealers; how can the existing state programs be incorporated into a federal program; what role should the states and the ASMFC play; and then how can we fund the program. That should give you a little bit to think about this morning.

Just briefly in terms of the funding right now, we struggle with this, to say the least, at the committee and the council. Right now there are two alternatives in the document for funding any aspects of the catch monitoring program. Alternative 1 is that we're going to rely on federal funds, but that the industry will fund the program when federal funds are not adequate.

I can pretty much tell you right now federal funds are not adequate, so this alternative is essentially going to be an industry-funded alternative. Whenever federal funds do not exist, under this alternative the industry would pick up the funds through service providers, and this would be for either sea-sampling, at-sea

observer coverage or dockside monitoring or potentially any other components that really would require service providers, although at this point I think we have whittled it down to either the at-sea component or the dockside component.

The second alternative in the document would fund the program from federally permitted dealers. The details of this alternative remain unclear. I have not been able to figure out a way to have dealers pay for observer coverage on specific vessels, so I'm not exactly sure that this alternative is going to be able to really fully work out to fund the entire catch monitoring program, but there may be an option in here, and I think the committee needs to talk about this for dealers to contribute to portside sampling and vessels to contribute to sea sampling.

And then, of course, the question is, is there other alternatives, and we will revisit this at the committee meeting, so any suggestions are certainly welcome. Now, that is the catch monitoring stuff. I'm going to fly through the rest of it for you because I really think that's where the section wants to focus.

The measures to address river herring bycatch are three times as complicated as the catch monitoring stuff or more, so I'm going to save that for the River Herring Board this afternoon. We have some alternatives in the document to identify river herring hotspots, which are seasonal, and then several alternatives for management measures that would apply to those hotspots. The hotspots are two months, bimonthly hotspots based on observer data, for sort of easy observer data to get sort of a map of your stage one hotspots; and then if certain triggers – there are a bunch of triggers identified in the document.

And then if there are a bunch of triggers, if they're reached, then they trigger these other hotspots, stage two hotspots that are based on bottom trawl survey data. The stage two hotspots become stage one hotspots when you hit the triggers, and then you have this whole map of all of these areas all over the place, and it is extremely complicated. I'll get into that this afternoon.

The next issue in the document – in the amendment is the alternatives to establish criteria for mid-water trawl vessel access to the groundfish closed areas. Several alternatives are being considered. I think this needs a little bit more work at the committee level, but we're moving forward with alternatives that would – you know, there will be a status quo type alternative in there.

Other alternatives consider a hundred percent observer coverage in the groundfish closed areas. There is another alternative that would apply to closed area one provisions to all of the year-round closed areas, and that is that observer coverage would be required to fish in those areas, and sampling is maximized by a requirement that their vessels have to pump all of the fish across the deck for sampling before they can discard them.

Then there is an alternative that would just close the areas and close them to a mid-water trawl unless they access the areas through an experimental fishery and an exempted fishing permit. These alternatives, by the way, are very similar to some of the alternatives that are being considered in the river herring hotspots, so I'm hoping at some point, as we go down the road of developing this stuff, we may take a step back and look at access to the hotspots and access to the groundfish closed areas a little bit more comprehensively in the amendment, but we're getting there – we're not quite there yet.

And then the measures to address the interactions with the mackerel fishery are really just changes to the open access permit in Areas 2 and 3. I'm taking this whole section and folding it into the administrative section at the beginning of the document because these are changes to permits. Really, what this does is for vessels that don't qualify for a limited access herring permit but may be fishing for mackerel, this would allow them potentially to keep more than the three metric ton allowance that is allowed under the open access permit. We're considering some increases to the possession limit for these vessels in Areas 2 and 3.

Measures to protect spawning fish, another issue in this amendment; nothing specifically developed yet just because we've had so much to do and we just haven't really gotten into an in-depth analysis and discussion of this issue. The plan development team is trying to put together a background packet on this issue, looking at available data, and we hope to get to this in front of the committee in time to have something for the January council meeting.

It is likely that some measures to address spawning will be incorporated into the catch monitoring program; and as I mentioned earlier perhaps the portside sampling, and then certainly at the very least the analysis that we do in the Amendment 5 Environmental Impact Statement will consider impacts on spawning fish.

The timeline, which is always evolving and probably will look different the next time I present it to you, but right now we are trying to really get these alternatives fleshed and pared down and back to the council for the January 2011 council meeting. I have three committee meetings planned between now and the January council meeting.

We have November 30<sup>th</sup> to work on catch monitoring. We have December 20<sup>th</sup> to work primarily on river herring and possibly groundfish closed areas. And then we have January 20<sup>th</sup> to sort of do odds and ends, wrap it up, hit the spawning issue and bring it to the council with a bow on it at the January council meeting.

At that point hopefully the council will have enough to approve a range of alternatives to develop into a Draft EIS, which we will try to do for June, but given the scope of this amendment, I think it is highly, highly optimistic to think we can put Draft EIS together for the June council meeting; so I'm already telling you now it is or September, which means that the public hearings, once the EIS is approved, would be either around August or November of next year.

And then the final selection of measures after public comment will occur either at the end of 2011 or at the very beginning of 2012, depending on the timing with the comment period. And then we will complete and submit the amendment as quickly as possible. So, really, 2011 is hopefully it for this amendment, and we'll get this rolling and get it done in this next year, which is why I think the timing is good right now I think for the section to think about complementary action or any input that it may want to have into the development of these alternatives. Timing is good if we get all of the actions wrapped up in 2011 and have them implemented hopefully in 2012. That is all I have. I hope I didn't take too much time and I'm happy to answer questions.

CHAIRMAN ABBOTT: Thank you, Lori; that was quicker than we thought, which is always good. Does anyone have any questions or comments that need answering at this time? Dave Simpson.

MR. SIMPSON: Lori, do you have sort of an order of magnitude cost associated with a hundred percent observer level coverage just for example; yes, total cost of the program, however you could answer that.

MS. STEELE: We have done some preliminary estimates. It is really hard at this point because there are so many different options in the document. I mean the costs are going to be big. I, unfortunately,

don't have that information in front of me right now, and I did not provide it to you, but, gosh, if you give me just a couple – I mean we're in the millions. I believe that the cost for a hundred percent observer coverage, if I'm remembering correctly, was in the order of two to three million dollars for the fishery. You can take a look at what the fishery is grossing to get an idea of the scale of that.

MR. GROUT: Lori, I don't know if you remember but were those estimates based on A, B and C vessels because that is what our motion is to have all these measures apply to A, B, and C but not D vessels at this point.

MS. STEELE: Yes, and actually I think the costs – when we took a preliminary look at it, I know in the – I wish I had that document in front of me – the initial cost estimate we did was just for A and B, and I think that is the two to three million dollars for the observer coverage. And then we also took a look at what the costs would be if you add in the C vessels, and it goes up significantly. And then we took a look at if you're just looking at C vessels when they're actually fishing for herring, and that's still a significant cost. Any way you cut it, it is going to be a very expensive amendment.

MR. STOCKWELL: Lori, my recollection was that we recommended including a Category D in the river herring measure; is that correct or incorrect?

MS. STEELE: Right now it is an option. This is something that we really need to go back and talk about at the committee meeting. The two options are to apply to river herring measures to just A, B and C and then the other option is to bring in the D vessels. As you know, right now there are about 2,200 D permit holders.

CHAIRMAN ABBOTT: Further comments? Does the public have any comments regarding Lori's presentation? Okay, that is really good, that is going to give Dave Pierce some more time at the end. Okay, let's move on to Agenda Item Number 9, discussion of portside sampling, and I think Terry Stockwell is going to start this off.

### **DISCUSSION OF PORTSIDE SAMPLING**

MR. STOCKWELL: Actually, Lori tee'd off this conversation pretty well about the value of portside sampling particularly with the council's Amendment 5 and in the commission's work on river herring. You folks may or may not know that the portside sampling proposal made by Maine DMR was below

the line on the ACCSP funding recommendations, so I have a motion to make, Mr. Chair.

CHAIRMAN ABBOTT: Go ahead with your motion.

MR. STOCKWELL: **I move to recommend that the ACCSP Coordinating Council allocate funds for continuation of the shoreside herring sampling program.**

CHAIRMAN ABBOTT: Do we have a second? Seconded by Doug Grout. Discussion on the motion? Go ahead, Terry.

MR. STOCKWELL: We did this last year, and I'm afraid we'll probably have to do it again next year, but it underscores the need that we have to continue this long-term funding collaboration with the council to move forward with the monitoring program that we need both the Atlantic herring and the river herring bycatch issues. It is fundamental. I'm sorry that other programs may fall below the bar, but this is a program that is too important to let go.

MR. HIMCHAK: Mr. Chairman, I would speak in favor of the project and the motion, but there are probably nine members here today that will be at the coordinating council tomorrow afternoon, and you realize that funding of this preempts funding of something else, and we will all go through this rather contentious process tomorrow of who gets how much money. I'm fully supporting the motion and the project on the basis of the need for river herring bycatch estimates.

DR. PIERCE: Of all my years with my agency going back a few decades, I think one of the most controversial issues, if not the most controversial issue, has been bycatch of river herring in the sea herring fishery, specifically the mid-water trawl fishery; incredibly controversial, high profile, up there in the media, and if this portside sampling was to fall to away, was to be diminished to any significant extent, that just runs contrary to the critical need for us to continue to gather this information for us to learn what is happening relative to the landing of bycatch, how much is being landed in that particular fishery; so for that reason alone – and there are many reasons, but for that reason alone I think this motion is quite appropriate and I strongly support it.

MR. ROBERT BALLOU: I fully support the importance of the shoreside herring sampling program. I'm equally concerned however about binding the hands of a sister board, in this case the

ACCSP Coordinating Council. Just to make sure that I understand the intent of this, it is merely a recommendation and it would have no binding effect on the coordinating council in their meeting tomorrow, which is aimed at trying to sift through priorities?

CHAIRMAN ABBOTT: I think the answer to that is yes; it is just trying to emphasize the need for. Any further comments regarding the motion? Would you care to vote; need to caucus? We will call the question. All those in favor raise your hand; 7 in favor, zero opposed, zero nulls, zero abstentions. **The motion carries seven, zero, zero, zero.**

### OTHER BUSINESS

CHAIRMAN ABBOTT: We're onto other business, and the first thing under other business I think before we get to Dave Pierce, I'm going to recognize Dave Ellenton, who said he had some comments about some previous actions that we made; so briefly Dave is going to have the floor. In the meantime, before you start, David, Dave Pierce passed out some letters this morning regarding the haddock bycatch. Is there anyone sitting at the table that doesn't have copies of those letters? If so, raise your hand and we'll pass them around.

MR. ELLENTON: Mr. Chairman, I've just got two various comments and items that have been discussed during the morning, and I just thought it would be better to leave until other business and take them up then. First of all, I'd like to thank the National Marine Fisheries Service for responding to the concerns that we all have about the closure of the herring fishery at noontime today.

We're pleased to see that somebody like Bob Ross has come along carrying the message and giving us the confidence that they are looking at the numbers and that they will in fact make some – give us a reopening of some days over the next couple of weeks. Again, thank you to the Service for responding quickly.

The thing, I just hope that the take-home message from the update on the 2010 fishery report isn't that we're at a collapsed position in the Area 1A fishery. There was some comparison of landings in 1982, '83, '84 to current landings. Of course, the chart that we saw did not show the fact that we're in fact having a closure because of landing, and landings are at a much higher level than were shown in that chart, so the inference that we may be looking at a collapse of the herring is not accurate. Thank you.

CHAIRMAN ABBOTT: Speaking of other things, I'll take a moment as the chairman's privilege for us to – talking about the conduct of the fishery is we had issues in the northeast about gear conflicts between lobster fishermen and the mid-water trawlers, and through the efforts of Doug Grout and Terry Stockwell and others we convened a meeting regarding gear conflicts. I must say that we met in Durham and we talked with the lobster fishermen, and we actually had the people like Dave Ellenton sitting at the table and we had the lobster fishermen who were affected, we had quite a few coast guard folks that showed up, the National Marine Fisheries were there, and we discussed this issue for a couple of hours. It was a very worthwhile discussion in that everybody saw each other's faces that were affected both ways.

The herring trawlers saw that there were faces behind the lobstermen. I'd also at this point like to thank Steve Meyer who provided us information regarding how much activity occurred in the area off the New Hampshire/Massachusetts/Southern Maine coast, so all in all it was a good effort and I think it did a lot to improve relations between the participants in the various fisheries. I just thought I'd take a motion and mention that.

MS. STEELE: Before you move off of portside sampling, I was just wondering if – I'm not sure; did we do anything. I'm going back to the committee on November 30<sup>th</sup>. I wasn't sure if the commission – is the section responding to our letter in any way? Is there any interest in taking any action in this interstate plan, to work with us on the catch monitoring?

We've got one more year of developing the plan, and I guess I was just – I'm not clear on whether or not the section or the commission is going to do a complementary action at some point or if there is going to be – how you want to coordinate with the portside sampling, with the council, or if you do. I just wanted to follow up on that because I wanted to make sure I bring back something to the committee if you have any specific recommendations or thoughts.

CHAIRMAN ABBOTT: Thank you, Lori; I wasn't aware that we needed to take any action, so I'll look for some advice from either the members or from Chris.

MR. VONDERWEIDT: Well, a copy of the letter sent on behalf of the council was provided on the CD. It was essentially that motion that Lori had up before that the technical committee and the plan

development team – the ASMFC Technical Committee and the New England Council Plan Development Team work together to come up with some kind of a scheme to have a comprehensive bycatch monitoring program, which is obviously the federal waters observer program and the state waters portside sampling program, so something along the lines of having the technical committee and plan development team work together and maybe look at what data is available, what kind of a program needs to happen or we could bring the technical committee to the plan development team meetings.

That might be a cost-effective way to do it, but at this stage it is pretty early and sort of just feeling out the range of alternatives or how the commission and the council could work together might be appropriate way to go.

MR. FOTE: What I was thinking – when you were having the discussion on the monitoring and the portside sampling, I was thinking of funding. We had an election last week and a lot of things are changing, a lot of chairmen are going to change the committees, and a lot of the funding issues are going to be coming up.

We're only going to meet in March and then we're not going to meet again until August. A lot of fiscal changes might go on in that period of time there. I think it behooves us that we get ahead of curve and start looking at what is going on with the federal budget and how it is going to be affecting us at the states and at the commission level and also at the council level. I mean, with this extreme effort to basically cut down on deficits, it is going to affect all the money that's coming into programs.

We're already funded, I guess, for 2011 and '12; but as we go further out from there, it could be a drastic reduction of programs. I think it should be part of the discussion, and I think we need to set up a committee to look at – because we keep on adding on extra tasks and everything else, and we keep on asking the people at the state level to do more with less, and now we're going to wind up with less is doing nothing because there are no people to do it or no money to do some of these efforts.

We wouldn't have this available to us if we didn't have the Wildlife Fund coming up with the money to do the two-year grant, but where do we go after that? Money is going to be really scarce. I listened to my governor on Meet the Press yesterday, and I don't see him spending a lot of money in the next two or three years, and I think everybody else is in the same

position. I think it is something that we need to be fully aware of and plan for very carefully in the next year.

CHAIRMAN ABBOTT: Thank you, Tom; I guess that's the reality of the world that we live in, so we will have to deal with all of these things at the appropriate times and at the appropriate levels. That's a generic statement to a generic problem. Lori, go ahead.

MS. STEELE: Just in terms of thinking ahead and planning, I guess that's one of the reasons why I wanted to bring this up at the annual meeting because if the council actually does move forward and gets this amendment done during this next year – I mean, I assume at some point there is going to have to be some sort of complementary action by the Atlantic States Marine Fisheries Commission just to make the plans consistent; for example, if we get rid of IVR reporting and move to VMS reporting and things like that.

So I know your process is a lot faster than ours, but it may be something that you want to put on your planning horizon for this upcoming year or so; because if we do get it done, I think there is going to have to be some work done on the interstate plan.

CHAIRMAN ABBOTT: Thank you, Lori, and I think we have the ability to catch up. Any further comments? Doug.

MR. GROUT: Only to say as a member of the council, I supported that motion that was put forward. I think by our last motion that we made trying to emphasize the importance of the funding of catch monitoring programs of the state of Maine in cooperation with the state of Massachusetts, we're working towards that concept.

Now, the question I have is in that motion we talking about having the PDT and the technical committee work together to try and improve the sampling design of the portside sampling program, and my question to you, Mr. Chairman, is that something we need to have in the form of a motion or is that something that we could just, as a board, request that our technical committee work with the PDT – and there are a lot of similar members on it – in developing that, so I ask your opinion on that.

CHAIRMAN ABBOTT: And that's all you would get would be my opinion at this time, but I'll talk with staff. I think we're also planning on having a January meeting and maybe it is possible that we

could ferret this out a little more in January when we have the section meeting.

MR. VONDERWEIDT: There is a joint committee meeting November 30<sup>th</sup>, I think.

CHAIRMAN ABBOTT: Yes, so let's let us talk about that. Okay, Dr. Pierce, you have the floor for the time necessary.

DR. PIERCE: If I may just a quick question before I begin my points on the bycatch cap, and that is in light of the discussions we've had already about the Gulf of Maine resource, Matt's presentation, if I may, Mr. Chairman, ask Matt when the benchmark assessment is scheduled for sea herring? I've lost track; is it next year?

DR. CIERI: June 2012.

### MASSACHUSETTS PROPOSAL

DR. PIERCE: Okay, so unfortunately, we still await a benchmark assessment to help the sea herring section out relative to what is going on with the Gulf of Maine resource, so we still wait, 2012. Mr. Chairman, as you indicated earlier on, I have a memo to the section relative to the haddock bycatch cap and a specific recommendation that we're offering up – the division is offering up.

I have a motion to make after I'm through with my brief presentation. In addition to this particular memo that I prepared on the plane flying down here, which is why you didn't get beforehand, there is a letter from NORPEL, a New Bedford processing plant, one of the major processing plants of sea herring in Massachusetts, New Bedford specifically. This is a letter that was sent to Representative Barney Frank; the mayor of New Bedford; as well as Brian Rothchild; and Division of Marine Fisheries; a letter of great concern as to the haddock bycatch cap; that is the New England Council bycatch cap.

They have expressed some very great concerns, and I thought it was appropriate to highlight this letter for the benefit of the section because after all the section has just adopted Addendum II to Amendment 2 and that has the haddock bycatch cap in it as an accountability measure; so even though the section may not appreciate what it did relative to the cap, it is in there, so we need to pay attention to it.

Also, that cap can have great implications for the way in which the sea herring section manages sea herring in cooperation and in conjunction with the New England Fishery Management Council. The bycatch

cap is 189,597 pounds. The industry was notified not too long ago that about 80 percent of the bycatch cap had been taken.

In a subsequent letter from the National Marine Fisheries Service to the industry, the Service, Pat Kurkul specifically encouraged the fleet, the fishery to avoid Georges Bank; stay away from Georges Bank because of the potential for the whole cap to be taken; and if the cap is taken, then the fishery shuts down for all practical purposes except for 2,000 pounds.

The fishery shuts down almost in the entire Gulf of Maine and Georges Bank and it affects all permit holders, A, B, C, and D permit holders, so it is pretty extensive, pretty all-inclusive, and the consequences of it being taken can be very dramatic. That is the point they made to us and I convey to you. They note in their letter of the lost value due to an imminent closure of Georges Bank and the Gulf of Maine Herring Fishery due to reaching our miniscule haddock catch cap will be 40,000 metric tons of herring worth \$12 million ex-vessel and \$35 million in ex-plant value. This is nearly half the value of the 2010 fishery. In the letter they say that they're quite concerned about the fact that the many participants in the fishery could very well go bankrupt.

This is not a letter written – well, it was a very significant letter in terms of the concern expressed by that company and I suspect it is a concern that is held by other major companies in Massachusetts and elsewhere. Now, this bycatch cap represents 0.2 percent of the haddock TAC. It is a relatively small amount.

That 0.2 percent was tied back in 1996, when the bycatch cap was implemented, was tied to observer coverage in the sea herring fishery, the directed fishery, which was expected to be less than 20 percent; so 0.2 percent. NORPEL in particular argues that the observer coverage now, currently and expected in the future in the directed fishery is going to be far in excess of 20 percent, and, of course, in some areas like Closed Area 1 is going to 100 percent.

So they're arguing that we could actually go back to previous logic for having a higher cap; that is, with higher observer coverage the bycatch cap can go up, so they make that point; why not go up to a higher level. In addition, I noted after going over their letter and reflecting on past council decisions about where the haddock bycatch occurs, that it is extremely extensive – as I indicated, almost all the Gulf of

Maine, Georges Bank – Area 2 of the Mid-Atlantic is not touched.

And there is one other consideration that was noted by NORPEL; once again, not specific to the section but certainly to those states in the section that are involved with the mackerel fishery that indeed if the haddock bycatch cap is caught – and it could be caught sometime very soon, especially with boats now shifting back to Georges Bank since the Gulf of Maine is closed, Area 1A – the mackerel fishery on Georges Bank would essentially be stopped; that potentially there would be no mackerel fishery this winter on Georges Bank because they would be catching herring along with mackerel and they can't catch more than 2,000 pounds, so it could stop the mackerel fishery there.

So, with all that said, it makes sense, we feel, for the section to make a reasonable request to the New England Fishery Management Council as a consequence of our partnership with the council on management of sea herring. With that said, I would like to make a motion. **I would move the section, in the interest of our continuing partnership with the New England Fishery Management Council in the management of Atlantic Sea Herring and our shared concerns about bycatch in the Herring Fishery, request the council determine; one, if the percentage of the haddock TAC for the Sea Herring Fishery Haddock Bycatch Cap can be increased in response to a recent increase in observer coverage; and, two, whether the boundaries of the area or areas to which the bycatch cap applies can be modified to prevent a closure of the Gulf of Maine Fishery when the cap is reached.** That is a motion for the council to delve a little bit deeper into this issue and to explore those particular questions.

CHIRMAN ABBOTT: Thank you, Dr. Pierce. Do I have a second to the motion? Terry Stockwell seconds the motion. Discussion on the motion? Terry.

MR. STOCKWELL: Question for Dr. Pierce. Are you proposing that the section recommend that the council prioritize this or just, as you say, determine, because there is significant analysis that would need to be done in order to affect either of these issues. With our setting our priorities next week, I'm just wondering what your thought process is.

DR. PIERCE: No, I'm not indicating or suggesting that we should indicate to the council that it should prioritize this. However, we should offer it up to the

council as an issue that we feel needs to be looked into in the light of the fact that there are some very severe significant impacts of this haddock bycatch cap being taken.

Now, obviously, some people will say the bycatch cap should be low, it should never be increased, and I would understand that feeling. Nevertheless, the haddock TAC is extremely large, 45,000 metric tons or so, I think, and we're only talking about 186,000 pounds of haddock as a bycatch for the fishery.

And, indeed, if the haddock bycatch cap is too low, if it can be increased because of increased observer coverage – and that is the logic of Framework 43 which the council adopted back in 2006 – if it can be increased, then why not if it will prevent a premature closure of the fishery in the Gulf of Maine as well as on Georges Bank and if it will prevent the cessation of the mackerel fishery on Georges Bank.

There are overlapping issues here; the Mid-Atlantic Council concerns; ASMFC Section concerns; and, of course, council concerns. I think it is an extremely important issue, especially in light of the fact that NORPEL felt so compelled relative to its financial situation, economic situation, indicating bankruptcy is nearing if indeed this bycatch cap is taken. It could very well be taken now in light of the Area 1 closure occurring.

I would guess that it might be with implications that I've already described. I'm not asking for the section to do anything that is unreasonable. We're not saying increase the cap. We're saying look into it, New England Council, that is something we would appreciate doing in light of the fact that NORPEL has made the specific request that seems to be very reasonable.

Now, obviously, as a New England Council member I'm going to be making the same arguments at the council meeting next week, but I thought I would lax if I didn't at least bring it forward to the section to indicate what I was attempting to do and also, of course, to solicit the support of ASMFC, if you care to provide it, with this motion.

CHAIRMAN ABBOTT: Thank you, David, I think your pleadings have been heard. Ritchie White.

MR. R. WHITE: Mr. Chair, at first take I had some concern about the wording in that asking for an increase that really is not our business, but I think after you have explained it in more detail I see this is more of a kind of a generic question is the haddock

cap still applicable. I think under that scenario I can support it, but I do have a concern that certainly myself, not sitting on the council, I have no knowledge of the haddock cap, and it certainly isn't the commission's business, but I think a generic asking is appropriate.

MR. HIMCHAK: Mr. Chairman, I had a question for Dr. Pierce. I'm very sympathetic to this issue about a bycatch cap because in the Mid-Atlantic Council we're facing this with butterfish possibly shutting down the directed loligo fishery. My question to Dr. Pierce is that from what I read, I guess about 80 percent of the bycatch cap has been taken; the fishery runs through next April 30<sup>th</sup>; does the increased observer coverage; does it alter the estimate of the 80 percent of the bycatch cap being taken? I know how variable those estimates are, but what is the potential that the bycatch cap is not as large as it is presently documented; isn't that what we're trying to determine here?

DR. PIERCE: The bycatch cap of 0.2 percent, the 186,000 was developed back a few years ago because it was believed that we would have low observer coverage of the fleet, less than 20 percent, and now we have higher percent coverage, so the logic still applies, why not, then, with higher observer coverage increase the bycatch cap?

That logic needs to be revisited I suggest by the council in light of, once again, the repercussions for our fishery that we manage – and specifically I speak to the Area 1A fishery that we have struggled to manage, certainly the three states, but in the Gulf of Maine, and we have dealt with the Area 1A fishery for a quite a long time.

If the fishery on Georges Bank had not stopped voluntarily because of the haddock bycatch cap, then the cap would have likely been taken and the fishery could have been closed let's say on Halloween; what a Halloween trick or treat – trick. It could have been closed; case closed. The November 1 quota that ASMFC has set aside for itself for that season of the year would have been unavailable.

It would have been off limits because the bycatch cap would have been taken. I'm thinking about 1A in particular – that is where my interest always seems to be, ours, our shared interest – I would hate to have had us meet here today having, well, closed until May 1 of 2011. So, it is a real issue. It has great applicability to Area 1A as well as the other areas, so it just warrants attention by the council.

We're not asking for an increase; we're just saying with the logic that exists right now relative to the cap, is it appropriate to increase the bycatch by some amount? I recognize it requires technical work, and the council will make that call next week. The council will say, no, low priority, we don't address it; or perhaps the council will say, yes, it needs to be addressed, and I submit that this commission would want it addressed.

CHAIRMAN ABBOTT: Lori, do you have comments to the points made by – the question by Pete Himchak and answer by David?

MS. STEELE: Yes, and I'll try to be brief because I don't want to get into too much detail. I know Dr. Pierce understands this and several other of the section members probably do, too, but what this motion is essentially doing is requesting that the council initiate a framework adjustment to the groundfish plan because these are the very types of issues that would have to be investigated in a framework adjustment to address the haddock catch cap.

The haddock catch cap in the haddock fishery was implemented through Framework 43 to the Groundfish Plan, and it will take an action of some sort, either a framework adjustment or an amendment to revisit the cap, how the cap is set, how the cap is monitored, where the cap applies. All of those issues have to be dealt with through a council action. This will essentially – and I'm sure even regardless of what happens with this motion, I'm sure it will come up during the priority discussion at next week's council meeting. It is a framework adjustment, though.

Just for a very brief history on the catch cap, when we set it in Framework 43, we determined at that time that the cap would be monitored through observer coverage. We initially discussed a 1 percent cap, 1 percent of the haddock TAC. At the time, when we said 1 percent monitored through observer coverage, it was assumed that we would have about a 20 percent coverage rate for observer coverage in the fishery.

So we took the 1 percent and we said, okay, well, then let's make it 20 percent of 1 percent, and so we made it a 0.2 percent quota anticipating it would be monitored with about 20 percent observer coverage. What has happened is that observer coverage has increased in the fishery. However, coverage across the fishery is still between 20 and 30 percent. We're

closer to 30 percent now than we are 20 percent, but we're not like way beyond 20 percent.

But, coverage in the areas in particular where haddock is encountered in the fishery has increased a lot more, and that is in, for example, Closed Area 1, now to go fishing in Closed Area 1 is a hundred percent observer coverage. So, we're getting observer coverage in some of the areas where the haddock is being encountered at rates much higher 20 percent even though not so much for the whole fishery.

And then at the same time what happened is the haddock TAC decreased so that 0.2 became a much smaller number in this past year than it has in previous years even though we're not anywhere close to reaching the haddock TAC. So we've had concurrently an increase in coverage in the areas where haddock is being encountered and a decrease in the amount available to the fishery, which has created the situation we're in now.

Yes, the cap should probably be revisited, I think. Yes, that is going to require a council action. As you can imagine, the Herring Amendment itself is pretty cumbersome, so it will have to be discussed as I guess a groundfish action during the priorities.

CHAIRMAN ABBOTT: I would have a question, Lori, for you for us non-council types. What timeframe would you be looking if you were to decide to make a framework adjustment, before that would become effective, if you proceeded?

MS. STEELE: Well, I think it depends on where the council prioritizes it. A framework can be done over the course of two council meetings. A framework adjustment could essentially be developed and submitted over the course of three or four months, depending on where it falls in the priority list and how quickly the council moves forward with it.

The current haddock catch cap runs until May 1<sup>st</sup> of 2011. The major encounters with haddock in the herring fishery occur in the late summer and fall on Georges Bank. It is conceivable, if this were a high-priority item, that the council could have a framework adjustment submitted in time for next year's fishery, the next summer or fall fishery, assuming we drop some other things off the priority list and focus on that immediately.

CHAIRMAN ABBOTT: Thank you, Lori, that was helpful. Representative Peake.

REPRESENTATIVE SARAH K. PEAKE: Mr. Chairman, just some comments on this. I support my fellow commissioner from Massachusetts for bringing this forward. I think the generic asking is very appropriate. I do have a couple of concerns. One is a process concern, and that is this is a fairly significant motion being brought to us this morning, and I see that NORPEL's letter is dated October 11<sup>th</sup>.

I'm always somebody who likes to do a little bit homework so more advanced notice is always welcome. Secondly, for me support of any kind of increase in the bycatch quota would have to be and need to be linked to increased observer coverage and not just in a generic sense. I would be seeking a hundred percent observer coverage.

In our prior agenda item's discussion on this we talked about what the costs might be, and it is fairly expensive. As we mentioned, two to three million dollars I think was the estimate. However, I look at NORPEL's letter saying that the financial impact to them of not raising the quota is \$12 million ex-vessel and \$35 million ex-processor, so I think it is an investment in their fishing future that they need to share in order for us to be able if this is a responsible action or not. I guess I would just like to go on the record in support of a hundred percent observer coverage before we made any move to increase the cap.

MR. SIMPSON: Actually, I was the maker of the motion back in '06 for the 20 percent cap. Certainly, I think the record is there to demonstrate that the intent was in terms of a projection for the National Marine Fisheries Service when is the bycatch cap caught. We had been operating under a system, as I recall, that they weren't going to close the fishery until a hundred percent of the bycatch cap was observed; at which time much more than that with 20 percent coverage, maybe five times that had been caught.

So I guess I'm asking for the clarification because I obviously don't recall. In Framework 43 did the cap itself get set at 20 percent or was that an action point for which NMFS would project the closure, which would provide the latitude to consider the current levels of observer coverage and when NMFS would take the action to project that the cap had been caught?

MS. STEELE: Actually, when the decisions were made in Framework 43, the cap was essentially hard-wired into the regulations as 0.2 percent of the target TAC. Maybe what we should have done at the time

was consider a mechanism for that cap to sort of adjust based on the levels of observer coverage or something like that. We didn't do that.

At the time we said 0.2 percent of the TAC would be the cap and the fishery will close in 90 percent of the stock area, which is how you get that sort of weird area with those little bits that are still open when a hundred percent of the cap is reached.

CHAIRMAN ABBOTT: At this time I would like to ask if the public has any comments they would like to make. Dave Ellenton.

MR. ELLENTON: Dave Ellenton from Cape Seafoods and Western Sea Fishing Company in Gloucester, Massachusetts. I fully support Dr. Pierce's motion. I'm hoping that this will be something that the council will deal with. This is the single most important thing to the pelagic fishery right now except for opening the herring fishery for one more week. Everything that NORPEL wrote in their letter is mirrored by our company as well, and I would hope that you would find supporting of the fishery, supportive enough to go forward with a letter to the council. Thank you.

MR. BEN MARTENS: Ben Martens, Cape Cod Commercial Fishermen's Association. I'm against this motion. I have some major reservations with it, and mostly I believe it is really simplifying this issue. I think that if something is going to move forward, we need to be looking at why this is happening this year.

There are some other things and other data that I think should be incorporated into this if you are going to be sending a letter, such as where the bycatch is taking place, are they fishing on the bottom, what time of day, what the observer coverage is in these areas. We've been told over and over by this fishery that they don't catch groundfish; and suddenly when the observer coverage is increased, now they are. I just think that is something that we need to take into consideration both at ASMFC and at the council level, digging a little bit deeper into this than just opposed to drawing some more haddock this way.

MR. JOHN PAPPALARDO: Mr. Chairman, John Pappalardo, chairman of the New England Fishery Management Council. I appreciate the opportunity to speak to you about this issue and it helps me understand – I had heard that this motion was coming up and hearing your discussion it has helped me understand where you're coming from.

Just a couple of comments; one, it has been noted that this issue will need to compete next week at our council meeting for prioritization. Our executive committee has recently offered up a slate of priorities to the council for consideration on Tuesday. While this is a very timely issue that obviously needs some immediate attention, it will need to get in the queue, and we will duke it out New England style at the table on Tuesday to see where it falls out.

On the issue of Framework 43, my memory was a little fuzzy like Dave Simpson's and a few others, so it was quite some time ago. I did go back and look at the record; and while it is true that we started at 1 percent in the discussion and then ended up at 0.2 percent, that decision was solely made based on the percentage of observer coverage we were thinking we were going to have.

There was a second component to that decision, which was that there would be no extrapolation, so the 0.2 percent is only fish observed. That is an important point you should note. Third, I appreciate the motion in that it is somewhat generic and it asks us to do some research. It asks us to look at data and to pull data from the Northeast Fisheries Observer Program.

That is something that I think as we've gone the development of Amendment 5, we certainly are spending a lot of time trying to figure out what information is available and how can it inform us with this fishery. I guess the last point I would like to make is that I appreciated Dr. Cieri's presentation today, and I would ask that he forward that on to the council for inclusion in our binder for next week. Thank you.

CHAIRMAN ABBOTT: Thank you, John, and thank you for joining us today. I think it is very helpful to have you with us. Jeff Kaelin.

MR. JEFF KAELIN: I'm Jeff Kaelin. I'm here for Lund's Fisheries from Cape May, New Jersey. I'm the clerk of the Sustainable Fisheries Coalition and NORPEL is a member of the coalition as is Lund's and Cape Seafoods and the small pelagic group and other people. This is a very important issue to us, obviously.

We're frustrated by the very low amount of bycatch cap represented by the 0.2 percent and the potential to significantly affect two sustainable herring and mackerel fisheries. The problem we have here is that years ago the mid-water trawl was defined as gear incapable of catching groundfish, and then it was

determined that when the haddock came back – in fact, the young haddock were swimming in the water column, and they were encountered by the mid-water trawl.

I think it is pretty clear that haddock can be caught by mid-water trawls at times when they're off the bottom or if the boats are fishing close to the bottom, which is related I think to the issue that we have in the Gulf of Maine where the seiners were unable to catch herring and frankly why the sardine industry brought mid-water trawls into the herring fishery many, many years ago.

So, when I think about the council's treatment of the yellowtail flounder bycatch in the scallop fishery, for example, where that fishery – and that is a fishery, by the way, that is being rebuilt. Haddock, of course, has been rebuilt – where the scallop industry is given a hundred percent or now 90 percent of what the yellowtail flounder bycatch requirements are of that fishery.

I think this is an issue like a lot of the bycatch cap in the butterfish fishery, which should focus more on the mortality effect on the haddock. It is miniscule. I'm not sure if that word was in the NORPEL letter or not, but it is in the brief that the National Marine Fisheries Service put together on this matter.

When it was asked by some advocates that we not have access to the groundfish closed areas, the agency was asked in court to keep us out of there. The agency responded that the bycatch levels are minimal with a very small mortality effect. That I think is the right way to approach this issue. It is not that we can catch some haddock.

We don't target the haddock; we don't want the haddock. The haddock are mixed up with the herring. I think it is important for the council to go back and take a look at this issue today with the new Magnuson Act Amendments in place about sub-ACLs and so forth, which except for this one has something to do with the mortality effect on the stock involved.

The herring fishery is having no effect on the sustainability of the haddock resource, and we think it is extremely unfair to have what I would call a double standard on this matter. I think the motion is right on point. I appreciate Dr. Pierce bringing it up today, and we hope that the council prioritizes it and that the groundfish committee looks at it in the context of what our fisheries' effect is on the mortality of haddock.

No matter what our observer coverage has been, the results are the same; we don't catch groundfish, we do catch some haddock, and there is a lot of data that is coming from the 2010 fishery, from Amy Van Atten, in terms of what the bycatch actually has been out there, which we'll have the ability to review earlier. So, again, for fear of repeating myself, this issue should be resolved in the context of what our fisheries' effect is on the haddock. Are we risking that stock or not, and I think the answer clearly is no. I think this is an important time to ask the council to revisit it and I hope that it goes over the bar in their priorities next week.

CHAIRMAN ABBOTT: Thank you, Jeff. Let's go back to the board. Excuse me, one last comment from the public. We're running up against our time allotment here; so if we can, we'll move the question.

MR. PATRICK PAQUETTE: Thank you, Mr. Chairman, especially for letting the recreational fishing community have our say in the discussion. I wanted to ask the commissioners to consider that the comment from Mr. White was absolutely appropriate about his concern. I just do not see this as being Atlantic States' business.

Although it is definitely the business of many of the people around this table, it is not the appropriate forum in my opinion and in the opinion of the 20-something groups that I represent under Honest Bycatch. I want to point out that if we're going to do council business here, we should start really doing council business in that as the haddock numbers have gone up, the observer coverage has gone up, and so has also the missing piece of this pie, and that is how much haddock is contained in the 11 percent of bags that were dumped in '08 or the 35 percent of bags that were dumped in '09.

We have no idea how much haddock was contained in a lot of that dumping. We still don't have the handle on it. This is a council discussion. This is going to be an extremely controversial discussion. It is really not Atlantic States' business. This isn't landings. This isn't what is going on. Why are we going to do this here when as Chairman Pappalardo said this is all about next week. I just would ask the commission to like not wade into this. This really isn't commission business. We have much more important things to do that is the business of this management board. Thank you.

CHAIRMAN ABBOTT: Thank you. The section will do the business that is brought before us, and I think the inter-relationship of the subject is such that

it is our business in the sense that we can make recommendations to them. We're not asking them to do anything, but I think we're voicing or will voice our position. What our position will be will be determined in moments as we take a vote, so we will leave it at that. Is there anyone from the table that needs to say anything before we call the question? Mr. Ballou.

MR. BALLOU: Just for the record, I'm just going to indicate my concern about – and frankly a followup to the comment that this doesn't feel right to me. It feels like we're wading into council business, but given the generic nature of the motion I'm prepared to vote it, but I do feel like we're playing out an issue that we will playing out next week with many of the same people here at the table, and frankly it doesn't feel right. But, given the way the motion is phrased, I'm comfortable supporting it. Thank you.

CHAIRMAN ABBOTT: Thank you for your learned comments and that is good. Pat Augustine.

MR. PATRICK AUGUSTINE: Mr. Chairman, Sarah mentioned something about a hundred percent coverage. Does she want to go forward with that, to include it as part of this or was she going to address it later? One of the previous commissioners made a comment about she would be favor of a hundred percent observer coverage, so could we clarify that point, Mr. Chairman? Otherwise, we're going to support the motion as it is.

CHAIRMAN ABBOTT: That was Representative Peake I believe that made that comment. Would you care to respond?

REPRESENTATIVE PEAKE: I have to apologize; I was having a sidebar conversation and missed the comment from the gentleman from New York.

CHAIRMAN ABBOTT: Pat, would you repeat?

MR. AUGUSTINE: You had suggested earlier that you would support this, but would prefer to go a hundred percent observer coverage as opposed to 22 percent; were you suggesting that we include that as a part of this motion or recommendation to the council or were you going to address it as a separate issue or just that you made the comment on the record? We're going to going to support it either way, but we're in favor of a hundred percent observer coverage because we know that is a very critical issue.

REPRESENTATIVE PEAKE: I was just making my comment so that it would be for the record and be clear to those who are reviewing our minutes and as we move forward in the process.

MR. AUGUSTINE: Thank you for that clarification, Mr. Chairman.

CHAIRMAN ABBOTT: Yes, that's good. Okay, let's call the question. Is there a need for a caucus? Let's have 30 seconds for caucus before we call for a vote.

(Whereupon, a caucus was held.)

CHAIRMAN ABBOTT: Okay, you see the motion on the board before you. All those in favor of the motion signify by raising a hand, six in favor; all those opposed, one opposed; null votes, none; abstentions, none. **The motion carries 6-1-0-0.**

## ADJOURNMENT

CHAIRMAN ABBOTT: At this time, being there is no further business to come before the Herring Section, we will close the meeting.

(Whereupon, the meeting was adjourned at 10:35 o'clock a.m., November 8, 2010.)