

PROCEEDINGS
of the
ATLANTIC STATES MARINE FISHERIES COMMISSION
ATLANTIC HERRING SECTION

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ATTENDANCE

Section Members

Lew Flagg, ME DMR, Vice-Chair

John Nelson, NH F&G

Dennis Abbott, proxy for Rep. Blanchard, NH Leg. Appte.

Dr. David Pierce, proxy for Paul Diodati, MA DMF

Gil Pope, RI Gov. Appte.

Bruce Freeman, NJ DF&W

Pat White, ME Gov. Appte.

G. Ritchie White, NH Gov. Appte.

William Adler, MA Gov. Appte.

Vito Calomo, proxy for Rep. Verga, MA Leg. Appte.

Eric Smith, proxy for E. Beckwith, CT DEP

Ex-Officio Members

Arthur Odlin, AP Chair

Jeff Marston, LEC Rep.

Other Commissioners

George Lapointe, ME DMR

ASMFC Staff

Dr. Joseph Desfosse

John H. Dunnigan

Guests

Maggie Raymond, AFM Groundfish Group

Jim Odlin, Atlantic Trawlers

Glenn Lawrence, F/V Double Eagle

David Turner, Engelhard Corp.

Ed Tooley, Scandia Seafoods

Al West, Stinson Seafood (2000)

Janice Plante, Commercial Fisheries News

Dr. Matthew Cieri, ME DMR

Eileen Brewer, ME DMR

Nakomis Nelson, Island Institute

Phil McMann, MA Env. Police

Bud Brown, CCA Maine

Norah Warren, Vinalhaven Fishermen's Co-op

Paul Palino, F/V Anna-Lisa

MaryBeth Tooley, F/V Starlight

Jerry Fraser, National Fisherman

Jeff Kaelin, Stinson Seafood (2000)

Penn Estabrook, ME DMR

Shale Rosen, Gulf of Maine Aquarium

Ben Neal, Island Institute

Al Slavin

Jim Hamlom, MA Env. Police

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

Atlantic Herring Section

October 18, 2001

SUMMARY OF MOTIONS

1. *Move to approve the Technical Addendum 1A.*

Motion by Mr. Adler, second by Mr. Smith. Motion carries with no objections.

2. *Move to adopt the draft Addendum II, with suggested revisions, for public hearing.*

Motion by Dr. Pierce, second by Mr. Freeman. Motion carries by voice vote.

3. *Move to consider allocation of up to 4,500 metric tons of the 2002 IWP specification for the period January 1 through June 30, 2002. Allocations would only be for Areas 2 and 3.*

Motion by Mr. Nelson, second by Mr. Smith.

Move to amend the motion so that the allocations would be for Area 2 and not 3.

Motion to amend by Dr. Pierce, second by Mr. Pope.

Motion to amend perfected to read: ***Move to consider allocation of up to 3,000 metric tons of the 2002 IWP specification for the period January 1 through June 30, 2002. Allocations would only be for Area 2.***

Motion to amend carries with 5 in favor, one opposed. Main motion carries by the same vote.

4. *Move to direct the Herring Technical Committee to evaluate the impact of mid-water trawling on the structure and function of sea herring schools.*

Motion by Dr. Pierce, second by Mr. White. Motion carries with no objection (staff note: please refer to the 3 specific questions in the verbatim proceedings for further information).

**ATLANTIC STATES MARINE
FISHERIES COMMISSION**

ATLANTIC HERRING SECTION

Samoset Resort Rockland, Maine

October 18, 2001

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CALL TO ORDER

The Atlantic Herring Section of the Atlantic States Marine Fisheries Commission convened in the Rockport/Camden Room of the Samoset Resort, Rockland, Maine, Thursday afternoon, October 18, 2001, and was called to order at 2:35 o'clock p.m. by Chairman Lewis Flagg.

WELCOME/INTRODUCTIONS

CHAIRMAN LEWIS FLAGG: Good afternoon. If everyone will take their seats, we'll begin this meeting of the Atlantic Herring Section. I note that there are a majority of the section members here and I'll have staff record the attendance.

APPROVAL OF AGENDA

The first agenda item is the approval of the agenda. I have a couple of items that need to be added. Item 3A will be the review and approval of Technical Addendum 1A.

Under Item 6 we have an additional IWP request to consider, and under Item 8, Other Business, we'll have a brief discussion about the effort control provisions in Area 1, days out of the fishery. Are there other agenda items that we should consider at this meeting? David Pierce.

DR. DAVID PIERCE: Yes, Mr. Chairman, I believe that we discussed, so this might be a good opportunity to give those in the audience an opportunity to comment about the days and days off, two days versus three days.

CHAIRMAN FLAGG: Yes, and we do have a public comment period on the agenda, too, and we will afford additional opportunity as we go through the agenda. Thank you. Other items?

APPROVAL OF MINUTES

The next item on the agenda is approval of the minutes. You have before you or were mailed to you a draft copy of the minutes of the Joint Herring Oversight Committee and Section meeting of June 6th. Are there any errors or omissions to those minutes? Seeing that there are none, I'll declare them confirmed as written.

PUBLIC COMMENT

At this time we'll give the public an opportunity to provide public comment on any matters of concern relative to Atlantic Herring that the Section deals with. Throughout the meeting, we will be offering the public an opportunity to comment. Does anybody from the public wish to make any comments at this time? Seeing none, we'll proceed and we will offer the public an opportunity to comment as we proceed.

TECHNICAL ADDENDUM 1A

At this time I'd like to have the members turn their attention to Technical Addendum Number 1A, which should be in your packet. This Technical Addendum has to do with the spawning area closures boundary lines, particularly in Eastern Maine. We noted last year that there was a significant catch of spawned herring in an area immediately outside of the spawning closure boundary in Eastern Maine, near Schoodic Ridge.

So, at the June meeting you may recall the Section did agree that we should prepare a technical addendum to address this issue, straighten out the line to afford additional protection to spawned herring in that area; and at this time perhaps Joe would like to offer any additional comment on this particular item.

DR. JOSEPH C. DESFOSSE: Unfortunately, this document was not in your packet. This was one that Bob was handing out and just reached you about five seconds ago.

This is an issue that the Section took up last February and approved the change in the spawning closure line for the Eastern Maine area, and this is the formal document now correcting the oversight from Amendment 1, Addendum 1, and we're looking for formal approval by the section. I believe that Maine did make the correction to the state regulations this year and implemented the new line.

CHAIRMAN FLAGG: Are there any comments on the Technical Addendum?

MR. WILLIAM A. ADLER: Can I move that it be accepted; is that what you want?

CHAIRMAN FLAGG: You may.

MR. ADLER: **All right, I'll move that it be accepted.**

CHAIRMAN FLAGG: Okay, we have a motion to accept the Technical Addendum.

MR. ERIC SMITH: **Second.**

CHAIRMAN FLAGG: Second from Eric Smith. Discussion? Yes, Bruce.

MR. BRUCE FREEMAN: I'm confused, Lew, as to the status of this. Are we just accepting this to go to public hearing or are we voting on its implementation?

DR. DESFOSSE: Actually, this is final approval of the document. This was part of the Maine proposal that the Section approved last year, actually in February -- not last year. This correction was supposed to be made in Addendum 1, which adjusted the spawning regulations. The line was not straightened at that time and we needed to go back and write a Technical Addendum to correct the line.

MR. FREEMAN: I'm just not familiar with having to go through a Technical Addendum before. I'm not sure of the status of this. Is it just, Joe, that we omitted to do it when we did Addendum 1 and this is just the technical catch up, or

do we have a special process we have to follow here for the Technical Addendum?

DR. DESFOSSE: It's more likely the former. It was not included in Addendum 1, although the Section had approved it.

MR. FREEMAN: So, our approval, if that occurs today, will actually make this effective; is that correct?

DR. DESFOSSE: That's correct.

CHAIRMAN FLAGG: Other comments? Okay, seeing no comments and if there's no other discussion on this issue, if we could take 30 seconds to caucus and we'll have a vote.

I don't really know if we need to caucus. If there are no objections from any of the Section members, **if there are no objections to this Technical Addendum, we can just move on and just declare this approved. Seeing no objections, then we will consider this Technical Addendum approved by the Section.** Thank you.

The next item on the agenda is an update on recent Council actions. Joe, would you like to discuss that a little?

NEFMC UPDATE

DR. DESFOSSE: There were two sets of meeting summaries from the New England Council. They were passed out to you about five minutes ago. They were meetings that were held on August 15th and August 22nd.

The first one was the Herring Advisory Joint Panel meeting with the Mid-Atlantic Council Mackerel Advisory Panel. They were discussing limited entry and controlled access issues. The second meeting, on August 22nd, was a meeting of the Herring Oversight Committee to review the recommendations from the Advisory Panel meeting.

I was not in attendance. I just bring these meeting summaries to you for your information. As far as I know, the New England Council has not taken any formal action on limited entry or controlled access at this time.

The other item that I wanted to update you on was that the Council has moved forward with Framework Adjustment Number 1 to their Atlantic herring FMP, and this deals with the seasonal allocation of the 1A TAC.

It was submitted on October 2, 2001, and as far as I know they have not heard back from the National Marine Fisheries Service at this time as to when this might be implemented.

CHAIRMAN FLAGG: Any questions of Joe? I might mention, too, with respect to some of the Council actions last June, the Herring Oversight Committee recommended to the Council the annual herring specifications, which were forwarded to the National Marine Fisheries Service.

There were a couple of notable changes in the specifications for 2002 versus this year's; one being that there was an allowance in this year's fishery for a 5,000 metric ton TALFF, which was not included in the specification for 2002 recommendation from the Council.

The other issue had to do with IWP JV allocations, and one of the recommendations in the specifications was that IWP JV allocations be restricted to Area 2 only, whereas this year's specifications allow for the harvest of JV IWP from both Areas 2 and 3. So those were the principal changes in

the specifications between this year and recommendations for next year.

REVIEW DRAFT ADDENDUM II

The next item on the agenda is the review and approval of draft Addendum 2. There are two items involved in Addendum 2. One of them relates to the Area 1A TAC seasonal allocation, which would essentially mirror the actions by the regional Council in terms of their recommendation for the split quota for Area 1A.

The second item in the Addendum is the IWP application review process. I'll ask Joe if he wants to just give some highlights on the draft addendum.

DR. DESFOSSE: Okay, just as a point of clarification, this would be a draft that would be approved for public hearing, and that's the stage that you're at right now. This is the first draft that you've seen.

On page two, under the Introduction, there is a typo that I will need to correct here, and that is inserting the date of the Council submission of Framework 1 into the first paragraph.

The two main purposes of draft Addendum 2 is -- the first is to seasonally allocate the Area 1 TAC on a January 1st to May 31st and June 1st to December 31st TAC periods. The first period would have 6,000 metric tons and the second period would be 54,000 metric tons, plus any unused portion of the period 1 TAC.

There are a number of other options that are listed in here and they are the same options that were taken to public hearing during the development of the Council's Framework I. There are, I believe, eight total options, ranging from setting the Area 1 TAC on a percentage basis, setting the quotas during the annual specification process, changing the fishing year, and recalculating the Area 1 TAC. There's explanatory text that goes along with all of these options.

The second main topic addressed by Addendum 2, or draft Addendum II is the IWP application and procedure. It's not specifically the review process, but the deadlines to be followed in terms of submitting applications for IWP's in the future.

Amendment 1 did not carry forward all of the IWP application and procedure deadlines from the original FMP, another oversight, and this addendum would set in place the deadlines for receiving those applications and then for review by the Section.

One problem that the staff and the Section has had to deal with this past year is the number of IWP applications coming in, ranging anywhere from late July up until last week. So, it would make it difficult for the Section to allocate whatever the annual specification was for that year, given the wide range of application times.

All the language is taken pretty much from the original FMP that was approved back in 1993. The bold italicized text is staff and Plan Review Team suggestions.

The third issue that is addressed by the addendum, which Lew did not mention because I probably didn't brief him on it, was that there are a number of minor typographical corrections to be made to Amendment 1, and those are in the Compliance Section, and again that text is in bold and italics.

CHAIRMAN FLAGG: Thank you, Joe. Any questions or comments from members of the Section? I might mention, for your information, that relative to the New England Council action, if you look on Page 3 under Option 2, essentially Option 2, which provides for a 6,000 metric ton allocation for the January 1/May 31 period and 54,000 metric tons for the balance of the year, represents the recommendation of the New England Council for the 2002 year specification.

Subsequent to 2002, Option 4 is what the Council is essentially doing. They did vote, after 2002, that they would set the Area 1 seasonal quotas during the annual specification process. So just a bit of a clarification on that point. John.

MR. JOHN I. NELSON: Thank you, Mr. Chair. I just want to make sure, in my mind anyway, that's it's clear that this is an addendum that is addressing strictly, in this case, the seasonal allocation.

It doesn't prevent or it doesn't supersede anything in Amendment 1 that allows us to, if you would, slow down the take in Area 1A, for example. I'm using that as an example, and I realize we're going to have other discussions on that.

But this does not prevent the states from enacting what has already been approved under Amendment 1 to deal with too rapid a take, for example, if that was happening in Area 1A? That's clear, right?

CHAIRMAN FLAGG: Yes, I think that is the case. In fact, with this mechanism, it would actually slow down the fishery, particularly in the early part of the season. So, it would be almost an additive measure to the effort control provisions.

MR. NELSON: Yes, it's an additive. Okay, that's good. That's the way I would look at it, too. The other thing is under the IWP applications -- and I might have missed the discussion at the Council level -- the dates were changed from what we originally had in Amendment 1, or what was in our other plan, and could Joe just explain why the rationale of changing from March to July or April to August, you know, what was the rationale for changing that, where those suggestions came from and the rationale associated with them.

CHAIRMAN FLAGG: Joe.

DR. DESFOSSE: Most of the IWP applications that came in this year came in late July. Some of the comments that were received by individuals pursuing IWP applications were that the early deadlines, early in the year, did not give them -- they couldn't judge the world market.

MR. NELSON: Okay, so these dates were chosen with the industry input in mind and it probably addresses those types of concerns. I know that we've gotten requests in at odd times now.

And as long as everyone is comfortable with these time lines, that we're going to be able to adhere to them without people coming in after August 2nd, for example, and saying, oh, here's another one -- we'd like to avoid that in the future, you know.

DR. DESFOSSE: The dates are flexible, based on the public comments that you would receive taking this to public hearing. These are just thrown out as ideas.

CHAIRMAN FLAGG: Yes, I wanted to reiterate what Joe has said in terms of the fact that this is a public hearing document, and I think we do need to have some fairly set dates, so that industry knows that it needs to get these requests in a timely manner in order to have us be able to respond in a reasonable way to them.

MR. NELSON: Yes, that was my point. I want to make sure, number one, that we had come up with dates that already had had advisory input and with revised dates on that to reflect what was happening out there as far as when requests actually were being received by these companies and what made sense.

I recognize that we could change those based on public input, but I just want to make sure that when people look at this, that they do recognize that these dates are what we're going to use once we finalize them.

CHAIRMAN FLAGG: Bruce.

MR. FREEMAN: Thank you, Mr. Chairman. I have a couple of comments relative to the IWP on Page Number 5. If you look at the very top of that page, and it continues from the previous page, these are the types of information that should be available to help, I believe, the Commission or the Board to make a determination of the usefulness of the IWP.

Under Item D, which was Other Information as Needed, I suggest that we move up "I" and "J" from lower in that page, and "I" is the ultimate country of sale of the product and "J" is the information showing how the fish processing will benefit development of a domestic fishing industry.

The reason I do that, I think that would be very helpful from the Commission's standpoint. Those two items were included in a list that states should consider, and I think that is important and should remain. I also think those items should be raised to the Commission level and then Item F would be other information as needed. So, it's kind of a realignment.

CHAIRMAN FLAGG: Good points, Bruce, thank you. Dave Pierce.

DR. PIERCE: The 6,000 tons set aside as a specific allocation for the winter/spring period is a concept that we've discussed quite a bit already at the Section level and certainly at the Council level.

So I don't see any need to get into any further discussion regarding the merits of that. It represents a rather reasonable compromise, I think, between allowing for a winter/spring fishery, which is a value to many individuals in the herring industry and prolonging the summer/fall quota as long as possible and helping us avoid the necessity of cutting down on the available days for fishing during the summer/fall.

This caused some heartburn for some industry members this year, so it seems to be the right approach. So, for that reason, Mr. Chairman, I would suggest that we adopt this addendum with all of its specifics, with an understanding that everything that the New England Council has done relative to this issue is reflected in this document, specifically -- and I can't recall the exact language.

I didn't bring the documents with me, but if for some reason the winter fishery in Area 2 does not materialize because of herring not being there, the migrations of herring for some reason are not as expected, and the fish remain in

the Gulf of Maine area during the wintertime – the Council discussed and I think established some means by which there could be consideration of an adjustment to move some of that herring back into the wintertime in the Gulf of Maine, if it could be justified.

So, I'm just raising it as an issue, that if there is some language that the New England Council has adopted with regard to that, that language should also be reflected in this addendum to give us that flexibility if we need it.

CHAIRMAN FLAGG: Yes, my recollection, David, of that discussion is that the Council does have the option to do an in-season adjustment on these plans as it determines the necessity for that.

I might also add that with respect to this particular addendum and with respect to the ASMFC Section, however we should determine to go, these particular provisions would only be applicable to state waters.

So, if, in fact, we didn't have flexibility built into this, the constraint would be only in those areas which were state waters, so EEZ waters could have adjustments that would be done by the Council.

But I do see your point in terms of trying to maintain some continuity between the Section actions and the Council, and I think that is an important point that we need to consider.

I would like to also remind folks that this particular document is a draft and basically today we're just approving the draft to go out to public hearing to get further input from the industry.

I'm sure we will be getting some further input before it comes back to the Section for final approval, but your points are well taken. Thank you.

DR. PIERCE: If I may, Mr. Chairman, you referenced the EEZ fishery. That flexibility is there for the EEZ fishery, we assume. I'm never quite sure that's the case, but the flexibility apparently is there.

For state waters, it would need to be there as well, since in previous years, back in the 1980's, for example, or maybe the early 1990's, but I think primarily in the 1980's, in Massachusetts state waters we did have a rather unexpected and very productive state waters fishery.

For whatever reason, the fish didn't move south of the Cape. They were north of the Cape and that served as a boon for many fishermen who were involved in the industry. I would like to see that sort of in-season adjustment in this document, and that way we avoid not bringing it to public hearing and having it raised by the industry that will just make the same point that I made.

In addition -- let's see here, I've got to make another point. I've got another point. It escapes me, but I'll come back to it, Mr. Chairman.

CHAIRMAN FLAGG: Other comments from the Section members? Yes, Joe.

DR. DESFOSSE: I just have a question. You raised the issue earlier that the Council's framework has Option 2 for its upcoming year, 2002, and then it moves to Option 4 for 2003 and subsequent year. Does the Section want to do the same, follow the same suit here?

CHAIRMAN FLAGG: Comments from the Section relative to that point? Do we want to have these options mirror what the Council plan is relative to the seasonal TAC's for Area 1A in that they've adopted the specification for 2002 for the seasonal TAC's, split season TAC's, but subsequent years they're going to set the seasonal TAC's at the time they do the annual specification so that it could be flexible.

That TAC would not necessarily continue to be permanently at 6,000 in the spring and 54,000 in the fall, so the issue Joe is asking for direction on is should we make the document mirror that particular issue relative to how the Council has handled it? John.

MR. NELSON: Yes.

CHAIRMAN FLAGG: With the in-season flexibility. Eric.

MR. ERIC SMITH: Yes, I had the same response John did. I would point out that we can get there from the use of Option 2 in the document and Option 4, which calls out exactly that, as I read it. But what is a little disconcerting is Option 4 is preceded by an underlined text that says other options considered, but not recommended.

If we're going to public hearing with this document, I almost don't want to send the signal that this is almost rejected because, in fact, it may be part of the eventual response and solution. So, I would suggest that we not say -- I would change that text to say "Other Options Under Consideration."

CHAIRMAN FLAGG" I think that's a good point.

DR. DESFOSSE: I had another suggestion for the Section and that was to move Option 4 up under -- basically renumber them so that it would follow Option 2.

You'd have Option 3. Option 2 would be just for 2002 and then Option 3, the new one, would be for subsequent years.

MR. SMITH: That perhaps is better than my solution, because some of the options below that underlined text are things that we really did discuss and deliberately decided, no, it's not going to work. So if you do as Joe suggests and then leave Other Options Considered, But Not Recommended, you accomplish both.

MR. NELSON: Mr. Chair, that's what I had understood that we were going to do, based on the fact that we were trying to mirror what the Council had done, and the Council has it specifically laid out that way, I believe, and so I thought that that's the type of language we were trying to incorporate in this. I would certainly endorse Joe revising that at least so the public can understand it.

CHAIRMAN FLAGG: Okay, thanks. Other comments from the Section? Bruce.

MR. FREEMAN: Should we, before we approve this, have a preferred option? I mean, now we're indicating more and more options -- and although we've talked about what I think we would like to see, for the purposes of a public information document, would it not be helpful to have us indicate which our preferred would be?

CHAIRMAN FLAGG: Yes, my sense from the discussion is that those elements that were mentioned were the preferred options.

MR. FREEMAN: But I don't see it indicated here.

CHAIRMAN FLAGG: No, but Joe, I think, has got the sense of the Section. We can certainly include that. Other comments? I want to go to the public. I know there are some folks that want to comment. Bill Quinby.

MR. WILLIAM QUINBY: Thank you, Bill Quinby from Mayflower. Mr. Chairman, just a question on the application and procedure dates. I see it has been changed from March to July, and some background on that if possible, please. Does that mean applications for the following calendar year need to be in by July 1st or how does that work?

CHAIRMAN FLAGG: I talked about it with Joe, and he can correct me, but my sense is that if an applicant wanted to begin a fishery in the fall of that year, that they could have their application come in in July and be approved in August.

So, you could have an operation going that fall. And, Joe, you can correct me if I'm mistaken in that. I think that's the way it would work.

MR. QUINBY: And that would cover up through the first quarter of the following calendar year as well?

CHAIRMAN FLAGG: I think that's open for discussion. Obviously, one of the issues there is that you get into another calendar year, you're into another year of specifications, which may be different from -- it does create some difficulty in terms of allocating IWP's and JV's because once you get into the next calendar year, it's sort of a different animal.

It's something we're going to have to deal with and figure out how we can best do that, and if industry has some suggestions on how that might work better, then we certainly would be interested in receiving those.

MR. QUINBY: Well, I'm just -- in the past, when we did the first one, I think in 1984, the ASMFC really wasn't involved in it so much. The authorization comes from the Magnuson Act and where the governor of a state can sanction this sort of activity and how the Magnuson, you know, language and so forth works with the ASMFC language -- and, of course, in the Magnuson Act they don't have any sort of an application date, whatsoever.

You can put in a request whenever you like and ask the governor's consideration. So depending on the situation and just -- you know, if somebody doesn't have an application in, but there is an interest from the industry to have this extra outlet, it would be nice to have that flexibility. Thank you.

CHAIRMAN FLAGG: Thank you, Bill. I'd like to get some additional public comment. Is your question germane to what Bill said, John?

MR. NELSON: To that point. If the Council is using the same process and the Council is dealing with this under the Magnuson Act, aren't we in sync then? Is there some other scenario out there for IWP's? There is no other --

CHAIRMAN FLAGG: Joe.

DR. DESFOSSE: I'm not aware of any other.

MR. NELSON: There is no other.

DR. DESFOSSE: No.

CHAIRMAN FLAGG: Other comments from the public? Jeff Kaelin.

MR. JEFF KAELIN: Thank you, Mr. Chairman. I'm Jeff Kaelin with Stinson Seafood (2000), and I just wanted to

make a couple comments about some of the things that have been discussed.

We are very strongly in support of Dr. Pierce's suggestion that this document contain language concerning the ability for an in-season adjustment in the wintertime, if the scenario that he described didn't occur.

I just wanted to go on record again to support that because our targets have us taking at least 50 percent of that 6,000 right now during that time of the year. So, I think that's a good addition.

And also I had thought through, as the Chairman did, that this Option 2 and Option 4 ought to be combined somehow so that we don't have to do an addendum every year, obviously, because we don't want those numbers, the 6,000 and 54,000, have to go out to another addendum process.

So, I think that's a good suggestion, to combine those two options as a preferred option here. I had a couple of questions about the IWP issue.

I did let Mr. Quinby know that I didn't see how he could work with these dates if he wanted a summer IWP, but that has just been discussed, and I've never been a tremendous proponent of IWP's, but I can't see how those dates are going to work for his operation or others.

But the other thing that I wanted to bring up, there's language on Page 5 of this document, at the top of the page, that clarifies that the IWP application considers whether or not -- this is in B, it's the second B from the top of the page -- whether or not the cumulative amount requested will cause catch levels from the area to exceed the specified TAC.

I think that's a good addition because we've got different areas where certain things are allowed and certain things aren't allowed, and I'd like to suggest that that same language be carried forward down below to the -- go down two more A's.

This is that "A" that basically is the boilerplate on capacity and intent to process. I think that language should be changed to include this clause, the specified TAC's, somewhere in it because right now what it says is that they're going to make an IWP or JV application and the capacity or intent issue that's addressed is for the entire fishery.

I think that they should focus their discussion on capacity and intent to process by specified area, because otherwise it doesn't have as much value.

For example, if a JV was going to take place on Area 3, you would want the argument to be based on capacity and intent to process the fish that could come off Area 3, not the entire fishery. So I just wanted to make that suggestion.

I think it helps define, for the applicant, what kind of argument they have to make on capacity and intent. So, those are my comments and one question, though. Did I understand that there's going to be a public hearing on this document?

CHAIRMAN FLAGG: Yes, there will be once the Section approves the draft. There will be a public hearing and the opportunity for public input before it's adopted, yes.

MR. KAELIN: Oh, I see. I thought today was the drop-dead date on all of this.

CHAIRMAN FLAGG: This is just dealing with the draft and trying to get the Section approval for a draft which will then go to public hearing for additional industry input.

MR. KAELIN: Okay, well thank you very much. I appreciate the Commission working on this.

CHAIRMAN FLAGG: Thank you. Other comments from the public? Yes, Dave Ellenton.

MR. DAVE ELLENTON: Dave Ellenton, Cape Seafoods from Gloucester. Yes, I just want to support what Jeff said again in support of Dr. Pierce's point about the need for the ability to react to what is actually happening in the fishery in the early part of the season.

I made the point at the New England Council and would like to make the point here that there is an absolute need for speedy flexibility in these quotas, should the fishery prove to be able to supply larger quantities than these numbers show.

He talked about the canneries needing 3,000 tons, 50 percent of the 6,000. We're processing herring in Gloucester on a regular basis, and we'll certainly be looking for fish in the winter months as well.

So, if that fish doesn't come from Area 2, if it's not available in that area, we would certainly need to look at what's happening in Area 1A. Thank you.

CHAIRMAN FLAGG: Thank you. Other comments from the public? Seeing none, we'll go back to the Section. David Pierce.

DR. PIERCE: When this goes to public hearing, there'll be some discussion, I'm sure, from the public regarding Option 7 on Page 4, recalculate the area 1A TAC, an option considered but not recommended; I still have strong feelings about this option.

I think it should be a preferred option, but I lost out, so obviously, I'm not going to raise it again. I still object to our giving 20,000 metric tons to the New Brunswick Weir Fishery, just off the top of whatever TAC we establish for ourselves in Area 1A.

For the benefit of the public, and certainly for those of us who are present at the public hearing when this document is discussed, I would suggest that the staff work with the New England Council staff to clarify that last sentence in that section, where it says that the Section and Council rejected this option, consistent with a strong recommendation by the PDT, because of the scientific uncertainty with the assumptions in the formula.

Well, formula for what? I know what it means, but the public may not know what that means. Some additional language to clarify what the formula is, what the formula does, I think would be helpful, especially since I suspect this issue will come up again during the next go around with the setting of TAC's by area for the next fishing year.

I'm certainly going to raise it again. And also, it would be helpful, if by the time we go to public hearing with this document, we have some estimate -- hopefully, more than an estimate -- of what was the catch in 2001 in the New Brunswick Weir Fishery so we can compare it to that 20,000 tons.

CHAIRMAN FLAGG: Okay, thank you. Just a little bit of a clarification, David, in respect to the weir fishery in New Brunswick; it has never been framed that we're allocating a

specific part of the Gulf of Maine, carrying TAC to the New Brunswick Weir Fishery, in the process of doing the stock assessment and for the PDT to provide recommendations on allowable TAC's by area.

It has been assumed, based on some historical performance of the New Brunswick Weir Fishery, that the annual catch is roughly 20,000 metric tons.

It's not that we're ceding that particular allocation to them, but we have no control over what the Canadians catch; and based on our need to make sure that we don't overfish the stock, we have to make an assumption, or we have to use data that's available and the 20,000 metric ton figure is what the Canadians have typically taken in that weir fishery.

So, that's the reason why that number is used, and in no way are we saying that there has been a predetermined allocation of that particular tonnage to the Canadian fishery. Yes.

DR. PIERCE: I understand the history, Mr. Chairman, but frankly it is a direct allocation. We assume it's 20,000; we keep it at 20,000. I'm a little fuzzy on this, but I thought the last time around they took 10,000. Maybe they did take their entire 20,000, but that bears looking into as well.

CHAIRMAN FLAGG: It was 16.

DR. PIERCE: They took 16?

CHAIRMAN FLAGG: It was 16,000. They had 4,000 that was not taken in that fishery.

DR. PIERCE: Well, it's an important issue that needs to be --

CHAIRMAN FLAGG: I agree.

DR. PIERCE: -- acknowledged. It's the only strategy we can adopt at this point in time, but there are those who don't like the way we do it because the Canadians get away scot free, in a sense.

They don't have to do anything for their New Brunswick Fixed Weir Fishery beyond what they already have in place, and you know better than I do, Mr. Chairman, what exactly are those measures in that New Brunswick Weir Fishery that control the catch of age one, two, or whatever else that they take in that fishery.

CHAIRMAN FLAGG: Bruce.

MR. FREEMAN: Since this issue was raised, I'd just like to carry on a little bit. It's something that has always concerned me, and I read it the same way Dave does. It's an allocation, although it's not meant to be.

In looking historically at what's happened in this area, it would seem to me that if 20,000 tons were not used, that that remainder be utilized in the Gulf of Maine. And we're not involved in the Gulf of Maine fishery, but it's just a point.

And the other thing that I'm just curious -- if, in fact, for some reason the harvest in mid-summer the in-shore Gulf of Maine Area 1A was 60,000 tons and the fishery closed down, and then fish were being taken off New Brunswick and shipped back here, it would seem to me it's going to be the same stock.

So I'm just curious what we're saving, and it seems, as far as I can tell, that there should be a mechanism to possibly reallocate some fish later in the season if there was a premature closure in the Gulf of Maine from that 20,000 tons if it's not utilized in the weir fishery in New Brunswick.

There is no mechanism to do it, but it seems that maybe some thought should be given to the mechanism to do so.

DR. DESFOSSE: Bruce, I think the mechanism that you were looking for was an original element of the Council's FMP that was rejected by the regional administrator, an in-season adjustment based on what was caught in the weir fishery.

I don't know if the Section wants to deal with that issue in the future. The one thing I was going to add, when Dr. Pierce was talking, was the next time that the herring assessment is reviewed, I believe it's going to go through the Transboundary Resource Assessment Committee, and one of the questions that is going to be looked at closely will be the affinity of those fish that are caught in the New Brunswick Weir.

CHAIRMAN FLAGG: Yes, Joe did remind me that that, in fact, was the case. It was part of the plan that was submitted to the National Marine Fisheries Service, a mechanism to reallocate any uncaught portion of that Weir Fishery back into the 1A fishery, and my recollection was that the Service turned that down because they felt that they couldn't get real time data on the catch there.

We certainly disagree with them on that because the weir fishery and the data is reported on a very timely basis, and we're able to get that. So, we don't think that was a good reason for turning it down, but, nonetheless, it was rejected as part of the plan. Dave Ellenton.

MR. ELLENTON: Dave Ellenton, Cape Seafoods. As this is a draft of a public document and Dr. Pierce made reference to the sentence that says uncertainty with the assumptions in the formula, having attended public hearings and sometimes being faced with a document which is not that clear, I would suggest that the formula itself should be shown in the public documents.

Unless everybody takes along the ASMFC Fishery Management Plan with them, or unless the person who is presenting this public document is able to explain in detail what that formula is, then it's going to be very difficult for people to fully understand what that paragraph actually means. I would just suggest that the formula is shown in the public hearing document, Mr. Chairman.

CHAIRMAN FLAGG: Thank you, that's a very good point and we'll attempt to do that. Jeff Kaelin.

MR. KAELIN: Thank you, Mr. Chairman. That brings up another issue that I forgot to raise with you guys a minute ago. I think it would be helpful if this document contained the specifications for all the different areas, specifically the fact that the specifications don't provide for an IWP allocation in Area 1, which is contrary to the language on Page 4 in this document, which states that IWP operations are permitted in all management areas.

Technically it's true, but not as far as the specs go. So, there again, I think you ought to put the specs in so the public that doesn't do this every day, like some of us unfortunate people do, knows what they're talking about here because that really makes it difficult to square the language in the document with what we know the specifications to be.

So, it's kind of a similar comment to what Dave had. The other thing is I didn't want to get into all these other

options, but, again, I agree with Dave Pierce and I know Dave Ellenton, too. We've sawed away at this for months.

We can't understand why the PDT will support the formulas in the plan to set the TAC's, but when you start to move mortalities around as we've suggested, from 2 to 1 and so forth, then all of a sudden they don't have any confidence in the formulas.

So, it just doesn't add up to me, and we ought to be able to move this fish around if it isn't taken or killed by somebody else. But I just wanted to make that comment again on the record because I think that either the PDT believes in the formulas in the plan or they don't, and it's pretty hard to have it both ways. Thank you.

CHAIRMAN FLAGG: Thank you, Jeff. Other comments? Back to the Section. Yes, Dave Pierce.

DR. PIERCE: Yes, Mr. Chairman, **I would move that we adopt the draft Addendum II, with our suggested revisions, for public hearing.**

CHAIRMAN FLAGG: Okay, we have a motion to adopt the draft. **Bruce Freeman seconds.** Discussion?

DR. DESFOSSE: There was one suggestion made by Jeff Kaelin earlier, and I don't think the Section weighed in on it, and that was on Page 5, copying the language from -- I think what the Plan Review Team needs to do also is to number some of these and leave some of them lettered so to make a little distinction here.

But basically, it was the second B from the top of the page, copying that language down into the long list, A through L; is that something that the Section agrees with?

CHAIRMAN FLAGG: Comments from the Section? Does anybody object to including that? Okay, we'll do that then. Other comments on the motion? Let's take about 30 seconds to caucus. (Whereupon, a caucus was held.)

CHAIRMAN FLAGG: Okay, has everybody had an opportunity to caucus? Okay, you see the motion on the board. All those in favor, signify by saying aye; those opposed; abstentions. **It carries by voice vote.** Bill Adler.

MR. ADLER: If this goes out to public hearing, are you assuming that this would be approved in time for, let's say, the allocation of the 6,000, whatever, for the first part, would be starting in 2002? Is the schedule going to be along that line that we can get going on it?

CHAIRMAN FLAGG: I'm going to ask Joe to discuss the process because it's a little different with a section than it is with other plans. So, Joe, would you like to elaborate on that?

DR. DESFOSSE: First of all, with an addendum there's no requirement for a minimum number of public hearings that the Commission would have to undertake.

We could turn to the states, once we put this document out on the street and see, first of all, how many states need to have a public hearing and need to have Commission staff there. So, we'd have to schedule those.

The next time the Commission has a meeting is in February. I was going to contact the Council staff and find out if there is a Herring Committee Meeting scheduled for early January, where the Section could piggyback on and give final approval to the document once they hear the public comments.

It would then be up to the states to implement the regulations for the beginning of 2002, given that the Section would be giving final approval in early January.

MR. ADLER: So, in other words, this can't be -- under the schedule this can't literally be on line January 1, 2002, but you do still plan to -- if it gets approved, has public hearings, goes through the process, gets approved, that you do plan to have this split quota thing in place for this coming year?

CHAIRMAN FLAGG: Yes. Typically, Bill, if you look at the history of the landings in recent years at least, there's very little activity in 1A up until the latter part of March, I believe.

MR. ADLER: Okay, all right, I just --

CHAIRMAN FLAGG: So, there is some time. It does start to pick up from March on pretty dramatically, so I think we have some time.

MR. ADLER: Okay, so we can do it now and it won't be a year --

CHAIRMAN FLAGG: Yes. Joe.

DR. DESFOSSE: One other thing. The time that it takes the National Marine Fisheries Service to approve a framework might be quicker than the normal approval process for an FMP or an amendment, so the Council's action may be on line by the first of the year as well.

CHAIRMAN FLAGG: John, you had a comment?

MR. NELSON: Well, when we were talking about timing -- we were just talking amongst ourselves -- if we don't have this approved until February 1st, then January is open under our existing system and the unlikelihood could take place of 6,000 metric tons coming out in January.

It's unlikely, I agree, but that could happen, just so we're all on the same wave length. Then when our plan kicks in, it would be zero because 6,000 had already come out of that area. Okay, I just want to make sure we're --

CHAIRMAN FLAGG: That could happen.

MR. NELSON: Yes, I realize that with temperature and all that, it's unlikely, although we are seeing more activity than historically we have seen in that, and I, again, would reflect that that was the reason why we were doing a lesser quantity, so that we did not have added incentive to harvest during that time frame.

CHAIRMAN FLAGG: The other issue is how many states here would be interested in having public hearings on this particular addendum, so I can get an idea about staff needs? Massachusetts, how many would you want to have? Just one. How about New Hampshire?

MR. NELSON: We probably would do one, but we would not be looking at ASMFC staff making the journey up for that.

CHAIRMAN FLAGG: Okay. And Pat? A couple. Okay, so that would be four between the three states. Yes, Eric.

MR. SMITH: I won't be surprised at the answer that I get to this, but the thought occurred to me as I listened, I'm not real sure how the Commission's emergency action process works, how cumbersome, whether they have to call the Commission together or not, but if anyone thought that January 1st was a real problem and if that process somehow could be used to get something in place by January 1st, once

you've had your public hearings and so forth, but you need a month of calendar time, you might just think about that possibility.

I just confess I don't know anything about the process to know how complicated it is. We don't ask for them in the Council process anymore because they're so complicated in the federal system that it's almost not worth asking anymore. Thank you.

CHAIRMAN FLAGG: Okay, Joe.

DR. DESFOSSE: I was just going through the tables of landings by management area that Matt Cieri and Kohl put together, and the first landings that occurred in 2001 in Area 1A, this past year, didn't occur until Week 8, which I would assume is the last week in February.

CHAIRMAN FLAGG: Thank you. Bruce.

MR. FREEMAN: Let me just back up a second. I'm not certain of the need for a public hearing in New Jersey. Our concern primarily would be the IWP, but I want to reserve that option.

CHAIRMAN FLAGG: Thank you, good point. I don't know about other states, too, to the south that might have interest in the IWP aspect of this addendum.

I think we should plan to poll New York, who isn't here, and I know Gordon had mentioned to me he does have some interest, so I think that they likely would be interested. I don't know about, Gil, Rhode Island, relative to the IWP issue. There might be some interest down there because there will be IWP's.

MR. GIL POPE: I don't remember us ever having one before. I'll check with David, but I don't think we've ever had one.

CHAIRMAN FLAGG: If you could have them get back to Joe and let him know so that we could plan accordingly.

MR. POPE: Well, yes, David had to leave early and I'll get with him on that.

2001-02 IWP ALLOCATIONS

CHAIRMAN FLAGG: Thank you. The next item on the agenda are the 2001-2002 IWP allocations, and I think Joe may have passed around a summary of the IWP allocations received to date.

We did have an additional IWP request that came in just very recently, which is for Cape Seafoods. It's the last one on your list. The state of operation would be Rhode Island, time period of November 1 through December 31, 2001. What's the pleasure of the Section relevant to this application? John.

MR. NELSON: Well, you're talking about this particular application, Mr. Chairman, a new application, is that what you said?

CHAIRMAN FLAGG: Yes, I was, but I mean if you have comments on the others also.

MR. NELSON: Yes, we received a notice that the request for our IWP for this year was withdrawn, that we would not be using it. I just wanted to advise the Section of that. I realize you can't sell the product to some other states, but I'd be willing to barter with them.

CHAIRMAN FLAGG: Well, that puts another 1,500 metric tons back into the pool, so that gets up to 7,000 as the balance of unallocated IWP.

We do have this request from Cape Seafoods, and I would entertain a recommendation from the Section. Joe, would you like to make a comment on this one?

DR. DESFOSSE: Actually, I think I have two comments if I get my thoughts straight. The total amount unallocated at this point then is 7,000 metric tons.

A number of these applications have asked for an allocation that would extend into 2002. The previous thinking had been that anything caught in January and February would come out of the 2002 IWP allocations.

I was wondering if maybe the Section wants to consider thinking along the lines of the 2001 allocations extending into the first quarter of 2002, sort of shifting the IWP season, the allocation that you have, through the end of February. I don't know if you can do that. It's an idea I had this morning.

CHAIRMAN FLAGG: Any thoughts from Section members? Bruce.

MR. FREEMAN: I'm not certain if that can be done. It's an interesting thought, but I just want to make clear the concerns we expressed previously is not to start allocating the 2002 amount, because there may be interest next fall.

Therefore, there has to be consideration given to fairly allocate it. I think the issue is if there's a remainder for 2001, can that surplus be utilized in 2002? If the answer is yes, then we ought to adjust these numbers for 2002.

CHAIRMAN FLAGG: My sense is, and I may be corrected, but I don't think we can carry over these specifications into the next calendar year.

Once the calendar year is over, if there are any unused allocations, it doesn't go to the next calendar year. If that's the cutoff, then you start with the 2002 specification and you use whatever allocation is available for that particular year. I don't think we have the opportunity to carry over unused allocation from the previous year.

I know Gordon talked with me about this too, Bruce, and he was concerned about having some ability to entertain IWP's in New York state sometime into next year.

My thought was that the Section might want to consider some portion of next year's allocation for early in the year, but put a cap on it; allocate maybe 3 or 4,000 metric tons, but put a cap on an allocation for the early part of next year, so there would be a fairly good pool of allocation left for states that might have allocations come in later on. I mean it's just a thought, but it's certainly up for discussion. John.

MR. NELSON: Mr. Chairman, if you could, or Joe, if you could, I recall that we -- it was probably e-mailed, but I thought we had gone through this discussion, and we had had some type of consensus by the Section via e-mails on what we were going to do for 2002.

I think a portion was going to be allocated in the early part and that was a capped amount. But if you recall that, Joe or Lew, if you could refresh our memory, I'd appreciate it.

CHAIRMAN FLAGG: Joe.

DR. DESFOSSE: What I remember the Section coming to consensus on was the initial allocation for 2001 and then

putting off discussion of any allocation of 2002 until this meeting.

CHAIRMAN FLAGG: That was my understanding, also. Certainly, I'd be interested in any input the Section might have on that issue. John.

MR. NELSON: Well, I think, Mr. Chairman, we're probably paving the way for what we're going to be facing when our addendum is approved as it stands, and that is requests are going to come in or be approved in August and they are undoubtedly are going to proceed into January, February and March. I'd make that assumption.

Just so we are having at least some type of movement here, I would suggest that we do look at allocating a quantity -- and I'll use 4,000 metric tons -- for the first half of 2002, with the remainder, whatever the remainder would be, allocated in the latter half of 2002, and it is specific to the year.

CHAIRMAN FLAGG: I might make a suggestion. You might want to consider 4,500. The reason I say that is because I think the allocations were in 1,500 increments.

MR. NELSON: Fine.

CHAIRMAN FLAGG: So it would be potentially three allocations; is that correct, Joe? We'd be looking at, in terms as the boat came on station, that the allocations would be in 1,500 metric ton increments. Just a suggestion.

MR. NELSON: I have no problem with that, Mr. Chairman. I think at least for a starting point of discussion, use the 4,500 metric tons from January to June of '02 and the remaining, if we have the 10,000 IWP allocation, remaining amount, which would be, in this as an example, that 5,500 would be available for the latter part of the fishing season.

Again, the fishing areas would be for Areas 2 and 3. I don't know if you need a motion or if you just want to have that as a discussion point, Mr. Chairman.

CHAIRMAN FLAGG: I think we could maybe have some discussion. If you wish to make a motion, that's fine, and then we could have a little discussion.

MR. NELSON: Whichever is easier for you. Maybe it would help to have that as a motion. I so move, Mr. Chairman.

CHAIRMAN FLAGG: Okay, we have a motion to allocate 4,500 metric tons for the early part of 2002 and capped at that number subject to reconsideration at the next Section meeting or subject to further allocations at the next Section meeting. Is that the intent of your motion? I don't want to put words in your mouth.

MR. NELSON: What are we deciding on this?. I thought we needed to make some decision now, I guess, and especially in light of the request that you have here.

CHAIRMAN FLAGG: Joe.

DR. DESFOSSE: I was just trying to rephrase John's motion.

MR. NELSON: Thank you.

DR. DESFOSSE: **Move to consider allocation of 4,500 metric tons of the 2002 IWP specification for the period January 1 through June 30, 2002. Allocations would only be for Areas 2 and 3.**

CHAIRMAN FLAGG: Okay, do we have a second? Okay, Eric Smith seconds. **Motion by John Nelson and second by Eric Smith.** Bruce.

MR. FREEMAN: I have difficulty with this motion, the reason being is that if we go on and have the other 5,500 metric tons for the rest of the year, and we get five or six allocations from states ranging from Maine to New Jersey, for example, then the states that have not engaged in the fishery to this point are going to be put to a great disadvantage, or could be put to a great disadvantage in that we could be fighting over the 5,500 metric tons, and that will be perceived as not being a fair allocation.

Now, it may well be that the opportunity to use the fish this winter may be our only opportunity. Market conditions may change, and there may not be any need later in the year and so we just simply don't know.

But my concern would be, at this point, that the demand will remain high. I don't have any information that the restrictions in the Eastern Atlantic are going to be relaxed.

Therefore, I suspect the demand will remain high and there will be additional IWP's next year. Again, the difficulty is you're allocating fish for next year immediately, but not everybody is going to have an equal opportunity to take it, and so I do have difficulty with this motion.

CHAIRMAN FLAGG: Thank you, Bruce. Other comments? David Pierce.

DR. PIERCE: My near death experience this week with sea herring has really clouded my thinking, and I'm really not sure where we are, Mr. Chairman, but that's one of the vicious herrings that attacked me.

What exactly are we doing, Mr. Chairman? The Section and the Council have set specifications for 2002; correct?

CHAIRMAN FLAGG: That's correct.

DR. PIERCE: For all the areas, IWP's, JV's and what have you; correct?

CHAIRMAN FLAGG: Well, they've been recommended to the National Marine Fisheries.

DR. DESFOSSE: They've been recommended, but they have not been published for comment yet, and they haven't been approved yet either.

CHAIRMAN FLAGG: That's right.

DR. PIERCE: No, but we've all made those decisions as to what the specs should be for 2002. They haven't been published yet. I guess I'm working at a bit of a disadvantage because I don't have those numbers in front of me, so I can't recall what all of the breakdown is for JVs and IWPs by area.

So when we say, through this motion, 4,500 metric tons of 2002 IWP specifications for the first half of the year, what does that leave us for the remainder of the year 2002 and as a balance for the beginning -- I need to be groundtruthed here.

CHAIRMAN FLAGG: Well, let me clarify that. If, in fact, the National Marine Fisheries Service adopts the Council's recommendation, the allocation for JV in 2002 is 10,000 metric tons. The allocation for IWP is 10,000 metric tons.

The recommendation of the Council was also that these allocations come only from Area 2, but that's the

recommendations. Only Area 2 for 2002, that's the Council recommendation to NMFS.

DR. PIERCE: Mr. Chairman, **then I would move to amend the motion so that the allocations would be for Area 2 and not 3.** The reason why I make that -- well, I'll wait to see if someone seconds that move to amend.

CHAIRMAN FLAGG: Is there a second to the motion to amend?

MR. POPE: **Second.**

DR. PIERCE: Thank goodness, there's a second.

CHAIRMAN FLAGG: Gil Pope, thank you.

DR. PIERCE: Okay, Mr. Chairman, the reason why I make this change is that the New England Council is saying there's not an Area 3 for IWPs.

I think we should have the same attitude, especially in light of the fact that members of the industry have said fairly recently that this year, especially this summer and fall, they have been dependent on Area 3.

They have been able to take large amounts of Area 3, Georges Bank herring, but a portion of that they cannot take because it's set aside for IWP allocation. I would rather not see an IWP allocation for Area 3.

I would rather see that amount be in the pool to be used by fishermen who would land their fish ashore and supply shoreside processors, not a foreign ship that's anchored inside state waters and taking fish over the side.

I have no problem with Area 2, especially since that would, in all likelihood, be a winter JV or IWP, IWP in this particular case. I think there's plenty of herring in Area 2 for an IWP.

I think it makes sense, especially for some states, but from what I've heard from the fishing industry from processors, notably one in Massachusetts that made this point at the last New England Council meeting, I feel much more comfortable knowing that -- I feel more comfortable with there being no IWP in Area 3.

CHAIRMAN FLAGG: Okay. Yes, John.

MR. NELSON: Mr. Chairman, the only reason I said 3 was because I was under the impression that the Council was also looking at Areas 2 and 3 and since that -- I understand they are not. They are only looking at Area 2?

CHAIRMAN FLAGG: That was the recommendation.

MR. NELSON: **Then I accept the friendly amendment as far as Area 2 and as far as the specs.** I guess the only other thing that we need to argue about is whether you want to go ahead; and if you don't, then fine.

If you do, then it's just how much do you feel you should allocate. Right now we have one vessel that wants to fish in January through February, as far as I see. Now, is 4,500 too much or just right or too little?

CHAIRMAN FLAGG: Eric.

MR. SMITH: **I was the seconder to the main motion.**

I do not agree with this change, so you need to find another seconder.

CHAIRMAN FLAGG: **Is there a second to the motion to amend? Gil seconded.** Yes, Eric.

MR. SMITH: Thank you, Mr. Chairman. There has been some -- notwithstanding what the New England Council decided to do, there is some lingering discontent about that,

and it frankly goes to the slightly ugly part of fishery management.

It goes to the part of fishery management that sounds a lot like allocation, and I'm a little troubled that this is a succeeding action that seems to take away opportunities from U.S. harvesting vessels to provide them as potential opportunities for U.S. shoreside processors.

We know, ultimately, we would like to see the fish caught by domestic boats and processed by domestic plants. But, we've heard a lot of promises too as the years have gone on and there always seems to be more promise in the processing sector than there is reality.

If we can leave some fish available for U.S. harvesting vessels, sell shoreside if they can, or sell to a foreign processing vessel if they can't find a shoreside processor, I believe we ought to create and maintain those opportunities, too.

I'm much more comfortable with this motion still referring to Area 2 and 3 because it provides a broader range of opportunities to U.S. harvesting vessels, which is why I withdrew my second and why I'll vote against the motion.

CHAIRMAN FLAGG: Other comments? Dave Ellenton.

MR. ELLENTON: Dave Ellenton, Cape Seafoods. We are the reality in Massachusetts. We do require fish to be delivered to the shore on a regular basis, and the calculations or parts of the formula that we discussed earlier show a substantial DAP quantity and the TACs for Area 1A, 1B and Area 3 do not come anywhere close to the total that is in the formula for DAP.

That was one of the main reasons that I gave for my argument for eliminating joint ventures on Georges Bank and that, as I understand it, was one of the reasons that the New England Council made the recommendation that they did.

I am the last one to argue against opportunities for fishermen, but I think if we've got a formula in place, we should follow that formula.

The formula was right at the time that it was determined and addressed, and I would ask people to support this motion with one slight change. In order to ease New Jersey's concerns, I would make the allocation of up to 4,500 metric tons, so that if there is anything that's left after the end of June that's required as part of, say, a potential JV in New Jersey, then they're not just restricted to the balance of 5,500.

It could be 6,000 tons. It could be 6,500 if there was any untaken portion. So I would just change the wording to consider an allocation of up to 4,500 metric tons of the 2002.

If I may, Mr. Chairman, while I'm at the microphone, I'll just make one or two changes to the information that you've got about my application about Cape Seafoods Inc.'s application for a herring IWP.

The period is from November 1st, but I believe in the letter that I sent to Rhode Island it carried through into 2002. These are ongoing operations, and there is definitely a need for this allocation that you're looking at in this motion because these are ongoing operations.

If they start in November in Area 2, they will definitely continue through January and February, and the requested amount was not 10,000 tons but up to 10,000 tons.

Because of the way that these operations have been handled in years gone by, is that instead of giving specific quantities to the IWP's, there was an overall target total to be taken by whoever is participating in the IWP; and as soon as that total is reached, all the IWPs stop.

CHAIRMAN FLAGG: David, could you clarify the time period for your request? You said it was beyond December 31. Do you recall the dates?

MR. ELLENTON: It was either the end of March or the end of April.

CHAIRMAN FLAGG: April 2002.

MR. ELLENTON: Yes.

CHAIRMAN FLAGG: Okay, thank you.

MR. ELLENTON: And the amount was up to 10,000 tons, and it was only from Fishing Area 2.

CHAIRMAN FLAGG: Vito Calomo.

MR. VITO CALOMO: Thank you, Mr. Chairman. And if I can agree with my fellow counselor, Eric, that for years he listened to the plans to deliver shoreside facilities, and I was one of the mouths for years that tried to bring home that bacon to a facility on the shoreside.

But in reality, it took me quite a bit longer; and working with the state of Massachusetts this time, we did bring home the bacon. It sits on the state fish pier in Gloucester, on Parker Street, about \$11 million worth of bacon.

It's a state-of-the-art plant and there is a second one being negotiated now, Mr. Chairman, so that is a good sign for the American processor.

For years, I've worked with joint ventures and IWPs, and I can honestly say they give you a shot in the arm for a short period of time, but for us to establish any shoreside -- and I can't promise that we'll bring home the bacon again.

But if we're going to establish any shoreside, this is a golden opportunity where one is now fully equipped, fully processing, and several shipments have already been made out in the millions of pounds of fish from the American fishing vessels from the American processors shoreside.

So, I'm just a little leery about what we do at this time and where we do it. So, I'm in favor of the motion, of course, in Area 2 to also give us a little cushion to look at what we're doing in Area 1 and Area 3 because I believe most of that fish is coming home to the processors. Thank you, Mr. Chairman.

CHAIRMAN FLAGG: Thank you.

MR. SMITH: Point of order, Mr. Chairman. Mr. White is pointing out to me -- I don't believe this should read move to amend anymore. This is the sole motion on this issue; am I correct? My second was to the main motion and then there was a motion to amend, which was accepted as a friendly.

CHAIRMAN FLAGG: It's still a valid amendment.

MR. SMITH: But Gil Pope then replaced me as the seconder of the main.

CHAIRMAN FLAGG: He seconded the amendment to the main motion.

MR. SMITH: Okay, so you're still working on an amendment and then you have the main motion --

CHAIRMAN FLAGG: Yes, that's correct. We're going to do the amendment first and then the main motion. I'll go

to Bruce and then I'm going to go back to the public again. Bruce Freeman.

MR. FREEMAN: Would it be acceptable as a friendly amendment to both the maker and the seconder to change that 4,500 metric tons to 3,000 metric tons?

CHAIRMAN FLAGG: Comments from the maker of the motion? Gil.

MR. POPE: Thank you. Well, I have no idea what's normally caught during that period of time in that particular area. So, that would be a total guess on my part, and the only people who would probably know are people that have done that before.

Now, if they aren't there, they're not going to catch it, and part of what I understand and what Mr. Ellenton said over here is if they don't catch it, they would like to carry that 10,000 into that, or what's left over, up to 10,000 into that second period.

That's the way I understood him to describe it. So if it's 3,000, you're saying that the other 7,000 will be in the remainder?

MR. FREEMAN: Yes. There are several ways of looking at it -- and, again, I'm just trying to come up with a compromise, Gil. I mean, the other possible way to do is allocate 3,000 for January and February.

The Board will meet again in February, and if there's a need for additional tonnage, it could be allocated then. I mean, we're trying to look six months because this motion goes to June 30th.

I don't know what the amount is either, but my concern, as I expressed earlier, is that the rest of the year, come July when other IWPs are coming in for the remainder of the year, there may be as many or more, and you're going to have to determine who's going to get what because there's not enough to go around.

So, my only concern is to reduce that 4,500 down to 3,000, with the expectation that this year we have 10,000 to allocate. In all likelihood, 10,000 will not be taken by the end of the year,

So, what we're doing is we're not going to use our 10,000 this year, but it appears we need more than 10,000 next year, which we're not going to have available.

MR. POPE: I don't know. Before I do that, I'd like to get some idea as to what is caught in that period of time, before I agree to that.

CHAIRMAN FLAGG: Okay. Joe.

DR. DESFOSSE: I've got a graph here of the cumulative catch in Area 2 for 2000 and 2001. Eyeballing it here, approximately 13,000 metric tons was taken by the end of February, the beginning of March.

MR. FREEMAN: Right, but I suspect most of that was not an -- I don't think any of it was an IWP.

CHAIRMAN FLAGG: None of it was.

MR. FREEMAN: And the issue becomes difficult. As Vito indicated, primarily what we're trying to do is get this harvest totally to domestic fishermen processed by domestic processors; get rid of the IWPs, get rid of the JVs, and have this as a total Americanized fishery.

That's what the shoreside investment is really gauged to do, and the issue is how do we get there in an efficient

manner where we encourage the U.S. investment, and not discourage it.

CHAIRMAN FLAGG: Okay, I'm going to the audience now, again, but I remind you that we have until 4:30 and the Shrimp Section has to meet at 4:30. So time is running short. Jim Odlin.

MR. JIM ODLIN: Jim Odlin, Portland, Maine. I'd like to ask the Section to reject this amendment and support the main motion. Although I'm in support of shoreside facilities, we still aren't there yet.

This year in Area 3, so far to date, 27,000 tons have been caught. Approximately 7,000 of that was JV, so there's still another 30,000 tons to go out of Area 3.

You could take two more plants and still not get the full TAC out of that area. We had numerous times all through the summer that we couldn't go fishing prior to the JVPs being operational because we had inadequate market.

In fact, we had to dump fish quite a bit this summer. So, I think we need another year or two before we're going to have enough shoreside market to do this.

The other thing is there's no difference between Area 2 and Area 3 fish. They're the same fish. They swim from Area 3 to Area 2. So, again, I'm just asking that the Section, please, reject this motion.

We need these markets for existing boats. We're going to be well short of the TAC this year, well short in Area 3. So, I don't see the boogey man at the door yet and I'd appreciate it if we could continue to have IWPs for another year. Thank you.

CHAIRMAN FLAGG: Thank you. George.

MR. GEORGE LAPOINTE: I have a question about the motion, Mr. Chairman. Does that say the allocations would be for Area 2. Is that for the entire year or for the first six months of the year, because it's not clear in reading it?

CHAIRMAN FLAGG: My understanding is that would only apply to the first six months of the year. Jeff Kaelin.

MR. KAELIN: Thank you, Mr. Chairman. I guess I would urge you to support this motion. I think it's difficult to do this piecemeal like this -- and maybe I'm confused too, but you've got another 5,500 IWP that hasn't been allocated after this motion, another 10,000 tons of JVP that hasn't been allocated after this motion, and I can imagine we're going to hear that that's going to come off of Georges too.

I think there's almost 31,000 tons of herring that has been taken from Area 3 up to this point. Our purchases were off quite a bit because we have very high inventories, and that is not always going to be the case. We came here today.

We talked about it a lot within our company and believe that what would be fair -- I'd like to see zero come out of Area 3, but we always try to be good guys.

I could see 10,000 total coming off of Area 3, but if there's any more than that, we would be absolutely, completely opposed to it because of the harvest levels already and their dependency on Area 3, not only for us but for the other processors that have spoken.

So, if this goes to 2 and 3, you've got 4,500 there and then you're probably going to try to derive the other 5,500 out there, or some portion of it, and you've still got the other 10,000 on the table for the JVs.

So, we could support this, but we're completely opposed to anything more than 10,000 coming off Area 3 next year, and that's going to be cutting it very, very fine, I think, from the shoreside processors perspective.

CHAIRMAN FLAGG: Just for clarification, Jeff, you're talking about 10,000 in the aggregate of IWP and JV?

MR. KAELIN: Over the side, foreign bottoms, 10,000 at the most. I don't think you can justify anything else than that, so I guess for that reason -- I don't understand why you've done it this way at all, frankly.

I don't see why you just don't put 10,000 in 2 IWP and then put 10,000 on Georges JVP, and then that's it. That's what I would do, but I'm not on the Committee. So, I guess we're speaking in support of this motion. If we have to give anything to Area 3 later on, we can talk about that later. Thank you.

CHAIRMAN FLAGG: Thank you. Ritchie.

MR. RITCHIE WHITE: Thank you, Mr. Chair. If the Council approved just Area 2 and we did 2 and 3, how would that work?

CHAIRMAN FLAGG: Well, that's a very good question. The Council -- it's a recommendation to the National Marine Fisheries Service that that be the specification. Now, what they do with that is up to them.

I presume that if this Section should vote to do something outside of that, I don't know whether the National Marine Fisheries Service would take that into consideration relative to the specifications or not. I don't know. Dave Pierce.

DR. PIERCE: This is why I don't like two-hour meetings. Two hours on tautog, two hours on this and that; boy, it's just not enough time. We're used to spending a whole day on these issues. They are very difficult issues.

Now Jeff Kaelin made some excellent points. I'm not going to repeat them. I share his views on this particular issue. I think the motion is appropriate. We're only doing this because it's in October, and this is a way for us to allow the IWPs that would be operating at the end of this year to spill over into next year and to not have the foreign ships that are part of the IWPs go home, go away, and then they're asked to come back to continue IWPs.

It doesn't work that way. It's very inconvenient for the IWP operators. It's actually not inconvenient, it's fatal oftentimes. So, this makes sense. I look at them as sort of an interim action to allow the IWPs to go into the early winter of next year.

So, I would move the question, Mr. Chairman. I think the maker of the motion was Mr. Nelson. All I did was make it to Area 2. I took off the Area 3. No? Maybe I've got Robert's rules --

CHAIRMAN FLAGG: Yours was the motion to amend.

DR. PIERCE: Mine was the motion to amend, that's correct, but, okay, I thought that John accepted it as a friendly change, so there wasn't any need to --

CHAIRMAN FLAGG: But the seconder did not.

DR. PIERCE: Oh, okay, alright.

MR. NELSON: The seconder did not.

CHAIRMAN FLAGG: The seconder did not. Okay, we have to move along. Vito, you have the last word and then we've got to move along here.

MR. CALOMO: Mr. Chairman, is it possible, under procedures, to change the number to 3,000 metric tons, Mr. Chairman, instead of the 4,500 metric tons? Can I offer that as a friendly suggestion to the motion?

CHAIRMAN FLAGG: Well, I think there was some discussion --

MR. CALOMO: Is it procedurally correct, Mr. Chairman?

CHAIRMAN FLAGG: I think there was some discussion about that, and I didn't hear any indication from the maker of the motion to change that, so we're still with the 4,500 at this point.

MR. CALOMO: I want to know if I could do that, myself, Mr. Chairman. Is it procedurally correct that I make that change? Can I amend an amendment, Mr. Chairman?

CHAIRMAN FLAGG: You would have to make an amendment.

MR. CALOMO: Well, I'd like to amend the amendment and say 3,000 metric tons, Mr. Chairman.

MR. SMITH: Mr. Chairman, he's also in Massachusetts; and if I'm not mistaken, that's where Dr. Pierce works.

MR. CALOMO: That's why I asked the question, Mr. Chairman.

MR. SMITH: I was trying to help the Chairman.

MR. CALOMO: I appreciate you helping the Chairman. My second part of the question, Mr. Chairman, wasn't the New England Fisheries Management Committee, which you Chair and I Vice Chair, voted to leave it in Area 2 only; wasn't that a vote we took?

And then the Council, at the next Council meeting, also voted to leave it in Area 2, Mr. Chairman; to make that suggestion? I just want to make it clear for the public that two strong parts of the New England Fisheries Management Council voted to leave it in Area 2 only, Mr. Chairman. Thank you, Mr. Chairman.

CHAIRMAN FLAGG: Thank you.

MR. CALOMO: Thank you for your help, Mr. Smith, I appreciate it.

CHAIRMAN FLAGG: I had John or Dennis, either one of the two of you, and then we have to move on to take a vote. But, yes, go ahead, John.

MR. NELSON: Thank you, Mr. Chairman. I was going to suggest that the language reflect what we heard in the audience, and that would be to consider an allocation of up to 4,500 metric tons, so that means that if something was left over, it actually could be used in the latter part of the year. So, I would just suggest that to the maker and the seconder.

CHAIRMAN FLAGG: Do I have any objection to having this as a perfected main motion, up to 4,500? Gil.

MR. POPE: If that's the only one, no; but from what I heard from Bruce was it was 3,000. But when he changed it to 3,000, it was for January and February? That's what he said.

CHAIRMAN FLAGG: No, he was making the suggestion to the maker of the motion that the maker of the

motion reconsider the 4,500 to 3,000, but we had no motion to that effect.

MR. FREEMAN: If I may just clarify.

CHAIRMAN FLAGG: Yes, Bruce.

MR. FREEMAN: I had two suggestions, Gil. One is to change that 4,500 to 3,000, which then we could support. The other was, if that was not acceptable, is to allocate 3,000 tons for January and February.

Then if we needed more -- if, in fact, the vessels were still here, the Board then could make an additional allocation for March or April and all the way to June. But if it's agreeable to change that to 3,000, we certainly could support that.

CHAIRMAN FLAGG: Okay, who's going to be the Pat Augustine and move the question. Pat.

MR. PAT WHITE: Mr. Chairman, I'm a little unsure now, because I didn't think we voted on the 3,000 and it's on the board.

CHAIRMAN FLAGG: No, I didn't think we did either.

MR. PAT WHITE: That's supposed to be 4,500.

CHAIRMAN FLAGG: I think it's still 4,500 because I -- no, it's still 4,500.

MR. SMITH: Now, I'll help you, if I may, Mr. Chairman.

CHAIRMAN FLAGG: Eric.

MR. SMITH: All you really have to do is ask Dave Pierce to change the number to what you want it to be. It's his motion.

CHAIRMAN FLAGG: No, his motion is to amend.

DR. PIERCE: **Since it is my motion, as I've been reminded, I will accept that change, up to 3,000,** in the interests of speeding things along, since we have about ten minutes left.

CHAIRMAN FLAGG: Okay. All right, so we have an amended motion. Okay, if there is a request to move the question, we do have to. We'll take 30 seconds to caucus. I'm sorry we have to cut this short, but we have to move on. (Whereupon, a caucus was held.)

CHAIRMAN FLAGG: Okay, I think we've had time enough to caucus. I'm going to read into the record the amended motion, motion to amend:

Move to amend to consider allocation of up to 3,000 metric tons of the 2002 IWP specification for January 1 through June 30, 2002. Allocations would be for Area 2.

That motion is a motion to amend and then we'll have a vote on the main motion after. I think we'd better have a show of hands. All those in favor of the motion to amend, signify by raising your right hand; those opposed; abstentions. **The motion carries on a five to one vote.**

Now, we're back to the main motion and the main motion, if -- the main motion as amended, which will, in effect, be a vote on the same motion that we had previously, essentially. Does everybody understand where we are? Do we need a few minutes to caucus or are we all set? Okay, let's move right along.

Those in favor of the motion as amended, signify by raising your right hand: those opposed; abstentions. **The vote carries on a five to one vote.** Thank you. Okay, where are we now?

DR. DESFOSSE: To clarify where you stand, from my standpoint, is you've allocated 3,000 metric tons of the 2002 IWP. You also have allocated 3,000 of the 2001 IWP specifications. There's still 7,000 metric tons of the 2001 specifications. Should that be addressed by the Section?

CHAIRMAN FLAGG: Bruce.

MR. FREEMAN: It was my understanding from the letter, Joe, that was sent out by you and your discussion with Dave Borden, is that 1,500 metric tons would be the first increment.

If, in fact, that were used, then additional increments could be used, and I'm just assuming we could use up to 10,000 metric tons through December 31 of this year; and then, if, in fact, the IWPs continue, we can use up to 3,000 metric tons for 2002, until June 30th.

So, I don't think we need to take additional action if we -- and I'm assuming the Board agreed with that. Essentially, it's an incremental allocation to individual IWPs. Instead of just doing a blanket amount, we did in 1,500 metric ton increments.

DR. DESFOSSE: Okay, if that's the understanding of the Section, and also a letter then going to the Governor of Rhode Island indicating the Section's recommendation would then go out.

MR. FREEMAN: Right. Again, it was my understanding it was just one of performance, because there were allocations asked for that exceeded the 10,000.

So, the issue is -- and, again, there are several different IWPs that could occur, and it's just one of performance so someone doesn't just get all of it and doesn't perform.

And as that performance occurs, then there's a reallocation or another 1,500 metric tons that would be in place for that particular operation.

CHAIRMAN FLAGG: Does this take care of the Cape Seafoods request?

DR. DESFOSSE: I believe so.

CHAIRMAN FLAGG: John.

MR. NELSON: Thank you, Mr. Chairman. Again, I agree with Bruce as far as his interpretation. So, if we're saying that the 10,000 metric tons are now available for an IWP, it looks like they would all be going to Rhode Island.

I see the same boat listed twice under different operations during the same time frame. I don't know how that works, but are we -- do we divide up the allocation to the state of Rhode Island via the boats, or are we leaving that up to the Governor to wrestle with it?

CHAIRMAN FLAGG: Joe.

DR. DESFOSSE: The recommendation has been going to the state and how the state deals with it is an issue for them.

CHAIRMAN FLAGG: Okay, are we clear on that then? And we're all set with the -- Yes, Gil.

MR. POPE: So what he was saying is there's 7,000 pounds left in 1,500 metric ton increments; correct?

CHAIRMAN FLAGG: Yes.

MR. POPE: That's the way I understand it.

CHAIRMAN FLAGG: By the end of this year, right?

DR. DESFOSSE: Yes.

MR. POPE: And that's approved to be taken; correct? Is that just in Area 2?

CHAIRMAN FLAGG: Yes.

DR. DESFOSSE: And whatever is not taken by the end of December does not get rolled over into 2002?

CHAIRMAN FLAGG: That's right.

MR. POPE: But it's up to 7,000 metric tons; correct?

CHAIRMAN FLAGG: That's what's available.

DR. DESFOSSE: It's up to 10,000 metric tons.

MR. POPE: Okay, good.

CHAIRMAN FLAGG: Okay, we all set? Okay, the next item on the agenda is the discussion of fishing gear impacts on herring schools and you'll find -- Okay, Bill, very briefly, please.

MR. QUINBY: Thank you, I'll be very quick, Mr. Chairman. Just to try to put some things in perspective, nobody is going to tell --

CHAIRMAN FLAGG: Give your name.

MR. QUINBY: Yes, Bill Quinby from Mayflower International. I don't believe anybody's going to come for 3,000 ton IWP, Mr. Chairman. There are three vessels out there today. Each one of them can do a hundred tons. That's ten days' worth of fish for these three vessels. That's one quick point I wanted to make. The other thing is we're very happy about Gloucester and the shoreside thing, and the purpose here is to send a signal to people that want to provide options to vessels with offshore markets, et cetera.

Gloucester used to, in my recollection, do about 300 or 400 tons a day in a plant there for many years, making filets and fishmeal and putting a lot of people to work. Today, it's not anywhere near what the history used to be. We're working back, we're going in cycles, but just to try to put some of these things in perspective. Thank you.

GEAR IMPACTS ON HERRING SCHOOLS

CHAIRMAN FLAGG: Thank you, Bill. Now we're on to Item Number 7 on the agenda, discussion of fishing gear impacts on herring schools, and you'll find in your folder a letter from George LaPointe to Dave Borden and myself concerning a request that we consider having the Technical Committee look at issues surrounding fishing gear impacts on herring.

There has been a lot of discussion and debate amongst various gear sectors about the impacts of various gear types on herring, and I think that discussion and debate is going to continue until we come to some resolution of that issue.

I do know that there have been some studies done in the past. I think most of the work that has been done to date is more or less inconclusive, at least from my perspective, and I can be convinced otherwise if there are those that have information to the contrary.

But it seems that this has been a festering issue for some time, and we have a request to direct the Technical Committee to look at this issue again and see whether or not they can come up with any definitive conclusions relative to this issue.

If, in fact, current scientific information is inconclusive, it would be desirable to have the Technical Committee

recommend any type of studies that might be undertaken to address this particular issue.

So, I'd like to get some input from the Section as to whether or not they feel that this is appropriate to pass on to the Technical Committee and how we should deal with it. David.

DR. PIERCE: Yes, Mr. Chairman, I've read the letter from George LaPointe. He makes some very important points. I've heard these before. You're quite correct.

The Technical Committee should look at this so we can finally -- well, not put the issue to rest because there will always be some unanswered questions here -- but, anyway, in order to get things going, I make a motion -- and Tina has the motion so it can go up on the screen now.

But I would move to direct the Herring Technical Committee to evaluate the impact of mid-water trawling on the structure and function of sea herring schools.

This evaluation should include answers to the following questions and or suggested research to enable a proper evaluation:

1. Do mid-water trawls fished at any time of the day or night and targeting schools of any size, disrupt schools to the extent that herring cannot regroup and regain the essential functions served by schooling, for example, predator avoidance.
2. Does the disruption of these schools have any impact on the distribution and availability of predators, such as tuna and marine mammals; and
3. Do purse seine operations in mid-water trawling have similar effects on school structure and function.

MR. PAT WHITE: **Second.**

CHAIRMAN FLAGG: Second by Pat White. Discussion on the motion? No discussion, good. Then is there any objection to this motion? Anybody object? **Okay, hearing no objection, we will proceed to refer this to the Technical Committee.** Thank you.

OTHER BUSINESS

We have got a very short time. Other Business, there are two items, and I'd like to just briefly let the Section know what we're doing relative to days out, effort control in Area 1A.

Effort Controls

As you may remember, part of the federal plan that was rejected was the Effort Control Provisions, whereby when certain percentages of the TAC in any area is reached, that we would take days out of the fishery in order to slow down the effort in that particular area.

Since that was rejected and the RA is not involved in the Effort Control Provisions, what we have done, Maine, New Hampshire, and Massachusetts have informally gotten together and instituted days out of the fishery in order to meet the requirement of that particular provision by controlling the

fishery in terms of controlling it through landings' restrictions.

I just bring that up. We have been doing that. We think it has been fairly successful; and unless there are objections from the rest of the Section, we will continue to work collaboratively amongst the three Gulf of Maine states relative to the Area 1A effort control provisions, which is the area that we have the problem in right now.

So, unless there are objections from any of the Section members, we will continue in that line. Hearing none, then I guess we have our charge.

The other issue relative to Other Business has to do with the Area 3 JV issue and Eric --

MR. SMITH: I got my answer.

CHAIRMAN FLAGG: Okay, so we can scratch that item then. At this time, is there any other business to come before the Section at this time? Dave Pierce.

DR. PIERCE: It's not really other business, Mr. Chairman. I just wanted to say that I'm about to leave the fair city of Rockland and it's been a joy.

I leave with a little remembrance of my travails here, plus the remains of my car, a little remembrance to bring with me. I thought perhaps that because the odds were about ten million to one that my car would be destroyed by a herring carrier on Main Street in Rockland, that perhaps something or someone was sending me a message.

It is a juvenile herring. It was going for bait. I know that I've been a pain in the neck on this issue in the state of Maine, so it does make me a little bit suspicious. It appears that instead of putting a horse's head in my bed, a truck full of herring destroyed my vehicle.

Fortunately, my picture is not on the window of this car. So, again, it has been a pleasant stay. I go home in a rental car. Thank goodness they have good insurance in Rockland.

CHAIRMAN FLAGG: As I mentioned to you earlier, David, with respect to herring management, when we come upon contentious issues, sometimes we play hardball up here. Yes, Dave Ellenton.

MR. ELLENTON: Yes, Dave Ellenton, Cape Seafoods. Mr. Chairman, at the beginning of the meeting, you asked for public comments and some of us didn't come to the microphone because we assumed we were going to be able to make some comments on this days out of the fishery question at this stage.

I know that you're running out of time, but it's not quite clear to me actually what the regulation is in Massachusetts at the moment. I think that we now have two days when we are not able to land herring.

I understand that we can land herring from 1A Monday through Friday; and if that's not correct, I would like to hear that it's not correct.

My question really is, is it Monday through Friday or is it seven days a week, because I understand our emergency action of the three days out of the fishery expired on October the 9th. From my company's point of view, we really have no interest with the -- there is nothing at all to be gained by having any days out of the fishery.

We went along with the suggestion of having days out of the fishery in support of certain sectors of the fishery. As

this season has progressed, those sectors themselves have been complaining bitterly about the days out of the fishery, and I'm just wondering whether we've actually now lost sight as to the reason why we ever put that in place. That's a real quick comment, Mr. Chairman. Thanks.

CHAIRMAN FLAGG: Okay, just very briefly in response to that, we had done some projections on what the closure date might be with respect to adding a day back into the fishery; and based on some projections we've done, if we left the three days out as it is right now and continued with three days out of the fishery, we anticipate that the fishery would run into early December, perhaps mid-December.

If we add a day back into the fishery, the fishery would likely close the middle of November. So there is a fairly substantial period of time that would be gained by retaining the three days out.

Massachusetts and New Hampshire and Maine will be discussing this a little bit further. If you look at Amendment 1 to the Herring Plan, it does specify in the original plan, once 75 percent of the TAC is reached, that we would be taking three days out of the fishery.

We're at over 75 percent because we're at around 47,000 metric tons out of the 60,000 metric ton quota, so we're certainly beyond the 75 percent provision.

So, if we're to maintain the spirit of the Amendment 1 to the Section Plan, then we would, in effect, be instituting the three days out.

If the National Marine Fisheries Service had accepted that as part of the federal plan, we would be there now. But we will be discussing that with our neighboring states and making a final determination on that very shortly. Yes, Dave Pierce.

DR. PIERCE: Two hours; I knew I didn't like two hours. As you know, we had an exchange of e-mails, Mr. Chairman, regarding this particular issue, John Nelson, yourself, and me and really it is an unresolved issue.

In that exchange of e-mails, I indicated that I had hoped that we would have an opportunity to further discuss this since our emergency action expired about a week ago, so it's two days instead of three days, and I was hoping to get some guidance from the Section today as to how we should proceed in Massachusetts.

I indicated at the time that there seemed to be no more support in Massachusetts for the three days, that there was support for the two days, and I made it clear that the reason why I was leaning towards the two day was the fact that we now have this new plan in Gloucester, and that there was this sentiment that having three days off was extremely detrimental to the success of that operation.

So I was guided with that input from that operation. I was also told that it was likely that there was very little support in the state of Maine for a continuation of the three days, that the two days would be supported by the majority of the industry in the state of Maine.

At the time when we had these discussions, in Area 2 approximately 42,000 metric tons of herring had been landed. Another week has gone by. We have had no discussion, real serious discussion, about expected landings for the remainder of this month and also in going into November.

So, I'm very uncomfortable with the way we are ending this meeting. I'd like to have more time to discuss this issue of two days, three days, and, frankly, I'm not sure how we're ending up at this point in time, except that it's two in Massachusetts, three elsewhere.

Massachusetts would, of course, consider reimplementing the three days off, again, as part of our working together, but I'm unclear as to what New Hampshire and Maine's position is based upon the input from the industry and the status of the landings that we have had so far.

CHAIRMAN FLAGG: John.

MR. NELSON: Well, I think the guidance comes from what we have already agreed to as far as what the plan calls for. If, as you have pointed out, Mr. Chairman, the plan calls for a certain number of days to be out when a certain percentage of the quota has been reached, that's what the plan calls for. That's what we've voted to accept, whether it's popular or not.

DR. PIERCE: Mr. Chairman, if I may, the plan may call for that, but, again, the way the Division of Marine Fisheries does business, our administrative procedures, our emergency regulation was in place for three months and then it expired.

Okay, if the plan calls for having to go to three days off, then we'll have to take a look at that and consider another emergency action, although emergency action would not really be an emergency, per se -- at least I'm not convinced it's an emergency, per se -- we would have to take that action because the plan calls for it.

So, they'll be more discussion within my office, with my boss, Paul Diodati, to see how we should proceed on this issue.

CHAIRMAN FLAGG: Okay, we're really out of time here. We had had some discussion earlier. Yes, Commissioner Lapointe.

MR. LAPOINTE: I am astonished, David. I am astonished. We talked about this -- when did we consult with our other states?

CHAIRMAN FLAGG: Oh, a couple of weeks ago, I guess.

MR. LAPOINTE: A couple weeks ago, and my indication was that there was no sentiment for changing from three days to two, none, and so we left ours in place.

And I can't in good -- I mean, I have been telling Paul Paulino he's out of luck for how long, Paul? Since forever. I did that because the decision of this Section, this Section was to stretch that season out as long as possible, and that's why we left that in place. If the other states aren't doing that, I can't in good conscious tell these people they can't fish for three days, David.

DR. PIERCE: That's why I say that there was an exchange of e-mails and there was no resolution to this issue.

MR. LAPOINTE: But if there's no resolution, you have to keep the three days in place. You can't just say, well, I'm not sure what's going to go on.

DR. PIERCE: As I told you, it was a three-month action on our part and --

MR. LAPOINTE: What do you do if the action needs to be taken for longer than three months? What do you

normally do? You take normal regulatory actions to follow behind it.

DR. PIERCE: We're out of time, George, let's continue this discussion afterwards --

MR. LAPOINTE: No, you started it when we were out of time, good friend. You started it when we were out of time. I want to end it. If we're not going to go ahead with this, I can't in good conscious keep three days out of this fishery in Maine.

DR. PIERCE: Mr. Chairman, let me bring this to an end, all right. If the plan calls for our taking three days off, we'll take the three days off.

We'll have to take an emergency action, but, like I said, I'll discuss this further with my director, but it's unfortunate that this was not resolved prior to this meeting, as I had hoped it would be resolved, and it wasn't.

CHAIRMAN FLAGG: Ritchie.

MR. RITCHIE WHITE: If the three day is in the plan and a state does not follow that, are they out of compliance then?

CHAIRMAN FLAGG: Joe.

DR. DESFOSSE: This provision was not a compliance criteria in the plan. About a year ago the Section delegated to the Gulf of Maine states, Maine, Massachusetts and New Hampshire, to come up with a scheme in order to implement the days out on their own.

CHAIRMAN FLAGG: John.

MR. NELSON: Just for the record, I see that our good friend has settled back in the chair there, and I hope he has settled down a little bit.

But as far as I recall the e-mails that were sent, I saw them one day when I turned on my computer and was trying to get caught up, and I recall that you had said that there was a scenario of when we went back to -- you know, if we stayed at three days, the season would end at roughly such and such a time, what were our thoughts? I recall sending back if that's the time frame, then we probably ought to stretch it out to that time frame and we were staying at three days out.

I thought that's what we all had agreed upon, but I do hear that there was some confusion from that. But I go back to the plan, if the plan was calling for us at a certain percentage to have the days out, and we agreed upon that, then I don't see how we can just kind of back out of that -- and I'm not casting any aspersions anywhere. I'm just saying that that's how I think we're following the plan.

CHAIRMAN FLAGG: I totally agree with you. Dave Ellenton. Oh, I'm sorry, Jack.

EXECUTIVE DIRECTOR JOHN H. DUNNIGAN: I'm sorry, Dave. Lew, we really need to get on to shrimp. There's, obviously, a lot of misunderstanding around the table.

We're going to get staff together with the chair of the Section, do some discussing with the members of the Section, find out what's going on, and get everything back on. I hate to say we've got to move, David, but we do.

MR. ELLENTON: I appreciate that, but just one quick word --

EXECUTIVE DIRECTOR DUNNIGAN: No, David.

MR. ELLENTON: But like I said, nobody came to the microphone and said we ought to stay at three days because the industry wants to stay at three days. They all said it's because the plan says so; and if the industry has got a different perspective to it, then surely this is the arena to address it. Thank you.

CHAIRMAN FLAGG: We stand adjourned.
(Whereupon, the meeting adjourned at 4:45 o'clock p.m., October 18, 2001.)