

Pages: 1-211

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I N D E X

TOPIC	PAGE
INTRODUCTIONS AND ANNOUNCEMENTS RICHARD ROBINS	4
TRAC ASSESSMENT OF MACKEREL LORETTA O'BRIEN	4
APPROVAL OF APRIL COUNCIL MEETING MINUTES RICHARD ROBINS	44
NMFS REGIONAL ADMINISTRATOR REPORT PATRICIA KURKUL	46
NEFSC DIRECTOR REPORT JAMES WEINBERG	70
NOAA OFFICE OF GENERAL COUNSEL REPORT JOEL MACDONALD	76
NMFS LAW ENFORCEMENT REPORT ANDREW COHEN	87
UNITED STATES COAST GUARD REPORT KEVIN SAUNDERS	115
COMMENTS RE ASMFC REPORT PETER HIMCHAK	122
NEW ENGLAND COUNCIL LIAISON REPORT ERLING BERG	125
EXECUTIVE DIRECTOR'S REPORT DANIEL FURLONG	129
STATUS OF MAFMC PLANS RICHARD SEAGRAVES	134
SURFLAM AND OCEAN QUAHOG SPECIFICATIONS TOM HOFF	136
Motion -	
Lee Anderson	141
Vote - (passed)	146

SQUID, MACKEREL, BUTTERFISH SPECIFICATIONS	
JASON DIDDEN	147
Motion - Loligo Specifications	
Erling Berg	149
Vote - (passed)	152
Motion - Atlantic Mackerel Specifications	
Erling Berg	155
Motion To Substitute	
Peter Himchak	157
Motion Withdrawn	173
Motion To Substitute	
Preston Pate	174
Vote - (passed)	187
Vote - (passed)	192
Motion - DAH/ABC Analysis	
Preston Pate	193
Vote - (passed)	194
Motion - DAP Analysis	
Preston Pate	195
Vote - (passed)	196
Motion - Butterfish Specifications	
Erling Berg	197
Vote - (passed)	198
Motion - Illex Specifications	
Erling Berg	200
Vote - (passed)	201
Motion - Transboundary Agreement	
Preston Pate	205
Vote - (passed)	208

1 [9:55 a.m.]

2
3 INTRODUCTIONS AND ANNOUNCEMENTS

4 COUNCIL CHAIRMAN RICHARD ROBINS:

5 Let's go ahead and come back to our seats, if you
6 would, please. Good morning and welcome. I'd just
7 like to make a couple of announcements before we
8 begin.

9 We're now convened as a Council, but
10 I wanted to take a moment to welcome our two newest
11 Council members. We have Kevin Saunders
12 representing the U.S. Coast Guard, and we also have
13 Michael Luisi representing Maryland DNR. And I
14 wanted to welcome both of you aboard now that we're
15 convened as a full Council.

16 Our first item today is the
17 presentation of the recent TRAC, the Transboundary
18 Resource Assessment Committee Mackerel Report. And
19 for that, we'll turn it over to Loretta.

20
21 TRAC ASSESSMENT OF MACKEREL

22 LORETTA O'BRIEN: Okay, good morning.

23 So, I will cover the results from the recent
24 mackerel assessment. This was -- quite a few people

1 were involved. This was a benchmark assessment
2 where I'll get into that. We had several meetings
3 that John Deroba is a new assessment biologist in
4 our group and he took the lead on the mackerel
5 assessment with Gary Shephard, Francois Gregorie
6 from Canada and Julie Kneeland and Paul Rago from
7 our lab.

8 So, this mackerel was assessed this
9 year in the TRAC. Prior to that, the assessment was
10 done at the Northeast Fisheries Science Center and
11 the SARC process at the 42nd SARC in the Autumn of
12 2005. Then in Canada had been previously assessed
13 in 2008.

14 I just want to go over a little bit
15 of background about the TRAC, is the Transboundary
16 Resources Assessment Committee, relative to the
17 Stock Assessments Review Committee which you're more
18 familiar with the SARC.

19 The TRAC is considered an integrated
20 process where the reviewers and the biologists,
21 participants, everybody around the table is part of
22 the TRAC. And the final assessment model is by
23 consensus of the TRAC members. And TRAC proceedings
24 includes a consensus of the group and that's put out

1 on the TRAC website.

2 In the SARC process, that's
3 considered a sequential process where we have a
4 panel of reviewers. The panel determines the final
5 assessment after presentation of the assessment.
6 And then the panel provides recommendations and they
7 also have individual reviewer reports. And all that
8 is put together in the SARC report, and that's a
9 Center reference document that's also on the
10 Center's website.

11 So, it's a different process, a
12 slightly different process. So, just a little
13 background on the TRAC. It was established in 1998
14 as a peer review -- to peer review transboundary
15 resources, and the objective was to ensure that the
16 management efforts of both Canada and the U.S. were
17 based on common understanding of the resource
18 status, whether or not the management was
19 cooperative or independently for mackerel, it's
20 independent at this point.

21 At that time, we -- and we still are
22 doing annual assessment reviews of Eastern Georges
23 Bank cod, Eastern Georges Bank haddock and Georges
24 Bank yellowtail. And those were the three species

1 that were -- you know, initially brought into the
2 TRAC. And we have periodically our benchmark
3 reviews when we determine that the model is not
4 working well or something has changed. We need to
5 look at it in more detail. Otherwise, we just do
6 updates.

7 So, during that benchmark, we look at
8 the data and the model and we examine methodologies
9 for assessment and model formulations.

10 Then in 2000, the Transboundary
11 Management Guidance Committee was formed, and this
12 is a group that includes Canadian and U.S.
13 government and industry members, and they develop
14 guidance in the form of harvest strategies for
15 resource sharing and management process for the
16 management of Eastern Georges Bank cod, haddock and
17 yellowtail -- Georges Bank yellowtail.

18 Then in 2007, the TMGC requested that
19 the TRAC review four other stocks for the species,
20 including Atlantic mackerel and also halibut, spiny
21 dogfish and pollock. We did have an assessment of
22 spiny dogfish. Pollock we have since agreed not to
23 do in the TRAC, and then we did go forward with the
24 mackerel.

1 And the objective of that was to help
2 support conservation strategies and maintain and
3 enhance productivity on these transboundary stocks.

4 So, for the Atlantic mackerel, since
5 this was a benchmark meeting, we had two separate
6 meetings. We had a data meeting in October of 2009.

7 That was a video conference call. And it involved
8 three different regions, Halifax, Nova Scotia, and
9 the Mont Joli in Quebec and then science and
10 industry were in Woods Hole.

11 We had two invited reviewers,
12 Mauricio Ortiz from the Southeast Fisheries Center,
13 and Dominique Robere from University in Quebec.

14 And then we had the model meeting in
15 March of this year, and that was everyone came to
16 Woods Hole. And again, we had invited reviewers and
17 Mauricio and Dominique were able to return, which
18 was good, so we had continuity.

19 And then Kearon Ciaran from the
20 Marine Institute of Ireland was a reviewer and he
21 was previously the co-chair of an ICES or the chair
22 of an ICES mackerel working group.

23 So, just briefly, we had several
24 terms of reference that I believe the Council had a

1 chance to review that we address. I won't go into
2 too much detail. But basically the typical
3 boilerplates, we review the assessment model and
4 recommend a new approach for stock status -- or an
5 approach.

6 So, we were to explore VPA models and
7 forward-projecting models, review the retrospective
8 pattern and look at the impact on uncertainty and
9 status determination. Then apply the assessment.
10 We agreed to do the assessment through 2008. Review
11 harvest strategy biological reference points to meet
12 management requirements in both countries. We
13 reviewed the approach for the projections for
14 management. There was one to consider the stock
15 indications of an unattained short-term yield,
16 identify potential future work that would improve
17 stock status, and consider the role of mackerel as
18 forage for predators and evaluate feasibility of
19 incorporating consumptive removals in the assessment
20 models.

21 So, I'm sure this is all familiar to
22 you, but just briefly, the distribution for
23 mackerel, they're distributed from the Mid-Atlantic
24 up into the Gulf of St. Lawrence, around

1 Newfoundland on up into Labrador. And for the stock
2 assessment purposes, we consider this to be a single
3 stock with two spawning contingents, one in the
4 north and the other in the south.

5 These two contingents mix during the
6 winter fishery, December/January, I guess depending
7 on the temperature. In the previous assessments,
8 the U.S. has always considered the stock -- the
9 whole area, which the NAFO sub-area is 2 to 6, 6
10 being down here and 2 being all the way up to
11 Labrador. So, we would include all landings from
12 these areas.

13 Canada has always done their
14 assessment just from 2 to 4, which is just down to
15 the Scotian Shelf. However, and we discussed this
16 at the meeting, there's no evidence for a resident
17 stock in Canada.

18 And then after the large 1999 year
19 class, the distribution shifted somewhat in the
20 north. Typically, the mackerel are in the Gulf of
21 St. Lawrence, but when that year class occurred, the
22 fish also were found east of Newfoundland along the
23 western shore here. But at the same time, the Gulf
24 of St. Lawrence waters cooled, so we have no way of

1 knowing if it's a large year class effect or a
2 temperature effect.

3 So, the TRAC recommended that stock-
4 related information be reviewed and the assessment
5 area modified based on scientific information, and
6 we would need tagging and genetic work to do this,
7 because currently we have no -- we don't have that
8 information on-hand to make those decisions as to --
9 you know, how much mixing there is and if there's
10 only one stock or two stocks or -- so, we do need to
11 do some research.

12 Just at the meeting, we went through
13 these maps with the Canadians several times to come
14 to an agreement to everyone's perception of how the
15 fishery occurred and how the fish were moving.

16 So, in the winter, January to March,
17 the fish are on the edge of the Continental Shelf in
18 the Mid-Atlantic. Primarily from January to May.

19 In January, the fish move south from
20 the Long Island area into the Southern Mid-Atlantic
21 before then shifting to the north in April. I mean,
22 these aren't definite dates. It's always
23 temperature-dependent on whether or not it's a warm
24 or a cool year, but this is the general directions.

1 And the Canadians said by --
2 typically by May they're in the southwestern region
3 of Nova Scotia and then they're up to Cape Breton by
4 late May and early June.

5 Then in the summer, the fish are
6 distributed all throughout the northern area. And
7 as I said, they've seen more here on the west coast
8 of Newfoundland.

9 Then the fish move south in the fall.
10 There's some commercial fishing in December in the
11 inshore Gulf of Maine and southern Georges Bank
12 area.

13 And the mixing of the northern and
14 southern contingent occurs in December when the
15 northern contingent moves south along the Long
16 Island area. And as I said, if we were to have some
17 tagging studies, this would -- we'd be able to
18 define this more -- anyhow, better. And this is
19 based on everyone's experience fishing and Settles
20 work from 1925, and there's some discussion that --
21 oops, sorry. I'm going the wrong way.

22 Like I said, a lot of this was based
23 on Settles work, but that was 1925 to 1930, and
24 there's a sense with changes in temperature that

1 this distribution may not be -- you know, I'm sure
2 the general directions are the same, but the
3 temperatures have changed a lot and they may be
4 staying in one area longer than we initially
5 thought.

6 So, to get into the landings, these
7 are the total landings, includes U.S. commercial,
8 U.S. recreational, U.S. commercial discards,
9 Canadian landings and the distant water fleet. So,
10 the distant water fleet is here in the blue. We all
11 know there were large removals back in the mid '70s.

12 Canada had -- their fishing on
13 mackerel had always been around 20,000 metric tons
14 until recently. Since 2000, their landings have
15 increased.

16 The U.S. commercial discards are
17 relatively minor in this fishery, and the
18 recreational catch is also small, and then we have
19 the U.S. commercial. Again, the U.S. commercial
20 average around 24,000 metric tons during '94 to
21 2008. And the record landings occurred in 2006 at
22 57,000 metric tons.

23 So, the combined Canadian and U.S.
24 landings for 2008 calendar year were about 51,000

1 metric tons. And the preliminary 2009 U.S. landings
2 are about 24,000 metric tons, and the Canadians are
3 about 41,000.

4 And there was some discussion at the
5 meeting and the Canadians did say that they believe
6 that their landings are underestimated. They don't
7 -- that's one of the things they're going to work on
8 for the next assessment. They don't have a good
9 handle on how much is removed by their bait fishery,
10 for example.

11 Did you want to take questions now
12 or ...

13 COUNCIL CHAIRMAN RICHARD ROBINS:
14 Yeah, if you want to take a question, that's fine.

15 LORETTA O'BRIEN: Well, this
16 gentleman has a question.

17 COUNCIL CHAIRMAN RICHARD ROBINS: Go
18 ahead. Chris.

19 CHRISTOPHER ZEMAN (No microphone):
20 (Inaudible.)

21 LORETTA O'BRIEN: All right. The
22 discards are estimated using the observer data, but
23 that program started in 1989, so the -- you know,
24 the discards would have estimated using that data.

1 CHRISTOPHER ZEMAN: (Inaudible.)

2 LORETTA O'BRIEN: I don't know off
3 the top of my head. It's better in more recent
4 years than it had been previously. I think maybe --
5 I don't know, five percent, earlier in the time
6 series and -- more -- I don't have that number off
7 the top of my head, but it definitely has improved
8 over time.

9 CHRISTOPHER ZEMAN: (Inaudible)
10 estimated discards?

11 DANIEL FURLONG: Can you try your
12 mike?

13 CHRISTOPHER ZEMAN: It's not working.

14 LORETTA O'BRIEN: No.

15 CHRISTOPHER ZEMAN: Oh, there it is.
16 Okay. Sorry. Do they also rely on vessel trip
17 reports for that estimate of discards?

18 LORETTA O'BRIEN: No. I'm pretty
19 sure they just use the observer. I have to double-
20 check.

21 CHRISTOPHER ZEMAN: Thanks.

22 LORETTA O'BRIEN: Okay. So, that was
23 the landings. I just wanted to show you that the
24 U.S. recreational landings -- as I said, they're a

1 small amount. You know, between 1980, 1990, they're
2 around 2500 metric tons and since '94 or so, they're
3 more about 1500 metric tons, which relative to total
4 landings is a small amount, but there was a shift
5 during those two time periods.

6 Looking at the survey indices, we
7 used the spring survey from the Northeast Fisheries
8 Science Center. The time series goes from 1968 to
9 2008. Number per tow is on the left axis and
10 kilograms is on the right, which is the blue line.

11 So, you can see that since about 1986
12 to 2000, there is an increase in the indices and
13 then they've been fluctuating with a slight decline
14 from 2000 to 2008.

15 And if you note, in the early time
16 series -- the early part of the time series here
17 there were very (inaudible) in the survey. And this
18 is one of the conflicts that the model had. Because
19 if you remember from the landings, there were very
20 high landings in this time period, and now there's
21 low landings. Whereas, in the survey we had low
22 catches in the survey early in the time series. And
23 so this is part of the reason there was a conflict
24 in the model. The model had a hard time handling

1 this.

2 We did do some -- John did a look at
3 the catch weight at depth from the survey, and it
4 showed that early in the time series that the mean
5 depth of mackerel caught in the survey were around
6 160 meters, so they were offshore. And now early in
7 the time series, it's around 60 meters. So, the
8 fish have shifted from the offshore to the inshore
9 over this time period. So, that introduces more
10 conflict into the model, too.

11 If we look at -- in this assessment,
12 we used catch per unit effort based on the bottom
13 trawl surveys -- commercial bottom trawl survey and
14 the midwater trawl. The time series for the
15 midwater trawl, which is in this lower line, was --
16 the data was not available or we weren't able to use
17 it prior to '94. But basically, there shows not a
18 lot of trend. It's highly variable for the bottom
19 trawl. And you could say there is a bit of a trend
20 -- an increasing trend in midwater. This declined
21 in more recent years.

22 But these two, along with the survey,
23 were all -- all three indices were used in the
24 model. And also we have the -- this was not used in

1 the model, but this was just for information. Here,
2 this is the DFO -- Department of Fisheries and
3 Oceans, the Canadian mackerel spawning stock biomass
4 estimated from their egg survey, which is originally
5 just in the Gulf of St. Lawrence, but in 2009 they
6 expanded it to the Scotian Shelf and to southern
7 Newfoundland.

8 And then their survey show that the
9 SSB was higher in the '80s and '90s. And
10 then since '95, they've had a very difficult time
11 finding eggs in any of these areas.

12 And so the conclusion they made was
13 since they couldn't -- since they expanded the
14 survey to the Scotian Shelf and to Newfoundland,
15 they still were not able to find eggs, that they
16 really feel like the fish are not present. It's not
17 that they've gone to another area, because they
18 pretty much surveyed all the area they like to have
19 been in. So, their conclusion was that there are
20 not large fish in the area.

21 So, for the model, we looked at a
22 number of different models, I think about five or
23 six models. And the final model that we chose to go
24 forward with was a VPA model. And this included a

1 variable natural mortality at age, and we were able
2 to estimate this based on predation mortality, which
3 we estimated using food habits data from the
4 Northeast Fisheries Science Center.

5 We weren't able to make it variable
6 over time because the data -- it was a minimal
7 estimate of predation mortality because it only
8 included groundfish. We don't have data for marine
9 mammals or large pelagics. So, until that time,
10 we're not going to go forward with the time during,
11 but we were able to make a step forward and put in
12 the variable mortality -- natural mortality at age.

13 And as I said, we included the spring
14 index, but we split this index between 1984 and '85
15 and between '92 and '93. But the split in '84 to
16 '85 had been done in the previous assessment and
17 that was -- we contribute -- attribute that to the
18 change in our survey doors on the gear.

19 We don't have an estimation for the
20 '92 to '93 split, except that it improved the
21 diagnostics of model. And we have also used the
22 same split in about 10 or 11 stocks -- groundfish
23 stocks during our domestic assessment, the GARM, a
24 couple of years ago.

1 We also -- we used the commercial
2 bottom trawl CPU index, and that was split in '88 --
3 between '88 and '89, again because that improved the
4 diagnostics. And the midwater CPUE, there was no
5 split, but that was also a very short time series.

6 So, looking at the results from the
7 model, we can see that SSB was fairly high in the
8 early '70s, and a lot of this was due to the growth
9 of the 1967 year class. And as that was fished out,
10 the SSB declined, and fluctuated, but -- you know,
11 gradually declined.

12 You see this jump in the '84. This
13 is probably an '82 year class. And again in 2001,
14 this SSB increases from the '99 year class.

15 We're looking at fishing mortality.
16 It was higher prior to the mid '70s -- or higher
17 during this period, and then it fluctuated between
18 '78 to 2000. It's a gradual increase, and we had a
19 very sharp increase in more recent years, most
20 likely from -- as the '99 year class moved through
21 the fishery.

22 Looking at age one recruits, we were
23 able to discern that the '67 year class, the '82
24 year class and the '99 year class which all show up

1 in the commercial landing.

2 Now, having shown those results, the
3 TRAC agreed -- well, I didn't present those here,
4 but these results are highly uncertain. The
5 variance around the assessments was very high. And
6 the TRAC -- in the end, we agreed to use these
7 strictly for trend and not for absolute estimate of
8 stock status.

9 If we look at the retrospective
10 analysis, this is a relative retrospective analysis,
11 so if you look at this point here, this is the 2007
12 estimate. So, how this is done is you have your
13 assessment we did with the terminal year was 2008,
14 and that would be like the zero line. If you take
15 that same data, you drop one year and run the model
16 again and then you get a new estimate. You get an
17 estimate for the terminal year of 2007.

18 So, the estimate of the 2007 relative
19 to the current assessment with terminal year 2008
20 showed a difference of about ten percent. When you
21 drop another year and do the run for just 2006 as a
22 terminal year, you got the same estimate -- very
23 close to the same estimate you got with the current
24 assessment.

1 However, as you can see, as you
2 continue to drop years and re-round the assessment,
3 you're getting a much lower estimate of F relative
4 to the current assessment.

5 So, the way we interpret this, that
6 we overestimated slightly in 2006, but
7 underestimated in 2001 to 2005 relative to 2008.

8 Typically, what you would want here
9 is, you know, alternating above and below the line
10 with a small magnitude of -- on your X axis, because
11 every model will give you a retrospective, but the
12 concern is that it's -- there's no pattern and then
13 it's of small magnitude.

14 If we look at the F estimate for the
15 retrospective, we see that as you drop a year, the
16 -- all the new runs give you a higher estimate than
17 the terminal year 2008.

18 And again, they're all in one
19 direction and they're very high. This is 100
20 percent different than the terminal year, 500
21 percent different. So, the estimates -- this is not
22 a good pattern in your retrospective.

23 So, given the uncertainty of the high
24 CVs on the point estimate and the retrospective, the

1 TRAC agreed that the VPA results for SSB, F and
2 recruitment would be indicative of trend only. So,
3 I think we're comfortable with the trend; we're just
4 not certain of the scale. So, the short-term
5 projections and characterization of stock status
6 relative to the estimated reference points would not
7 be an appropriate basis for management advice at
8 this time. And for the purposes -- for U.S.
9 management, the stock status determination would be
10 considered unknown.

11 So, looking at annual catch
12 recommendations, we looked at the productivity in
13 the stock regardless of the assessment results. The
14 productivity has been low. There's been low
15 recruitment since 1982. There was a '99 year class,
16 but it was not as large as the '67, and it's since
17 been fished out. The lack of older fish in the
18 survey, in the catch in both U.S. and Canada since
19 the 1990s.

20 We have low biomass estimates based
21 on the DFO egg survey, and mackerel are maturing at
22 a smaller length in Canadian waters and younger ages
23 than U.S. waters. And this is typically a sign that
24 you don't have older fish in your stock, is one

1 explanation.

2 So, given all this -- these
3 conditions, the TRAC determined that with this
4 reduced productivity and the lack of older fish that
5 the TRAC recommended that annual total catches not
6 exceed the average total landings, which was 80,000
7 metric tons over the last three years, 2006 to 2008,
8 until such time that new information suggests a
9 different amount is appropriate.

10 And at the meeting, we came up with
11 -- I count 14 different research recommendations. I
12 don't need to go through them all, but basically
13 we're trying to -- we're all trying to address this
14 issue of -- you know, what is the spacial
15 distribution of the stock, can we come up with some
16 alternative indices of abundance, a broad-scale
17 international egg survey would be helpful.

18 Some of these are -- you know, we
19 tried to prioritize them. A lot of them are very
20 costly. Some of them we can do -- you know,
21 cooperatively with the fishing industry or -- and
22 industry may be able to do some on their own.

23 So, we did bring the model forward
24 with including a predation mortality, so that was a

1 step forward in this model this year. But we still
2 have more work to do with that.

3 We need to quantify the additional
4 sources of mortality in the Canadian landings and
5 look at alternative sampling gear. We do have the
6 MARMAP data, which is our egg and larval database,
7 may be helpful to look at that relative to the
8 survey. And again, looking at the spatial structure
9 of the stock. And then the final one was -- I want
10 to talk -- we talked about initiating a technical
11 TRAC working group to help advance and monitor
12 progress of these research recommendations, because
13 there is a lot of interest in doing the research for
14 the stock.

15 So, that was all I had.

16 COUNCIL CHAIRMAN RICHARD ROBINS:

17 Loretta, thank you very much for your presentation.

18 I would just ask out of those research priorities
19 is there any one that you think would get the group
20 to the point that you could have an analytical
21 assessment that might have a better chance of
22 succeeding?

23 In other words, is there one
24 recommendation out of that list that would get you

1 there, or would it take several of them in
2 combination?

3 LORETTA O'BRIEN: I'm not exactly
4 sure why (inaudible - no microphone.) Sorry. I'm
5 not certain as to -- we're not certain as to why --
6 you know, what exactly -- you know, exactly why the
7 model is not behaving.

8 As far as retrospective analyses,
9 typically the major cause of a retrospective would
10 be you're not accounting for the removals somehow,
11 either through natural mortality or fishing. So, I
12 think one of the first things would -- you know,
13 probably -- and the Canadians came forward with
14 this, to identify these additional sources of
15 mortality in the Canadian fishery.

16 They said that they didn't think they
17 had good estimates for their bait fishery, and they
18 weren't able to provide any recreational discard
19 data at the meeting. And so that would be -- if we
20 could nail that down, so either -- you know, that
21 would be very helpful, because that obviously would
22 account for more removals.

23 And I think since there's a lot of
24 discussion giving -- you know, there is this change

1 in temperature, environmental factors, I don't know
2 either -- either the broad-scale egg survey or
3 tagging program, I mean, something that would help
4 us discern -- you know, the extent of the stock and
5 when it's moving -- well, I guess we don't have to -
6 - if we can discern whether or not any of these fish
7 are resident. I think that would be helpful. But
8 basically, the removals I think is the biggest --
9 accounting for the total removals.

10 COUNCIL CHAIRMAN RICHARD ROBINS:

11 Well, just to follow up, would the expansion of the
12 egg survey lead to the development of alternative
13 indices, or would that just be an input in the
14 model?

15 LORETTA O'BRIEN: No, you would be
16 able to use that as an index in the model. That's
17 how the Canadians take their egg survey, then you
18 can do total egg production to figure out the SSB.
19 So, it would give you another metric to measure it
20 against.

21 COUNCIL CHAIRMAN RICHARD ROBINS:

22 Okay. And is the information on predation mortality
23 by those other species, such as HMS species and
24 marine mammals, is that available through the

1 Northeast Fisheries Science Center, and was it just
2 not considered or was the information not available?

3 LORETTA O'BRIEN: We don't collect it
4 on our research survey. I believe it is available,
5 but it's not -- it hasn't been analyzed or -- I
6 think it's kind of scattered. I do believe they do
7 have it for the HMS. I'm not -- they did mention
8 that they have some data on the mammals. That's
9 more difficult to get, of course. But I think there
10 is room to expand on that. Whether or not we can
11 get it completely, I think we could improve that
12 estimate.

13 COUNCIL CHAIRMAN RICHARD ROBINS:

14 Thank you. Any other questions for Loretta?
15 Richard.

16 RICHARD SEAGRAVES: Yeah, just a
17 follow-up to Loretta's response, while I wouldn't
18 disagree that the normal culprit in terms of
19 retrospectives -- the normal retrospective you tend
20 to underestimate fishing mortality, overestimate
21 spawning stock biomass in the terminal years or most
22 recent years the -- of the model. And that
23 normally, as Loretta indicated, you're not tracking
24 total mortality. There's some source of mortality

1 that you're not accounting for. Then, when you
2 finally get down the line, you see the
3 retrospective.

4 In this case, we had just the
5 opposite. The retrospective was -- we were
6 overestimating -- underestimating biomass,
7 overestimating F in the terminal years. And this
8 was largely believed to be because probable stock
9 availability is the most likely culprit.

10 One explanation would be -- because
11 the problem is if you think back to the graphs that
12 you show, we had this huge fishery in the '70s, but
13 yet the survey was basically flatline. In the most
14 recent survey period, we have a high survey index
15 and we have poor fishery production.

16 So, the model was forced to reconcile
17 that tension. So, what was done was there were
18 three separate catchability coefficients that were
19 applied to make the model -- you know, whole, and
20 give some results that made sense.

21 So, what basically that means is that
22 for every fish that you catch, you have to multiply
23 by some factor to explain in the early period that
24 there are actually more fish than was being

1 surveyed.

2 So, really I think the key
3 information to make this model work will be to try
4 to explain the availability of the fish relative to
5 the survey in future years. At least that's one
6 component of it -- major component.

7 COUNCIL CHAIRMAN RICHARD ROBINS:

8 Rich, is that a hurdle you think that can be
9 cleared?

10 RICHARD SEAGRAVES: I don't know. I
11 mean, I think there weren't any real bright ideas.
12 It means you'd have to do some additional survey
13 work, and maybe John can chime in. You know, the
14 idea was that perhaps during the early period, the
15 fish were off-Shelf during that distant water fleet
16 fishery; so, the survey was -- you know, on the
17 Shelf and was doing its thing every year and the
18 fish were outside the survey area.

19 Now suddenly maybe they're more
20 available to the gear -- you know, even than on
21 average, resulting in these high numbers in the most
22 recent years. So, it would require some sort of
23 survey that in addition to what the Northeast Center
24 is doing.

1 Beyond that, we didn't -- I didn't
2 hear any great ideas at the assessment itself. So,
3 some sort of additional sampling I think would be
4 the answer.

5 COUNCIL CHAIRMAN RICHARD ROBINS:

6 Thanks for the follow-up. Other questions for
7 Loretta? Erling.

8 ERLING BERG: Well, it's not a
9 question; it's a comment, and I just have to wonder
10 out loud. I'm looking at Page 7, Loretta. The
11 Russians started coming here in the early '60s.
12 That's when we first encounter them. And there was
13 a lot of them. We had some close and personal
14 encounters with them.

15 And of course, later on other nations
16 followed along. And according to the graph, they
17 caught an awful lot of mackerel. And I'm just
18 wondering if they decimated the stock to the point
19 where it just was not able to recover to its former
20 self. And I think that may be part of our problem
21 today. Just a thought out loud. Thank you.

22 COUNCIL CHAIRMAN RICHARD ROBINS:

23 Thank you, Erling. Other questions or comments?
24 John.

1 JOHN BOREMAN: Yeah, just to follow
2 up on what Rich said and ask a question. The SSC
3 also saw that one of the big unknowns here is the
4 range of the mackerel versus the extent of our --
5 our, meaning the U.S., surveys out there. And one
6 of the big unknowns is this inshore/offshore
7 component. What is the relationship between
8 environmental conditions and whether the mackerel
9 are appearing closer to shore, or further offshore,
10 outside the range of the bottom trawl survey during
11 parts of the year that -- it's important to pick
12 them up.

13 So, I think a cooperative survey with
14 industry, if you could find vessels that are brave
15 enough or big enough to get off the Shelf out there,
16 to kind of extend -- at least to sample out there to
17 see if that is a reality. And if they can relate
18 that inshore/offshore movement to some environmental
19 variables, then it may be possible to go back and
20 look at the early survey values and assign a
21 coefficient based on the environmental conditions at
22 the time.

23 The second question is the egg survey
24 issues that you brought up, Loretta. This was an

1 issue that both the U.S. and Canadians thought would
2 be useful. One of the problems that was discussed
3 yesterday during the committee meeting and during
4 the SSC meeting, as well, is this inconsistency in
5 age composition. We're seeing a lot of the older
6 ages disappearing from the catch, and also from the
7 survey. And yet there's some indication that maybe
8 older fish are contributing to the spawning stock
9 somewhere.

10 But if you have an egg survey, you
11 really can't look at the age composition of your
12 spawning stock. All you're doing is getting an
13 estimate of total stock biomass. And it may be a
14 lot of little young spawners or very few old
15 spawners out there that are producing those eggs.

16 So, was there any talk about just
17 doing the spawning stock biomass survey on the
18 actual spawning stock itself, rather than rely on
19 the egg survey?

20 LORETTA O'BRIEN: No. I mean, not
21 unless you -- they were pretty -- the Canadians were
22 interested in doing the egg survey. But if you were
23 to do that, you might as well tag them, if you can
24 find the spawning ones. So, that would be -- but we

1 didn't talk about looking at just the spawning
2 stock.

3 But to follow up on John's earlier
4 comment, at the meeting we did have some plots made
5 up looking at the thermal habitat relative to where
6 the survey covers. And based on those figures, the
7 survey covers at least 75 to 90 percent of the
8 thermal habitat that mackerel preferred.

9 So, obviously we don't go off the
10 Shelf, but of the area that we do cover, we were
11 covering 75 to 90 percent of that habitat. So, if
12 they're anywhere within the Continental Shelf, then
13 we should be able to survey them except -- unless
14 there's a problem with the vertical distribution and
15 they're higher up than the net can catch them. So,
16 we did discuss -- you know, all those aspects, too.

17 COUNCIL CHAIRMAN RICHARD ROBINS:

18 Thank you. Other questions? Pam.

19 PAM GROMAN: Thank you, Mr. Chairman.

20 Pam Groman with the National Coalition for Marine
21 Conservation. Certainly concerning that we don't
22 have reference points right now. And I'm wondering
23 if the TRAC discussed the next assessment and if the
24 research needs that you just listed somewhat dictate

1 when that next assessment will take place.

2 LORETTA O'BRIEN: We didn't talk
3 about when the next assessment would be, and we're
4 hoping that -- well, one thing we will be -- we'll
5 have more survey points from the Bigelow and they
6 weren't used in this assessment.

7 I don't know what the time schedule
8 is, but hopefully we'll have two to three more years
9 of survey data, and that hopefully would help. But
10 we didn't -- we didn't discuss when the next one
11 would be.

12 PAM GROMAN: Okay. Thank you.

13 LORETTA O'BRIEN: Kind of leave that
14 to the powers that be.

15 COUNCIL CHAIRMAN RICHARD ROBINS:
16 Greg.

17 GREG DIDOMENICO (No microphone):
18 Just a quick comment really that -- in preparation
19 for the next stock assessment, Loretta, anyone else
20 around the table, whenever that may be (inaudible)
21 the industry is really interested in working with
22 the agency on tagging issues, on the egg surveys,
23 off-Shelf surveys. Whatever it takes to collect the
24 information that will get us a better stock

1 assessment in three or four or five years, believe
2 me, we're willing to do and certainly offer that
3 partnership up. And we'll continue to -- interested
4 in working with you. Thank you.

5 COUNCIL CHAIRMAN RICHARD ROBINS:

6 Thank you, Greg. Dave.

7 DAVID ELLENTON: Dave Ellenton from
8 Cape Seafoods in Gloucester. We're a processor of
9 herring and mackerel.

10 During the course of the commercial
11 fishery, at its height, January through April, we do
12 send samples to Woods Hole. But just recently --
13 and that fishery is over now for us. But just
14 recently we have seen a large influx of mackerel
15 coming into the ports of Gloucester, large in
16 comparable terms from previous years. We're seeing
17 a lot of fish -- of good-sized fish coming in -- you
18 know, with thumb-sized roe in the fish.

19 Is there any -- is there any way that
20 or is there any benefit for us to -- for you to
21 receive samples of those landings?

22 We don't actually get involved with
23 that fish because of the smaller quantity, but maybe
24 we could try to work with some of the guys who are

1 landing that fresh in Gloucester and Marblehead and
2 other areas. Because we're seeing a lot more
3 larger-size fish this year than we have in the past,
4 with Roshena.

5 LORETTA O'BRIEN: Yes, I think that
6 would be helpful. Perhaps if they talk to the port
7 agent and they could come and sample or the samplers
8 could take a sample of that, so that would be
9 helpful to know that those larger fish are -- you
10 know, are in the stock, because they would be
11 incorporated into -- into the other samples.
12 Because we did use the samples that you provided --
13 the industry provided. Those were used in this
14 assessment also. So, that would be helpful.

15 DAVID ELLENTON: Yeah, I'll come back
16 to you and see if we can get some sort of protocol
17 for these guys to work to.

18 And one last point, if I may. You
19 talk about one stock or two stocks, and from the
20 Canadians' point of view, they're not sure that
21 there is just one stock. Francois sent me an email
22 this week (inaudible) talking back and forth with
23 him and what more refinements would be, and he made
24 it quite clear that they're not sure that there is

1 one stock or two stocks. They're more inclined to
2 go with two stocks than one.

3 And -- but his priorities were to
4 start a tagging program, a tagging study, and then
5 some morphometries, and certainly the egg
6 information. But at the TRAC did you -- was there a
7 consensus at the end of the day that there is just
8 one stock or is that not a relevant point?

9 LORETTA O'BRIEN: Well, at the TRAC,
10 in order to do the assessment, we did come -- we
11 made the -- we came to the consensus because we had
12 nothing else in front of us, based on historical
13 information that we have one stock. We need more
14 definitive -- if we were to say there's two stocks,
15 we'd need a tagging program, never been done.

16 So, we could not imply to say there's
17 two stocks. One of the -- hopefully by the next
18 assessment, we can do -- rework the data but not
19 rework the data, but take the data we have and try
20 some different models, because I think all this
21 research needs to be done, but unfortunately it's
22 going to take a few years to get your returns on a
23 tagging program and to get -- you need at least four
24 or five, six years, from an egg survey.

1 But some of these that I didn't go
2 over very well with -- and try to incorporate
3 spatial structure into a model, where you separate
4 the North Atlantic from the Southern. So, there's
5 some modeling that can be done that may be able to
6 help address some of these problems.

7 So, I think we would be working on
8 that, and working with the data we have -- you know,
9 trying to include the environmental factors, work
10 with the data we have, but also I see your point
11 about -- I think maybe to get -- we should be more
12 organized about the research that we go forward
13 with, and I think this idea of the technical TRAC
14 working group, I think everyone at the meeting was
15 interested in doing that, so if we all sit together
16 so that we aren't duplicating efforts, I think that
17 would be useful.

18 COUNCIL CHAIRMAN RICHARD ROBINS: Dr.
19 Weinberg.

20 JAMES WEINBERG: Thank you. For
21 Loretta, just a couple quick questions. With the
22 data that we'll be able to go forward with, we
23 recently switched from the Albatross to the Bigelow,
24 and if you could clarify whether the Bigelow data

1 were used in this latest assessment or not. And
2 then going forward, the Bigelow is taking more
3 samples in the deeper strata that we survey, so the
4 precision for a lot of our stocks on those estimates
5 is likely to be better.

6 But for mackerel, the -- I know that
7 the Bigelow tows more slowly than the Albatross did,
8 so I wondered if you could tell us anything about
9 the relative catch efficiency between the two
10 vessels for mackerel?

11 LORETTA O'BRIEN: The assessment that
12 I just presented was -- the terminal year was 2008,
13 so we didn't use the Bigelow in this assessment.

14 The coefficients were estimated and
15 it looks like the Bigelow catches more fish, but
16 they're smaller size. So, they seem to be catching
17 -- but they're smaller weights -- less weight, more
18 fish, so therefore they've got to be younger fish
19 rather than older, which -- points to what Jim just
20 said, since the Bigelow is towing slower, they're
21 not catching the faster, older fish.

22 So, we only did the -- excuse me --
23 we only at this point have a point estimate for
24 total numbers and total weights, but before the next

1 assessment we'll do a length-based conversion and so
2 that will be applied and could account for the
3 difference between the large and older, small and
4 larger fish.

5 COUNCIL CHAIRMAN RICHARD ROBINS:

6 Chris.

7 CHRISTOPHER ZEMAN: In terms of your
8 research recommendations, would it be possible to
9 actually sort of -- for every bullet you sort of
10 provide one or two alternatives or steps to sort of
11 achieve that research goal and also with the budget,
12 as well, like -- you know, so you could lay out sort
13 of the details as to what would be necessary to
14 accomplish these research goals, and then lay out
15 some sort of (inaudible) budget. That would just
16 help me understand what sort of really needs to get
17 done in terms of achieving these goals, because it's
18 just like -- you know, I think that some of these
19 research goals it's like just doesn't really allow
20 us to sort of get from Point A to Point B, because
21 it's just too general. Collaborate with industry
22 for alternative sampling gear, specific what do you
23 mean by that and if you have a proposal that we have
24 in front of us, then we can start looking at our

1 state money or other funding to actually address
2 these bullets.

3 LORETTA O'BRIEN: I couldn't do that
4 on the fly right now, but we did try to prioritize -
5 - like the first one was a high priority, additional
6 sources of mortality. I mean, that's primary to any
7 assessment that you have, to account for all the
8 removals.

9 So, the ones that we could get a
10 handle on, the medium term, working with industry on
11 the overlap. I think what you're asking is what
12 this technical working group would do, sit down and
13 prioritize of all these -- I mean, for the
14 assessment scientists, this is just a matter of --
15 well, it's out of our -- you know, Canada has to
16 take care of that one. But some of these are -- you
17 know, like looking at spatial structure, that's
18 something that John Deroba will be looking at in the
19 next couple -- you know, years or whatever.

20 But you're right. They need to be
21 prioritized and figure out what -- you know, long-
22 term and what's more -- what the budgets would be.
23 I think that's what a working group would have to
24 sit down and I think we should -- whoever wanted to

1 initiate that, whoever is interested in being on
2 that working group. I mean, I don't know how -- you
3 know, the Council would work that out, but we have
4 had working groups within the TRAC before, the stock
5 assessment working groups. But I think that would
6 be the place to put that together.

7 CHRISTOPHER ZEMAN: And also just to
8 see if there's -- I'm sorry for the follow-up
9 question, but there's a way to sort of see if
10 there's existing surveys where we could also use for
11 this purpose, as well.

12 Like, I mean I know for the -- we do
13 scallop abundance surveys with video cameras. I
14 know -- I remember one year where I saw videos of
15 herring egg beds they documented and -- you know, if
16 they find something like that with mackerel, is that
17 data -- can that be sort of used for this purpose?

18 COUNCIL CHAIRMAN RICHARD ROBINS: Any
19 other questions?

20 (No response audible.)

21 COUNCIL CHAIRMAN RICHARD ROBINS: All
22 right. Again, Loretta, thank you very much for the
23 presentation on the mackerel TRAC.

24

1 APPROVAL OF APRIL COUNCIL MEETING MINUTES

2 COUNCIL CHAIRMAN RICHARD ROBINS: The
3 minutes of the April Council meeting have been
4 distributed and I did note one correction on Page
5 56, RRY should read IOY. That was related to the
6 initial optimum yield and the ecological
7 considerations that I think John McMurray raised at
8 the last meeting.

9 Are there any other corrections or
10 edits to the minutes? Howard.

11 HOWARD KING: Thank you, Mr.
12 Chairman. Let's see. Give me one second here.

13 COUNCIL CHAIRMAN RICHARD ROBINS:
14 Sure.

15 HOWARD KING: On Page 46, booklet
16 Page 46, Document -- or record page 180 up in the
17 left-hand corner, Line 13. There's a motion
18 attributed to Harley Speir, which I actually made.

19 I was actually looking for some
20 signals around the table. I don't see any. But I
21 will for the purpose of discussion make a motion
22 that the Mid-Atlantic Fishery Management Council and
23 so on. I actually made that motion.

24 COUNCIL CHAIRMAN RICHARD ROBINS: And

1 we certainly did not intend to short-credit you on
2 that.

3 HOWARD KING: I think I used Harley's
4 microphone.

5 COUNCIL CHAIRMAN RICHARD ROBINS:
6 Very well. Okay, that correction is noted. Any
7 other corrections to the minutes?

8 DANIEL FURLONG: I would point out
9 that Harley's not here to defend himself.

10 COUNCIL CHAIRMAN RICHARD ROBINS:
11 That's right.

12 HOWARD KING: I made sure of that.

13 COUNCIL CHAIRMAN RICHARD ROBINS:
14 Okay. Can we have a motion for approval?

15 PAT AUGUSTINE: So moved.

16 COUNCIL CHAIRMAN RICHARD ROBINS: Pat
17 Augustine moves approval of the minutes as amended.

18 Second by Gene Kray. Is there any objection to the
19 motion to approve the amended minutes?

20 (No response audible.)

21 COUNCIL CHAIRMAN RICHARD ROBINS:
22 Seeing none, they're approved by consent.

23 The next item is the NMFS Regional
24 Administrator Report. Pat Kurkul.

NMFS REGIONAL ADMINISTRATOR REPORT

1
2
3 PATRICIA KURKUL: Thank you, Mr.
4 Chair. Let's see. Atlantic bluefish, we published
5 a final rule in the Federal Register for the 2010
6 bluefish fishery specifications on May 14th, and the
7 specifications will become effective on June 14th.

8 There was a correction notice for
9 Amendment 10 to the Squid, Mackerel, Butterfish
10 Fishery Management Plan, published on May 24th in
11 the Federal Register. Gear requirements in the
12 final rule did not reflect a minimum mesh size
13 increase for net strengtheners used in the loligo
14 fishery. The notice corrects that error.

15 We put together a butterfish
16 mortality cap working group. It's comprised of NMFS
17 and Council staff, and we'll be working on
18 specifying the extrapolation methodology that will
19 be used to monitor the butterfish mortality cap in
20 the loligo fishery.

21 We plan to provide an update on that
22 proposed extrapolation methodology at the Council's
23 August meeting.

24 On spiny dogfish, we published a

1 proposed rule on April 2nd. The comment period
2 closed on May 3rd. And we hope that final
3 specifications for dogfish will be published
4 shortly.

5 On American lobster, we announced the
6 availability of a Draft Environmental Impact
7 Statement. The DEIS analyzes proposed alternatives
8 for American lobster in the EEZ. The comment period
9 opened on April 30 and will close on June 29th.

10 The proposed alternatives are based
11 on recommendations by the ASMFC and several
12 different addenda to Amendment 3 of the American
13 Lobster Fishery Management Plan.

14 The Commission recommendations
15 proposed establishment of limited access programs to
16 limit future access in two lobster management areas
17 and implementation of ITQ trap programs in three
18 areas.

19 These requirements would implement
20 regulations that are complimentary to those that
21 have been implemented through the states under the
22 Atlantic Coastal Fisheries Cooperative Management
23 Act.

24 We have received a petition from the

1 Center for Biological Diversity to list Atlantic
2 bluefin tuna under the Endangered Species Act.
3 We're currently reviewing the petition and will
4 publish a finding within approximately 90 days from
5 receipt of the petition, which was May 24th.

6 And finally, I just want to go
7 through -- we've had a -- May 13 and 14th, the
8 Northeast Regional Coordinating Council met.
9 There's copies of the agenda and the working papers
10 for that meeting in the briefing book.

11 Briefly, on some of the items of
12 particular note, the NRCC did talk about annual
13 catch limits and accountability measures from the
14 perspective of -- well, what started anyway the data
15 needs discussion. And this, you may recall, goes
16 back to a working group that was formed I think two
17 years ago now. It was originally suggested by and
18 chaired by the Northeast Fisheries Science Center
19 and it is now being chaired by Rich and Chris
20 Kellogg -- co-chaired by Rich and Chris Kellogg from
21 the Councils.

22 The workshop -- working group,
23 rather, was set up to address the issue of the
24 increased need for science advice and assessments

1 associated with ACLs and accountability measures.

2 The workgroup has been somewhat
3 frustrated in making progress on that, and I think
4 the discussion at the NRCC, it was clear that the
5 issue goes beyond just the scientific advice, just
6 dealing with annual catch limits and accountability
7 measures in a more general way than the demands on
8 the agency's resources as well as the Council
9 process.

10 So, the working group had made a
11 series of recommendations to the Northeast Region
12 Coordinating Council that led to several action
13 items for the Council, and -- if I can find those,
14 hopefully.

15 The first action item had to do with
16 -- has to do with developing a roadmap of all 55
17 northeast region stock management cycles from data
18 acquisition and analysis through assessment, science
19 information delivery, SSC consideration and
20 recommendation, Council recommendation and NMFS
21 rulemaking. And so we've asked the workgroup to
22 provide that roadmap.

23 One additional action item had to do
24 with looking more closely at the North Pacific

1 fishery management process. They currently provide
2 the equivalent of ACLs on an annual basis for 40
3 different stocks, and apparently at least 20 of
4 those are assessed on an annual basis. So, we want
5 to look at that process to see if there's anything
6 that would be helpful to us here in the Northeast.

7 That information will feed into a
8 workshop that -- let's see -- a workshop that's
9 proposed to be held later this summer that will
10 include the Council's SSCs, the Council and ASMFC
11 technical representatives, Northeast Fisheries
12 Science Center and Northeast Regional Office and
13 Council staff, to speak specifically to an action
14 item or a problem statement which reads:

15 How can existing science and
16 management resources and processes be configured and
17 directed to produce an acceptable level of science
18 advice for Council to make ACL/AM decisions?

19 We propose to have that as a
20 facilitated workshop, and then the results of that
21 workshop will feed back into the NRCC. So, we had
22 some pretty lengthy discussions about how we're
23 going to do business over the next several years,
24 and there was general agreement through those

1 discussions that basically everything was on the
2 table and we need to look at how we currently do
3 business, how that leads to change, to address the
4 need to now set annual catch limits and monitor and
5 adjust as a result of accountability measures.

6 So, that was a very extensive
7 discussion at the NRCC. There were several other
8 issues that were discussed that -- of course we knew
9 that -- that our time lines for the SAW/SARC
10 process, and I'm sure Jim will talk about that, in
11 other words, what assessments are coming up, what's
12 the schedule for the assessments that are coming up.

13 I think there -- let's see, in the
14 interest of time -- oh, and by the way, we do -- we
15 coordinate this now in such a way that we have our
16 discussions related to science issues on the first
17 day of the meeting, and the chairs of the SSC's for
18 both Councils, John Boreman and Steve Cadrin for the
19 New England Fishery Management Council, call in and
20 participate in those discussions. So, they were
21 part of this ACL discussion and the SAW/SARC
22 discussions.

23 And then there's one other I think
24 issue. We did talk about the U.S./Canada --

1 U.S./Canada issues. We had recently had a
2 U.S./Canada Steering Committee meeting. We have a
3 meeting twice a year, a meeting that I co-chair with
4 my counterpart in the Maritime regions of Canada, a
5 spring and a fall meeting. And so I've given the
6 group a bit of an update on those discussions.

7 They were primarily around the
8 fisheries transboundary management for groundfish
9 stocks, but we did also have some sidebar
10 discussions with Faith Gatalon who's the Regional
11 Director General for the Maritime region, related to
12 the mackerel issue. As I mentioned yesterday, the
13 Maritime region does not have the lead
14 responsibility for mackerel, but they're one of the
15 regions that are interested in it.

16 So, I did express our concerns about
17 the quota-setting process for the Canadians for this
18 year and its relationship to the science advice.
19 And as I mentioned at the committee meeting
20 yesterday for folks who were here, I've also asked -
21 - there is a national U.S./Canada bilateral meeting
22 held in July every year, and I've asked that
23 mackerel be put on the agenda for that meeting, as
24 well.

1 And then the other action item that
2 we came up with out of the NRCC had to do with
3 looking at alternative funding sources for
4 observers. This is also an issue that we had on the
5 agenda a couple of times for the NRCC. And we in
6 the Center had prepared a white paper looking at
7 what the potential sources of funding are.

8 And so discussions and a workgroup
9 are going to continue to work, taking that white
10 paper now, going to work with Council staff and
11 Commission staff, Science Center and Regional Office
12 staff, to continue to flesh that issue out, I guess
13 is the best way to put it.

14 And then finally, we also had
15 discussion having to do with corals, and there is a
16 letter again in your briefing book from me, I
17 believe. I didn't actually sign it -- Chris signs
18 most of my letters -- but from me, to Dan, dated May
19 13th, having to do with giving some guidance on
20 inclusion of measures to protect deep sea corals in
21 the fishery management plans.

22 So, I've asked George, if it's okay
23 with you, Mr. Chair, to just briefly talk about the
24 letter and the conclusions with that.

1 COUNCIL CHAIRMAN RICHARD ROBINS:

2 Thank you. And just for some additional background,
3 this in part relates to the New England Council's
4 habitat omnibus action which proposes to include
5 deep sea corals in it.

6 The scope of that action potentially
7 ranges from the Hague Line to Cape Hatteras, and
8 we've raised our level of interest and activity in
9 following that amendment. We added Tom Hoff to
10 their PDT, I believe, about a year ago now. And
11 Gene Kray's been attending the committee meetings.
12 I attended a recent one, as well. And we're
13 beginning to follow it up more closely.

14 But one of the final actions in that
15 would be to develop options to protect deep sea
16 corals, and we wanted to bring this issue to the
17 attention of the Council, because at some point I
18 think we're going to have to weigh our options in
19 terms of how we might engage either with the New
20 England Council or separately on this issue to the
21 extent that those actions could take place in the
22 Mid-Atlantic.

23 So, Pat's written this letter that I
24 think clarifies some of the jurisdictional questions

1 and gets at some of the legal authority for the
2 management of corals.

3 So, George, you can go ahead.

4 Thanks.

5 GEORGE DARCY: Sure. Those letters
6 are under Tab 10, I believe, in your briefing book,
7 and there's also in there a section of text from the
8 Magnuson Act relative to deep sea coral
9 discretionary provisions, in particular the Deep Sea
10 Corals Research and Technology Program.

11 This is a provision that was added in
12 2007 in the reauthorization of the Act, and it's
13 discretionary. It's not something that a Council
14 has to do. So, it's unlike a designation of EFH in
15 that sense, but it does give the Councils the
16 authority if an area is identified as having deep
17 sea corals to the Research and Technology Program to
18 take action through one of their FMPs to protect the
19 corals and potentially the surrounding area from
20 fishing impacts.

21 So, the question arose, as many
22 measures in the Magnuson Act are, there's not a lot
23 of detail in the Act, so this letter prepared in
24 connection with our attorneys tries to clarify what

1 we believe the authority to mean.

2 And the bottom line is, first of all,
3 the area has to be, as I said, identified through
4 this research program as having corals. At that
5 point, Council can through any one of its FMPs, as
6 long as that area falls within the geographic range
7 of that FMP, designate protective measures up to and
8 including closing the area to fishing entirely to
9 protect those corals.

10 But it doesn't necessarily have to be
11 restricted to the gear that's used in that fishery,
12 nor the activities of that fishery. So, as an
13 example, you have an Bluefish FMP that extends from
14 Florida to Maine. In theory, if there were an area
15 of coral identified off South Carolina, for example,
16 that this Council was interested in protecting, you
17 would have the authority to include the
18 discretionary measures in the Bluefish FMP and
19 prohibit fishing using any gear type, potentially,
20 in that area.

21 So, it's a very broad authority.
22 There are certain criteria that you're supposed to
23 meet in terms of justifying why you would do that
24 and the tradeoffs, but the bottom line is you have

1 -- every Council has a fairly broad range of
2 authority to take action within their FMP.

3 The other item, the question that
4 came up was how would this relate to non-Magnuson-
5 Act activities such as the American lobster fishery.

6 And the finding was that you could not prohibit
7 activities under that fishery, for example, because
8 it's not a Magnuson Act fishery. So, you don't have
9 the same authority that would apply.

10 That's kind of the bottom line. If
11 there are any questions, I'll try to take them.

12 COUNCIL CHAIRMAN RICHARD ROBINS:

13 George, thank you. And I did discuss this before
14 the meeting with Gene Kray, who chairs our Habitat
15 and -- or Ecosystem and Ocean Planning Committee
16 now, and we suggested that perhaps an update of the
17 New England habitat omnibus amendment would be
18 helpful for that committee, perhaps coupled with a
19 presentation from the deep sea coral program so that
20 we can get a better sense of what data are available
21 for us to consider if we were to consider initiating
22 any action or how we might fit in with the New
23 England actions.

24 But that, I think, depends on -- the

1 timing of that would probably depend on the actions
2 that are taken this week. Tomorrow, there is a
3 Habitat Committee meeting in New England and they'll
4 be taking action on the omnibus.

5 If they come out and recommend
6 specific management options, then I would suggest
7 that we may need to have that update at the August
8 meeting.

9 If they simply task the PDT with more
10 work in preparation for developing the management
11 alternatives, then perhaps we can take this up in
12 October.

13 But again, the timing of that I think
14 is going to depend on where that committee is and
15 its work product relative to the omnibus in terms of
16 how we might receive it.

17 But I think we need to be looking at
18 the New England omnibus very carefully and
19 determining as a Council whether we want to consider
20 additional actions, separate actions, joint actions,
21 or simply work through their Habitat Committee.

22 We currently have two seats on that
23 committee, but again I think if corals are going to
24 be protecting in the Mid-Atlantic region, one of the

1 questions for us to the Council is how we might be
2 involved in that. And I think we would want to
3 consider the impacts and benefits of that here at
4 the Council level. I think there would be
5 advantages to that, as opposed to just letting it go
6 through the New England process. But that's a
7 decision that we will have to make and consider at
8 some point in the near future.

9 But I appreciate this briefing. I
10 think this gives us an important perspective on the
11 legal background and the relevant statutory
12 authority that we have under the Reauthorization
13 Act.

14 Are there questions on the point for
15 Pat or George? John.

16 JOHN MCMURRAY: Yeah, just quickly,
17 what FMP do we have that we could address deep sea
18 corals in?

19 COUNCIL CHAIRMAN RICHARD ROBINS:
20 Under the authority, I think you could do it in a
21 number of the FMPs. You could do it under the
22 Squid, Mackerel, Butterfish Plan, you could do it in
23 tilefish. As George says, bluefish go -- the
24 Bluefish Plan goes from Maine to Florida, and the

1 authority is basically within that management range.

2 So, geographically, the authority is quite broad.

3 Now, if you were to get into an EFH
4 designation, you have to -- or perhaps HAPC, I think
5 the EFH designation would have to have a stronger
6 nexus to the actual resource.

7 JOHN MCMURRAY: Thanks. So, it
8 doesn't have to be restricted to those fisheries
9 that utilize bottom-tending gear?

10 COUNCIL CHAIRMAN RICHARD ROBINS:
11 George.

12 GEORGE DARCY: No, it doesn't. All
13 it has to do is be within the range of the
14 management unit in that FMP. It doesn't have to be
15 -- that that fishery per se doesn't have to mean
16 gear that's used in that fishery.

17 JOHN MCMURRAY: Okay. And one more
18 quick follow-up question. I think it would be
19 beneficial moving forward if we had a map showing
20 where these deep sea corals have been shown to
21 exist.

22 COUNCIL CHAIRMAN RICHARD ROBINS: I
23 think one of the issues there, as well, is that
24 there are a number of databases on coral resources,

1 and that's what I was hoping to get an update on at
2 the committee level, perhaps from the coral program
3 itself, and see what other available resources would
4 be available to the Council. George.

5 GEORGE DARCY: There is a requirement
6 in the Act for there to be a biennial report to
7 Congress prepared on this issue. And there have
8 been two so far; the last one was in 2010. And
9 they're both online at the NOAA website, and they do
10 have at least some fairly broad-scale charts of
11 where some of that resource has been identified.

12 COUNCIL CHAIRMAN RICHARD ROBINS: And
13 of course if there are any gaps in information, we
14 could send Gene down in a submersible. Pete.

15 PETER DEFUR: Thank you, Mr.
16 Chairman. George, you said that coral areas are
17 identified by the Research and Technical Committee,
18 and that's a vague reference to -- is there anything
19 more (inaudible).

20 GEORGE DARCY: It's the Deep Sea
21 Coral Research and Technology Program, and the
22 details of that are in your Tab 10. It's a NOAA
23 program, so it's the same program that is mapping
24 these areas and preparing the report to Congress

1 would be the one that would be basically your
2 baseline for areas to include.

3 COUNCIL CHAIRMAN RICHARD ROBINS: And
4 George, on that point, the report that goes out,
5 perhaps we could get a copy of that distributed to
6 the full Council. I know I received a copy, but I
7 don't think that went out to the full Council. So,
8 perhaps we could get that distributed before we meet
9 as a committee.

10 GEORGE DARCY: Okay. I could ask to
11 have that sent to you.

12 COUNCIL CHAIRMAN RICHARD ROBINS:
13 Pres.

14 PRESTON PATE: I'm going to change
15 subjects, Mr. Chairman, if that's okay, and ask Pat
16 about the petition to list bluefin tuna and if you
17 have a feel for what the time line is on that, and
18 how the fact that that's managed under international
19 treaty affects the decision.

20 PATRICIA KURKUL: Well, the time line
21 is that we have to decide within 90 days whether or
22 not the petition is warranted. And if we make a
23 determination that listing may be warranted, that
24 there's sufficient information to indicate that --

1 within the petition, we don't look beyond the
2 petition, but if there's sufficient information
3 within the petition to indicate that we should go to
4 the next step, then we make that decision within 90
5 days. And then we have a year to make a decision on
6 the listing.

7 I don't honestly know how the
8 international issue plays into it. I don't believe
9 that -- well, I don't know for sure. Maybe Joel
10 does.

11
12 COUNCIL CHAIRMAN RICHARD ROBINS:

13 Joel.

14 JOEL MACDONALD: I'm not quite sure,
15 but I don't see that the international obligation
16 the United States has under the Atlantic Tunas
17 Convention Act would frustrate listing of bluefin
18 tuna, but it's something -- you know, I'd have to
19 find more about it to see if our covenants and what
20 our obligations would be under the convention with
21 respect to not implementing allocations that we get.

22 Because I assume proposed to be
23 listed as endangered as opposed to threatened, if
24 that's the case, then you have some real takings

1 issues, which would mean you can't take the bluefin
2 tuna.

3 So, there would be a couple of
4 questions I think I'd have to -- you know, pursue to
5 get a fuller picture of how the process would work.

6 I don't think anybody's really thought it through
7 too the end point yet, because it's still in the
8 early phase, as Pat pointed out.

9 COUNCIL CHAIRMAN RICHARD ROBINS:

10 Thanks, Joel. Other questions for Pat or George on
11 these issues? Greg.

12 GREG DIDOMENICO: Just a quick
13 question, if I may, to Ms. Kurkul, for
14 clarification, and a request.

15 You mentioned a possible July meeting
16 regarding transboundary resources and specifically
17 you'd asked for mackerel to be added. Is that a
18 meeting -- well, when will you know if mackerel will
19 be added to that agenda, and can the domestic
20 industry show up and participate?

21 PATRICIA KURKUL: I think that -- I'm
22 fairly certain that it will be added to the agenda,
23 but what they're trying to do is finalize the dates.

24 And right now I've got a conflict with the

1 potential dates that they're talking about.

2 And no, it's not an open meeting.
3 It's a government to government bilateral. Just
4 annually we have an exchange of views on a whole
5 range of issues.

6 GREG DIDOMENICO: Can we exchange --
7 can we exchange our views to you prior to that
8 meeting?

9 PATRICIA KURKUL: Certainly.

10 GREG DIDOMENICO: In any -- you know,
11 in any -- whatever you'd like, whatever's good for
12 you. It would be great for our industry to be able
13 to impart some of our issues.

14 PATRICIA KURKUL: Sure, absolutely.

15 GREG DIDOMENICO: (Inaudible) I know.
16 I know you'll take care of us, so we appreciate it.

17 PATRICIA KURKUL: All right. Thank
18 you.

19 GREG DIDOMENICO: Will there be any
20 follow-up? Will there be a summary of that meeting
21 or an additional meeting after that?

22 PATRICIA KURKUL: I can report back
23 at the August Council meeting.

24 GREG DIDOMENICO: Okay. Thank you

1 very much. And if you can't make it, we can.

2 PATRICIA KURKUL: Okay. I'll let them
3 know.

4 COUNCIL CHAIRMAN RICHARD ROBINS:
5 Rich.

6 RICHARD SEAGRAVES: Thank you, Mr.
7 Chairman. I'm not sure if Pat touched on it in her
8 review of the NRCC meeting, but Paul Rago presented
9 the update on the SBRM observer day allocation of
10 sea days for 2010. And I'll -- it's in the briefing
11 book behind Tab 10. It's numbered 40 sequential
12 pages, then 13 pages unnumbered, and then they start
13 numbering again. That's the standardized bycatch
14 reporting report that Paul presented.

15 And I'd just note for the record that
16 the Service did react to our comments and requests
17 for an increase in observer coverage for small mesh
18 fisheries, which, again, the way the SBRM works is
19 that sea days aren't allocated to specific species.
20 It's rather by mesh size and area.

21 And so the two components of the
22 loligo fishery would be kind of subsumed into New
23 England small mesh otter trawl and the Mid-Atlantic.

24 And based on our request, they did increase sample

1 coverage.

2 However, if you turn to Page 3 of
3 that -- Pages 3 and 4, there's discussion about
4 concern for continued shortfalls in the level of
5 observer coverage in the Mid-Atlantic. And the
6 primary reason for that is that they are -- the
7 Service is bound by restrictions in terms of the
8 money coming from congress is earmarked to specific
9 areas, principally New England.

10 So, they can't use -- those
11 additional funds to increase observer coverage are
12 earmarked primarily to the New England area. And if
13 you read at the top of Page 4 there, they reiterate
14 in this report the fact that this shortfall is
15 likely to continue because of those restrictions,
16 that we just don't have the money.

17 And also, later in the report on Page
18 11, the two boxes there in Table 2, they show the
19 initial sea day allocation, the revised sea day
20 allocations in Row 5 and Row 7, which would be the
21 bottom two rows in that table.

22 And so the increase in sea day
23 allocations to the Mid-Atlantic small mesh and New
24 England small mesh will reduce the CVs, but I'll

1 take -- make note that it's still not going to quite
2 get us there in the Mid-Atlantic. It's pretty close
3 to the 30 percent required.

4 So, I would just note that they were
5 responsive to our request, but the overall problem
6 of inadequate coverage in our fisheries continues,
7 and it's something that as we move forward in
8 setting ABCs -- hate to beat the dead seahorse, but
9 you know, if -- uncertainty will translate into
10 greater buffers, reduced from the OFL to the ABC
11 when the SSC makes its ABC determination, a big
12 component of this will be discards. So, it's a
13 problem that we definitely need to continue to
14 address.

15 COUNCIL CHAIRMAN RICHARD ROBINS:

16 Rich, that's an excellent point. I would just
17 follow up and say that there was one other item we
18 covered in the NRCC meeting, as well. This
19 afternoon when we meet in Executive Committee, we
20 will cover the NRCC actions. But one of those that
21 was quite important was discussing the
22 implementation of ACLs and AMs.

23 And as I mentioned yesterday, there
24 is going to be a need to consider the details of the

1 spec-setting cycle this August, and we want to
2 consider that now, I think, so that we can be in a
3 position in August when we take final action on the
4 omnibus, hopefully, set that up for implementation
5 for the 2011 fishing year. And the Service has
6 issues that they'll have to address, as well, on the
7 rulemaking side; but hopefully we can work together
8 to make that a reality.

9 We'll discuss that to some degree
10 this afternoon in the Executive Committee, but then
11 again, tomorrow when we discuss the omnibus
12 document, we can cover some of those details. But I
13 think that's going to be an important consideration
14 for us now before we get into position for the
15 August meeting.

16 And Pat, you had mentioned that you
17 expected the proposed rule on spiny dogfish to be
18 out soon. Will that be accompanied by -- or at what
19 point might we expect a declaration that the species
20 is rebuilt? I know that the reference point
21 document came out just earlier this week, or came
22 out last week.

23 PATRICIA KURKUL: On the question of
24 the declaration, that should be very soon. We don't

1 need to wait for the rule for that. And the report
2 was finalized I think the end of last week, if I
3 remember correctly. So, we can prepare that letter
4 now.

5 On the specifications, I -- you know,
6 my -- I can give you one of my wild guesses, but I
7 don't really know for sure. I would hope within a
8 couple of weeks.

9 COUNCIL CHAIRMAN RICHARD ROBINS:

10 Thanks for that update. Any other questions for Pat
11 or George at this point?

12 (No response audible.)

13 COUNCIL CHAIRMAN RICHARD ROBINS:

14 Okay. Jim Weinberg, would you like to give the
15 Science Center Report?

16 _____
17 NEFSC DIRECTOR REPORT

18 JAMES WEINBERG: Thank you. I'm
19 representing the Science Center today. Nancy
20 Thompson was temporarily assigned to the Gulf, where
21 she is working on NOAA's studies of the -- related
22 to the Gulf oil spill. So, Frank Almeida is our
23 acting director and he's also at a meeting somewhere
24 else; so, I'm the representative.

1 And I was going to cover under Tab 10
2 a revision to the SBRM and mention the increase in
3 the number of sea days, but Rich did a very good job
4 of describing that; so, I won't have to do that.

5 I will, as I usually do, describe
6 what's going on with our surveys and then get into
7 some stock assessment issues.

8 The spring bottom trawl survey that's
9 conducted by the Bigelow is in its final leg. Oh,
10 sorry. It was completed on May the 2nd, with a
11 total of 402 stations. And the Bigelow does sample
12 -- has increased number of stations in our deepwater
13 strata so that the precision on the estimates of a
14 lot of our stocks in the deeper water is improving
15 in the future.

16 However, some of the stocks which
17 were problematic in the past will probably continue
18 to be. The ones that have a lot of variability.
19 But the Bigelow definitely does in general catch --
20 have a higher catch efficiency than the Albatross.

21 The resource survey reports from the
22 2009 bottom trawl survey are available. You can get
23 a hold of those on the web or by contacting the
24 Resource Surveys Division at our Northeast Fisheries

1 Science Center.

2 And the people that prepare those
3 reports just wanted me to make a note to the -- to
4 both of the Councils that the numbers that are in
5 those resource survey reports have to be used
6 carefully and not misused. Those are raw catches
7 per tow. And it would be inappropriate for someone
8 to take the numbers in those reports and compare
9 those values to what the Albatross was catching.
10 They're not adjusted in any way for the changes that
11 exist between the two vessels and the trawls that
12 are used on the two vessels.

13 So, just be careful about how you use
14 those data and any reports that you might make to
15 other people based on them.

16 The 2010 sea scallop survey began on
17 May the 12th, and it's ongoing. The future work for
18 the scallop survey will likely involve new
19 technology with cameras, and that work is ongoing
20 collaboratively with the folks at the Woods Hole
21 Oceanographic Institute.

22 There is also work going on to
23 compare different sweeps for trawl surveys. You may
24 recall a few years ago there was a lot of talk about

1 whether to use a rockhopper sweep or a cookie sweep,
2 both designed by the Survey Advisory Panel.

3 So, the survey branch has continued
4 to do a lot of experimental studies comparing those
5 two types of sweeps, and they've been done off
6 Southern New England and future work will take us to
7 Georges Bank and the Gulf of Maine.

8 Then I'd like to just go over the
9 schedule of assessments in the recent past and then
10 what's coming along.

11 First of all, I'd like to note that
12 behind Tab 10, just a few pages in, there is a
13 schedule of stock assessments. But this is an
14 outdated version. This is the one that was provided
15 to the NRCC for their spring meeting. And the NRCC
16 goes through those and makes changes. So, I will be
17 reporting on the conclusions of what the NRCC agreed
18 to at their May meeting.

19 So, getting into that, first of all,
20 this spring we've had the mackerel benchmark
21 assessment in March and the dogfish benchmark
22 assessment also done in the TRAC in January.

23 We have TRAC assessments coming up in
24 the middle of July for the Georges Bank stocks of

1 cod, haddock and yellowtail flounder. There will be
2 updates done this year for the Mid-Atlantic species,
3 bluefish, black sea bass, et cetera.

4 For work that goes on in the SARC,
5 which is one of the main processes that we use at
6 the Center for peer reviewing stock assessments,
7 we've just had the meeting on SARC 50 in Woods Hole,
8 which lasted the week from June 1 to 5, on sea
9 scallops, monkfish and pollock.

10 And the review panel did their work,
11 they met with the assessment scientists, and now
12 they're in the process of writing their reports.
13 And we'll be seeing those reports later on this
14 month and also in early July.

15 The SARC 51, which will occur in
16 early December of 2010, has one Mid-Atlantic stock,
17 loligo squid, which has not been assessed in quite a
18 while. And there are also several stocks of hake,
19 silver hake, red hake and offshore hake. That will
20 be a very busy meeting.

21 And we're also beginning to have
22 meetings to prepare for the herring assessment,
23 which will be coming up in 2012.

24 For June of 2011, there will be a

1 SARC 52, and on that we have scheduled three
2 different winter flounder stocks, Gulf of Maine,
3 Georges Bank and Southern New England.

4 Now, summer flounder had been
5 scheduled on that schedule, but because the SARC had
6 the three winter flounder stocks on, it wasn't
7 possible to include those three as well as summer
8 flounder. So, the NRCC took summer flounder off of
9 the SARC schedule for that meeting, and we intend to
10 have a meeting this summer to talk about where to
11 fit in summer flounder. But at the moment, it is
12 not on the schedule.

13 For December of 2011, SARC 53, we
14 currently have scheduled black sea bass and Gulf of
15 Maine cod.

16 And then for June of 2012, there's
17 Southern New England yellowtail flounder and
18 herring, which is expected to be a very big
19 assessment.

20 And that concludes my report. I'd be
21 happy to field questions. Thank you.

22 COUNCIL CHAIRMAN RICHARD ROBINS:

23 Thank you, Jim. Questions for Jim? As Jim pointed
24 out, at the next NRCC meeting, we will revisit this

1 issue of summer flounder and the issue of updates is
2 going to be an ongoing concern. As Pat indicated in
3 her report, there are questions about how we're
4 going to do business in the future under the
5 increasing requirements we have associated with ACLs
6 and AMs. And that will be an ongoing discussion at
7 the NRCC and to the working group.

8 Are there any other questions?

9 (No response audible.)

10 COUNCIL CHAIRMAN RICHARD ROBINS: All
11 right. Thanks a lot, Jim.

12 The next report is Joel MacDonald,
13 General Counsel.

14
15 NOAA OFFICE OF GENERAL COUNSEL REPORT

16 JOEL MACDONALD: Thank you, Mr.
17 Chairman. I've got a few items to address.

18 Madeline Green, the owner of two
19 tilefish boats that did not qualify for IFQ permits
20 has filed a suit challenging the final rule
21 published on August 24th, 2009 that implemented
22 Amendment 1.

23 Interestingly enough, the lawsuit was
24 filed February 9th, but it wasn't served on us until

1 sometime in mid-May.

2 Also named as plaintiffs in this
3 lawsuit are a number of unnamed class members, those
4 presumably that are in the same class as Mrs. Green.

5 And that would be those that were denied an IFQ
6 permit for the category for which Madeline Green
7 applied.

8 The case was actually styled as a
9 class action, and there's a request for a jury
10 trial, which is unusual to say the least.

11 The plaintiffs allege that the final
12 rule violates the due process clause of the
13 Constitution in that the electronic database that
14 was used to make a decision on the application of
15 Mrs. Green for the IFQ permit was flawed, the agency
16 knew it was flawed, didn't really represent the
17 actual landings of the vessel. And the appeal
18 process in conjunction with that did not allow the
19 plaintiffs to submit landings records from the
20 vessel. So, they feel that that violates their due
21 process rights.

22 Also they allege that it violates the
23 takings clause of the constitution in that the
24 permit denial constitutes a taking of their unique

1 fishing gear used for tilefish and their so-called
2 unique fishing history.

3 They believe it violates National
4 Standard 2 because their position is that the best
5 scientific information are the actual dealer reports
6 themselves and not the electronic database used by
7 the agency.

8 This is an interesting one. They
9 allege it violates National Standard 4 because
10 unlike LAPPs and other programs developed under
11 Section 303A in the Magnuson Act, by the New England
12 Council and the Gulf Council, which are subject to
13 referenda, those developed by the Mid-Atlantic
14 Council are not subject to referenda.

15 It also alleges that the program
16 violates National Standard 5 because they believe
17 that the IFQ program is solely for economic
18 allocation purposes, which is -- you know, if
19 established violates National Standard 5.

20 And they have a claim under the
21 Freedom of Information Act saying that was violated
22 because we would not allow them access to the
23 landings records of the former vessel owners, which
24 is -- you know, (inaudible) Section 402 of the

1 Magnuson Act, that information is confidential
2 unless the submitter actually authorizes it's
3 release in writing.

4 The plaintiffs want the court to
5 issue a preliminary injunction against enforcement
6 of the program and allow them to fish under a Letter
7 of Authorization until the matter, the lawsuit is
8 essentially settled.

9 Now, Vince O'Shea as he was leaving
10 the other day mentioned to me that the Commission
11 and the ACCSP, which are also named in the lawsuit,
12 have filed a motion for a sanction against the
13 attorney who filed the lawsuit under Civil Procedure
14 Rule Number 11, which prevents attorneys from filing
15 lawsuits that are not warranted by law or that are
16 frivolous.

17 Now, you may recall that I said the
18 challenge was to a final rule that was implemented
19 -- Amendment 1 was published almost a year ago. If
20 you take a look at Section 305F of the Magnuson Act,
21 there's a 30-day statute of limitations. So, by law
22 you can't really gain ground in this lawsuit. You
23 know, it's got to be -- you know, dismissed out of
24 hand essentially.

1 And apparently the attorney has
2 agreed to withdraw the lawsuit against both the
3 Commission and the ACCSP.

4 Vince also told me that they have
5 filed a similar motion or are about to file a
6 similar motion in the lawsuit styled Lovgren v.
7 Locke, which is a challenge to Amendment 16 to the
8 Multispecies Plan. And the indications are that the
9 attorney is going to withdraw that lawsuit against
10 the Commission. The agency -- you know, is still
11 subject to the lawsuit.

12 What we are planning to do is file a
13 motion of dismissal for that 305F bar. I mean, we
14 don't feel that it's justifiable to go through the
15 whole process when we can sort of shortcut it by
16 convincing the court that this lawsuit is not
17 warranted under the law and there's no
18 representations by the plaintiffs' attorney that he
19 has another view as to how -- you know, Section 305F
20 operates in a manner that is different than we
21 interpret it to be.

22 Another couple of lawsuits that have
23 become active, in United Boatmen v. Locke -- now,
24 that's the lawsuit involving the emergency closure

1 of the black sea bass recreational fishery in the
2 EEZ, which was undertaken October 5th of 2009.

3 We are in a battle, if you will, with
4 the plaintiff's attorney over supplementing the
5 administrative records with three documents. One of
6 the documents is the December 18th, 2009 minutes of
7 the Council meeting at which -- you know, as we do
8 every December, we talk about management measures
9 that will be adopted for the recreational fishery
10 the upcoming year.

11 The other two documents are a
12 document dated October 2nd from the United Boatmen
13 Recreational Fishing Alliance to the Secretary of
14 Commerce. And the last document is a document
15 dated I think maybe a month after that.

16 And our position is, Number 1, the
17 December 18th minutes don't relate to the decision
18 to close the EEZ on October 5th. They relate to
19 establishing the recreational measures for the
20 upcoming fishing year.

21 Any reference to the closures -- you
22 know, pertain to the seasonality aspect of the
23 recreational measures in that there was some
24 discussion about possible having a split season with

1 a closure in between, and you know, a lot of the
2 dialogue concerning closures had to do with, well,
3 how long should the season be.

4 And at that time, obviously there
5 were no -- there was no information that would lead
6 anybody to believe that there was going to be an
7 emergency closure in October of the upcoming year.
8 You know, we just didn't have the landings data to
9 even contemplate that that was going to be a
10 possibility.

11 We believe that the lawsuit is moot
12 because the fishery reopened when the closure ended
13 May 22nd. And so, you know, we're off and running
14 again.

15 The position of the plaintiffs is
16 that even though the fishery is now open, the
17 closure is capable of repetition yet abating
18 judicial review. So, we're going to fight that up.

19 Once the court deals with the supplementation
20 issue, we'll get into exchanging summary judgment
21 motions and we'll see where we come out from there.

22 The general category scallop lawsuit
23 involving 17 general category scallopers vs. Locke
24 was a challenge, I believe, to the Amendment 11,

1 which established the IFQ program for the general
2 category of the scallop fishery.

3 And we filed cross-motions for
4 summary judgment and the court has found in our
5 favor.

6 The plaintiffs' attorney, who was
7 actually the plaintiffs' attorney in the first
8 lawsuit, the guy in the Green lawsuit, has filed a
9 Notice of Appeal.

10 There was another case where we had
11 moved to dismiss. The case styled Lovgren v. Locke,
12 has to do with the interim final rule for the
13 multispecies fishery.

14 You may remember that Amendment 16
15 was held up because of the GARM results weren't
16 available, so the New England Council couldn't
17 really structure a reasonable range of alternatives
18 without (inaudible) information that flowed from the
19 GARM. And given that we had a hiatus, and that
20 hiatus was filled with this interim final rule, that
21 is no longer in effect, and so we've moved to
22 dismiss that case.

23 The plaintiff's attorney, which is
24 the same as in the Green case, and I was informed by

1 Gene that -- you know, our motion has been granted.

2 There have been three lawsuits filed
3 on Amendment 16 to the Multispecies Plan. I think
4 the first one may have been Lovgren v. Locke, which
5 was filed I believe in Trenton. And then we have
6 New Bedford v. Locke, which was filed in Boston.
7 And finally, I think the last suit was from Oceana,
8 which my understanding was filed in the District of
9 Columbia.

10 And we are -- we're moving to
11 consolidate those cases, and I'm not sure whether we
12 filed papers to that effect or not, but that's the
13 path we're going on right now. We'll be putting
14 together the administrative record, which is going
15 to be huge, depending on which administrative record
16 guidance we can operate under. There's sort of a
17 split amongst the different circuits as to whether a
18 policy on records that are -- you know, capable of
19 being included in the administrative record is
20 defensible. Some circuits have not upheld it.
21 We've had some good case law out of the D.C.
22 circuit.

23 I think it was Blue Ocean or
24 Bluewater said that our policy which eliminates the

1 inclusion of documents such as emails that other --
2 you know, pre-deliberative type documents that were
3 not either directly or indirectly considered by the
4 decision-maker out of the administrative record.

5 I know most of you have not put
6 together an administrative record, but I can tell
7 you if you have to include all the emails, it's a
8 tremendous burden. I have to, you know, the
9 attorney involved in each of these lawsuits has to
10 go through every document in the administrative
11 record.

12 And the inclusion of the emails, for
13 example, just blows up. It's so voluminous that --
14 you know, it's not just the attorneys, but you know,
15 Pat's folks play a big role in this. You know, they
16 have to find these documents, have to assemble them,
17 put them in chronological order.

18 Then we sift down to which documents
19 we can actually argue are excluded from the record,
20 and which documents may be included in the record
21 but are privileged documents that we can withhold.

22 So, it's a very tedious process,
23 which demands a lot of man hours.

24 I believe that is it. So, that's all

1 I have, Mr. Chairman.

2 COUNCIL CHAIRMAN RICHARD ROBINS: And
3 you've been busy.

4 JOEL MACDONALD: We have. I've got
5 about five or six lawsuits that are active, and Gene
6 Martin who advises the New England Council, I
7 believe, has 12 or 13.

8 COUNCIL CHAIRMAN RICHARD ROBINS:
9 Joel, what's the status of the summer flounder suit?

10 JOEL MACDONALD: The summer flounder
11 lawsuits are in front of Judge Nina Gershon here in
12 New York, and we have not gotten a decision out of
13 her.

14 The one she is looking at first off,
15 obviously, is the challenge to the 2008 Summer
16 Flounder, Scup and Black Sea Bass measures. So,
17 that's -- you know, that will tell us the direction
18 which we go.

19 If she finds for the agency, then the
20 2009 lawsuits filed by the State of New York and
21 United Boatmen of New York will -- I understand --
22 not be pursued. I mean, it wouldn't make any sense.

23 Unless there was some judicial error in the
24 decision in favor of the agency. But we were hoping

1 to have a decision by now, but it hasn't come to
2 pass.

3 And I'm occasionally in contact with
4 the AUSA who's representing us in those cases,
5 Vincent Lipari, he's right over in Brooklyn. And
6 you know, there's nothing he can do. There's no
7 leverage you have over the court. You'll turn your
8 computer on one day and all of a sudden you'll have
9 a message from the court saying -- you know, here's
10 the attached. That's where we're at.

11 COUNCIL CHAIRMAN RICHARD ROBINS:

12 Joel, thanks for that update. Questions for Joel?

13 (No response audible.)

14 COUNCIL CHAIRMAN RICHARD ROBINS:

15 Okay. Seeing none, we'll go on to the law
16 enforcement reports, and start with Andy Cohen.
17 Welcome Andy.

18
19 NMFS LAW ENFORCEMENT REPORT

20 ANDREW COHEN: Thank you, Mr.
21 Chairman. Good morning, everybody. As promised,
22 I'm going to give you an overview of the OLE's
23 reaction to the preliminary Office of Inspector
24 General Report, based on their review of our

1 operations and that of General Counsel for
2 Enforcement and Litigation.

3 And I'm going to confine my remarks
4 to those that pertain to OLE specifically. I'll
5 give you a brief overview of the General Counsel
6 response and recommendations, but I'm not going to
7 go into detail with that, the reason being in the
8 past when I have spoken to the Councils and other
9 people, I've been in the habit of telling you about
10 our investigations in OLE and the results of those
11 investigations, which were based on General Counsel
12 actions.

13 And in retrospect, that might have
14 been the wrong thing for me to be doing, because the
15 general impression, at least of the OIG and those
16 who have complained about us, have used the term us
17 as a collective term. And us includes the Council
18 who makes the regs and the Regional Office who makes
19 the regs, OLE who gathers facts, and General Counsel
20 who assesses penalties. And this big us has become
21 the center of controversy.

22 So, from now on and in the future
23 when I tell you about my function, I'm going to try
24 to limit it to my function. When I tell you about

1 the results, General Counsel's function, I'm going
2 to make a very clear delineation.

3 I think it provided a disservice to
4 the regulators, fact-finders and the prosecutors by
5 giving this general impression to the public that
6 we're one unit, although we are partners; and also
7 frankly it's kind of self-preservation at this
8 point. Because being right in the middle of the
9 regulators and the prosecutors, I'm the lightning
10 rod. And I've gotten spanked pretty hard in the
11 last year. So, I'm going to kind of adjust my
12 tactics.

13 The outcome may still be the same,
14 though. We're still going to enforce regulations,
15 and those who violate regulations should expect a
16 penalty from General Counsel. So, maybe a lot of
17 semantics here. Can I have the next slide, please?

18 As you know, our mission is pretty
19 simple. It's to conserve and protect our nation's
20 marine resources throughout compliance and
21 enforcement of regulations, not only for
22 conservation, which is another misconception of a
23 lot of people, but to keep fishers fishing. Our job
24 is to keep the industry viable. And sometimes that

1 impacts individuals within the industry. And I
2 think that message has gotten lost. We may be
3 refining our mission statement in the future, but
4 that is the intent.

5 And the next slide, please, you've
6 seen before. These are our four what we call
7 pillars. They're the four components of how we meet
8 our mission:

9 Investigations and patrols, which of
10 course are the most visible.

11 Community-oriented policing in which
12 we listen to problems and try to resolve them with
13 the community. The community in this case being the
14 regulated industry.

15 The use of technology through VMS.

16 And partnerships. Partnerships with
17 the Coast Guard, with the states, and with the
18 industry.

19 I neglected to mention that this
20 PowerPoint that I'm giving to you today was given by
21 Alan Risenhoover, who's the Acting Director of Law
22 Enforcement at the Council Chairs' meeting in
23 Anchorage. I've modified it a little bit and I've
24 taken out some of the specifics to General Counsel,

1 but that is the origin of this report.

2 Next slide, please. In January, the
3 Office of Inspector General published a preliminary
4 report, reportedly one of three reports. We have
5 not seen the other two yet.

6 In the preliminary report, some
7 observations were noted. They are not as damning as
8 some of the press reports would like them -- have
9 portrayed them to be. And there were some really
10 good suggestions in there.

11 There are also some suggestions that
12 I don't think really reflected the balance of what
13 we do. And whether or not the agency is going to
14 implement all of the suggestions, I am not in a
15 position to speculate right now, but it was a
16 preliminary report on an overview of what we do.

17 And the second report was a forensic
18 review of the asset forfeiture fund. And as you
19 probably know, the asset forfeiture fund is money
20 that is seized from illegal profits -- illegal
21 takes, unlawful landings. And contrary to, again,
22 some newspaper articles, we do not take from the
23 poor and give to ourselves. We seize catches in
24 certain instances when we suspect that illegal

1 activity has taken place.

2 The proceeds from those catches,
3 which is money, goes into an escrow account where it
4 remains until the case is adjudicated. Adjudicated
5 means dismissed, gone to hearing or settled.

6 There's a great deal of debate now
7 about how penalties are assessed and how settlements
8 are reached, and I'm not going to comment on that.
9 That's something for General Counsel to discuss. I
10 will only say that those processes are being very
11 closely reviewed and some changes have been made
12 already.

13 Could I have the next slide, please?

14 There were some general findings by
15 the OIG report that indicated that my senior
16 leadership, my folks at headquarters, need to
17 exercise greater management over the five
18 enforcement divisions around the country. And we
19 are working towards that.

20 Another general finding was that we
21 need to reassess the work force of the Office of Law
22 Enforcement. Now, the term criminal investigator
23 has been bantered about a lot. I just want to
24 explain what a criminal investigator is or isn't.

1 Our official title, according to the
2 Office of Personnel Management, is criminal
3 investigator. It's in the same series as criminal
4 investigators, generically called special agents,
5 are throughout the government.

6 Now, some traditional -- many
7 traditional -- actually, all traditional federal law
8 enforcement agencies have special agents, FBI,
9 Secret Service, plus regulatory agencies not unlike
10 NOAA. Agencies like FDA, EPA and many others.
11 Virtually all regulatory agencies have an
12 enforcement branch, and they employ special agents
13 or criminal investigators no matter whether the bulk
14 of the violations we encounter are criminal or civil
15 in nature.

16 And the theory behind having criminal
17 investigators working civil cases, as most Magnuson
18 violations are, is when a criminal investigator is
19 trained, he or she gets the most in-depth rounded
20 investigative training available in the government.

21 And the skills that a special agent has are equally
22 as applicable to working a money laundering case as
23 it is a fishery overage. In short, the training is
24 how to gather information.

1 The tactical end of it can vary from
2 agency to agency. But the fact that a criminal
3 investigator investigates a Magnuson violation in no
4 way should be interpreted as a desire on the agent's
5 part to take that violation to a criminal forum
6 rather than an administrative one. It just doesn't
7 work that way.

8 However, as that was identified as a
9 concern, I just want to tell you our theory behind
10 it, and then I'll tell you about what we're going to
11 do about the recommendation.

12 If you give me the next slide,
13 please. Industry had some very valid concerns,
14 also, that we recognized. And it's kind of ironic
15 that this has come to a head from an OIG report,
16 because you've heard me and my predecessors talk
17 about this forever, and I think you'd all agree,
18 fishing regulations are unduly complicated, unclear
19 and confusing. I don't think anybody here is going
20 to disagree with that, and that is a recipe for
21 conflict between the users, being the industry, and
22 the enforcers, who's me.

23 NOAA's regulatory enforcement
24 processes are arbitrary and lack transparency. I

1 don't know if I agree with the arbitrary comment.
2 However, we're going to certainly continue to try to
3 make the process as transparent as we can, which is
4 nothing new. I've attempted to do that. Apparently
5 I haven't done it well enough. But we in
6 enforcement are committed -- continue to be
7 committed to being as transparent as possible.

8 And an industry concern identified
9 was that NOAA's broad and powerful enforcement
10 authorities have led to a fisheries enforcement
11 posture that is overly aggressive and intrusive.

12 I understand this concern. I would
13 argue that in general most users -- most of our
14 customers are satisfied with the service we provide.
15 But I also understand that it's a very sensitive
16 topic, that none of our customers, if you will, like
17 when we show up. And it is and will always be
18 adversarial. And we are going to strive to make it
19 a better process.

20 If you'd go on to the next slide,
21 that is the first of the recommendations that were
22 made by the Office of Inspector General. The first
23 is to ensure that NOAA leadership regularly
24 addresses and provides input into the enforcement

1 priorities.

2 The RA and I meet occasionally and we
3 discuss her changing priorities for fisheries
4 management. And I incorporate those into our
5 priorities in the Office of Law Enforcement, which
6 tend to be broader than that of the Regional
7 Administrator, because we have international
8 programs, we have state programs, marine mammals and
9 endangered species, aquaculture, imports and
10 exports, and other things that don't really pertain
11 to Magnuson directly.

12 But I am going to make a greater
13 effort to coordinate with the RA, as are the special
14 agents in charge around the country. And if you
15 will go to the next slide, we're going to come up
16 with a formalized process for setting enforcement
17 policies. And that will mean increased
18 communications with the regions and with our
19 headquarters office to make sure that the priorities
20 here in the northeast are not vastly different from
21 the priorities, let's say, in the Pacific Islands.

22 Certainly, there are going to be some
23 big differences, but it is one agency and we should
24 have similar goals and similar prioritization to

1 reach those goals.

2 And the agency is considering re-
3 establishing an ombudsman position which we all
4 agree is a great idea. We've had that idea in
5 enforcement for a long time, and we've discussed it
6 with the Regional Offices.

7 In the past, it has been a budgetary
8 and FDE concern to have a liaison between either
9 enforcement and the rest of the world or the agency
10 and the rest of the world. We think that's a great
11 suggestion, and maybe now that it's in an OIG report
12 we'll actually see something come of that, which I
13 think would be beneficial to everybody.

14 If you'd please to go the next slide.

15 There was a recommendation that we perform what is
16 being referred to as a work force analysis -- this
17 is what I was talking about a minute ago -- to see
18 if special agents are really the right job
19 description for the job at hand.

20 We're taking a very objective look at
21 the way we are structured in our balance between
22 special agents and uniformed officers to see if
23 that's appropriate.

24 Here in the Northeast, we currently

1 have no uniformed officers. We have joint
2 enforcement agreements with the states. And it's
3 always been my feeling that the states perform that
4 function better than we will ever do, because
5 they've got the infrastructure, they've got their --
6 closest parallel I can draw is they're individual
7 police departments that we enter into contracts with
8 to do federal enforcement work.

9 I'm not convinced that NOAA officers
10 are the best bet. And since that's my opinion, I'm
11 not part of this working group. So, I tell you that
12 to kind of reassure you that this is being looked at
13 in a more objective manner than I as a special agent
14 in charge might look at it. It's being done by an
15 independent group of NOAA OLE employees with outside
16 contract help, and oversight from other entities.

17 It says here that approximately 98
18 percent of our enforcement caseload is regulatory
19 and civil, and only about two percent are criminal.

20 Those statistics are accurate, I think. But you
21 can't take that at face value because a criminal
22 case takes up -- in general -- a whole lot more time
23 and effort than a civil case. So, two percent of
24 the result might be 40 percent of the effort. And

1 those numbers are -- I'm pulling those numbers out
2 of the air for an example.

3 But again, the fact that only two
4 percent of our cases are prosecuted criminally
5 doesn't mean that the special agents favor that or
6 lean towards that or have a bias.

7 If you go to the next slide, that is
8 our action plan on the recommendation of those -- of
9 that number 2.

10 Dr. Lubchenco has frozen hiring --
11 the hiring of any new special agents until the work
12 force analysis is complete. Whether or not that is
13 going to impact our work on the docks currently
14 remains to be seen. We are working on the work
15 force analysis and we are re-engaging with our state
16 partners and the Coast Guard to make up for any
17 losses we're suffering through attrition in the
18 meantime.

19 That work force analysis is a very
20 high priority, so I hope that issue will be
21 resolved. And whether we rehire special agents,
22 hire enforcement officers instead of agents or in
23 addition to agents or whether or not we supplement
24 our state funding to hire more state officers

1 remains to be seen.

2 There's -- but they're still going to
3 be substantial lag time from the time we decide what
4 we're going to do and everybody agreeing that that's
5 the way to go, and then implementing it. As you
6 know, nothing happens as fast as we'd like.

7 The next slide is a third
8 recommendation, to promote greater transparency,
9 consistency and oversight. We are -- we're taking a
10 -- we're reevaluating our Procedures and Policies
11 Manual, which is quite a voluminous document anyway.

12 I think that by and large it's a good one, but we
13 want to make some substantial changes and we're
14 going to make some improvements and we're going to
15 engage the public in figuring out how we should do
16 that.

17 I'll just mention briefly that
18 General Counsel now is having all of their cases
19 approved by a supervisor prior to them being --
20 going forward for prosecution, and the penalties
21 that they are assessing will now be reviewed by
22 headquarters.

23 This is going to slow the process
24 down. We're probably going to see fewer

1 prosecutions in the future than we did in the past.

2 However, I think we all agree internally that
3 that's another good suggestion.

4 I think that just as work of the
5 special agents is reviewed independently by General
6 Counsel, General Counsel's work product needs to be
7 reviewed, for fairness, for consistency, and if for
8 nothing else than to avoid the appearance of
9 vindictiveness or arbitrary prosecution or
10 inconsistency.

11 So, I think that the public, the
12 industry, is going to see some real improvements in
13 that regard.

14 And on the next slide, we are
15 attempting to improve our outreach and public
16 appearances. You know, I come to all these Council
17 meetings. I have -- my coworkers attend a lot of
18 committee meetings, industry meetings. We're
19 conducting -- we're participating in some training
20 in the next couple of weeks on the implementation of
21 sectors. The VMS staff in my office is always
22 available for questions on the telephone. And I
23 know a lot of people take advantage of that.

24 We also had an idea where we would

1 have face-to-face interaction with groups in public
2 forum -- public fora. The first one of those was
3 scheduled in Gloucester, and frankly the intent of
4 what we wanted to do was misconstrued. The
5 newspaper screwed it up. The mayor said that she
6 would boycott, the local politicians didn't want it
7 to happen because they didn't want me to be there,
8 and we pulled the plug temporarily. There is
9 another forum that's going to happen pretty soon in
10 Gloucester, and hopefully in other communities. And
11 the intent of that is just for people to see who we
12 are, for me to see who the people are, and for
13 people to be able to ask very specific questions of
14 individuals, so that those who criticize may never
15 have had the opportunity to go one-on-one on the
16 policymaker, whether it's me or somebody else, and
17 it's -- I think it's a good idea.

18 I don't think it's going to be fun.
19 I think I'm going to be in the hot seat. But I
20 think it's important that we do that.

21 Maggie Raymond invited me up to an
22 Associated Fisheries of Maine meeting a couple of
23 weeks ago, along with three General Counsel
24 attorneys, and we got a taste of what people wanted

1 to say to us. And hopefully they heard our
2 explanations and responses.

3 And we're getting some feedback from
4 that which tells me that they did hear what we're
5 saying, and they're telling us what they agreed and
6 didn't agree with.

7 And I think we've done an okay job
8 doing that in the past, and I can give you a hundred
9 examples, but we're going to do a better job in the
10 future. Clearly, that's what the -- that's what the
11 OIG heard from our constituents, and that's what
12 we're going to -- that's what we're going to do.

13 And again, General Counsel can tell
14 you more specific about how they're going to do
15 things, but Mitch MacDonald, who's one of the three
16 Northeast GC prosecutors, is going to start to come
17 to these meetings occasionally.

18 I offered him the opportunity to do
19 this today instead of me, but he was too smart for
20 that. But I think he will be here for the August
21 meeting.

22 And the next slide are the follow-up
23 efforts of the Office of Inspector General. As I
24 mentioned, the forensic review of the asset

1 forfeiture fund is being worked on. That was due to
2 be delivered to us at the end of April. And there
3 is no final date for that yet. The latest I heard
4 from the OIG is they're still working on it.

5 And what they're doing there is
6 looking at the fund and looking at the way we have
7 used it in the past, and they're going to I'm sure
8 come up with some better parameters for oversight of
9 that fund in the future.

10 Now, I will say -- and I'll go out on
11 a limb a little bit here -- I don't think that
12 they're going to find any abuse of the fund. We may
13 have used the fund for things that they'll tell us
14 we should not have.

15 I'll give you an example. The use of
16 the fund for training in fisheries enforcement is
17 specifically identified in the Magnuson Act. You
18 all have read that the fund was used for some
19 foreign travel. I can tell you that the foreign
20 travel was training specific. It was not a
21 boondoggle. If any of you would like to see a
22 report of that training session, which took place in
23 Norway, I'd be happy to give you a copy of it.

24 It was -- if the OIG suggests we

1 don't use that type of money for that type of
2 training in the future, we'll consider that; but
3 there was no fraud involved, as has been suggested.
4 And like I say, if you're like to read the report
5 from that training, I'll be glad to have -- show it
6 to you.

7 And the third component of the OIG's
8 report is the allegations of misconduct and abuse by
9 my colleagues. They have been looking at this for
10 many months now, and I've got to tell you, I don't
11 know if they're holding their cards close to their
12 chest, but nothing has surfaced as of yet.

13 I'm very eager to see their final
14 report. I know a lot of people complained. I don't
15 know how many people went to the OIG and said those
16 guys are well-behaved and doing a bangup job,
17 because they're not sharing any feedback with me.

18 I do know that none of you have
19 called up and said, Andy, you've got a problem with
20 Special Agent X. I've said it in the past and I'll
21 say it again, if you've got a complaint about folks
22 I work with and I don't know about it, I can't fix
23 it. So, please. If you hear -- and on occasion I
24 have heard some loud allegations and I've looked

1 into it and I've -- you know, we've made some
2 adjustments. Many of those things are unfounded,
3 but we do look into them. And I need to know about
4 it.

5 That's the -- that will hopefully be
6 the third and final OIG report. Again, I don't have
7 a time line for that.

8 Next slide, please. How can the
9 Councils help? Well, I started with this, so I'll
10 kind of finish up with it. We need to help each
11 other make regulatory improvements for
12 enforceability.

13 We have two documents floating around
14 out there. One is called the precepts for
15 developing enforceable regulations. The other is a
16 similar document that will be used more in the
17 future for developing enforceable regulations
18 pertaining to aquaculture.

19 If you have input on how we can make
20 those documents better, they are living documents,
21 they're not set in stone. But in order to gain
22 compliance, we have to gain the hearts and minds of
23 those who need to comply. And I will agree with all
24 of our critics that enforcement is not the only tool

1 out there. So, we really need the Council's help in
2 that.

3 We will improve our processes, the
4 process of getting the information in my office to
5 talk with the information in General Counsel's
6 office better.

7 Enhance computer communications so
8 that our pieces can be consistent, penalties can be
9 consistent, outcomes can be consistent, and results
10 can be measured more accurately.

11 The next slide is just a rehash.
12 Simple and easy to understand. As few as possible.

13 And fish and fish products need to be accountable
14 and traceable.

15 And that is all I have on this. I
16 will be happy to entertain questions. I'm not going
17 to use the other slides, so I'm done. Comments,
18 questions, please.

19 COUNCIL CHAIRMAN RICHARD ROBINS:

20 Andy, thank you very much for that report.

21 Questions for Andy? John.

22 JOHN MCMURRAY: Thanks. Just a quick
23 question regarding special agents versus uniformed
24 officers. Does NOAA have uniformed officers?

1 ANDREW COHEN: We do. There are
2 about 15 uniformed officers in Alaska, and there are
3 several in -- there are two or three in -- excuse me
4 -- two or three in the Southeast, and I think that
5 the Southwest Division has one.

6 At one time, we had three uniformed
7 officers in the Northeast. And we found that the
8 program just wasn't working for us because they were
9 kind of treading underfoot of the states and they
10 were not really part of the state enforcement units,
11 but they were doing very, very similar work.

12 So, there's a bit of a disconnect
13 there. And there were some kind of cultural issues
14 that came up between what an agent was supposed to
15 do and what an officer was supposed to do. And it
16 was just easier for us to convert all of our
17 existing officers to agents when they had that skill
18 set.

19 And the benefit of that, to my way of
20 thinking, was officers can do A, B and C. They're
21 kind of one-trick ponies. Agents, are A through Z.
22 They can do everything an enforcement officer can
23 do and a whole lot more.

24 So, I thought and I think that agents

1 give us the most robust skill sets. They give us
2 the most bang for our buck. They give us enhanced
3 benefits and attraction for the employees that help
4 us retain, train people, so they don't skip around
5 to different agencies.

6 COUNCIL CHAIRMAN RICHARD ROBINS:

7 Pres.

8 PRESTON PATE: Andy, you mentioned
9 the benefits that are mutually derived between the
10 states and the Service from the joint enforcement
11 agreements.

12 Do you see that there's going to be
13 any effect on those agreements or that overall
14 process as a result of this investigation?

15 COUNCIL CHAIRMAN RICHARD ROBINS:

16 That -- that question is of great concern to the
17 states, and I and the other agents in charge met
18 with all of our state partners in Miami a couple of
19 weeks ago. And that was their main concern.

20 If we hire uniforms, what's going to
21 happen to our relationships with the states, which
22 have really worked very well overall, for us and for
23 the states, because it's given me a -- it's given us
24 a multiplier of several thousand uniforms along both

1 coasts -- along all the coasts, Alaska and the
2 islands. More people than we could ever hope to
3 hire. And it's given them a heck of a lot of
4 resources and equipment and people.

5 There is no talk about cutting state
6 funding and replacing it with NOAA officers. But
7 the details of that have not been worked out.

8 We're also bantering about the idea
9 of instead of taking the money allocated to us for,
10 for instance sector enforcement and hiring uniformed
11 officers to pass that money onto the states with a
12 stipulation that those people hired would be under
13 their umbrella and their administration, but they
14 would do federal enforcement work.

15 I do not anticipate, nor is it the
16 intent, to cut state funding.

17 COUNCIL CHAIRMAN RICHARD ROBINS:

18 Thanks, Andy. Other questions? Erling.

19 ERLING BERG: Yeah, Andy, one of the
20 main complaints from the fishermen is the excessive
21 fines for violations. And the two cases that stand
22 out in my mind is the Gloucester Seafood Auction, a
23 large fine, I think -- I do believe they settled
24 that.

1 The other one is H & H Fishing,
2 owners of the Fishing Vessel Thurston and Flicka out
3 of Cape May New Jersey. And I think that was
4 reduced, the last I heard.

5 I just wondered what the rationale is
6 for setting these fines that the fishermen deem to
7 be excessive.

8 ANDREW COHEN: Thanks. That's a
9 great question that I'm going to dodge. And it's a
10 great question because I have been cited time and
11 time again in the press as the person who has
12 assessed those penalties. Not only do I not -- my
13 office does not, neither does the Regional
14 Administrator's office, that's done independently by
15 the Office of General Counsel.

16 So, it's a really good question and
17 frankly I know the answer but I'm not going to --
18 I'm going to let them give that answer at the
19 appropriate time.

20 I will say that their procedures have
21 changed substantially because of the OIG report, and
22 I think that it's going to be a more transparent
23 process in the future. But OLE does not perform
24 that function, so I'd like to leave it at that.

1 ERLING BERG: Thank you.

2 COUNCIL CHAIRMAN RICHARD ROBINS:

3 Thank you, Andy. Andy, you mentioned that you were
4 going to hold a listening session or outreach
5 session I believe in Gloucester at some point in the
6 future. And I think it would be helpful if we could
7 work with your office to try to schedule one of
8 those here in the Mid-Atlantic region at some point
9 in the next few months.

10 ANDREW COHEN: Thanks. I'd be happy
11 to do that. And it doesn't have to be that formal,
12 Mr. Chairman. If any of you and your constituents
13 want to have a sit-down with me or one of the
14 supervisors, it can be a big deal, but it doesn't
15 have to be a big deal.

16 COUNCIL CHAIRMAN RICHARD ROBINS:

17 Thanks, Andy. Other questions? Sean McKeon.

18 SEAN MCKEON: Thank you, Mr.
19 Chairman. Sean McKeon, North Carolina Fisheries
20 Association. Just a couple of comments.

21 I appreciate the report by OLE and I
22 think some of the proposals are very good, but that
23 was the Cliff Note version obviously of the
24 Inspector General's concerns.

1 One of the big ones I did want to
2 highlight that I think was kind of glossed over a
3 little bit under the title of industry concerns, the
4 perception that -- with respect to the criminal work
5 force, 90 percent of criminal investigators are not
6 uniformed officers and two percent of the violations
7 turn out to be criminal.

8 I think that the OIG was very clear
9 that the perception of the industry that they're
10 being treated like criminals was very well-founded.

11 And they made that a very big point in their
12 report, that that is precisely why they feel the way
13 they feel.

14 One of the things we still have
15 outstanding that's a concern to our industry is that
16 under what the OIG's report said were systemic
17 problems at the Office of Law Enforcement, how are
18 the fishermen and families who got caught up in
19 those systemic problems -- how are their lives ever
20 going to get made whole?

21 And that's a concern that we still
22 have, and an ongoing concern. With respect to the
23 confiscation fund, the OIG did say that there's no
24 evidence that that fund had ever even been audited,

1 ever. And I think that when the report does come
2 out -- I'm glad to hear the forensic report is -- we
3 get no date for that either. They keep saying next
4 week or two weeks we're going to get it.

5 There's still the issue of documents
6 that have been misplaced or missing or shredded or
7 emails that have been deleted. We haven't heard
8 anything about that and we'd like to find out about
9 that, too.

10 But in general, we welcome
11 improvements; and contrary to what people might
12 think, we do welcome the opportunity to work with
13 the agents on these things. Because without it, and
14 I hope I didn't quote Andy wrong, but I hope that
15 things will not forever be adversarial. I don't
16 think they should be. I think most of the -- you
17 know, in the Coast Guard report you see most of the
18 boardings, I'd say probably 99 percent of them in
19 the report, are no violations. I mean these are --
20 my industry respects the work that these people do.

21 It's when it goes beyond what is -- what we believe
22 is fair that we have concerns. And I think the
23 OIG's report was very clear that our concerns and
24 the issues that we had were well-founded. And I

1 just wanted to make those points. Thank you.

2 COUNCIL CHAIRMAN RICHARD ROBINS:

3 Thank you. Thanks again, Andy, for that report.

4 With that, we'll move on to Kevin
5 Saunders. Kevin, if you would, please, tell us a
6 little bit about yourself before you give your
7 report. And welcome.

8
9 UNITED STATES COAST GUARD REPORT

10 KEVIN SAUNDERS: Thank you, Mr.
11 Chairman. First of all, I'd like to welcome -- or
12 thank all of you for welcoming me onto the
13 committee, making me feel like part of the family
14 here.

15 I came from the University of Rhode
16 Island was my most recent tour, where I got a
17 Master's in Marine Affairs. Took Tim Brown's job.

18 I met most of you last Council
19 meeting just briefly at the end, and this is my
20 first Council meeting actually sitting at the table.

21 So, thank you. If you haven't met me, please let
22 me have the opportunity to introduce myself more
23 formally.

24 Also, I'd like to direct you to my

1 supervisor, he's sitting in the back, Commander
2 Chris Strong. If you have any questions for either
3 of us, he's here today. I don't know if he's going
4 to be here regularly or not. It depends on how this
5 brief goes. But please make yourself available to
6 him, too, if you'd like to meet him.

7 Prior to being at URI, I was back in
8 Hampton Roads working at the sector. I was an
9 incident management division guy, but I actually
10 worked some of the fisheries there because I had a
11 background from my previous unit, which was the
12 Southeast Regional Fisheries Training Center.

13 And before that, I was up in New
14 Bedford working on a cutter, doing fisheries
15 enforcement in D1 and a little bit in D5 until
16 September 11th happened. And then I was in New York
17 the whole time. Doing no fisheries, by the way, in
18 New York.

19 So, with that said, I'd also like to
20 draw your attention to the enforcement report you've
21 all been provided. Sean pretty much did my
22 presentation for me on this. Thank you, Sean.

23 As you can see from the report, we've
24 conducted 143 boardings in the past two months, and

1 of those we've had zero significant violations.
2 However, you can see on a few pages in that we have
3 had a number of marine protected species responses
4 that are a little bit alarming for this time of the
5 year. We've had four negative ones and -- two
6 positive interactions, I guess you could say, but
7 four negative ones, which is more than half what
8 we've had for the whole fiscal year prior to this.

9 So, part of this can be -- I don't
10 want to say blamed, but part of this can be
11 attributed to the migration of the whale species
12 farther north, but part of it can't be.

13 So, if we do find out that a number
14 of these negative interactions and takes have been a
15 result of fishing gear, then we'll probably look at
16 doing a fisheries op aimed at determining -- you
17 know, what threats we have in our area.

18 In addition to that, we have
19 Operation Ocean Hunter going on right now, and we
20 have a major cutter working off Delmarva and the
21 Elephant Trunk and Hudson Canyon in support of that
22 as we speak.

23 They'll be there throughout the end
24 of this month. And we're also looking at ways to

1 augment that with other cutters, moving back and
2 forth, up and down our AOR. Trying to boost our
3 offshore time.

4 In addition to that, we have some
5 schedules of -- you know, normal patrol boats going
6 out and station operations.

7 Deepwater Horizon has been -- is
8 impacted D5, the district that we work in, pretty
9 significantly. The last number I heard -- correct
10 me if I'm wrong, Commander -- ten percent of the
11 people in D5 have, you know, either been sent down
12 or slated to go down to the Gulf to work in support
13 of that operation.

14 So, that has some impact. However,
15 to date for Ocean Hunter, we only lost one aircraft
16 that went down to support Ocean Horizon -- I'm
17 sorry, Deepwater Horizon as opposed to Ocean Hunter.

18 Lastly, one more thing I wanted to
19 point out, is that there's been a recent change to
20 the qualification and training program that the
21 Coast Guard has for its fisheries boarding officers.

22 It used to be that you could either go to SERF Tech
23 down in Charleston, NERF Tech in Cape Cod, or
24 *Strike, meaning you could just do on-the-job

1 training to become a fisheries boarding officer.

2 That striking program has been taken
3 off the shelf, so you have to go to one of the two
4 training centers in order to qualify to be a
5 fisheries boarding officer, which means hopefully
6 that the interactions that the commercial and
7 recreational fishermen have with Coast Guard
8 boarding officers will be more standardized and --
9 you know, we'll just have greater control over that
10 program.

11 That's the end of my report. If you
12 have any questions for me, I'm here. Thank you.

13 COUNCIL CHAIRMAN RICHARD ROBINS:

14 Kevin, thank you. Any questions? Erling.

15 ERLING BERG: I usually ask this
16 question every time one of you fellows show up. The
17 Lady Mary. This happened over a year ago, a year
18 ago February I think it was. I don't know if you're
19 familiar with the case, or -- if you are, or if
20 there are any updates on when we'll have a report.
21 Thank you.

22 KEVIN SAUNDERS: I'm going to have to
23 direct you to my supervisor on that one. Thank you.

24 COUNCIL CHAIRMAN RICHARD ROBINS:

1 Chris.

2 COMMANDER CHRIS STRONG: That's one
3 of the reasons I came here, to bail him out.
4 Tomorrow marks his second day on the job, so I'm
5 here to kind of provide some history knowledge. I'm
6 assuming you're referring to the loss of life at
7 sea. The investigation still goes on. We're hoping
8 that a report comes out soon.

9 One of the things on Admiral
10 Justice's list, his change of command is the 25th of
11 June, and he keeps pounding it, but the
12 investigative process takes some time within the
13 prevention branch of the Coast Guard. We have a lot
14 of investigations going on, both in the fishing
15 community, but external, as well, anything from
16 groundings, parasailing in our own -- we had a lot
17 of Coast Guard mishaps in the aviation community, as
18 well.

19 So, there unfortunately is no new
20 updates on the Lady Mary itself, but it is still in
21 our hopper and continuing investigation.

22 What is highlighted by that case in
23 particular, though, is a broader issue that needs to
24 be aware of the Council and the fishing community is

1 Fishing Vessel safety continues to be an issue of
2 concern to the United States Coast Guard. While
3 we've had no significant fisheries violations in the
4 last quarter, we continue to find violations of
5 commercial fishing vessel safety.

6 And part of the goal is not only in
7 the fishing community for us is not only make sure
8 we protect the stocks and keep the fishermen
9 fishing, but keep the fishermen safe. And that is
10 another one of the issues that we continue to run
11 across so we don't run into Lady Marys in the
12 future.

13 We hope you'll -- provide you the
14 report and the answer for what happened there in the
15 near future.

16 ERLING BERG: Thank you. This is
17 very near and dear for us. The vessel sailed out of
18 Cape May, New Jersey, and as a former safety
19 instructor I'm very concerned about this. I have to
20 agree with you on it.

21 COUNCIL CHAIRMAN RICHARD ROBINS:
22 Thanks again for the update. Any other questions
23 for Kevin?

24 (No response audible.)

1 COUNCIL CHAIRMAN RICHARD ROBINS:

2 Okay. We'll move on then. Vince is not with us,
3 but the ASFMC Report is located in your book behind
4 Tab 6. Pete.

5
6 COMMENTS RE ASMFC REPORT

7 PETER HIMCHAK: Yes, thank you, Mr.
8 Chairman. I think there are a couple points in the
9 ASFMC meeting week summary report that should be
10 brought to the attention of the Council, and let me
11 preface my remarks. This is with extreme reluctance
12 and intimidation that I dare step in as the role as
13 Captain O'Shea. But nonetheless, there are some
14 resource issues that are pretty important.

15 The Southern New England stock of
16 American lobster is severely depleted due to
17 recruitment failure. And the Technical Committee
18 has -- and the Southern New England stock extends
19 from Cape May to Cape Hatteras. The Technical
20 Committee has gone as far as recommending a five-
21 year moratorium on the fishery.

22 This is a crisis that the Lobster
23 Board is trying to resolve through an addendum as to
24 it will require some rather serious reductions in

1 output. We are trying -- there are challenges to
2 keep some kind of fishery operating, a remnant
3 fishery or a sentinel fishery, because we are
4 required to have at-sea observer programs for
5 American lobsters under a prior addendum. And if we
6 don't continue those programs, the stock assessment
7 crumbles.

8 So, we're in a very challenging mode
9 here in the next couple of months, of coming up with
10 some options in public hearings on essentially
11 keeping something alive.

12 The black sea bass -- Summer
13 Flounder, Black Sea Bass and Scup Board moved to
14 adopt a season of May 22nd through October 11th and
15 November 1st through December 31st.

16 So, this was subsequent to the
17 receipt of the WAVE 5 data for 2009, and it
18 represents a 26 percent reduction in the
19 recreational fishery.

20 The other issue is New Jersey is on
21 schedule to avert a moratorium on sharks, all
22 Atlantic coastal sharks. We have until July 30th to
23 adopt all of our regulations. We closed the public
24 hearing comment last Friday. They're all ASFMC

1 required. It's just a matter of getting it
2 published in the Register to avert that moratorium
3 by the National Marine Fisheries Service.

4 And then the last thing I'd like to
5 bring up is that the Atlantic Coastal Cooperative
6 Statistics Program Coordinating Council met during
7 that week. We only meet twice a year. And we had
8 just put out a request for proposals and the ACCSP
9 program has an annual budget of three and a half
10 million dollars, and what the Council should be
11 aware of is that the hierarchy of species, we go
12 through an extensive biological review for
13 establishing hierarchy of species and bycatch issues
14 whereby project proposals are judged and ranked, and
15 black sea bass again is the number one -- has been
16 identified as the number one species for
17 biologically -- for biological sampling programs.

18 So, again, don't send in -- the rule
19 of thumb is if you're going to send in a proposal
20 for biological sampling of a species that's not in
21 the upper 25th percent quartile of all the species
22 ranked, don't bother, we're not going to look at it.

23 So, there are some pretty strict
24 guidelines in this RFP and -- you know, again, we

1 recognize not only black sea bass but scup is also
2 one of the highest ranked species in the priority
3 list. So, that's about it.

4 COUNCIL CHAIRMAN RICHARD ROBINS:

5 Pete, thanks for that briefing. That was very
6 helpful.

7 Let's go on to the council liaison
8 reports. Erling.

9
10 NEW ENGLAND COUNCIL LIAISON REPORT

11 ERLING BERG: Thank you, Mr.
12 Chairman. This is from the New England Fishery
13 Management Council meetings from April 27, 28th and
14 29th in Mystic, Connecticut.

15 The first item was the skates. The
16 SSC recommended an increase in the ABC to 41,088
17 metric tons of the skate complex. This is an
18 increase of more than 10,000 metric tons.

19 As a result of that, the Council
20 voted to ask the agency to increase the skate length
21 possession limit from 1900 pounds to 5,000 pounds.
22 I spoke to George about that the other day and I
23 guess they're in that process.

24 Monkfish, the Council voted to

1 approve final measures to be submitted to the agency
2 as part of Amendment 5 to the Monkfish FMP. This is
3 a joint plan between the two Councils.

4 And there was proposal to require all
5 monkfish limited access vessels to have VMS onboard,
6 and that was rejected by the Council.

7 Next item is groundfish. Several
8 groundfish-related issues raised at the April
9 meeting, will be discussed at the Portland meeting,
10 which occurs the week after next. I intend to be
11 there.

12 The first bullet is consider
13 reaffirming the control date, which is March 30th of
14 '06, for party or charter vessel. There's some
15 uncertainty where -- if that includes the whole
16 coast or just specific areas.

17 And there's discussion that will
18 occur asking the agency to initiate a zero
19 possession limit for Gulf of Maine winter flounder
20 and no allocation to sectors.

21 This is to treat Gulf of Maine winter
22 flounder similar to Southern New England/Mid-
23 Atlantic winter flounder.

24 On Page 2. This is the joint

1 groundfish/scallops. The Council voted to continue
2 development of a joint Groundfish/Scallop AM that
3 will address mechanisms that will facilitate the
4 harvest of optimum yield from the two fisheries.

5 The effort will focus on examining
6 the potential constraints of the groundfish stock,
7 allocations, and reducing the bycatch of groundfish
8 by scallop vessels. It's primarily yellowtail.

9 And at the last meeting I reported to
10 you that there was a -- the scallop industry was not
11 interested in joining groundfish sectors to get
12 yellowtail quota.

13 And the joint Groundfish/Scallop
14 Committee felt that there was no need to pursue that
15 any further. Well, the industry came back to the
16 Council and wanted to look at other ways to achieve
17 their objectives.

18 And that's all from my report. With
19 the Chair's permission, I've been asked to request
20 the Regional Administrator to have a public hearing
21 on Amendment 16 to the Groundfish Plan somewhere in
22 northern New Jersey. This came from the fishing
23 industry in North Jersey, primarily Point Pleasant.

24 So, I'm just relaying that to the Regional

1 Administrator. Thank you.

2 COUNCIL CHAIRMAN RICHARD ROBINS:

3 Pat.

4 PATRICIA KURKUL: These are not
5 public hearings that we're holding. And we need to
6 be very clear about that. I think there's a
7 misperception out in the industry. They're not to
8 receive public comment; they're really training
9 sessions for the industry. They're an opportunity
10 for us to hear from the industry what issues they're
11 having with the implementation in the new program
12 and for us to provide them information on how to use
13 the monitoring systems.

14 So, they're small group settings, I
15 mean, within the people that attend, we're going to
16 be meeting in small groups. It's not for people to
17 come and provide comment on the amendment and what
18 they don't like about the amendment. We're beyond
19 that, and we're just trying to deal with what kind
20 of implementation issues they're having.

21 And so we can certainly add something
22 in New Jersey, but people need to be very clear that
23 this isn't an opportunity to comment -- you know,
24 and read a set of comments. It's an exchange

1 between us and the industry on implementation.

2 ERLING BERG: Thank you, Pat. This
3 came to me over the internet, and I was asked to
4 relay it to the Regional Office. I'm just the
5 messenger. Thank you.

6 COUNCIL CHAIRMAN RICHARD ROBINS:
7 Frank, do you have anything to add to Erling's
8 report from New England?

9 FRANCIS BLOUNT: I think he covered
10 everything.

11 COUNCIL CHAIRMAN RICHARD ROBINS:
12 Fair enough. Any questions from Erling on his
13 report?

14 (No response audible.)

15 COUNCIL CHAIRMAN RICHARD ROBINS: All
16 right. Seeing none, we'll move on to the Executive
17 Director's Report. Dan.

18
19 EXECUTIVE DIRECTOR'S REPORT

20 DANIEL FURLONG: Thank you, and let's
21 cut right to the chase. Tonight's dinner, it's at a
22 place called Jack Dempsey's. It's very close by.
23 When you walk out the hotel doors, make a right. Go
24 up to the corner, make a right. At the next corner,

1 make a right. And it's down about a hundred yards
2 on your right. So, it's very much a right-turn
3 process.

4 We start at 7:00 and if you're on
5 travel orders from our Council, the ladies will just
6 have our travel orders back there and you don't have
7 to pay anything. We'll just dock your reimbursement
8 38 bucks.

9 That's what the cost is, 38 bucks.
10 So, you don't have to pay anybody anything. We'll
11 just take it off your reimbursement.

12 For those of you who are attending
13 who aren't on orders, see Kathy or see Jan and it's
14 \$38.

15 And as I understand it, it's like six
16 different entrees are available to us at this bar --
17 at this restaurant. So, that's the deal for
18 tonight.

19 As for my actual report, I will start
20 at Tab 8 and just kind of page through that.

21 First section of this Tab 8 relates
22 to our last meeting, and as usual I just captured
23 the motions that occurred at our last meeting and
24 communicate them onto staff for action.

1 First one up relates to Amendment 11
2 and for those of you who were here yesterday
3 afternoon, you know we spent some time after
4 specifications cycle with the Squid, Mackerel,
5 Butterfish Committee dealing with Amendment 11 and
6 adding a couple of additional alternatives.

7 We also had as a consequence of that
8 motion a meeting on May 26th that was to address the
9 outstanding issues related to Amendment 11. And
10 that has come to pass.

11 The following motion relates to
12 incorporating -- I should also add also at the
13 bottom of that email we talked about Amendment 14,
14 and these were communicated to Rich and Jason -- you
15 know, as we moved downstream or as the Council moved
16 downstream in the development of Amendment 14.

17 Next email was directed to Carol, and
18 it related to the adoption of the motions -- the
19 motion that was made to incorporate a new charter,
20 if you will, for our S&S Committee. Some more
21 follow-up emails on that.

22 But following that is the specific
23 language that has been incorporated into our
24 Statement of Operating Practices and Procedures.

1 So, that has been done.

2 After that is an email to Jim
3 Armstrong that communicates what actions the Council
4 took regarding Monkfish Amendment 5. Erling just
5 mentioned that the New England Council has completed
6 its work on that.

7 You'll see that on the 23rd of April
8 we did communicate this Council's position on that
9 amendment to its Chair John Pappalardo.

10 Following that is an email to Jessica
11 related to ACLs and AMs. And it included the
12 actions that the Council decided upon at the April
13 meeting.

14 There have been some -- there have
15 been four public hearings since our last Council
16 meeting. Tomorrow, Jessica will be here in the
17 morning and will be dealing with the ACL/AM omnibus
18 amendment, and again we're making great progress on
19 that. And based on what I heard at the Council
20 Coordinating Committee meeting up in Anchorage,
21 Alaska, we may be the first Council to have our
22 amendment in place in satisfaction of the Magnuson
23 Reauthorization Act of '06.

24 Let's see. Yeah, the next one is the

1 letter to -- or an email to Jessica regarding the
2 drafting of a letter to support whatever came out of
3 the Commission meeting.

4 Pete just mentioned that at the
5 Commission meeting they did go to a single season.
6 We did recognize that and on May the 11th, following
7 the Commission's action, we did send a letter on to
8 the Regional Administrator indicating that there was
9 a difference between our Council and the Commission,
10 but that we were in fact in a position to support
11 what the Commission would do, owing to the fact that
12 there was more recent information available from the
13 WAVE 5 that was missing throughout the entire time
14 that we were trying to come up with some sort of
15 size, season and bag limit for black sea bass. So,
16 that's what that letter communicated to the agency.

17 Following that is a letter that went
18 from our Chairman to the HMS Unit with National
19 Marine Fisheries Service, indicating that the
20 Amendment 3 to their HMS plan, we had some
21 suggestions as to what they should do with regards
22 to smooth dogfish based on what our joint spiny
23 dogfish committee recommended.

24 And they have put out a -- their

1 final rule on this, and in fact they incorporated
2 these measures that we had communicated to them in
3 writing.

4 Next item is just the press release
5 from the last Council meeting.

6 And the very last page is just a
7 thank you for having had the opportunity to serve as
8 your Executive Director for nearly 12 years. And I
9 look forward to tonight's send-off for myself and
10 Mr. Simms. And that's it.

11 COUNCIL CHAIRMAN RICHARD ROBINS:

12 Brilliant final report, Dan. Well, and as Dan said,
13 tonight is our opportunity as a Council family to
14 recognize his service as well as Larry Simms, who is
15 also going off the Council at this point in time.
16 So, that will be at 7 o'clock tonight and we'll look
17 forward to that opportunity.

18 Why don't we go ahead and take Rich
19 Seagraves' report, and then we'll break for lunch.

20
21 STATUS OF MAFMC PLANS

22 RICHARD SEAGRAVES: Thank you, Mr.
23 Chairman. The Status of Plans Report is summarized
24 behind Tab 9. It's pretty brief. As usual, the

1 first two items are matrices of where we stand on
2 Mid-Atlantic Council specifications, FMPs,
3 amendments and frameworks. The only action, as Pat
4 alluded to, was the publication of final rule for
5 2010 bluefish specifications. That was on May 14th.

6 And again there's the Annual Work
7 Plan and any substantive changes to that.

8 The next item is the Atlantic
9 Bluefish final specifications notification,
10 commercial quota -- or I'm sorry, back up -- total
11 TAL of 29.264 million pounds with a breakdown
12 between the commercial and recreational fishery.

13 Bluefish recreational possession
14 limit remains at 15 per person. And then the second
15 table is a breakdown of the allocation of the
16 commercial quotas amongst the states.

17 And the final item is the
18 notification of the publication of part of the rule
19 for the 2010 dogfish fishery in that while no quota
20 has been published, a possession limit of 3,000
21 pounds is in effect beginning May 1, 2010. And then
22 pending a publication of the final rule, whatever
23 landings have occurred in Period 1 will be applied,
24 you know, against the Period 1 quota published

1 eventually in the final rule.

2 And that is my report.

3 COUNCIL CHAIRMAN RICHARD ROBINS:

4 Thank you, Rich. Questions for Rich or for Dan?

5 (No response audible.)

6 COUNCIL CHAIRMAN RICHARD ROBINS: All

7 right. Seeing none, it's quarter to 1:00. Why
8 don't we come back at 2:15 and we'll set surfclam
9 specs followed by Squid, Mackerel, Butterfish.

10 Thank you.

11 (LUNCH, 12:45 p.m. to 2:35 p.m.)

12 COUNCIL CHAIRMAN RICHARD ROBINS:

13 Let's go ahead and take our seats, please. Thank
14 you. We'll go ahead and come to order setting the
15 specifications now for surfclams and quahogs. Tom
16 Hoff.

17
18 SURFCLAM AND OCEAN QUAHOG SPECIFICATIONS

19 TOM HOFF: Thank you, Mr. Chairman.

20 Yesterday, Jose and I presented to the committee
21 about 40 slides. And what we're going to do today
22 is just run through the list for the forage summary
23 ones. And then we have the motion for the
24 committee.

1 So, in terms of the summary status
2 for surfclams, the resource is not overfished,
3 overfishing is not occurring. We're losing the
4 biomass in the southern portion of the range, in
5 inshore New Jersey and New York also. The Delmarva
6 area has lost about 20 percent of the resources,
7 with Georges Bank increasing about 20 percent of the
8 resource.

9 The last 25 years' surveys have shown
10 that New Jersey is about 30 percent 25 years ago.
11 It's still about 30 percent. Recruitment is down
12 nearly everywhere. Population biomass will continue
13 to decline through 2013. LPUE decline is large and
14 the fishery appears to be a secondary factor in the
15 overall decline.

16 Here are the numbers in terms of
17 important reference points. The overfishing level
18 is about 17 million bushels. The SSC in mid May set
19 an ABC equal to 12.5 million bushels. Max OY is 3.4
20 million bushels. And the current quota is also 3.4
21 million for 2010.

22 The maximum catch that we've had
23 under FMP management is 3.3 million bushels. Five
24 and ten-year means are 2.9 million bushels with a

1 minimum OY that's allowed in the plan of 1.85
2 million bushels.

3 In terms of ocean quahogs, the
4 resource from the stock assessment last year is not
5 overfished, overfishing is not occurring. The
6 biomass has been declining slowly from the virgin
7 state when the fishery began in the 1970's. Natural
8 mortality, fishing mortality, recruitment and
9 growth, are all in the one to two percent per year
10 range.

11 New Jersey has lost about ten percent
12 of the resource over the last 35 years, and Georges
13 Bank has increased about ten percent. Maine has a
14 tiny little artisanal fishery up there. They've
15 done a peer-reviewed assessment that -- they've done
16 an assessment that was peer-reviewed by the SARC,
17 and that resource and fishery appears to be
18 sustainable at this time.

19 In terms of the important reference
20 points for ocean quahogs, the overfishing limit
21 would be about 14 million bushels. The ABC set by
22 the SSC is 5.75 million bushels. Our maximum OY
23 allowed in the plan is 6 million. We currently have
24 a quota in 2010 of 5.333 million. Maximum catch

1 under FMP management has been 4.9, five-year mean of
2 3.2, and a ten-year mean of 3.5 million bushels have
3 been taken. And the minimum OY is 4 million
4 bushels.

5 Having said that, Mr. Chairman,
6 there's your committee's motions.

7 COUNCIL CHAIRMAN RICHARD ROBINS:

8 Thank you. I'll look to the Subcommittee Chairman,
9 Lee, you have a motion on behalf of the committee?
10 Is there discussion on the motion? Pete.

11 PETER HIMCHAK: Yes, Mr. Chairman.

12 I would just like to comment for the sake of
13 Council members that were not at the committee
14 meeting, although I see there are still five that
15 aren't here. And this was a hard-fought meeting
16 insofar as this motion as originally presented for
17 the status quo which did not include that bullet in
18 addition for 2012-2013 quotas request, et cetera, et
19 cetera, et cetera.

20 The original motion as presented
21 did not get a second. And then after much
22 discussion, a second motion that was made that would
23 have included a 25 percent reduction in both the
24 surfclam and quahog quotas, that did not get a

1 second. So, we went -- we had some rather lively
2 discussions about resource issues and datasets that
3 some of us could not -- you know, come to -- well,
4 we -- the bottom line is that we came to a meeting
5 of the minds. We added that bullet about the
6 Georges Bank because we see that as the savior of
7 getting out of this management box that we feel
8 we're in. And subsequently, it passed 5-0.

9 But the issues of recruitment and a
10 coast-wide stock assessment and dealing with the
11 discreet resource areas is still -- again, it's
12 going to get more and more attention between now and
13 the setting the quota for 2012. And that was --
14 that was the whole -- that was the bright side of
15 the meeting and I support the motion.

16 COUNCIL CHAIRMAN RICHARD ROBINS:

17 Thank you, Pete. Lee?

18 LEE ANDERSON: Yes. I agree with
19 Pete that we had a very useful meeting. The purpose
20 here is to make it show up. And I want to make that
21 everybody knows what the motion is. Basically, it's
22 what we've done for the last X-number of years.
23 It's the same quotas, but we're setting them for
24 three years. And in the plan, it is mandated that

1 even though we are setting these for three years,
2 that we look at them again.

3 Because of the issues that Tom
4 discussed and the areas of concern and that Pete
5 summarized, we felt it was important to -- the
6 committee felt it was important to make sure that we
7 did look at them again. And when we did, we would
8 consider the reopening of Georges Bank.

9 As a committee chairman, I don't want
10 you people to run around with not knowing all of the
11 facts. We had a big discussion. Everyone could
12 have been here. Anybody wants to see the PowerPoint
13 which is 83 pages long, we can make that available
14 to you. But I think this summarizes it. We're
15 doing what we used to do, but we're really going to
16 be looking at these issues that Pete raised.

17 And so, with that, I will make the
18 motion from the committee or put it to the table.

19 COUNCIL CHAIRMAN RICHARD ROBINS:

20 Thank you, Lee. Will you read that into the record,
21 please, the motion.

22 LEE ANDERSON: Okay. Read into the
23 record. Move that the committee recommend to the
24 Council that the three quotas be maintained for 2011

1 to 2013. Surfclams 3.4 million bushels. With
2 respect to surfclam also suspend the minimum size in
3 surfclams. Ocean quahogs 5.333 million bushels.
4 Maine ocean quahogs 100,000 bushels. In addition,
5 for 2012 and 2013, for those quotas, request that
6 the Council consider the impacts of any reopening on
7 Georges Bank for reassessing the quotas for 2012 and
8 2013.

9 COUNCIL CHAIRMAN RICHARD ROBINS: The
10 motion does not require a second. And further
11 discussion on the motion? Jim.

12 JAMES WEINBERG: Tom said something
13 in the beginning that was fast and it kind of -- I'd
14 like to hear it again. I think he said that New
15 Jersey surfclams were down by 20 percent. But I was
16 wondering what that's -- what the baseline is, what
17 year?

18 COUNCIL CHAIRMAN RICHARD ROBINS:
19 Tom.

20 TOM HOFF: Jim, I believe I said that
21 it was down for ocean quahogs. Here's the slide
22 that says New Jersey has lost about ten percent for
23 ocean quahogs. When you look at surfclams, the
24 percentage is between '86 and 2008 for New Jersey

1 are very similar. There's 30 percent in 2008, 32
2 percent in 1986. So, if I misspoke, I was going
3 very fast and I apologize.

4 COUNCIL CHAIRMAN RICHARD ROBINS:

5 Thank you, Tom. Any further questions or comments
6 on the motion? Yes, sir.

7 TOM DAMERON: My name is Tom Dameron.

8 I'm a commercial fisherman. I've fished the Mid-
9 Atlantic region. A couple of things I'd like to
10 point out. And yes, this has been the quota for the
11 past -- at least the past six years. But there
12 continues to be a relentless decline in the
13 productivity of effort in the surfclam fishery. The
14 effort has returned approximately ten percent less
15 catch for quite a few number of years. So, although
16 it looks like the biomass is not in jeopardy, the
17 fishery is in jeopardy. Your overview of the stock
18 assessment points out that the current biomass
19 targets would not likely ever support an overfishing
20 or an overfishing determination. So, although this
21 stock will always be healthy, it appears that the
22 fishery may not.

23 And as concerning the ocean quahogs,
24 and again this goes back to the stock assessment, it

1 has severe implications on the sustainability of the
2 fishery, and again, but not the stock.

3 So, the good news is that the
4 committee doesn't have to worry much about the --
5 about the surfclam and ocean quahog stock, but we do
6 have to worry about the fishery. And the -- I
7 believe it's the National Standard 8, we must take
8 into account the importance of this fishery to the
9 communities that rely on it. The stock biomass is
10 below the one-half virgin level percent in southern
11 Virginia -- this is again for quahogs -- Delmarva
12 and the New Jersey region.

13 Over the years, the fishery has moved
14 to the north and is now fishing basically Long
15 Island and southern New England which are the last
16 stops before Georges Bank. Now whether George Banks
17 gets opened up or not is a wildcard and we all hope
18 that it does. But it may not and it is my opinion
19 that we should slow this down and see what happens.

20 At the current fishing rates, we've got some very
21 big boats in the quahog fishery, some of them able
22 to take 12 to 14 tractor-trailer loads per trip, and
23 a trip is 36-40 hours. I know some of these boats
24 are pulling two, three trips a week.

1 And like I said, we basically only
2 have Long Island and southern New England left, and
3 it looks like they're going to go the same direction
4 as the -- as the southern regions.

5 Now, a lot of the fishing interests
6 that have become vertically integrated, where the
7 plant owns to the boats, they own the quota, they
8 may be able to survive this a lot longer than the
9 individual fisherman who only can rely on the price
10 he gets per bushel. A vertically integrated company
11 can afford to take money out of one pocket and put
12 it in the other, so to speak, and lose money on the
13 vessels and make it up on the other end.

14 I submitted a lengthy public comment
15 in writing and thank you all for reading that and
16 thank you for your time here. Is there any
17 questions for me?

18 COUNCIL CHAIRMAN RICHARD ROBINS: Any
19 questions. All right.

20 TOM DAMERON: Thank you.

21 COUNCIL CHAIRMAN RICHARD ROBINS:
22 Thank you for your comments. Any other comment on
23 the motion? And for the benefit of those of you who
24 weren't here yesterday, we did discuss these

1 concerns in the committee. We've agreed to refer
2 some of the questions about spatially explicit
3 fishing mortality rates, or the implication to
4 spatial exploitation, and the potential implications
5 of Georges Bank not opening to the committee and so
6 we look forward to further discussion at the
7 committee level on that subject.

8 Is the Council ready for the
9 question?

10 (Motion as voted.)

11 {Move that the following management measures be
12 maintained for the 2011-2013 as follows:

13 Surfclams - 3.4 million bushels

14 Suspend surfclam minimum size limit

15 Ocean quahogs - 5.333 million bushels

16 Maine ocean quahogs - 100,000 Maine bushels.

17 For 2012 through 2013 quotas, request the Council
18 consider the impacts of any reopening on Georges
19 Bank for reassessing quotas for 2012 and 2013.}

20 COUNCIL CHAIR RICK ROBINS:

21 All those in favor, please raise your hand.

22 (Response.)

23 COUNCIL CHAIRMAN RICHARD ROBINS:

24 Twelve. Opposed, like sign.

1 (Response.)

2 COUNCIL CHAIRMAN RICHARD ROBINS:

3 One. Abstentions, like sign.

4 (Response.)

5 COUNCIL CHAIRMAN RICHARD ROBINS: One
6 abstention. Motion carries, 12-1-1.

7 Tom, is there any additional business
8 to come before us on surfclams or quahogs?

9 TOM HOFF: No, there isn't.

10 COUNCIL CHAIRMAN RICHARD ROBINS:

11 Thank you. Lee, thank you. Are we ready for squid,
12 mackerel, butterfish? Jason.

13
14 SQUID, MACKEREL, BUTTERFISH SPECIFICATIONS

15 JASON DIDDEN: Mr. Chairman. To
16 quickly summarize stock status and biology, I won't
17 do mackerel. The Council just received an update
18 from the Science Center on the TRAC. At the last
19 Council meeting, we had a very detailed briefing
20 from Rob Latour on butterfish. And for loligo, we
21 have -- it's been quite a while since we had a stock
22 assessment. The last one concluded qualitatively
23 that overfishing was not likely occurring, it was
24 unlikely the stock was overfished, assessment coming

1 up in the fall.

2 Illex assessment. The more recent
3 assessments have been -- have not produced reference
4 points and previous reference points that were
5 established were more or less dismissed by the most
6 recent assessment. And the SSC kind of picked up on
7 that and felt that the old reference points that
8 we've been using previously were not viable.

9 So, the SSC looked at the available
10 information and come up with ABC's for the species
11 loligo, 24,000 metric tons; mackerel 80,000 metric
12 tons to be shared between the U.S. and Canada;
13 butterfish, 1500 metric tons; and illex, 24,000
14 metric tons.

15 The committee DH's, this was
16 summarized yesterday, loligo, 20,000 metric tons;
17 mackerel, 37,984, it accounts for discards and
18 expected Canadian catch; butterfish, 500 metric
19 tons; and illex, 23,328 metric tons. Illex is
20 different from last year just to account for
21 discards.

22 And at that, I have committee
23 motions. And if the Council wants to do those, and
24 I'll turn it back to the Chair. Thank you.

1 COUNCIL CHAIRMAN RICHARD ROBINS: Are
2 there any questions before we get into the motions?

3 All right. Seeing none, let's go ahead with the
4 first committee motion, please.

5 ERLING BERG: Thank you, Mr.
6 Chairman. This is a rather lengthy motion, it has
7 ten bullets. So, if you'll indulge me, I'll read
8 through them. And Jason, I'll try to follow along
9 with you. I have a hard time seeing the board.

10 The committee moved that the
11 following is specified for the 2010 loligo
12 specifications: Maximum OY equals 32,000 metric
13 tons. ABC equals 24,000 metric tons. IOY equals
14 DAH equals DAP at 20,000 metric tons.

15 The second bullet. The annual of
16 20,000 metric tons be allocated as follows:
17 Trimester I, 43 percent, which is 8,600 metric tons;
18 Trimester II, 17 percent, 3,400 metric tons; and
19 Trimester III, 40 percent, which is 8,000 metric
20 tons.

21 The third bullet. For Trimester I
22 and II, the directed fishery will be closed when 90
23 percent of each trimester allocation is taken.
24 Vessels will be restricted to a 2500 pound trip

1 limit for the remainder of the period. Vessels
2 which possess loligo with incidental catch permits
3 may land up to 250 pounds per trip at all times.

4 COUNCIL CHAIRMAN RICHARD ROBINS:

5 Erling, is that 2500?

6 ERLING BERG: 2500.

7 Fifth bullet. Up to 330 metric tons
8 of the DAH DAP for loligo may be set aside for
9 scientific research.

10 COUNCIL CHAIRMAN RICHARD ROBINS:

11 Erling, if I can interrupt you.

12 ERLING BERG: Yeah.

13 COUNCIL CHAIRMAN RICHARD ROBINS: You
14 skipped the fourth bullet. Do you want to read the
15 fourth bullet into the record.

16 ERLING BERG: Oh, I thought I did.
17 I'm sorry. Okay.

18 Fourth bullet. When a 95 percent of
19 the total annual quota has been taken, 19,000 metric
20 tons, a 2500 pound trip limit will be implemented
21 for the rest of the fishing year. Vessels which
22 possess loligo incidental catch permits may land up
23 to 2500 pounds per trip at all times.

24 I'll reread the fifth bullet. Up to

1 330 metric tons of the DAH DAP for loligo may be set
2 aside for scientific research.

3 Number six. Half of Trimester I
4 underages will be transferred to Trimester II and
5 half will be transferred to Trimester III. Overages
6 in Trimester I will continue to be deducted from
7 Trimester III. Underages or overages in Trimester
8 II will be applied to Trimester III. Only triggered
9 if Trimester I underages are greater than 25
10 percent, the Trimester II quota can be increased by
11 a maximum of 50 percent.

12 Number seven. The butterfish cap
13 will close when the loligo fishery as described in
14 Amendment 10 with the extrapolation method to be
15 developed by January 1st, 2011, and the Council will
16 be briefed by NERO on the methodology before January
17 1st, 2011.

18 Number eight. 2 and 1/8th-inch cod-
19 ends required in Trimesters I and III, 1 and 7/8th
20 inch cod-ends required in Trimester II.
21 Strengtheners can be used subject to a minimum of 5-
22 inch mesh opening.

23 Number nine. Rule that the Council
24 make good notice of September 13th, 2010, 2 and

1 1/8th-inch mesh requirement in a press release.

2 And we have one more. Move that the
3 -- that up to three percent of butter DAH will be
4 set aside for either butterfish RSA or to cover
5 loligo RSA as appropriate based on RSA awards.

6 COUNCIL CHAIRMAN RICHARD ROBINS:

7 Thank you, Erling. That's some motion.

8 ERLING BERG: Yes.

9 COUNCIL CHAIRMAN RICHARD ROBINS: On
10 behalf of the committee it does not require a
11 second. Discussion on the motion? Are there any
12 comments on the motion? All right. Seeing none.

13 Is the Council ready for the
14 question?

15 (Motion as voted.)

16 {Move that the following is specified for the 2010

17 Loligo specifications:

18 1. Max OY = 32,000 mt; ABC = 24,000; IOY=DAH=DAP=
19 20,000 mt;

20 AND

21 2. The annual quota (20,000 mt) be allocated as
22 follows: Trimester 1 - 43% (8,600 mt) Trimester 2,
23 17% (3,400 mt), and Trimester 3 - 40% (8,000 mt);

24 AND

1 3. For Trimester 1 and 2, the directed fishery will
2 be closed when 90% of each Trimester allocation is
3 taken; vessels will be restricted to a 2,500 pound
4 trip limit for the remainder of the period.

5 Vessels which possess Loligo incidental catch
6 permits may land up to 2500 pounds per trip at all
7 times.}

8 4. When 95% of the total annual quota has been
9 taken (i.e. 19,000 mt), a 2,500 pound trip limit
10 will be implemented for the rest of the fishing
11 year. Vessels which possess Loligo incidental
12 catch permits may land up to 2,500 pounds per trip
13 at all times.

14 5. Up to 330 mt of the DAH/DAP for Loligo may be
15 set aside for scientific research;

16 AND

17 6. 1/2 of Trimester 1 underages would be
18 transferred to Trimester 2 and 1/2 would be
19 transferred to Trimester 3. Overages in Trimester
20 1 will continue to be deducted from Trimester 3.
21 Underages or overages in Trimester 2 would be
22 applied to Trimester 3. Only triggered if
23 Trimester 1 underage is greater than 25%. The
24 Trimester 2 quota can be increased by a maximum of

1 50%. percent.

2 AND

3 7. The butterfish cap will close the Loligo fishery
4 as described in Amendment 10 with the extrapolation
5 method to be developed by January 1st, 2011, and
6 the Council will be briefed by NERO on the
7 methodology before January 1st, 2011.

8 8. 2 1/8" codends required in Trimesters 1 and 3. 1
9 7/8" codends required in Trimester 2.

10 Strengtheners can be used subject to a minimum of
11 5-inch mesh opening.

12 9. Move that the Council include notice of
13 September 13, 2010, 2 1/8" mesh requirement in a
14 press release.

15 10. Move that up to 3% of butterfish DAH will be
16 set aside for either butterfish RSA or to cover
17 Loligo RSA as appropriate based on RSA awards.}

18 COUNCIL CHAIR RICK ROBINS: All those
19 in favor, please raise your hand.

20 (Response.)

21 COUNCIL CHAIRMAN RICHARD ROBINS:
22 Fifteen. Opposed, like sign.

23 (No response.)

24 COUNCIL CHAIRMAN RICHARD ROBINS:

1 Zero. Abstentions, like sign.

2 (Response.)

3 COUNCIL CHAIRMAN RICHARD ROBINS: One
4 abstention. 15-0-1. The motion carries. Thank
5 you.

6 Jason, do you have the next. Erling?

7 ERLING BERG: This is for mackerel.
8 The committee moves that the following is specified
9 for the 2010 Atlantic mackerel fishery: One, ABC
10 equals 80,000 metric tons, U.S.; ABC equals 38,484
11 metric tons; IOY DAH equals 37,984 metric tons; DAP
12 equals 22,984 metric tons; JVP and TAL equals zero.

13 Jason, do you have anything else,
14 that you want to continue?

15 JASON DIDDEN: Maybe if you want to
16 finish the motions, and then if there's discussion
17 later, I can try and --

18 ERLING BERG: Yeah. I'll finish the
19 motion and then we can discuss. Okay.

20 Second bullet. Directed mackerel
21 fishery to be closed at 90 percent of optimum yield.

22 If 90 percent of optimum yield is reached prior to
23 June 1st, a 20,000 pound trip limit results. If 90
24 percent of OY is reached on or after June 1st, a

1 50,000 trip limit results.

2 Three. Up to three percent of the
3 IOY and DAH for Atlantic mackerel may be set aside
4 for scientific research.

5 Four. Is plan a conference call to
6 the AP open to the public to discuss resource-
7 sharing issues and all bilateral research agenda.

8 COUNCIL CHAIRMAN RICHARD ROBINS:

9 Thank you, Erling. That motion is on behalf of the
10 committee so it doesn't require a second.

11 Discussion on the motion? Pete.

12 PETER HIMCHAK: Yes, thank you, Mr.
13 Chairman. The motion as listed on the board, it
14 passed very narrowly, 6-4, and there's only one
15 number in there that's really hard, it's hard pill
16 to swallow, and that's the DAH of 37,984 metric
17 tons. And boy, I guess you had to be at the meeting
18 to experience the debate on this one particular
19 number. And I think it's a travesty that we don't
20 stand up for our domestic fishermen. There's a
21 motion originally made that would have given the
22 U.S. fleet 44,175 metric tons and that was defeated
23 4-6. And then the Monitoring Committee
24 recommendation of 42,277 metric tons, and the whole

1 debate, this was really contentious. It's like the
2 reasonable expectation of the Canadian catch coming
3 off the top and our fishermen get what's left.

4 And you know, there are two sides to
5 this. I mean, we obvious -- the people that want
6 the higher DAH just could not fathom accepting that
7 strategy. And as far as insuring not overfishing.

8 So, I would be -- I would offer up a
9 substitute motion just on that one number and I'd
10 like to hear -- I would -- I would move to
11 substitute that in Item 1 of the specs package that
12 the U.S. DAH be 44,175 metric tons - 44,175 metric
13 tons - which represents the subtraction of the mean
14 Canadian catches from 2007 and 2008 from the SSC
15 recommendation of 80,000 metric tons. That's how
16 the number was derived. And I would offer that up
17 for discussion.

18 COUNCIL CHAIRMAN RICHARD ROBINS:

19 Pete, is that accurate what's on the board?

20 PETER HIMCHAK: Yes.

21 COUNCIL CHAIRMAN RICHARD ROBINS: Is

22 there a second to the motion? Second by Pat
23 Augustine. Pete, what's the -- can you explain
24 again the basis for accounting for the Canadian

1 catch here? Is that the average of the 2007 and
2 2008 Canadian landing?

3 PETER HIMCHAK: Yes, it is. And this
4 whole -- I mean, there are a lot of people in here
5 that have been in this fishery a lot longer than I
6 have, but how we come up with an ABC and then come
7 up with the best estimate of what the Canadians will
8 take in a given year, and then we're left with the
9 balance. That was the crux of the argument
10 yesterday. And if we needed to justify this
11 particular number for the DAH, our justification
12 was, hey, these were the two most recent years in
13 the stock assessment. We took an average and we
14 think our U.S. fleet should get what comes out of
15 it, 44,000 metric tons. It was a very frustrating
16 argument.

17 COUNCIL CHAIRMAN RICHARD ROBINS: I'm
18 going to ask Jason real quickly just to confirm. If
19 we were to use the approach of deducting the '07 and
20 '08 Canadian catch, if the number on the board
21 accurately reflects the necessary deductions for
22 discards, et cetera? I just want to make sure it's
23 in order. I don't know if you've vetted this with
24 him or not. Go ahead.

1 PETER HIMCHAK: Yes, I'd appreciate
2 that, Mr. Chairman, because we were doing
3 calculations at the table.

4 COUNCIL CHAIRMAN RICHARD ROBINS: I
5 understand.

6 PETER HIMCHAK: And then there was
7 did we account for the discards, or we subtract from
8 80,000 metric tons or 79. But I'm pretty sure.
9 This was Dr. Pierce's motion and his calculation and
10 his spirit lives on.

11 COUNCIL CHAIRMAN RICHARD ROBINS:
12 While Jason is looking at that, I'd look for further
13 discussion around the table. I know we discussed
14 this extensively yesterday in the committee. The
15 basis for the motion that ultimately was approved
16 was basically using the Monitoring Committee's
17 recommendation and updating to reflect the latest
18 available information from DFO. And the arguments
19 for that were that that represented the best
20 estimate of expected Canadian catch. I think that
21 all the committee members noted the fact that there
22 was fulcrum here in terms of having any leverage in
23 the discussion with the Canadians in order to
24 negotiate their expected quota.

1 There is no joint resource agreement.

2 They're not obligated to operate under Magnuson.
3 And unfortunately, we have to account for their
4 catch. So, I think we've found ourselves in a very
5 unenviable position. And that sentiment was widely
6 echoed around the table yesterday. As we heard
7 today, Pat has put the issue on the agenda. We
8 discussed this in NRCC, but now it's going to be
9 discussed in the joint meetings with the Canadians.

10 But again, there's not much to get them to the
11 table when they know that they'd be operating under
12 Magnuson. So, it is a difficult situation.

13 Jason? Pres.

14 PRESTON PATE: And you made some
15 points that I was going to ask to be clarified to a
16 certain extent. I'll just ask Jason, in the course
17 of giving the explanation that you asked, if he
18 would also give just a brief explanation of why the
19 original recommendation from the Monitoring
20 Committee was changed to the amount that actually
21 occurred in the motion, just for the benefit of
22 those who weren't in here yesterday.

23 COUNCIL CHAIRMAN RICHARD ROBINS:

24 Thank you, Pres. Will you clarify that, Jason?

1 JASON DIDDEN: Yes. First, the --
2 I'm not quite sure where that calculation is coming
3 from. I show the average landings for Canada for
4 those two years to be 40,800, count for discards, it
5 bumps it up to about 41 5. And then, so, when you
6 subtract 80 from that, it's going to be below 40. I
7 think Dr. Pierce may have been suggesting to use
8 2008 and 2009 as his two years to average, and that
9 may be where we're getting the discrepancy from. I
10 can address this issue.

11 So, the Monitoring Committee made a
12 recommendation based on -- we looked at some
13 correlations between averages of Canadian catches
14 and using the most recent year. And it turned out
15 that the most recent year data, which is really a
16 two-year lag, like for example, right now we're
17 setting for 2011, but we have 2009 Canadian data.
18 It was more strongly correlated than it averaged.
19 So, that was what was included in the Monitoring
20 Committee memo.

21 Subsequent to that, I was forwarded
22 from the Science Center an updated Canadian
23 landings. We put that into the correlations. It
24 didn't change the outcome. And it actually made a

1 slightly stronger correlation between the most
2 recent year average. And then I forwarded that
3 information to the committee last week.

4 Also, in talking to Erling, I looked
5 at some other approaches to coming up with an
6 estimated Canadian catch that I think would be
7 equally justifiable, last night and this morning,
8 and I can go through those if the Council is
9 interested.

10 COUNCIL CHAIRMAN RICHARD ROBINS:

11 Pete?

12 PETER HIMCHAK: Yes. Thank you, Mr.
13 Chairman. In my haste to get this on the board, I
14 did give the wrong years. It's 2008 and 2009, the
15 last two years in the TRAC document. So, it's the
16 average of those two years.

17 COUNCIL CHAIRMAN RICHARD ROBINS:

18 Jason, can you take another look at that. Peter?

19 PETER DEFUR: Yeah. I was just
20 looking at the numbers on Jason's board and I don't
21 think it's 8 and 9 either. I don't know where it
22 comes from. I know he talked about the average of
23 two years, but 8 and 9 comes up with a Canadian
24 average of 39,786, if I read the numbers correct.

1 And I won't say that my eyes are young enough to
2 read it from this distance accurately. Anyways.

3 (Pause.)

4 JASON DIDDEN: So, if I back that
5 out, I show 44,756. If we do -- if I calculate the
6 2008, 2009 average, it comes up to 34,785. If you
7 say that was their landings and then you increase it
8 for discards 1.3 percent, then you take 80,000 minus
9 that would be the U.S. catch, and then 44175, is
10 that what you had?

11 PETER HIMCHAK: Yes.

12 JASON DIDDEN: Okay. Then we're on
13 the same page there.

14 COUNCIL CHAIRMAN RICHARD ROBINS:
15 Tell you what, before we vote on something that
16 Jason is doing here on the fly, I mean, if there are
17 any other scenarios you want to analyze, I'm going
18 to ask him to look at them.

19 But let's take a ten-minute break and
20 let him go back and just check these numbers. I
21 don't want to see us vote on something that's sort
22 of done on the fly. But I would just ask if --
23 let's take ten minutes and we'll go through that.

24 (Break: 2:57 p.m. - 3:20 p.m.)

1
2 COUNCIL CHAIRMAN RICHARD ROBINS: In
3 anticipation of some of this discussion, he's had
4 some discussion with the Science Center about that
5 today, and I'll let him run through that before we
6 consider Pete's motion. I think this may be helpful
7 information.

8 JASON DIDDEN: Okay. So, as last
9 night thinking about the concept we talked about of
10 utilizing 2010 Canadian data for 2011, and we
11 decided we couldn't do that, because it doesn't come
12 in soon enough to make a decision to be useful. And
13 it all -- maybe we could use 2010 U.S. data. We do
14 have that now. The mackerel fishery is pretty much
15 finished. We can predict with a pretty high degree
16 of accuracy what the U.S. fishery is going to end up
17 with at the end of the year, because it's flatlined
18 and it's been flatlined from June on for quite a
19 while, going back several years.

20 And so I just ran the same kind of
21 thing the Monitoring Committee was doing, I ran a
22 correlation between -- I'll try to do them a little
23 bit so folks can -- (pause.)

24 Correlation. Same kind of procedure.

1 Canadian catch is one year and the U.S. catch in
2 the previous year, and the correlation was quite
3 strong, .86.

4 And I just started kind of exploring
5 some other ones. Canadian in one year correlated to
6 Canadian in the previous year, .82.

7 Canadian in one year correlated to
8 U.S. in the same year, .89. Just to try to start
9 thinking about it. But again, the key thing I was
10 thinking of, you can use 2010 U.S. to provide
11 information on 2011 Canadian. And that was that .86
12 correlation.

13 So, I started thinking, okay, well,
14 that's interesting, but there is a scale problem in
15 the sense that these three numbers here, this
16 20,020, 10,010, 5,005, those six numbers, two
17 series, are perfectly correlated. However, there's
18 50 you would never want to use, those 50, as a 50
19 here because there's a scale difference. Even
20 though they're correlated, there's a very big scale
21 difference.

22 So, in order to think about that, I
23 went and looked at the ratio of Canada in one year
24 to the U.S. in the previous year. So, this 1.99 is

1 just saying that the Canadian catch in 1995 was
2 double the U.S. catch in 1994. And so, I just -- I
3 have this knowledge now that there is a correlation
4 there, but how do I address the scale issue. I just
5 did those ratios all through the years. The mean
6 was 1.71. So, on average, the Canadian catch in the
7 next year was 1.71 times the U.S. catch in the prior
8 year. The minimum was .93. on occasion the Canadian
9 catch is lower. The max is 4.24 and that was a
10 significant outlier when you look through -- I don't
11 think there's even a 3. It goes down to 2. So,
12 there was this one high outlier. The medium as
13 1.35. And then the 95th percentile of that range
14 was 3.22.

15 Why did I pick the 95th percentile?

16 I was just thinking, trying to be kind of
17 conservative about that I'm more likely to over-
18 predict Canadian catch than under-predict it. And
19 so, if you use that 3.22, right now the U.S. fishery
20 is going to land around 10,000 metric tons this
21 year. And it's 9,000-something. But it will be
22 around 10,000, and I'd have to go back into the
23 landings database to get a better number on that.
24 But that will be very close. And then multiply that

1 by 3.22, and there's some decimal issues, but you
2 get about 3200 for an estimation of Canadian catch
3 next year based on U.S. landings this year.

4 And this method of using that 95
5 percentile, only in 1 out of 15 years did that
6 underestimate Canadian catch and that was one year
7 was the max 4.24. But using that as a multiplier on
8 U.S. catch this year to Canadian catch next year,
9 using 3.22 for that, almost always overestimates
10 Canadian catch, which means that -- you know, you
11 wouldn't expect to exceed your ABC.

12 Another just back-check, I did a
13 multiple regression on both the two-year prior
14 Canadian catch number value we have and the one year
15 prior U.S. catch. Those are kind of the most recent
16 for each one. I ran these all since '94, since I
17 thought, well, going back too far, the fleets just
18 may be operating so differently back then. Also,
19 we've got better landings data since '94 because of
20 the reporting issues. And when I ran that
21 regression and then I plug in the 10,000 for this
22 year, the 41,000 for Canadian the prior year, the
23 regression kind of predicting out says 24,000 for a
24 predicted Canadian catch. I mean, the regression

1 predicted 74 percent of the variation. That's
2 fairly -- okay. And I would never -- I would not
3 suggest running with this, but it is kind of a back-
4 check to see is the other one conservative or not
5 conservative. This would suggest that maybe it is
6 conservative.

7 I just did a single regression on the
8 one year prior, U.S. one, and it ends up being
9 14,000 for a Canadian predicted landings for next
10 year. With the regression itself, it's easy to make
11 mistakes on these. I was more doing these as kind
12 of a back-check as to -- you know, is this other
13 methodology, which I think is fairly conservative,
14 does it appear to be conservative by looking at it
15 with some other ways.

16 So, if you took the 32,181 and then
17 bump it up a little bit for discards, 80,000 minus
18 that Canadian catch, then bring that down for U.S.
19 discards, you end up at 46,779. So, that's --
20 again, it was an effort to say can we use that 2010
21 number to inform what we think what we think the
22 Canadian catches might be next year.

23 COUNCIL CHAIRMAN RICHARD ROBINS:

24 Jason, I'm wondering if this has long-term

1 implications of using this method in the future. In
2 other words, right now, we've got a very low catch
3 in the U.S. and you're proposing to multiply it, as
4 I understand it, by 3.22. If the U.S. catch goes up
5 in the future and we were to use this method, it
6 would result in a very high estimate of Canadian
7 catch; would it not? I mean, you'd be almost
8 implying an allocation formula; would you not?

9 JASON DIDDEN: That is true. And I
10 mean, there could be -- the Council could kind of
11 say -- I think this kind of area is ripe for some
12 investigation over the next year. Looking at
13 different methodologies of how you can use the
14 available data. You could look at the indexes. You
15 can look at, you know, the catch numbers, the
16 recreational catch.

17 I mean, I can imagine 20 different
18 ways to try to explore how can you best predict
19 Canadian landings and that could be something we
20 could kind of work on over the course of the next
21 year cooperative with the Science Center and kind of
22 use this. In the meantime, this appears to be a
23 very -- you know, conservative approach. But, I
24 mean, I guess someone could use that as a rationale

1 for -- well, if you went with that same 95th
2 percentile, yes, it would result in a very high
3 multiplier or high estimate. But again, you could
4 probably couch it in -- you know, there's a lot of -
5 - it's kind of adjusting to the new TRAC. We're
6 going to have the Omnibus and maybe something else
7 that informs that. I think everything is going to
8 get re-evaluated next year and we'd have a full year
9 to kind of work on some kind -- some of the details
10 and maybe not use something that is so conservative
11 in the future. And that's really a risk thing, I
12 think, for the Council. I mean, the Council can
13 always kind of express its risk in different ways
14 from year to year.

15 COUNCIL CHAIRMAN RICHARD ROBINS:

16 Pete.

17 PETER HIMCHAK: Jason, so the bottom
18 line from your analysis, is the 46,779, that could
19 be -- that could be a domestic DAH, according to
20 your analysis, which is higher than what's in the
21 motion?

22 JASON DIDDEN: Yes. And only in one
23 of the last 15 years, that methodology had resulted
24 in underestimating Canadian catch.

1 COUNCIL CHAIRMAN RICHARD ROBINS:

2 Pres.

3 PRESTON PATE: Thank you, Mr.

4 Chairman. I don't think Peter underestimated the
5 angst that the committee experienced yesterday when
6 he made his opening comments. It was certainly one
7 of the most painful, for lack of a better word to
8 describe the way that I felt, because I was so torn
9 between the arguments that I made about having
10 something that we could rely on in terms of a number
11 that had been thoroughly analyzed by the Monitoring
12 Committee and doing what's right by the American
13 fisherman. It's a terrible dilemma that we find
14 ourselves in with having to project the Canadian
15 landings that will affect our domestic landings when
16 we have no control or no type of agreement with the
17 Canadians to play fair by similar standards that the
18 American fisheries use.

19 And I argued very strongly yesterday
20 when I voted against the motion that was similar to
21 what Peter made this morning and the original
22 Monitoring Committee motion out of concern for the
23 need to be very sensitive to the role that the
24 Monitoring Committee plays in this process and not

1 developing something on the fly, on the back of an
2 envelope so to speak, that was different from what
3 the Monitoring Committee recommended and did not
4 have the benefit of a thorough analysis and
5 thoughtful consideration of all the science that the
6 Monitoring Committee process allows.

7 I'm certainly grateful to Jason for
8 taking the initiative to work as he has since the
9 end of that meeting yesterday to come up with
10 something that I feel is certainly science based,
11 and clearly is rational and thoughtful in its
12 development as what I have been told the Monitoring
13 Committee went through when they were looking at
14 their various alternatives.

15 So, I feel much more comfortable in
16 accepting these figures as an alternative and as an
17 approved level of landings for the domestic fishery
18 than I did in any of the alternatives that were
19 presented yesterday beyond what the Monitoring
20 Committee has presented to us. So, I'm certainly in
21 favor of either having Peter accept a friendly
22 amendment to his motion to change the numbers
23 according to what Jason presented to us or else make
24 it a substitute motion, whichever is more

1 appropriate.

2 COUNCIL CHAIRMAN RICHARD ROBINS:

3 Well, we're already on a substitute. Pete, would
4 accept that as a friendly amendment?

5 PETER HIMCHAK: Well, rather than
6 that, Mr. Chairman, I think it may be more
7 appropriate if I withdrew the motion because it's
8 linked to the specific -- you know, the averaging of
9 the two years. And if I withdrew it and then a
10 motion was made that explained the rationale for
11 coming up with the DAH, I think that would be a --
12 this is a much more scientific method I'd have to
13 admit.

14 So, I'm willing to withdraw my
15 motion. Secunder?

16 COUNCIL CHAIRMAN RICHARD ROBINS: Is
17 there any objection from the seconder or the Council
18 of letting him withdraw?

19 PAT AUGUSTINE: The only objection I
20 have as the seconder is that if the intent of the
21 motion is to change -- the substitute is just to
22 change that part and you correct or take out of your
23 motion, because we already discussed it and it's
24 been seconded, that you don't have a problem with

1 protocol or Roberts Rules, I'll withdraw the second
2 and go with the motion. Whatever is easier, Mr.
3 Chairman.

4 COUNCIL CHAIRMAN RICHARD ROBINS: All
5 right. Well, Pete's asked to withdraw it and the
6 seconders agreed to that. All right. What's the
7 pleasure of the Council?

8 PRESTON PATE: Mr. Chairman, I'll
9 make a stab at a motion.

10 COUNCIL CHAIRMAN RICHARD ROBINS: Go
11 ahead, Pres.

12 PRESTON PATE: And in trying to work
13 in the justification, I may stumble a little bit, so
14 please don't hesitate anyone to help me out with the
15 perfected language of this.

16 But, I would move to substitute for
17 the DAH for the I guess it would be the 2011 fishing
18 season the amount of 46,779 metric tons that has
19 been generated from an analysis of the correlation
20 between Canadian catch in one year and the U.S.
21 catch in previous years -- and here's where I may be
22 going too far, but I'll give it a try -- which has
23 been considered a conservative estimate of Canadian
24 landings based on the observation that this

1 correlation approach has resulted in estimates that
2 exceeded Canadian landings only once in the last 15
3 years. I think that's what Jason said.

4 COUNCIL CHAIRMAN RICHARD ROBINS:

5 Thank you, Pres. Is there a second to the motion?
6 Second by Pat Augustine. Discussion on the motion?

7 PAT AUGUSTINE: Discussion?

8 COUNCIL CHAIRMAN RICHARD ROBINS: Go
9 ahead.

10 PAT AUGUSTINE: Mr. Chairman, thank
11 you. Excellent motion, Pres. Do we need that much
12 detail? Is it too much?

13 COUNCIL CHAIRMAN RICHARD ROBINS: I
14 think it does help with the justification when we go
15 to the service.

16 PAT AUGUSTINE: Good. Thank you.

17 COUNCIL CHAIRMAN RICHARD ROBINS: I
18 had another hand up I believe. John.

19 JOHN MCMURRAY: Thank you. I need
20 some clarification here because I'm still trying to
21 understand how we went up 10,000 points from the
22 Monitoring Committee recommendation and we're still
23 at a very low risk of overfishing.

24 COUNCIL CHAIRMAN RICHARD ROBINS:

1 Jason, can you go back through the history there
2 that showed the correlation.

3 JOHN MCMURRAY: I guess what I'm
4 asking is, why is this so different from the
5 Monitoring Committee's recommendation?

6 COUNCIL CHAIRMAN RICHARD ROBINS:
7 It's a different methodology.

8 JASON DIDDEN: In terms of risk of
9 overfishing, it's very difficult since there are no
10 reference points to begin with. So, I'll limit it
11 to exceeding the ABC.

12 And we're looking at correlations.
13 They're imperfect. The previous correlation, I
14 think, was .7. So, I mean, that's suggesting it's
15 not -- it would only be a -- you know, the estimates
16 will only be perfect if the correlation came out to
17 be one.

18 So, there's variation involved. And
19 the estimates and the difference -- it's just too --
20 I mean, you look at any -- many things out there in
21 science and you can get -- the estimates for the
22 beach premium spill, you get widely different
23 amounts. A couple of groups of scientists -- you
24 know, were doing different estimates and they came

1 up with (inaudible).

2 So, they are pretty close in terms of
3 projecting out into the future. I would say that
4 level of difference is not surprising. It actually
5 came out to be fairly close. When I saw it,
6 actually, I thought it was fairly close given what I
7 didn't know what it would come out to be originally.

8 So, it's an imperfect exercise.

9 COUNCIL CHAIRMAN RICHARD ROBINS:

10 Peter.

11 PETER DEFUR: Thank you, Mr.
12 Chairman. And Jason, would you give a quick
13 thumbnail of the way the Monitoring Committee
14 originally came up with the first recommendation.

15 JASON DIDDEN: I proposed to the
16 Monitoring Committee a three-year average. John
17 Deroba at the Science Center ran the correlation of
18 the three-year average in the previous Canadian
19 year, which is really a two-year lag. The two-year
20 lag Canadian data rather than the three-year average
21 was more strongly correlated. The Monitoring
22 Committee said why would we recommend something that
23 was less-correlated. And so, that's what we
24 recommended. And we didn't get these updated

1 Canadian landings that bumped the estimate up, but
2 the methodology was the same.

3 COUNCIL CHAIRMAN RICHARD ROBINS:

4 Peter.

5 PETER DEFUR: Jason, not having the
6 data in front of me because we don't have a copy of
7 those datasheets, that spreadsheets that you had up
8 there, the 1.71 seemed like an awfully high ratio
9 between Canadian and the previous years U.S.; is
10 that right? So, we're talking about Canadian and
11 the previous year's U.S. landings. Yeah. Thank
12 you.

13 COUNCIL CHAIRMAN RICHARD ROBINS:

14 Lee.

15 JASON DIDDEN: While folks discuss,
16 I'll graph the -- within the same year, the Canadian
17 and U.S. catches just so you can kind of see those
18 and you'll see the Canadian catches are above the
19 U.S. ones. But let me -- I'll do that while folks
20 are discussing.

21 COUNCIL CHAIRMAN RICHARD ROBINS:

22 Steve.

23 STEVEN SCHAFFER: Jason, are we
24 dealing with a genuine mistake here or are we just

1 trying to rationalize a number in a different way?

2 JASON DIDDEN: It's just a different
3 method of analysis that comes to a different result
4 and appears that it would be unlikely to
5 underestimate Canadian catch.

6 STEVEN SCHAFER: So, the latter?

7 JASON DIDDEN: Say again what the
8 latter was?

9 STEVEN SCHAFER: Rationalize a
10 different number.

11 JASON DIDDEN: I didn't start off
12 with a number to rationalize. The issue was
13 yesterday we were exploring can we use the 2010
14 Canadian catch to look at 2011 Canadian catch,
15 because that was the most strongly correlated thing
16 I looked at to date. Because of the decision time
17 lines, the answer was no, we can't do that.

18 Last night I was thinking, well, 2010
19 is more recent than 2009. If it's linked and we do
20 have that data, it would be nice to utilize it and
21 that led to this. So, I think it wasn't
22 rationalizing a particular number. It was -- you
23 know, there's another way to look at a problem.

24 COUNCIL CHAIRMAN RICHARD ROBINS:

1 Jason, you indicated you ran this through the
2 Science Center or you went through the assessment
3 scientists there? Who did you consult with?

4 JASON DIDDEN: I talked to John
5 Deroba, who is the mackerel person. He did the
6 original correlation work. He took -- I talked to
7 him on the phone. We looked at the spreadsheet. He
8 thought -- he can't -- it's not an official Science
9 Center review. I think it could be wise to include
10 in the document this and some other example in case,
11 because, I mean, this is obviously -- anytime you're
12 doing something rapidly, there's always a potential
13 for error. He didn't see anything. I mean, it is
14 what it is. But it may be wise to include as kind
15 of another alternative in case this is deemed to be
16 not proper for some reason.

17 But he took a quick look at it. He
18 thought that it looked like a reasonable way to go
19 and the general philosophy behind it was of a very
20 similar philosophy behind what the Monitoring
21 Committee had done previously. But I haven't talked
22 to -- I mean, I've talked to Rich about it, but, I
23 mean, there are other folks on the Monitoring
24 Committee who obviously have not had the chance to

1 look at this.

2 COUNCIL CHAIRMAN RICHARD ROBINS:

3 Peter.

4 PETER DEFUR: Thank you, Mr.

5 Chairman. One of my concerns yesterday that I
6 expressed was that we were -- yesterday when we were
7 talking about 2008-2007, or 2008-2009, the 2008
8 catch year was one of the lowest on record if not
9 the lowest in at least six or eight years where
10 previous years had been 53,000 instead of 28,000.
11 So, it's, you know, 55 percent of the previous
12 several years. And in fact, someone around the
13 table mentioned it would almost seem to be
14 anomalously low.

15 So, that was one of the concerns.

16 And so, that raised the question of the validity of
17 the method. You know, is what we're doing going to
18 pass scientific muster, which gets to the point
19 we're raising now with Jason. And so, while several
20 methods can be used to follow down the pathway, if
21 we just use the one that gives us the number we like
22 the best, then we are guilty of cherry-picking. So,
23 it's in part trying to make sure that we are using
24 the most valid technique to get to it. I don't

1 think we're cherry-picking, but, I mean, that's a
2 concern that we have to make sure that we're
3 addressing. And I don't know whether we need to
4 address something to our Regional Administrator
5 about the result being criticized because of the
6 method we used to get there or not.

7 COUNCIL CHAIRMAN RICHARD ROBINS:

8 Howard.

9 HOWARD KING: Yes, thank you. Well,
10 I'm comfortable with this method. I think that
11 Jason has taken the longest possible time series
12 with the low and the high and everything in between
13 and has come up with this ratio, which fortuitously
14 gives us an estimate of the Canadian catch where
15 it's likely going to be exceeded once every 15
16 years. To me, that's a reasonable way to derive an
17 estimate and I'm comfortable with that.

18 COUNCIL CHAIRMAN RICHARD ROBINS:

19 Peter, I think too the idea of the number being an
20 anomaly, I think the observations have been from the
21 fishery that the availability has been poor in
22 recent years and that's what's driven the catch
23 figures down. So, we've heard that from our
24 advisors. Michael.

1 MICHAEL LUISI: Thank you, Mr.
2 Chairman. I do agree with Howard and I feel that
3 this methodology that Jason worked on is much more
4 complete than just the two-year analysis that was
5 part of the previous substitute motion.

6 The only concern I have, Jason, you
7 mentioned that there is this gross anomaly or
8 outlier that the 4 percent value. I just wonder
9 what your thoughts would be about or how it would be
10 affected if that outlier were eliminated from the
11 result?

12 JASON DIDDEN: The 95th percentile
13 would be a much lower number for Canadian catch
14 resulting in a higher available U.S. DAH. But the
15 fact the outlier -- I mean, that outlier occurred
16 and can occur, that's -- John Deroba, when I was
17 talking to him, he mentioned do you want to drop out
18 the high-low and the lowest one and the highest one.

19 But Pat said, well, it's more precautionary to
20 leave that higher one in because it happened once,
21 it could happen again.

22 COUNCIL CHAIRMAN RICHARD ROBINS:

23 Peter.

24 PETER HIMCHAK: Thank you. Indeed,

1 this is a much more defensible method and
2 encompassing many years and I believe critical in
3 the motion. It was the language that Jason said
4 that this is unlikely to underestimate the Canadian
5 landings. Was that not part of the motion or part
6 of the outcome of the analysis. So, I think that's
7 critical. It's certainly a superior analysis and
8 better defensible. Thank you.

9 COUNCIL CHAIRMAN RICHARD ROBINS:

10 Jason.

11 JASON DIDDEN: The other analysis did
12 look at correlations through the whole time series.

13 I mean, I would say they're very similar analyses
14 in terms of the philosophy behind them. It just
15 happens to come out to a slightly different result.

16 The issue of the Canadian landings
17 generally being at a ratio above U.S. landings. I
18 just plotted it equal years and Canadian landings in
19 most years have been above. And you can see in
20 those early -- well, the gap may not look that large
21 in the early years. All boat landings were low.
22 So, that gap is fairly good percentage there. So,
23 it's not surprising, the ratio that resulted.

24 COUNCIL CHAIRMAN RICHARD ROBINS:

1 Okay. Further discussion? Chris.

2 CHRISTOPHER ZEMAN: I have two
3 questions more. One is, why isn't there sort of a
4 transboundary TRAC process for like the USCA
5 agreement for certain groundfish. And then B, why
6 can't we just go with 50/50 and go 40,000 metric
7 tons with the U.S. as opposed to try and correlate
8 something like -- it's like apples and oranges. I
9 mean, why would you correlate -- I mean, the
10 Canadians can catch 60,000 next year or they can
11 catch 20,000 next year. Why don't we just keep it
12 simple and go 40,000 for the U.S. and then try to
13 work out -- set up a TRAC or some sort of agreement
14 where we actually negotiate this?

15 COUNCIL CHAIRMAN RICHARD ROBINS:

16 Pat.

17 PATRICIA KURKUL: There's no
18 agreement because we have never negotiated one. And
19 negotiating one is not a simple or a quick process.

20 And that's the really short answer to the question.

21 The second part of your question, why
22 can't we just do the 40/40. Because U.S.
23 requirements are that the Council, the agency, needs
24 to take into consideration all sources of mortality

1 in setting their catch levels, their harvest levels.

2 And so, it's necessary from that perspective for us
3 to come up with a reasonable estimate of Canadian
4 harvest just like we would come up with an estimate
5 of recreational harvest or state waters harvest, and
6 include that in the equation when we're deciding
7 what's available for the U.S. industry.

8 COUNCIL CHAIRMAN RICHARD ROBINS:

9 Lee.

10 LEE ANDERSON: Yesterday, when I was
11 speaking on the motion, I said I was very conflicted
12 too. And what I was really interested in was a
13 number that seemed to work. Pete talked about
14 cherry-picking. And I think that's an interesting
15 point and you want to look at it. But I don't think
16 there's cherry-picking going on with respect to the
17 results here.

18 Jason, as I understand him, just said
19 here's something that I think we can look at. He
20 didn't really know what the results were going to
21 be, higher or lower, but conceptually it made sense.

22 And so, you start off with that and it
23 serendipitously it did turn out that way, but that's
24 not the reason that method was chosen. As far as I

1 can understand it, it seemed to be a good way of
2 looking at the issue. So, I'm -- my conscience --
3 or not conscience, but my job appears to be a little
4 easier now because now I think I have a -- something
5 that I can base a vote on that is based on good
6 calculations and not cherry-picking.

7 COUNCIL CHAIRMAN RICHARD ROBINS:

8 Further discussion on the motion? Gene.

9 EUGENE KRAY: I simply want to call
10 the question, Mr. Chairman.

11 COUNCIL CHAIRMAN RICHARD ROBINS:

12 Thank you. The motion was Pres Pate. Who seconded
13 that? Pat Augustine, for the record. Okay.

14 Is Council ready for the question?

15 (Motion as voted.)

16 {Move to substitute for the DAH 2011 specs 46,779
17 mt that has been generated from an analysis of the
18 correlation between Canadian catch in one year and
19 the U.S. catch in the previous year, which has been
20 considered a conservative estimate of Canadian
21 landings based on the observation that this
22 correlation approach resulted in predictions that
23 exceeded Canadian landings in one of the last 15
24 years in the analysis. US ABC would be changed to

1 47,395}

2 COUNCIL CHAIR RICK ROBINS: All
3 those in favor, please raise your hand.

4 (Response.)

5 COUNCIL CHAIRMAN RICHARD ROBINS:
6 Thirteen. Opposed, like sign.

7 (Response.)

8 COUNCIL CHAIRMAN RICHARD ROBINS:
9 Two. Abstentions, like sign.

10 (Response.)

11 COUNCIL CHAIRMAN RICHARD ROBINS:
12 One. 13-2-1. The motion carries. Thank you. Go
13 ahead, Pres.

14 PRESTON PATE: Mr. Chairman, I have
15 another motion that speaks to the transboundary
16 agreement issue that I would want to make later on
17 in the agenda. I'd like to get through the
18 specification setting process and come back to that
19 as another item related to this plan.

20 COUNCIL CHAIRMAN RICHARD ROBINS:
21 Okay. If you can hold that. So, we've just passed
22 a substitute motion. And now the -- Joel, what do
23 you want me to do, put in the whole motion now;
24 right? Has the rest of the motion been read into

1 the record yet or did we stop after that first part.

2 Erling, where are we on that motion?

3 ERLING BERG: Well, don't we have to
4 move this up? Then that becomes part of the whole
5 motion and then we vote on that. I mean, I'm not --

6 COUNCIL CHAIRMAN RICHARD ROBINS:

7 Well, we just approved this as a substitute, but I
8 was asking if the balance of the motion had been
9 read into the record already. It has.

10 UNIDENTIFIED: Yes, it has. Yes.

11 COUNCIL CHAIRMAN RICHARD ROBINS: All

12 right. The substitute motion is now the main
13 motion. Pat.

14 PATRICIA KURKUL: I think for
15 clarification, this really just substituted a
16 portion of the main motion. So, I think we should
17 be clear on the record which part was substituted
18 and then what it's replacing.

19 COUNCIL CHAIRMAN RICHARD ROBINS:

20 Pres, do you mind just reading into the record which
21 portion has been substituted, if you can do that
22 from the screen.

23 PRESTON PATE: Read the complete
24 motion, you mean? What we're substituting is the

1 DAH for the 2011 fishing season.

2 COUNCIL CHAIRMAN RICHARD ROBINS:

3 Okay. Give us just a second to put the original
4 motion up on there so we can confirm which portion
5 has been substituted.

6 JASON DIDDEN: 10,000 used for the
7 U.S. catch. It may be useful for the Council to
8 indicate to have staff perfect that number as an
9 assumed U.S. catch for 2010. Staff would take where
10 we are now precisely. And then -- or probably are
11 when I submit the specs package and I don't think it
12 will be much different than 10,000. And then to --
13 you know, project what percent of the landings
14 typically have happened after that, and then to come
15 up to a total projected for 2010.

16 So, if you -- if the Council wants to
17 do that, you could just provide a motion to allow
18 staff flexibility to finalize 2010 U.S. catch.

19 PRESTON PATE: I thought we had it
20 worked out. I'm just trying to think how to write
21 that in as a perfection to this motion. Because I
22 think what you're saying, Jason, it could
23 potentially modify up or down that 46,000 metric ton
24 number we're using now.

1 JASON DIDDEN: Yes.

2 PRESTON PATE: To some potentially
3 small amount. Okay. Let me try this then. Okay.
4 You're doing it as a separate motion. I was trying
5 to work it into the original motion. Okay. Let's
6 do it a separate motion.

7 Move that --

8 JASON DIDDEN: Do you need to vote on
9 the full motion first?

10 COUNCIL CHAIRMAN RICHARD ROBINS:
11 Yes. If you want to do that, I think it would be
12 okay.

13 PRESTON PATE: That might simplify
14 it.

15 COUNCIL CHAIRMAN RICHARD ROBINS:
16 Yeah. Let's just vote on the full motion, if that's
17 all right. And then we'll have a second motion that
18 says the staff would update the figures based on the
19 2010 catch data at the time of spec submission.

20 (Pause.)

21 COUNCIL CHAIRMAN RICHARD ROBINS:
22 Rich.

23 RICHARD SEAGRAVES: We'd also, in the
24 interest of getting this thing correct, you've got

1 to also change the U.S. ABC in the motion. So, it
2 has to be recalculated. You take 80,000 minus the
3 new number for Canadian, that becomes U.S. ABC. And
4 then you subtract discards to get the DAH.

5 COUNCIL CHAIRMAN RICHARD ROBINS:

6 Thanks, Rich. I think we're ready. We have the
7 motion on the board. The section one, bullet one,
8 that specifies U.S. ABC IOY DAH DAP JVP and TALFF
9 has been modified per the substitute motion.

10 Is the Council ready for the
11 question? All those in favor, please raise your
12 hand.

13 (Response.)

14 COUNCIL CHAIRMAN RICHARD ROBINS:

15 Fifteen. Opposed, like sign.

16 (No response.)

17 COUNCIL CHAIRMAN RICHARD ROBINS:

18 Zero. Abstentions, like sign.

19 (Response.)

20 COUNCIL CHAIRMAN RICHARD ROBINS: One

21 abstention. 15-0-1. The motion carries.

22 JASON DIDDEN: I'm going to just
23 quickly edit that.

24 COUNCIL CHAIRMAN RICHARD ROBINS:

1 Yeah. Pres, did you have another follow-up motion?

2 PRESTON PATE: Yes. Thank you, Mr.
3 Chairman. The motion will read, the Council agrees
4 to the staff adjusting the DAH for 2011 and
5 parenthetically add that amount of 46,779 metric
6 tons based on an analysis of U.S. landings data
7 available at the time of publication of the proposed
8 2011 specs.

9 COUNCIL CHAIRMAN RICHARD ROBINS:

10 Second by Pat Augustine. Discussion on the motion.

11 Pat.

12 PATRICIA KURKUL: I think it's just a
13 timing issue. I think he said based on publication
14 in 2000. Based on the publication date, but in
15 reality it would be based on the submission date.

16 PRESTON PATE: Okay. Thank you, Pat.

17 COUNCIL CHAIRMAN RICHARD ROBINS: So,
18 the motion reads, the Council agrees to the Council
19 staff adjusting the DAH ABC for 2011 based on
20 analysis of U.S. landings available at the time of
21 submission of specifications. Motion was by Pres
22 Pate. Second by Pat Augustine. Questions on the
23 motion? Discussion on the motion. Rich.

24 RICHARD SEAGRAVES: Yeah. The

1 Council agrees the Council staff adjusting. Is that
2 what you meant?

3 PRESTON PATE: Yes.

4 RICHARD SEAGRAVES: The staff making
5 that change.

6 COUNCIL CHAIRMAN RICHARD ROBINS: All
7 right. Is the Council ready for the question.

8 (Motion as voted.)

9 {The Council agrees to the Council staff adjusting
10 the DAH/ABC for 2011 based on analysis of U.S.
11 landings available at the time of submission of
12 specifications.}

13 COUNCIL CHAIR RICK ROBINS: All those
14 in favor, please raise your hand.

15 (Response.)

16 COUNCIL CHAIRMAN RICHARD ROBINS:
17 Sixteen. Opposed, like sign.

18 (No response.)

19 COUNCIL CHAIRMAN RICHARD ROBINS:
20 Abstentions, like sign.

21 (No response.)

22 COUNCIL CHAIRMAN RICHARD ROBINS: The
23 motion carries. Thank you, Pres. Jason.

24 JASON DIDDEN: Along Rich's earlier

1 observation, a simple motion to adjust DAP
2 accordingly might be good also.

3 COUNCIL CHAIRMAN RICHARD ROBINS:

4 Pres.

5 PRESTON PATE: The Council agrees to
6 the staff adjusting the DAP for the 2011 fishing
7 season, and parenthetically whatever that amount is
8 -- I haven't gotten it written down -- based on an
9 analysis of U.S. landings data available at the time
10 of submission of proposed 2011 specs.

11 COUNCIL CHAIRMAN RICHARD ROBINS: Dan
12 just told me that that difference is hard-wired into
13 the plan. It's minus 15,000 metric tons. So, it's
14 probably moot.

15 PRESTON PATE: The motion --

16 COUNCIL CHAIRMAN RICHARD ROBINS:

17 This motion may not be necessary. Do you concur,
18 Rich?

19 RICHARD SEAGRAVES: Yeah. I mean,
20 the motion -- what the problem is as Jason points
21 out, it's got a DAP in the original motion that is
22 not correct. So, that should be adjusted now. So,
23 it would be the new DAH minus 15,000.

24 COUNCIL CHAIRMAN RICHARD ROBINS: So,

1 we do need a motion that simply corrects that.

2 Jason.

3 JASON DIDDEN: I think this would
4 allow the flexibility to adjust it as is.

5 COUNCIL CHAIRMAN RICHARD ROBINS: Is
6 there a second to the motion? Second by Gene Kray.

7 Is Council ready for the question?

8 (Motion as voted.)

9 {Council agrees to Council staff adjusting DAP for
10 2011 fishing season based on analysis of US
11 Landings available at time of submission of
12 specifications.}

13 COUNCIL CHAIR RICK ROBINS: All
14 those in favor, please raise your hand.

15 (Response.)

16 COUNCIL CHAIRMAN RICHARD ROBINS:
17 Fifteen. Opposed, like sign.

18 (No response.)

19 COUNCIL CHAIRMAN RICHARD ROBINS:
20 Zero. Abstentions, like sign.

21 (Response.)

22 COUNCIL CHAIRMAN RICHARD ROBINS: One
23 abstention. 15-0-1. The motion carries.

24 *Tape 4B

1 ERLING BERG: Move that the 2010. I
2 think that's wrong. Shouldn't it be 2011?

3 COUNCIL CHAIRMAN RICHARD ROBINS:
4 Yeah. We'll go with 2011.

5 ERLING BERG: Number one, ABC equals
6 1500 metric tons. IOY DAH DAP equals 500 metric
7 tons.

8 Second bullet. If mackerel TALFF is
9 not specified, then bycatch TALFF equals 0 (zero),
10 otherwise a bycatch TALFF equal to 0.08 percent of
11 the mackerel TALFF is to specified based on the
12 current FMP.

13 Three. Maintain the trip limit of
14 5,000 pounds for moratorium butterfish permits.
15 Maintain the threshold for butterfish minimum mesh
16 requirement 3 inches at 1,000 pounds.

17 Four. Maintain the threshold level
18 for directed butterfish fishery closure at 80
19 percent of the DAH. If 80 percent of DAH is reached
20 prior to 2011, a 250 pound daily trip limit results.

21 If 80 percent of the DAH is reached on or after
22 October 1st, a 600 pound daily trip limit results.

23 Number five. Incidental limits 600
24 pounds reduced to 250 pounds if directed fishery

1 closes before October 1st. That's it.

2 COUNCIL CHAIRMAN RICHARD ROBINS: A
3 motion for the committee does not require a second.

4 Discussion on the motion.

5 Is the Council ready for the
6 question?

7 (Motion as voted.)

8 {Move that the following be specified for the 2011
9 Butterfish specifications.

10 1. ABC=1500 mt; IOY, DAH, DAP = 500 mt;

11 AND

12 2. If mackerel TALFF is not specified then bycatch
13 TALFF = zero, otherwise a bycatch TALFF equal to
14 0.08% of the mackerel TALFF is to specified based
15 on the current FMP;

16 AND

17 3. Maintain the trip limit of 5,000 pounds for
18 moratorium butterfish permits. Maintain the
19 threshold for butterfish minimum mesh requirement
20 (3.0 inches) at 1,000 pounds;

21 AND

22 4. Maintain the threshold level for directed
23 butterfish fishery closure at 80% of the DAH. If
24 80% of DAH is reached prior Oct 1, a 250 pound

1 daily trip limit results. If 80% of the DAH is
2 reached on/after October 1, a 600 pound daily trip
3 limit results.

4 AND

5 5. Incidental limits: 600 pounds, reduced to 250
6 pounds if directed fishery closes before October
7 1.}

8 COUNCIL CHAIR RICK ROBINS: All those
9 in favor, please raise your hand.

10 (Response.)

11 COUNCIL CHAIRMAN RICHARD ROBINS:
12 Twelve. Opposed, like sign.

13 (No response.)

14 COUNCIL CHAIRMAN RICHARD ROBINS:
15 Zero. Abstentions, like sign.

16 (Response.)

17 COUNCIL CHAIRMAN RICHARD ROBINS: One
18 abstention. The motion carries. Erling.

19 ERLING BERG: I have a question for
20 Jason. We had some other motions but they were
21 highlighted. Did we do all these? I don't
22 remember.

23 JASON DIDDEN: I think if you go down
24 to illex, those other ones were just part of how the

1 committee came to its final motions.

2 ERLING BERG: Okay. So, the next one
3 is the -- will be a motion to amend. Is that the
4 one we should go into now then?

5 JASON DIDDEN: I think we just go to
6 illex.

7 ERLING BERG: Okay. Move that the
8 following be specified for the 2011 illex
9 specification: ABC equals 24,000 metric tons; IOY
10 equals DAH equals DAP equals 23,328 metric tons.

11 Number two. The directed fishery for
12 illex closes when 95 percent of DAH is taken and a
13 10,000 pound trip limit implemented for the
14 remainder of the fishing year. Vessels which
15 possess illex incident catch permits may land up to
16 10,000 per trip at all times.

17 Three. Up to 3 percent of the DAH or
18 DAP for illex may be set aside for scientific
19 research. And part of that is move to make a
20 thousand pounds Trimester III limit while existing
21 Trimester II years ranges. Is that correct.

22 JASON DIDDEN: I think those other
23 motions related to Amendment 11 which we'll address
24 tomorrow.

1 ERLING BERG: Okay. So, we'll stop
2 right there. All right. Mr. Chairman, that's it.

3 COUNCIL CHAIRMAN RICHARD ROBINS:
4 Thank you, Erling. Motion for the committee. Is
5 there any comment or discussion on the motion?
6 Seeing none.

7 Is the Council ready for the
8 question?

9 (Motion as voted.)

10 {Move that the following be specified for the 2011
11 Illex specification:

12 1. ABC=24,000 mt; IOY, DAH, DAP = 23,328 mt.

13 AND

14 2. The directed fishery for Illex closes when 95%
15 of DAH is taken and a 10,000 pound trip limit
16 implemented for the remainder of the fishing year.
17 Vessels which possess Illex incident catch permits
18 may land up to 10,000 pounds per trip at all times.

19 AND

20 3. Up to 3% of the DAH or DAP for Illex may be set
21 aside for scientific research.}

22 COUNCIL CHAIR RICK ROBINS: All those
23 in favor, please raise your hand.

24 (Response.)

1 COUNCIL CHAIRMAN RICHARD ROBINS:

2 Fourteen. Opposed, like sign.

3 (No response.)

4 COUNCIL CHAIRMAN RICHARD ROBINS:

5 Zero. Abstentions, like sign.

6 (Response.)

7 COUNCIL CHAIRMAN RICHARD ROBINS: One

8 abstention. 14-0-1. The motion carries.

9 COUNCIL CHAIRMAN RICHARD ROBINS:

10 Erling.

11 ERLING BERG: Okay. I have three

12 motions here. Do you want them all at once, or

13 should I just do them one at a time?

14 COUNCIL CHAIRMAN RICHARD ROBINS:

15 Hang on just a second. Jason.

16 JASON DIDDEN: Are these the

17 Amendment 11 motions?

18 ERLING BERG: Yes.

19 JASON DIDDEN: I think it's on the

20 schedule for tomorrow and on the agenda just doing

21 specs now and 11 tomorrow.

22 ERLING BERG: So, that's it then.

23 Thank you.

24 COUNCIL CHAIRMAN RICHARD ROBINS:

1 Jason.

2 JASON DIDDEN: That's all for me.

3 Rich has his hand up.

4 COUNCIL CHAIRMAN RICHARD ROBINS: Is
5 there anything else?

6 RICHARD SEAGRAVES: Did you cover the
7 linkage between the loligo and the butterfish RSA?
8 Was that covered in the motion?

9 JASON DIDDEN: It was in the loligo
10 motion.

11 RICHARD SEAGRAVES: Okay.

12 JASON DIDDEN: Hold on.

13 COUNCIL CHAIRMAN RICHARD ROBINS:
14 Rich, let us review that and make sure we got it. I
15 know we covered it yesterday in committee. Rich,
16 thanks for the point. It was covered in the motion
17 that was made before the committee. Erling, do you
18 have anything else to bring before us related to
19 specifications?

20 ERLING BERG: No, I do not.

21 COUNCIL CHAIRMAN RICHARD ROBINS:
22 Okay. That concludes our spec setting meeting. Why
23 don't we take a ten-minute break and we'll reconvene
24 the executive committee. We'll be covering an

1 update of the NRCC and CCC meetings. We'll also
2 discuss the proposed visioning project. And we'll
3 have an update on the surfclam excessive shares
4 issue.

5 PRESTON PATE: Mr. Chairman.

6 COUNCIL CHAIRMAN RICHARD ROBINS:

7 Yes, Pres.

8 PRESTON PATE: I had originally noted
9 that I had another motion ready. We can take it up
10 now or wait until we come back. It doesn't matter.

11 COUNCIL CHAIRMAN RICHARD ROBINS:

12 Let's take it now. Let's take it now while the
13 Council is convened.

14 PRESTON PATE: Thank you. I don't
15 think it will take but just a minute.

16 COUNCIL CHAIRMAN RICHARD ROBINS:

17 That's fine.

18 PRESTON PATE: And I was interested
19 in doing it now because it would come right on the
20 heels of the discussion that we had about the
21 fairness issue based on the current or lack of a
22 current agreement with the Canadians for sharing the
23 Atlantic mackerel resource. And Pat alluded,
24 correctly, in her statements that there just wasn't

1 one and it would be a long time coming and it was
2 going to be an arduous task as was noted yesterday.

3 But I certainly don't think based on
4 the comments that I heard during the meeting
5 yesterday, privately last night, and during the
6 discussions today that there's any disagreement that
7 something needs to be in place to correct this
8 inequitable situation for the U.S. fishermen. And
9 even though the tasks may be difficult and the
10 journey may be long in getting us where we want to
11 go, I think it's appropriate for the Council to go
12 on record supporting the idea of moving forward with
13 developing such an agreement.

14 So, in that spirit, I would like to
15 make a motion.

16 COUNCIL CHAIRMAN RICHARD ROBINS: Go
17 ahead, Pres.

18 PRESTON PATE: And I would move that
19 the Council ask the National Marine Fisheries
20 Service to pursue a transboundary resource sharing
21 agreement for Atlantic mackerel similar to that in
22 place for the groundfish stocks.

23 COUNCIL CHAIRMAN RICHARD ROBINS:
24 Second to the motion, Chris Zeman. Discussion on

1 the motion. Pete.

2 PETER HIMCHAK: I hate to complicate
3 things, but, I mean, this is certainly applicable to
4 Atlantic herring and spiny dogfish. We went through
5 this with Atlantic herring. And again, trying to
6 estimate Canadian catch is -- I'll just leave it at
7 that.

8 COUNCIL CHAIRMAN RICHARD ROBINS:

9 Further discussion on the motion? Pat.

10 PATRICIA KURKUL: I'm wondering about
11 the part that's similar to groundfish. There are a
12 couple of models out there. Groundfish is
13 considered an informal agreement. And then a more
14 formal agreement would be negotiated through the
15 state department. The Canadians have already
16 indicated that they are less than interested in
17 discussion on an informal agreement. So, I
18 understand the motivation behind the motion and I
19 can certainly have discussions with my colleagues in
20 international affairs and the statement department
21 on what our options are here. But I think we need
22 to do that and then have a further discussion before
23 we really decide which way to go.

24 PRESTON PATE: And I was wondering

1 that as I was reading my motion. Would you feel
2 more comfortable then, Pat, with that motion ending
3 with a period after the word agreement? Pursue a
4 transboundary resource sharing agreement with Canada
5 for Atlantic mackerel. Is that okay with you,
6 Chris.

7 COUNCIL CHAIRMAN RICHARD ROBINS:

8 Chris, as a seconder, do you agree to that
9 modification?

10 CHRIS ZEMAN: Yes.

11 COUNCIL CHAIRMAN RICHARD ROBINS:

12 Further discussion on the motion. Public comment on
13 the motion? Jeff

14 JEFF KAELIN: I'm Jeff Kaelin. I'm
15 with Lund's Fisheries. Again, just on the notion to
16 expand this motion to other species --

17 COUNCIL CHAIRMAN RICHARD ROBINS:

18 Hang on, Jeff. Can you all turn the microphone on.

19 JEFF KAELIN: Thank you, Mr.

20 Chairman. Jeff Kaelin for Lund's Fisheries. I'm
21 speaking in support of this motion, but on the
22 notion that it be expanded to consider Atlantic
23 herring for example. I don't think the herring
24 industry wants to go down this road. In fact, we're

1 very interested in only having a SARC assessment for
2 Atlantic herring. Because every time we go and sit
3 down with the Canadians, we get our asses kicked
4 basically.

5 So, we're not interested in expanding
6 this beyond mackerel but we really appreciate Mr.
7 Pate's motion, because I think we need to continue
8 to put our efforts in focus in this direction.

9 I understand Pat's frustration with
10 the Canadian response. We know what it is. And
11 whether or not there is a day that we go to the
12 state department and try to elevate this is one that
13 we think we need to work on collectively. So, thank
14 you very much for the time to speak.

15 COUNCIL CHAIRMAN RICHARD ROBINS:

16 Sure, Jeff. Additional discussion on the motion.

17 Is Council ready for the question?

18 (Motion as voted.)

19 {Move that the Council ask the NMFS to pursue a
20 Transboundary resource sharing agreement with
21 Canada for Atlantic mackerel.}

22 COUNCIL CHAIR RICK ROBINS: All
23 those in favor, please raise your hand.

24 (Response.)

1 COUNCIL CHAIRMAN RICHARD ROBINS:

2 Fifteen. Opposed, like sign.

3 (No response.)

4 COUNCIL CHAIRMAN RICHARD ROBINS:

5 Zero. The motion carried.

6 Pat, was that an abstention?

7 PATRICIA KURKUL: And abstention and
8 a comment.

9 COUNCIL CHAIRMAN RICHARD ROBINS: An
10 abstention and a comment.

11 PATRICIA KURKUL: Yes.

12 COUNCIL CHAIRMAN RICHARD ROBINS: A
13 double header. Go ahead.

14 PATRICIA KURKUL: Thanks. When you -
15 - my suggestion would be that when you write the
16 letter to us on this issue that it be written from
17 the perspective of the resource and not allocations
18 issues.

19 And then, just a comment to the
20 herring comment. The industry didn't want to pursue
21 mackerel a few years either. So, I just want to be
22 able to say I told you say later.

23 JEFF KAELIN: Fair enough.

24 COUNCIL CHAIRMAN RICHARD ROBINS:

1 Okay. And tomorrow, when we're convened as a full
2 Council, we will consider the results of the earlier
3 committee meeting that was held as a stand-alone
4 meeting that discussed Amendment 11.

5 But is there any additional business
6 right now to come before us. I think we're done
7 with the specs. Let's take ten minutes and we'll
8 come back as executive committee. Thank you.

9
10 WHEREUPON:

11
12 THE METING WAS SUSPENDED AT 4:20 P.M.
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C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF NORFOLK

I, PAUL T. WALLACE, a Professional Court Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing transcript represents a complete, true and accurate transcription of the audiographic tape taken in the above entitled matter to the best of my knowledge, skill and ability.

In witness whereof, I have set my hand and Notary Seal this 7th, day of August, 2010.

PAUL T. WALLACE. Notary Public
My Commission Expires

October 8, 2015

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Pages: 1-212

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL
800 North State Street, Suite 201
Dover, Delaware 19901

COUNCIL MEETING

8-10 JUNE 2010

at

Radisson Martinique on Broadway
49 West 32nd Street
New York City, New York 10001

THURSDAY, JUNE 10, 2010

I N D E X

TOPIC	PAGE
OMNIBUS ACL/AM AMENDMENT	
JESSICA COAKLEY	4
Motion - Eliminate Option 1	
Lee Anderson	47
Vote - (passed)	47
Motion - Default 75% Fmsy	
Peter DeFur	66
Approved by Consent	66
Motion - Risk Policy	
Lee Anderson	68
Approved by Consent	68
Motion - Option 2B	
Lee Anderson	72
Approved by Consent	78
Motion - Remove Prescriptive Trigger	
John MCMurry	116
Vote - (passed)	122
Motion - Bluefish RHL Adjust	
Peter Himchak	125
Vote - (passed)	125
SCIENTIFIC AND STATISTICAL COMMITTEE REPORT	
JOHN BOREMAN	156
HIGHLY MIGRATORY SPECIES COMMITTEE REPORT	
PAT AUGUSTINE	158
PROTECTED RESOURCES COMMITTEE REPORT	
RICHARD SEAGRAVES	164
SPINY DOGFISH REPORT	
HOWARD KING	177
SQUID, MACKEREL, BUTTERFISH COMMITTEE REPORT	
ERLING BERG	182
Motion - Package Substitution	
Erling Berg	187
Approved by Consent	189
Motion To Substitute	
Erling Berg	189
Approved by Consent	190

Motion - Fleet Capacity	
Erling Berg	192
Approved by Consent	192
Motion - Submit To NMFS	
Erling Berg	193
Approved by Consent	194
Motion - Canadian Catch Prediction	
Erling Berg	195
Approved by Consent	195
RESEARCH SET-ASIDE COMMITTEE REPORT	
PRESTON PATE	197
ECOSYSTEMS AND OCEAN PLANNING COMMITTEE REPORT	
EUGENE KRAY	200
EXECUTIVE COMMITTEE REPORT	
RICK ROBINS	202
Motion - Sources of Funding	
Rick Robins	203
Approved by Consent	203
Motion - Visioning Project	
Rick Robins	204
Approved by Consent	204
Motion - AP Process Report	
Rick Robins	205
Approved by Consent	205
CONTINUING AND NEW BUSINESS	
RICK ROBINS	206

1 [8:42 a.m.]

2 _____
3 INTRODUCTIONS AND ANNOUNCEMENTS

4 COUNCIL CHAIRMAN RICHARD ROBINS:

5 Good morning and welcome to the Council's June
6 meeting, the third day of business. Last night many
7 of you had an opportunity to join us as we wished
8 Larry Simns farewell. This is Larry's last meeting
9 after nine years on the Council as a Council member.
10 And we were also able to have a retirement party for
11 Dan Furlong. Dan has served for over 11 years as the
12 Council's Executive Director and has provided us
13 with excellent staff leadership during that period
14 of time. But I wanted to take one final opportunity
15 to thank and congratulate Dan on his outstanding
16 career with the Council. Thank you Dan.

17 All right and with that we're on to
18 the omnibus. Jessica?

19 _____
20 OMNIBUS ACL/AM AMENDMENT

21 JESSICA COAKLEY: Hey, good morning
22 everyone. I'm going to start out by going through
23 the public comments that we received. Jan, if you
24 could go to the next slide. There were four public

1 hearings that occurred in the month of May. One at
2 the Atlantic States Marine Fisheries Commission
3 meeting, one at the VMRC, New York State DEC and the
4 final hearing was in Stockton, New Jersey. The
5 comment period closed on May 21st, so the 30 formal
6 comments that were provided from the hearing and the
7 18 comments that came in either via mail, email or
8 fax all came in up to May 21st. There was an
9 additional letter that came in after the 21st and I
10 believe that's been made available to you as a
11 handout. So it was a 19th comment that had come in
12 late.

13 For all of these comments, in order
14 to engage the industry advisors, the industry
15 advisory panel members for all the species that we
16 are dealing with were invited to attend each of
17 these meetings by the Council, so we did have a
18 pretty good turnout for some of these meetings.
19 There were many general themes that came out and as
20 you can see the comments are very, very detailed, so
21 I'm going to hit on the main themes and try to hit
22 those points, but really to get a true feel for the
23 comments, you need to read them all. And I know it's
24 a lot of comments but there's a lot of detail in

1 there. One of the things that was raised in several
2 letters are concerns about how are stocks in the
3 fishery are classified and there were
4 recommendations in there for upfront, oh I'm sorry
5 Jan, I keep forget to telling you to change the
6 slide, I'm not used to having my talk over there,
7 concerns about how stocks in the fishery are
8 classified and basically ideas put forward about the
9 types of catch analyses that could be done upfront
10 to look at different stocks that are involved in
11 that fishery. The issue of board stocks was raised
12 in several -- several comment letters including
13 having procedures for setting optimum yield when
14 dealing with forage species.

15 The process for setting Acceptable
16 Biological Catch. There was some concerns that were
17 raised about the framework and the amount of detail
18 in the framework. Some people wanted to see more
19 detail in that ABC framework. And a lot of concerns
20 raised and questions about the process for how the
21 ABC and risk policy would actually fit together. I
22 know at one of our earlier hearings one of the
23 commenters had stated that -- you know, the risk
24 policy looks a lot like what -- the shapes of those

1 policies, a lot like what some of the other control
2 rules are that are used in other places. So the
3 fact that we have this disconnect between how the
4 ABC framework and risk policy are structured in
5 different sections that they thought it would be
6 valuable to make it more clear, the connections
7 between the ABC framework and that risk policy and
8 how those would fit together.

9 There were also a lot of questions
10 raised both at the hearings and in the comment
11 letters about where stocks would be classified in
12 the ABC framework, between Levels 1 through 4. For
13 some of our species, the SSC has already met and
14 classified -- and discussed the level of information
15 available for the stock assessments, but they
16 haven't formally met and applied this new framework
17 and figured out where all the stocks are going to
18 fit for all of those different levels. So that was
19 something that people had raised that they wanted to
20 know where all the stocks were going to fall.

21 There were comments that the ABC
22 framework should be more formulaic. There were also
23 comments that the Council should draft an EIS as
24 opposed to an EA for this document. The risk

1 policy, as I said before, is part of the ABC control
2 rule, but some raised the issue that it's separated
3 in the document and that should be revised. You'll
4 recall from the last meeting, we went out and scoped
5 the risk policy and that it could either reside in
6 the Council SOPPs, as part of that policy process,
7 or it could reside in the FMP. We actually scoped
8 both concepts. There were several comments that had
9 come in when the commenters felt that the risk
10 policy should in fact reside in the FMP as opposed
11 to the SOPPs. There were also specific comments on
12 the risk policy options that are contained within
13 the document. You'll recall those were 2A through
14 2F and what was preferred, we got a specific comment
15 that had highlighted Alternative 2D. There was
16 another commenter that liked Alternative 2F, and
17 there were a series of comments on what the upper
18 limit on the probabilities of overfishing should be.
19 I know there was one set of comments in that the
20 group had recommended at least a 25% probability of
21 overfishing as a reasonable probability. There was
22 also another group that had suggested, they were
23 looking for something on the order of 10%, the
24 standard probability of overfishing.

1 So lots of differing opinions on what
2 those should be. There were also comments that had
3 spoken to having higher probabilities of overfishing
4 associated with those risk policies. So that there
5 are several on that issue. There were also comments
6 on the ACTs and the ACT control rule. Several
7 commenters had stated they wanted to see more
8 formulaic approaches to the ACT as opposed to having
9 the Monitoring Committee develop the ACT
10 recommendation and communicate the ACT control rule
11 through their Monitoring Committee processes to the
12 Council and then on through the specifications
13 process.

14 There were some specific verbal
15 comments that were raised relating to the tilefish
16 incidental category and you'll recall from the last
17 meeting we talked a little bit about additional
18 analyses that were going to be done for this
19 meeting. I'm going to go over that after we go
20 through this comment section. But the comments were
21 specific to how to deal with accountability and that
22 commenter didn't think it was appropriate if the
23 incidental category is exceeding its 5% allocation
24 to increase the allocation to the incidental

1 category by taking allocation away from the ITQ
2 fishery. That was one of the concerns that was
3 raised because the ITQ fishery gets 95% of the TAL,
4 the incidental category gets 5% of the TAL.

5 There were comments on the use of
6 Annual Catch Limits and Annual Catch Targets. Some
7 commenters felt that this really automates the
8 Council decision process in that because now you
9 have the SSC and their role with the ABC
10 recommendation and now this structured process for
11 ACLs and ACTs that takes some of the discretion away
12 from the Council and their decision process.

13 There was a comment at the New Jersey
14 hearing that the comment period should be longer and
15 that they felt that for the magnitude of this type
16 of action that the comment period wasn't -- wasn't
17 long enough.

18 For the recreational fishery, there
19 were concerns that were raised about the application
20 of inseason recreational management measures. And
21 this related to their concerns about the MRFSS data
22 and using that data as a basis for either any
23 adjustments for accountability or the development of
24 management measures to manage these fisheries.

1 Another common theme, particularly at that New
2 Jersey meeting, was where's MREP and the fact that
3 there's this expectation that MREP should be coming
4 online. We've had this new information program, a
5 new process for dealing with recreational data. And
6 there were some commenters that felt until that
7 information comes online they didn't think it was
8 appropriate to deal with this accountability.

9 Other things that were raised at the
10 meetings, the ASMFC and state processes and how
11 these would fit with the new requirements and the
12 new system of catch limits and accountability.
13 There were commenters that were concerned, both
14 verbal comments and in some of the letters, that
15 this process will cause state/federal disconnects,
16 future disconnects for fluke, scup, sea bass,
17 bluefish, dogfish, those that we cooperatively
18 manage. There were also comments that had come in
19 in terms of they felt that this process of Annual
20 Catch Limits and Annual Catch Targets was
21 excessively precautionary on top of having the
22 scientific input in that ABC process built into
23 place. There were some questions that... that were
24 raised at the meetings about how to deal with

1 state/federal accountability. I recall specifically
2 it was the Virginia hearing we had a fisherman that
3 had asked about this issue and how on the federal
4 side we would be dealing with accountability on a
5 coastwide basis for a lot of these stocks, but he
6 raised issues of state by state accountability and
7 how it made sense to him with state by state that an
8 individual state is responsible for their landings
9 and their overages and the way that they manage
10 where as if these processes and accountability are
11 applied generally, states that are more
12 precautionary may be penalized by states that are
13 less precautionary in the way that they chose to
14 manage. So some of those issues were mentioned in
15 comments but some of these were raised as questions
16 when we held the hearings.

17 Those are the main themes that I
18 pulled out of the document, but as you know, there's
19 49 comments that came in, many of them are more than
20 a page or two long, so it's impossible for me to
21 capture every single point that was made, but these
22 were the common themes that I had hit on. So things
23 to think about as we move forward, now that you've
24 looked through these comments and had them available

1 in the briefing book, there are a lot of sub-options
2 that are contained within the document for some of
3 the species. One of the things that we did scope
4 was the issue of one vs. three years; averaging that
5 recreational data. Last meeting I provided some
6 information on the effects of one vs. three or
7 averaging that basic Fmat analysis that was done.
8 The Council today may want to consider modifications
9 to options or if there are things that you don't
10 consider particularly viable as sub-options, this
11 may be the time to remove those from the document
12 and treat them as considered but rejected. So for
13 fluke, scup, sea bass, one vs. three years was in
14 there. From reading through the comments, I didn't
15 see a lot of comments, in particular on this issue -
16 -

17 UNKNOWN: You're not coordinating.

18 JAN BRYAN: Which slide are you on?

19 JESSICA COAKLEY: I'm sorry, Jan.

20 Next slide. I forget. I'm sorry. I get -- get in
21 my zone. I'm used to -- I'm scrolling through it
22 not realizing it -- not realizing that you're not
23 scrolling through it.

24 Okay, so the one vs. three year

1 option, next slide. Another issue that's contained
2 within the document that we did get some comments on
3 is the how to deal with accountability for the
4 bluefish recreational harvest limit when transfers
5 occur. You'll recall when a transfer doesn't occur
6 within the document, the commercial fishery would be
7 responsible if the -- for any landings overages
8 because that's something that's already contained
9 within the FMP, but there's the new -- newly
10 proposed action that if the ACL is exceeded in that
11 rec harvest limit, those landings are responsible,
12 and a transfer's not occurred, the rec harvest limit
13 would be adjusted the subsequent year by the amount
14 of the overage. The big question is what do you do
15 when a transfer occurs and there were three sub-
16 options in the document and the commenters were
17 leaning towards either that second option, which
18 would be to adjust the ACL because you've
19 transferred fish from the rec harvest limit to the
20 commercial; and essentially if you adjusted the ACL,
21 it comes off the top before you've done that
22 allocation, so both pay, and people seem to like the
23 idea to having an automatic adjustment to the
24 transfer. So those -- those were the options that

1 the commenters were leaning towards.

2 Next slide. Also, inseason
3 recreational measures for fluke, scup, sea bass.
4 These were things for these three species there are
5 prescriptive inseason triggers that are proposed in
6 the document. In addition, those three species plus
7 mackerel and bluefish have general inseason closure
8 authority that's described in the document. That
9 would be general authority not with fixed prescribed
10 triggers and the Council could choose to keep both
11 within the document. If there was one or the other
12 that you were leaning towards, you could identify
13 that or if the Council doesn't want to move forward
14 with either of those options, that would be
15 something you could identify at this point. There
16 seemed to be pretty strong public input on the MRFSS
17 issue and their discomfort with the prescriptive
18 inseason triggers and using that MRFSS information
19 for the basis for that.

20 So other options and things that we
21 do need to talk about today, the Atlantic mackerel
22 issue. I just want to make sure I highlight this so
23 we don't forget about it. Amendment 11, I just want
24 to make sure right now within the document, we scope

1 two options, a flow chart on page 26 that has a
2 recreational ACT and on page 29 that didn't include
3 a recreational ACT. So I know that FMAT is looking
4 for clear advice from the Council today, is
5 Amendment 11 going to move forward, if it is which
6 flowchart are we going to go with, which set of
7 accountabilities so we can continue to develop the
8 document. And if there are no changes or are no
9 proposals for considered but rejected, the FMAT
10 would move forward with the options as they are
11 contained within the document and develop the
12 environmental assessment to have a draft to the FMAT
13 and the staff in July and to get it to the Council
14 in August, for the August briefing book so you can
15 review that prior to the August meeting to consider
16 submission of the document at that point in time.

17 Other things that -- we did have one
18 other issue come up between June and -- between
19 April and this meeting in June. We have had
20 Council, some Council members raise the issue of
21 optimum yield and there is a section in the document
22 that discusses optimum yield but there were some
23 Council members that wanted to make it more explicit
24 that the Council can recommend adjustments for any

1 of these stocks to address optimum yield when you
2 set your catch limits. Within the document, it
3 already says that optimum yield would fall somewhere
4 between the ACL, because ACL equal ABC and the ACT
5 when those are set for any given year. But the FMAT
6 felt very strongly that it wasn't appropriate to
7 designate optimum yield and where it sat relative to
8 those catch limits in those flow charts because it's
9 something that's a moving variable for long term
10 average it changes. Where it sits relative to those
11 catch limits would change over time. So unless
12 there's objections to making that a little more
13 explicit, because I think at this point it's clear
14 that the Council can do that at anytime when you set
15 your catch limits, but we would just make it a
16 little more clear in the document. So unless
17 there's objections, we would go ahead and add a
18 statement to that effect to that optimum yield
19 section.

20 So before I move onto the tilefish
21 limit review, this might be a good time to take
22 questions.

23 COUNCIL CHAIRMAN RICHARD ROBINS: Well
24 Jessica I was just going to ask if you could clarify

1 that. So when we get an OY, I think the issue is
2 not just where it falls on the flowchart but I think
3 what we want to preserve explicitly in the document
4 is the ability as a Council to incorporate OY
5 considerations that are basically statutory. So in
6 the Act it says that the Council should consider
7 social, economic and ecological factors in making
8 that determination and those are the explicit
9 statutory components, but I think we need to make it
10 clear in the document that we could set ACL below
11 ABC to account for those factors in each of these
12 fisheries. I guess that's -- I think that's what's
13 not clear to me in the narrative there, but John you
14 had a --

15 JOHN MCMURRAY: Thanks. You actually
16 covered what I was going to ask, but I still don't
17 really understand why we wouldn't put that in the
18 flowchart. Maybe you could explain it.

19 JESSICA COAKLEY: Sure and Joel's here
20 as well. Joel and I have talked about this at
21 length and he may want to chime in. But the concept
22 of optimum yield, when you set your catch limits for
23 the upcoming fishing year and you propose a series
24 of catch limits that may include adjustments for OY,

1 your true OY is essentially the catch that you get
2 in the long term that's the return on those. So
3 when you catch limits for the upcoming fishing year,
4 you're not going to catch exactly what you propose.
5 You're going to get something else. And it's a long
6 term -- the optimum yield is a long term average and
7 I know people have said they don't like the term
8 return, that's an economic term. It's the return
9 that you're getting from using that process to set
10 those catch limits. And it's something that -- that
11 it is a variable that changes over time and in
12 different circumstances it may -- your true OY may
13 be right up against where your ACL is, where we have
14 ACL equal ABC or it might be closer to where your
15 ACT is. So to pinpoint within this flowchart exactly
16 say OY is going to fall between these or be equal to
17 those, the FMAT really didn't think that was an
18 appropriate way to communicate OY.

19 JOHN MCMURRAY: Okay, thanks.

20 COUNCIL CHAIRMAN RICHARD ROBINS: Is
21 there any objection then to including the statement
22 just that makes that explicit that in fact the
23 Council can set ACL below ABC to account for social,
24 ecological or economic considerations to achieve OY?

1 All right, we'll do that.

2 JESSICA COAKLEY: That's fine. Joel
3 and I were just having a quick side bar that really
4 it should be since ACL is equal to ABC, it should be
5 when you're setting your ACT. You could adjust that
6 to address OY and if you look in the guidelines, the
7 guidelines are specific that in order to achieve OY,
8 you have to address both scientific and management
9 uncertainty first. So it would be a step after
10 that.

11 COUNCIL CHAIRMAN RICHARD ROBINS: But
12 you could still -- you could still establish an ACL
13 that reflected OY considerations. I wouldn't think
14 it would be limited to --

15 JOEL MACDONALD: It depends on
16 whether you want to double count those particular
17 considerations. I mean if you've taken them into
18 account in establishing an ACL, would you then
19 account for them again at the ACT? I think there
20 may be situations where you may want a buffer of --
21 you know, a greater level and maybe consider those
22 factors at both levels. But I don't see that
23 operating at the ACL level most often. I think in
24 setting the ACT, those considerations will probably

1 be better involved in the process. But I don't
2 think -- you know, it's a process we haven't worked
3 through yet so it's kind of difficult to forecast or
4 predict at what level most considerations are best
5 brought into play. I think given the fact that we
6 are setting ABC equal to ACL, etc., that moving into
7 the ACT arena, that's probably a better forum in
8 which to discuss those considerations, at least the
9 way the process is envisioned right now under the
10 Omnibus. (Microphone stopped.)

11 COUNCIL CHAIRMAN RICHARD ROBINS:

12 Well I guess it depends on whether or not you want
13 those factors to be reflected in a soft target or a
14 hard target and maybe you could have -- is there any
15 reason you couldn't have both of those in there? Is
16 it whether we ?? the flexibility and say the Council
17 request considerations at the ACL or ACL level.

18 JOEL MACDONALD: There is no reason
19 you couldn't have it at both levels.

20 COUNCIL CHAIRMAN RICHARD ROBINS: And
21 you could have it twice but reconsider it an
22 either/or.

23 JOEL MACDONALD: Yes.

24 COUNCIL CHAIRMAN RICHARD ROBINS: I

1 think we need to make it clear that the Council can
2 and will bring those factors in the -- section but I
3 just think it needs to be -- . Dan, my mic is not
4 working. I have Lee and then Peter.

5 LEE ANDERSON: Jessica, I think -- I
6 thank you for the summary of the things you gave --
7 I think that was very well and I know it's good
8 because it corresponded to mine, so it has to be
9 right. But the issue I'm thinking of is that I hope
10 that through the day or through this discussion you
11 go into a little of those comments and say okay,
12 this one is -- thank you very much for this comment,
13 but we're fine with the way we are or thank you very
14 much, this is a great comment, this is how we
15 adjusted to it. So I think to be transparent and do
16 what we want to do with this, we have to do more
17 than list the comments, we have to show, at least I
18 would believe and I hope that we would show how we
19 are reacting to the comment. I'm not trying to tell
20 you how to run the show today, because you've got a
21 lot but eventually that needs to be done.

22 COUNCIL CHAIRMAN RICHARD ROBINS:

23 Peter.

24 PETER DEFUR: Thank you very much, Mr.

1 Chairman. There are a couple of questions that I
2 have that are related to Joel. Number one is, the
3 first one goes to this OY question, don't we need to
4 have in there that the Council shall -- and I'm not
5 clear why we've got the choice of putting it in
6 either at the ACL or the ACT level. I mean, the
7 guidance is really that vague? I mean we really
8 have the option of putting it in in either of those
9 two places and aren't we required to do it? It
10 might be a factor of zero, but aren't we required to
11 consider it? That was one question and then I have
12 a couple others from the comments.

13 JOEL MACDONALD: Okay, when you say
14 consider it, what exactly do you mean? I mean we
15 have to specify optimum yield. I think optimum
16 yield, as Jessica explained, is generated by the
17 structure that we have in place between the ACL and
18 the ACT so that the OY will be the amount of catch
19 generated under that structure that will fall
20 somewhere between the ACT, maybe equal to it, and
21 the ACL. You know, as Jessica explained and the
22 courts have confirmed, optimum yield is a long term
23 average. We've had lawsuits where one of the claims
24 has been that -- you know, you're not achieving

1 optimum yield this particular year because you're
2 not generating the maximum level of catch and the
3 courts have said: no, that's not the concept, it's a
4 long term average.

5 So what I see happening here is --
6 you know, this structure allows for the optimum
7 yield to be generated through the application of the
8 ACL/ACT formula. And so we'll look at those catches
9 over time to see what they are and the average of
10 those will be the optimum yield. Consideration of
11 the factors that Rick articulates -- the factors
12 that Rick articulates economics, ecology and social
13 factors or biological factors fall out of the
14 definition of optimum with respect to yield which is
15 in the definition section of the Magnuson Act and so
16 I think we do have the ability to take a look at
17 those considerations at either or both the ACL and
18 the ACT level. It depends on what the circumstances
19 are. Talking about these concepts in a vacuum is
20 kind of difficult until we are confronted by a real
21 life factual situation. There may be -- you know,
22 factors that -- we look at those situations at the
23 AC level and let's say there are economic
24 considerations or management uncertainty that fall

1 within the ecological range of those factors that we
2 want to take into account that drop the ACL below
3 the ABC; and then we come to look at the ACT level,
4 there may be other factors that fall in other
5 categories that you want to consider to, let's say,
6 because of management uncertainty you may want a
7 larger buffer, so you're really looking at those
8 factors at those two levels in some situations but
9 it will be the situation that drives those
10 considerations and not -- you know, the discussion
11 that we have here today. We really need something
12 to confront us so that we can make a determination
13 when we're going to take those particular
14 considerations into account.

15 PETER DEFUR: Okay, thank you very
16 much.

17 COUNCIL CHAIRMAN RICHARD ROBINS: And
18 Peter just to follow up, appreciate Joel's answer.
19 I think the guidelines do indicate that OY would
20 reflect an account for uncertainty now and I think
21 the document as written, the OY section gets at that
22 issue but I think this additional issue of economic,
23 ecological and social considerations is something
24 that we just need to include specifically so that we

1 preserve the flexibility to do that. And we're not
2 proposing to formulate a control rule by which we
3 would do that at this point in time, it's just
4 simply a placeholder to say that the Council can
5 incorporate those factors and -- you know, it is
6 statutory, so I think we ought just be explicit
7 about that.

8 PETER DEFUR: Yeah, I had a follow-up
9 to Joel which is on a different subject and that is
10 I remember reading a comment about the difference
11 between the EA and the EIS and that we're in the
12 path for an EA and at least one commenter raised
13 that question about shouldn't we be doing an EIS?
14 And I don't want us to get down the road and
15 discover that we're on the wrong road.

16 JOEL MACDONALD: This is a
17 consideration that's raised by many commenters,
18 basically NGOs. What it comes down to is, is this a
19 major federal action significantly affecting the
20 quality of the human environment. That's the NEPA
21 threshold and typically we've had frameworks, I
22 believe SBRM was one of them that we did an
23 Environmental Assessment for. I think we're being
24 challenged -- you know, on that score, but the

1 considerations involved is, okay, what's the
2 significance of this. What we're looking at here is
3 establishing a structure that would be populated by
4 later actions and I don't see that as being
5 significant in the context of NEPA. The process of
6 going -- NEPA process -- the agency go through a
7 process to better inform its decision making. It
8 doesn't require a particular outcome and the way it
9 should work is you go through an EA to determine
10 whether in fact you need an EIS. And everything
11 that we've analyzed so far -- you know, the
12 significance of it in the context of an EA, doesn't
13 demonstrate that we meet the threshold for doing an
14 EIS. That's the position we've taken right now.
15 That's not to say that -- you know, let's say we go
16 down the road, we adopt this in final, we make a
17 recommendation to the agency, it's implemented,
18 we're still subject to a legal challenge. It will
19 be for the courts to decide whether in fact we made
20 the right decision or not.

21 COUNCIL CHAIRMAN RICHARD ROBINS:

22 Okay, Jessica?

23 JESSICA COAKLEY: Okay, well the next
24 issue I wanted to go through was the tilefish trip

1 limit review. You could go to the next slide Jan.
2 There we go. But I guess if there are other --
3 before I get into this trip limit analysis, did you
4 want to go into more detail on some of the comments
5 or are we done with that section and I can move on
6 to this and then we can come back to some of the
7 issues from the comments you want to discuss after
8 the trip limit review. How would you like to do
9 this?

10 COUNCIL CHAIRMAN RICHARD ROBINS: Why
11 don't you go ahead and go through the trip limit
12 review --

13 JESSICA COAKLEY: Okay.

14 COUNCIL CHAIRMAN RICHARD ROBINS: --
15 and I'll see if -- see if we need to take action on
16 that. And then we'll go back and review the summary
17 comments and see which ones we want to take action
18 on. It think we've already acted on some of the OY
19 concerns, but go ahead.

20 JESSICA COAKLEY: Okay, I just -- just
21 wanted to make sure we do this efficiently. Well
22 back in December the Council tasked the FMAT with
23 examining inseason trip-limit adjustments and the
24 potential for those in the incidental tilefish

1 fishery. The fishery already has in place that
2 incidental component of the fishery already has the
3 ability to change trip limits from one year to the
4 next year through the specs process if that 5%
5 allocation is exceeded. So the FMAT also discussed
6 how to deal with accountability for the incidental
7 fishery but there wasn't a lot of supporting data.
8 So the staff, myself, Jose Montanez in junction with
9 Eric Thunberg, worked through some trip limit data
10 and Eric had put together a trip limit model to
11 answer some of these questions. One of the things
12 we looked at was the fishery performance for the
13 incidental tilefish fishery and while there were
14 some overages in that incidental category earlier in
15 the time series, this goes back to 2001, in the most
16 recent years the incidental category has come in
17 under their -- their allocation. I also want to
18 just highlight that 2004 is the time period for the
19 Hadajah vs. Evans lawsuit where the permitting
20 requirements were suspended for that year so we
21 haven't included the landings for that year in this
22 table. That was sort of an unusual case for that
23 year.

24 So one of the things we did take a

1 closer look at were the trip thresholds that are in
2 place, the otter trawl vessels, the trips they're
3 taking, what poundage of tilefish are landed for
4 each of those trips and then the associated amount
5 of pounds. So in terms of the numbers of trips that
6 are landing up to that 300 lb. threshold, the
7 majority of the trips are landing less than 300 lbs.
8 There were only 19 trips that reported landing 300
9 lbs. for their trip and they landed a total of 5,700
10 lbs. of tilefish, that was from those 19 associated
11 trips. From those 19 trips, only 2 lbs. of discards
12 were reported for those 19 trips; which leads staff
13 to suspect that discarding in this fishery is likely
14 being underreported because the sum of all
15 those fish came exactly to 300 and we know that it's
16 unlikely that that has happened and that more than 2
17 lbs. was discarded. So that's something that when
18 we talk about the options for how to deal with the
19 trip limit, that will factor in that discard aspect.

20 One of the other things that we also
21 looked at was the tilefish, the contribution, the
22 weight contribution to the trips and the X-vessel
23 value contribution at those different threshold
24 through the VTR and dealer data and as you can see

1 the weight contribution to the total landings for
2 these trips is quite small. We're looking at 1% or
3 less weight contribution to those trips; and value,
4 you're looking at about 3.5% or less contribution to
5 the X-vessel value for those trips. So the tilefish
6 landings for these otter trawl trips are a small
7 contributor. It is a poundage or to X-vessel value.

8 Now the trip limit model that was put
9 together is something that the Science Center has
10 used for other trip limit analyses. It examines how
11 the trip limit that's in place affects fishing
12 choices. So we look at the trip limit itself, the
13 revenues that are earned, catch composition and
14 fishing costs and those all affect whether or not a
15 trip is going to occur and whether a fisherman
16 decides to take that trip, to shorten their trip, to
17 abandon fishing or taking that trip. So what this
18 model does is look at all of those factors and how
19 they affect that decision. The conclusions from
20 this analysis were that regardless of the trip limit
21 imposed in the incidental tilefish, oh good, you're
22 already caught up, I'm sorry I realized I hadn't
23 said slide in a very long time -- regardless of the
24 trip limit imposed in the incidental tilefish

1 fishery, whether it was zero pounds or 300 lbs., the
2 otter trawl vessels that catch tilefish would not
3 abandon or shorten any of their fishing trips. This
4 modeling effort basically says that's not the
5 factor that's driving their decision to take that
6 fishing trip. Their landing tilefish incidentally.
7 So those landings really do appear to be truly
8 incidental and correspond to a minor component of
9 that total volume and X-vessel value, which as we
10 saw from the data, it is a small -- a small
11 contributor. Peter has a quick question, did you
12 have a question?

13 COUNCIL CHAIRMAN RICHARD ROBINS:

14 Peter?

15 PETER DEFUR: Do you have any way of
16 confirming that first conclusion out of the model?

17 JESSICA COAKLEY: Confirming the
18 conclusion?

19 PETER DEFUR: Yeah, do you have -- is
20 there any way to get ground truthing on it?

21 JESSICA COAKLEY: Well, basically I
22 guess not necessarily outside of the model. Within
23 the model, we basically plugged in these different
24 values -- you know, zero pounds, 5 pounds and

1 examined how many trips would be affected and what
2 the -- that modeling what the fishermen would
3 actually do, and that model model indicated that
4 none of those trips would have been abandoned over
5 those circumstances. So other than looking at that
6 X-vessel value or total volume, I don't have any
7 information outside of that to confirm this at this
8 point.

9 So there were a couple of options
10 that the staff has compiled and we wanted to ask the
11 Council how do you want to deal with the trip limit
12 in this case. One, we have a 300 lb. trip limit
13 that's currently in place and one strategy the
14 Council can take is to just maintain that current
15 300 lb. trip limit in the incidental fishery
16 recognizing that based on this modeling effort, it
17 does not appear that that 300 lb. trip limit is
18 particularly effective given the dynamics of the
19 fishery. One other option that the Council could
20 consider is to increase the trip limit in the
21 incidental fishery. And the basis for this would be
22 to try to capture some of those discards that
23 probably are not being reported. If you increase
24 that trip limit, those discards may then be

1 converted to landings and you may get a better
2 picture of some of that -- that mortality that is
3 occurring due to discarding. One of the
4 difficulties of this option, since there is no
5 discard information it's hard to figure out what you
6 should increase the trip limit by, whether it should
7 be 25 lbs., 50 lbs., a hundred lbs.; we really don't
8 have that information and really what we're trying
9 to do as staff is really lay out a couple ways you
10 might want to think about this. The third option is
11 to not have a trip limit in the incidental fishery.
12 One of the advantages to that, maybe you'd convert
13 all of those potential discards into landings so you
14 may get a better accounting of that total mortality.
15 One of the things that we did highlight in that trip
16 limit review, as well, is we're looking at the way
17 this fishery is operating right now. We do have an
18 ITQ fishery coming on line, there are other
19 conditions that affect whether fishermen decide to
20 target species and you could have things like market
21 prices could change, so if you eliminated the trip
22 limit, there's potential for some directing if you
23 do that. But like I said, one of the advantages you
24 may convert what are discards into landings and

1 figure out, get a true picture of what that discard
2 component might be.

3 So these are just three general
4 strategies that we put out there. There are pros
5 and cons to all of them. You know, with Option 1,
6 even though the trip limit may not be effective, you
7 may want to look at that as a backstop. That you
8 have a trip limit, even though its not effective
9 now, it may become effective at some point. And I
10 just have one other slide to cover on this and
11 that's the issue of accountability. And we had some
12 rough options drafted out in the last version of the
13 document and the staff, we've tightened these up a
14 little bit and come up with what we think are two
15 reasonable options for dealing with accountability.
16 And one if the ACL is exceeded and the overage is
17 due to landings and excess of the incidental fishery
18 their allocation of 5%, you could choose to tackle
19 this by reducing the incidental allocation the
20 subsequent years as a single year adjustment and
21 that was something that we talked about back in
22 April. There's the potential there that if it's
23 truly incidental and basically the tilefish landings
24 are sort of secondary to the effort that's driving

1 these trips, you could reduce that amount the next
2 year and they could still land in excess of that the
3 next year because it hasn't really done anything to
4 resolve the underlying effort or drivers for taking
5 those trips. So there is that potential with that
6 first option.

7 Another way that you could tackle
8 this is to reduce the ACL the subsequent year by the
9 landings overage amount as a single year adjustment.
10 So that allocation would still stay as a 5%
11 allocation, but if there are overages that occur as
12 a result of the incidental fishery, it would come
13 off the very top before you go through and do your
14 ACT allocation and then allocate 95% of the TAL to
15 the ITQ fishery and 5% to the incidental category.
16 One thing in addition that the staff did highlight,
17 if the incidental fishery allocation is being
18 frequently exceeded, the Council should visit the
19 adequacy of that 5% because if this is incidental
20 and that 5% isn't an adequate, essentially set-aside
21 amount for that fishery, that may be something you
22 want to re-evaluate and re-evaluate the trip limits
23 at that time as well. So these are the options that
24 we've laid out. Like I said there are pros and cons

1 to any of those approaches, but we've been looking
2 for guidance from the Council on how you want to
3 deal with the trip limit and how you would like to
4 deal with accountability -- already taken care of
5 ITQ accountability. There should be permit by permit
6 accountability for that aspect of this fishery. We
7 need to deal with the incidental category.

8 RICHARD ROBINS: Jessica, can you go
9 back to a previous slide that laid out the trip
10 limit options.

11 JESSICA COAKLEY: Sure.

12 COUNCIL CHAIRMAN RICHARD ROBINS:
13 Okay, so, I guess the question I would have on these
14 it seems that, at least Option 3 if you had no trip
15 limit you potentially have an incentive to change
16 fishing behavior potentially. I mean I realize that
17 they are incidental, but it's not a cheap fish and
18 if you had no incidental trip limit at all, couldn't
19 that potentially induce some additional effort.

20 JESSICA COAKLEY: That is -- that is
21 possible.

22 COUNCIL CHAIRMAN RICHARD ROBINS: And
23 on Option 2, do you a specific recommendation from
24 the Council for a trip limit or would you simply

1 develop a range of options for a higher trip limit.

2 JESSICA COAKLEY: Well, right now
3 there isn't a lot of information available with the
4 FMAT to suggest what that increase should be. If
5 the Council wanted to go with that and had a
6 recommendation, we could certainly develop that.
7 But at this point there's only two pounds of
8 discards on which to base any analysis in that
9 fishery.

10 COUNCIL CHAIRMAN RICHARD ROBINS:

11 Okay. Peter?

12 PETER DEFUR: Thank you, Mr.
13 Chairman. Thank you, Jessica, nice job. So what is
14 the fishery now that's there's the incidental.
15 That's the mixed fishery otter trawl fishery and
16 what is their target.

17 JESSICA COAKLEY: Well, it is a mixed
18 species fishery and actually is Jose here?

19 JOSE MARTINEZ: Yeah, I'm right here.

20 JESSICA COAKLEY: Come on up, Jose.
21 Jose worked with me on a lot of these analyses.

22 JOSE MARTINEZ: They could be
23 targeting monkfish, groundfish, some other species -
24 - you know. They could be doing some type of

1 flounders in the winter time up in New England,
2 yellowtail flounder, things like that. It's really
3 truly a mix species fishery up there.

4 PETER DEFUR: Because, Mr. Chairman,
5 the question that I had in my mind is if we go with
6 Option 3 in order to capture the true catch, the
7 true incidental measure, and it starts to expand,
8 then what are the consequences for those who are
9 prosecuting the fishery and suddenly they say, well
10 let's forget the flounder, let's go for tilefish.
11 There's a consequence, isn't there, for them?

12 COUNCIL CHAIRMAN RICHARD ROBINS:
13 Well, there are consequences for the ITQ fishery to
14 operate in a directed fashion and that gets some of
15 the AM options. But I see Option 3 as being
16 somewhat risk prone, but Chris?

17 CHRIS ZEMAN: Yeah, I was going to
18 add it's very hard to sort of accurately
19 characterize any of these options as either a
20 bycatch reducing measure or increasing measure
21 because we really don't understand -- you know,
22 what's -- we don't really understand why there --
23 you know, is this a fishery that they're trawling
24 for flounder and their like oh, let's get our 300

1 lb. limit. Let's go further out, let's go 10 miles
2 here to get our limit of tilefish and then head back
3 in. Or is this a fishery that catches -- is
4 trawling for monkfish and catches 3,000 lbs. of
5 tilefish and just throws away 2,700 lbs. We don't
6 know. So I can't see any of these options as -- I
7 can't really see -- I can't even -- I can't even --
8 I don't have information to sort of say which is the
9 best option here and if we think there is discarding
10 going on, and I'm assuming that that 300 lb. trip
11 limit has a purpose for conservation. And if that's
12 the case, then shouldn't there be an Option 4 to
13 reduce the trip limit to account for discards?

14 COUNCIL CHAIRMAN RICHARD ROBINS:

15 Jose?

16 JOSE MARTINEZ: If you look at Table
17 1, excuse me, if you look at Table 2, you really see
18 that the bulk of their trips were way below 300 lbs.
19 So basically you see a lot of trips in there, 200
20 lbs. or less. These fishermen definitely if they
21 find the tilefish, they're going to get them. It's
22 just more money, but I do not think that they are
23 deviating from their normal operations to look for
24 tilefish. There isn't really a conservation benefit

1 from this trip limit. If you're throwing the fish
2 back, it's dead. You're not conserving anything,
3 you're just not landing it and the other thing that
4 perhaps what they do is, which I don't know if the
5 Council will feel uncomfortable, but we can really
6 even look at the data that was used when the FMP was
7 first implemented; and we have a little bit of the
8 historical account of that and there were just a --
9 there were a handful of trips that were about 300
10 lbs. The reason they chose the 300 lbs. is because
11 it's kind of like something that the industry felt
12 comfortable with. They say, you know 300 lbs.
13 that's -- we're catching that much -- you know, we
14 don't want to throw the fish back. There are not
15 that many trips above 300 lbs. But there were a few
16 trips above 300 lbs. when you look at the original
17 data that was used to develop the FMP. Now those
18 landings were not super high. I don't recall
19 exactly, but I think that perhaps like the highest
20 landings were like 700 lbs. I mean there were just
21 truly a handful of trips. So even though I agree
22 with Jessica completely, we don't have the discard
23 data to really truly access how much has been
24 discarded right now. We could potentially rely in

1 that old data and perhaps come up with a range if
2 that's what the Council wishes to do.

3 COUNCIL CHAIRMAN RICHARD ROBINS:

4 Lee?

5 LEE ANDERSON: I think we may be
6 focusing on a different issue, or at least I'd like
7 to focus on another one. And the whole purpose that
8 I understand that bycatch limit for is to protect
9 the ITQ fishery. You don't want people directing
10 elsewhere. Bycatch is important. I'm not saying
11 you want to ignore that. But I would say that on
12 this tossup, look there are 19 trips that are over
13 300 and that pound and there were 2 pounds of
14 discarding, so you're right Jessica that their --
15 they could -- they probably lying but there's 19 out
16 of how many. And I think as Rick pointed out, if
17 you try to increase it, that will diminish the value
18 of the thing to the tilefish which is what we tried
19 to protect, is to protect their source. It seems to
20 me this 300 is working to do the job that it is if -
21 - at least now. Of those three options, I would say
22 let's keep it here on the grounds that it will
23 continue to protect the tilefish which is kind of an
24 obligation we had when we set it up. And right now,

1 I don't see a big problem with discards, although
2 everything Jessica said is true. But let's keep our
3 eye on it.

4 COUNCIL CHAIRMAN RICHARD ROBINS:

5 What's the pleasure of the Council on these options.
6 Do you want to include one option, two options? Do
7 you want to give -- go ahead, Pat?

8 PAT AUGUSTINE: Thank you, Mr.

9 Chairman. You could probably eliminate Option 3, no
10 limit. One or two seems logical.

11 COUNCIL CHAIRMAN RICHARD ROBINS: And

12 ask staff to develop a range of values for Option 2?

13 PAT AUGUSTINE: Absolutely.

14 COUNCIL CHAIRMAN RICHARD ROBINS:

15 Jessica, do you require any additional guidance from
16 us if that's acceptable to the Council?

17 JESSICA COAKLEY: No, I don't think

18 we do at this point.

19 COUNCIL CHAIRMAN RICHARD ROBINS: Is

20 there any objection then to eliminating Option 3
21 here.

22 (No Response Audible.)

23 COUNCIL CHAIRMAN RICHARD ROBINS:

24 Okay, seeing none, we'll do that. Jessica, do you

1 want to go on to the AM options?

2 JESSICA COAKLEY: Sure if we can go
3 to the next slide. There we go. In terms of
4 accountability, the question would be how do you
5 want to deal with accountability for this fishery.
6 Do you want to have -- right now, like I had said,
7 you have the ITQ specific adjustments that happens
8 to be individual permits. If they're responsible
9 for an overage on that ITQ aspect of the fishery,
10 it's accountable right there. You could either
11 adjust the incidental allocation the subsequent year
12 by the amount of the overage or you could leave that
13 incidental allocation amount the same and then
14 reduce the ACL the subsequent year in response to an
15 overage prior to doing that allocation process. So
16 in order to move forward, the Council -- if you
17 would like to identify how you would like to deal
18 with that accountability, we can then go ahead and
19 fold that into the tilefish suite of accountability.

20 COUNCIL CHAIRMAN RICHARD ROBINS:

21 Okay, well Jessica I guess the -- I want to make
22 sure I understand this correctly, but in Option 1,
23 if this mortality is truly incidental and we were to
24 reduce the allocation to the incidental category,

1 wouldn't that mortality continue to occur?

2 JESSICA COAKLEY: It would, that's
3 the potential -- the potential for approaching
4 accountability for the incidental fishery that way.
5 You could -- they may go over the next year, and
6 then you would adjust them downwards the next year
7 and they could go -- I mean, you could have the
8 potential to scrawl down that allocation over time.
9 That would be my concern with that approach.

10 COUNCIL CHAIRMAN RICHARD ROBINS:
11 Right, it would seem -- it seems to me that would
12 just turn landings into discards and so I think that
13 makes a case for going with Option 2 as I understand
14 it.

15 JESSICA COAKLEY: Okay, is that what
16 the Council would like to do?

17 COUNCIL CHAIRMAN RICHARD ROBINS: But
18 I -- I just want to make sure I understand that
19 correctly.

20 PAT AUGUSTINE: Thank you, Mr.
21 Chairman. that's absolutely correct. If the
22 incidental keeps going over as incidental then
23 you've got something set wrong. And maybe the ACL
24 has to be changed and I agree with Option 2 and to

1 eliminate Option 1.

2 COUNCIL CHAIRMAN RICHARD ROBINS:

3 Thank you, Howard.

4 PAT AUGUSTINE: Couldn't be any
5 clearer.

6 COUNCIL CHAIRMAN RICHARD ROBINS:

7 Howard King.

8 HOWARD KING: The other Howard.
9 Yeah, Option 2 would be unfair to the ITQ holders,
10 but you have to leave it in, I think, for the
11 reasons you've stated.

12 COUNCIL CHAIRMAN RICHARD ROBINS:

13 What's the pleasure of the Council? Do you want to
14 eliminate Option 1 or leave both options in?

15 HOWARD KING: I vote to leave both of
16 them in.

17 COUNCIL CHAIRMAN RICHARD ROBINS:

18 Lee?

19 LEE ANDERSON: I think we should
20 remove Option 1 because it really -- it doesn't do
21 anything unless you're going to say you're going to
22 shut down the incidental fishery when they reach
23 their limit and we're not going to do that. We
24 don't have the authority. And so lowering it is not

1 going to accomplish anything. Lowering it will not
2 accomplish anything unless you change the
3 regulations on the incidental fishery. So it is
4 unfair, but I guess -- Option 1 doesn't make sense.
5 I will make a motion we eliminate Option 1.

6 COUNCIL CHAIRMAN RICHARD ROBINS:

7 Second by Pres Pate. The motion is to eliminate
8 Option 1 for the tilefish AM options for the
9 incidental fishery. Discussion on the motion?

10 (No Response Audible.)

11 (Motion as voted.)

12 {Move to eliminate Option 1m, AM options for
13 Tilefish in the ACL/AM Omnibus Amendment.}

14 COUNCIL CHAIRMAN RICHARD ROBINS: All

15 those in favor raise your hand.

16 (Response.)

17 COUNCIL CHAIRMAN RICHARD ROBINS:

18 Eleven, opposed like sign.

19 (Response.)

20 COUNCIL CHAIRMAN RICHARD ROBINS: Two

21 opposed, 3 opposed, sorry. Abstentions?

22 (Response.)

23 COUNCIL CHAIRMAN RICHARD ROBINS: One

24 abstention. The motion carries. Jessica?

1 JESSICA COAKLEY: So that Option 1
2 would be moved to considered by rejected.

3 COUNCIL CHAIRMAN RICHARD ROBINS:
4 Yes.

5 JESSICA COAKLEY: I think this
6 addresses both issues for the tilefish trip limit
7 revue. Did you want to back through some of the
8 comments at this point?

9 COUNCIL CHAIRMAN RICHARD ROBINS:
10 Yeah, why don't we go back through the comments and
11 categories there and let's go through those and see
12 if the Council wants to make any modifications to
13 the document to incorporate those. One of the big
14 concerns that showed up in a lot of the written
15 comments related to the fact that we're doing an EA
16 rather than an EIS. As you all heard, Joel
17 MacDonald addressed that earlier and the current
18 advice from General Counsel is that this does
19 satisfy an EA rather than an EIS but that was a
20 significant set of comments that we received on that
21 issue and Joel's addressed that for us at this
22 point. But we want to go through some of these
23 other comments as well and see if you want to
24 incorporate -- see what you want to incorporate in

1 the document. Peter?

2 PETER DEFUR: Yes, thank you, Mr.
3 Chairman. I'm trying to like step back. I mean
4 this is a massive document and I'm trying to
5 understand the procedure on essentially --
6 essentially I'm trying to figure out where to step
7 in on this document and at what point. And how this
8 meeting is -- I mean we're refining tilefish, we're
9 dealing with mackerel, we're redoing the comments.
10 We're going to start eliminating some of the
11 options. This does not go into the Federal Register
12 with the response to all the comments. That comes
13 after our August meeting, so I'm trying to get a
14 concept of the big picture here so that I know like
15 when to step in and get something off of my mind.
16 And I guess we're doing it through the general
17 themes as they come up. Is that how we're going
18 deal with this issue, this document today?

19 COUNCIL CHAIRMAN RICHARD ROBINS:

20 Pete, the comments have come in and been
21 characterized by staff and so we're going to go
22 category by category, and some of the comments are
23 specific to existing options. So Jessica had
24 prepared some slides that had set up for the Council

1 questions as to whether or not you wanted to
2 eliminate any of the options, for example, that
3 currently exist and -- you know, we need to discuss
4 whether or not we want to make any additional
5 modifications before we go forward.

6 PETER DEFUR: Okay, thank you for
7 that guidance, Mr. Chairman. So in that light, I
8 would wait until we get onto a presentation on
9 proactive AMs in the recreational fishery to pipe
10 in.

11 COUNCIL CHAIRMAN RICHARD ROBINS:
12 Thank you, Pete. Pres?

13 PRESTON PATE: Couple questions for
14 Jessica, Mr. Chairman, and thank you for the
15 recognition. Jessica, some of the responses
16 identified specific alternatives as preferences.
17 Did you try to capture those in some type of tabular
18 form so that the Council members that -- I'm pre-
19 supposing everybody didn't read all the comment, but
20 for those that didn't or didn't make their own list,
21 would have something to look for where those
22 preferences lie and who made them. And the second
23 question is, there are a couple of general areas of
24 comments that I noted that weren't on your list and

1 I think they can be handled in narrative
2 improvements to the document more so than it is
3 switching the tone of the document in one direction
4 or another. One specifically was that there was a
5 lack of clarity about the nature and uncertainty
6 that would be considered at the various steps of the
7 process, which is not an option thing, it's just a
8 matter of further detail and explanation in the
9 document.

10 JESSICA COAKLEY: Yeah, in terms of
11 compiling the numbers of comments in support or
12 against other options, that was very difficult for
13 this process because as you know, there's one
14 preferred approach for the ABC framework so most of
15 the comments for ABC spoke generally to that
16 framework, that's itself in the way that was
17 structured. For the risk policy, I had highlighted
18 earlier in my talk, there was a commenter that had
19 preferred Alternative 2D, there was one that had
20 recommended a modified Alternative 2F, it was
21 actually CCA New York that had recommended the 2F
22 which was the one with the stock history, life
23 history. They had recommended eliminating part of
24 that option and then there was some general comments

1 on probabilities of overfishing, but not every
2 commenter made comments relative to specific
3 alternatives. And that was the difficulty with
4 this, particularly with the ACLs and AMs because
5 they're essentially a sweet of preferred measures
6 that all fit together essentially to complete those
7 requirements.

8 So we don't have it in tabular form
9 and that's actually why typically we don't have the
10 -- the oral comments transcribed and I had Jan and
11 Kathy did a great job transcribing all of those for
12 you because there was just so much specific detail
13 that was communicated. So there are comments that
14 reference alternatives for the risk policy, but for
15 the other options, those -- many of the comments
16 were general -- were issues with general -- issues
17 with like the rec data, whether you should use
18 inseason or not inseason measures, but not
19 necessarily linked up to some of the specific
20 options.

21 PRESTON PATE: Okay, thank you and
22 I'm fine with that.

23 COUNCIL CHAIRMAN RICHARD ROBINS:
24 Thank you Pres. Jessica?

1 JESSICA COAKLEY: Okay, can we go
2 back I think three or four slides, Jan. Keep going.
3 Go down one to the -- okay, so do you want to just
4 walk through each of these?

5 COUNCIL CHAIRMAN RICHARD ROBINS:
6 That's fine, I think we've already addressed the
7 second one, but go ahead.

8 JESSICA COAKLEY: Yeah, we've already
9 talked through optimum yield and ABC, there were
10 concerns that were raised about the framework and
11 how that's being applied; and I know that the
12 Council has given the SSC a lot of liberty in terms
13 of developing an ABC framework approach that would
14 provide them with enough flexibility so that's the
15 option that was presented to the Council and
16 contained within the document. And really that
17 framework with that series of criteria lays out how
18 the stocks will be classified and the risk policy
19 will be applied to it. So I think what the Council
20 has developed, unless there are modifications you
21 want to recommend or other things you think the SSC
22 should expand on, that that alternative is succinct
23 at this point. There were comments that this should
24 be more formulaic but that may be something that

1 John wants to comment on to the Council; why that
2 was developed the way it was.

3 COUNCIL CHAIRMAN RICHARD ROBINS:

4 Right now I look to the Council to see if there's --
5 if they are satisfied with the first part of the
6 document that deals with the framework for tiers for
7 the ABC section. I mean that's what was developed
8 largely by the SU and subcommittee in consultation
9 with staff and through the SSC, but I think it does
10 weigh out the different tiers and explains what the
11 differences are between those. There was concern
12 about how that links up to the ABC control rules,
13 but I think as Jessica said, that part of that can
14 be better explained in the document. Are there any
15 outstanding concerns about that section of the
16 document? Chris?

17 CHRIS ZEMAN: Just in my review of
18 the document -- you know, one thing I did notice was
19 in terms of how we identify or defining management
20 uncertainty, in the FMP -- in the plan it says --
21 you know, this is due to like under reporting,
22 misreporting and bycatch. But then how we sort of
23 implement it later on per species, we really don't
24 address the misreporting or non-reporting of

1 bycatch. There seems to be like a -- it clearly is
2 meant for a catch. This plan's meant to be
3 addressing a total catch. We need to account for
4 all catch and that includes landings and discards.
5 Subsequently when we go to individual species, you
6 see it -- the language shifts back to landings. And
7 so there's a question in my mind that are we really
8 sort of -- are we really sort of properly defining
9 management uncertainty when we are looking at it for
10 specific species?

11 COUNCIL CHAIRMAN RICHARD ROBINS:

12 Jessica, can you comment on how discards are being
13 dealt with and those other factors?

14 JESSICA COAKLEY: Yeah, the way
15 management uncertainty is described in the document
16 is pretty much a repeat of how it's been described
17 in the NS 1 guidelines. And we've pretty much stuck
18 to the way that they've described management
19 uncertainty. It could be when the monitoring
20 committee discusses how to address relevant sources
21 of management uncertainty, there may be uncertainty
22 in the estimates of the bycatch. There may be
23 patterns of under-reporting that they recognize are
24 occurring which could be one factor that contributes

1 to things like retrospective patterns where the
2 model is -- fish have disappeared in the model.
3 Catch doesn't fully account for it and sometimes you
4 can have missing pieces generate those types of
5 patterns. That -- that may be part of it and that
6 would be something would be -- all sources of
7 management uncertainty would be at the discretion of
8 the monitoring committee to review all that
9 information and make a recommendation to the Council
10 so I don't think that that's being ignored; that
11 it's part of management uncertainty.

12 CHRIS ZEMAN: Just to follow-up,
13 later on in specific plans we then see sort of
14 statements where that, you know, because this
15 commercial fishery has a hard trip -- hard TAC,
16 there is no management uncertainty. That's really
17 my -- the crux of my concern is that that approach,
18 while we're supposed to be addressing management
19 uncertainty for both catch and discards, we then
20 later in specific fisheries that, well this
21 commercial fishery has no management uncertainty
22 because it's a hard TAC. It's managed under a hard
23 TAC and that fails to account for problems with
24 reporting discards.

1 JESSICA COAKLEY: Well, I don't know
2 where in the document we said that there's no
3 management uncertainty for some of the fisheries. I
4 don't believe that we've addressed how much
5 uncertainty we think is going to be associated with
6 each of these aspects but was it something that was
7 said on the record or in comment?

8 CHRIS ZEMAN: Yeah, I thought I saw
9 that in some of the examples as part of this plan --
10 as part of this plan -- as part of this FMP. So as
11 an example, maybe it was a hypothetical, but I saw
12 that sort of statement in there. Maybe that's it.
13 I just want to make sure that -- you know, it's not
14 clear where we land on that or how we -- you know,
15 how we account for management, the actual numbers,
16 because it's not in this plan. But it's to the
17 extent that -- you know, that needs to be addressed.
18 I see this -- I see sort of like -- and it's not the
19 Council, it's FMP sort of falling back on the prior,
20 sort of, terms used. So their falling back from
21 using catch to -- reverting back to just landings.

22 COUNCIL CHAIRMAN RICHARD ROBINS:

23 Chris, I think too when we established the ACTs,
24 we'll be working with the monitoring committee and

1 giving them a set of terms of reference by which to
2 do that and I think these are things that we can
3 articulate very clearly in our communications with
4 them as well. So I think it is a good point, but I
5 think where -- where you have very low management
6 uncertainties in our ITQ managed fisheries, where
7 retention may be 100%, whereas some of the other
8 fisheries that are managed by TACs would have more -
9 - more uncertainty about the discards, etc. Lee?

10 LEE ANDERSON: Thank you. My only
11 point is that surf clam and ocean quahog there is
12 almost no discards so if there is a reference to it,
13 I would suspect that's the fishery they were
14 referring to. But I share your concern that we need
15 to -- where there is stuff, that has to be addressed
16 somehow in the process.

17 CHRIS ZEMAN: Right, it should be a
18 species by species determination, exactly. So for
19 surf clam, probably not an issue. But you could
20 have another situation where there is a real severe
21 limitation on trips and it could be an issue.

22 COUNCIL CHAIRMAN RICHARD ROBINS:
23 Thank you. Well I think the -- the EIS issue has
24 already been addressed by Joel, but I wanted to ask

1 if there are any additional questions on that issue
2 here at the Council table. John?

3 JOHN MCMURRAY: Thanks, Mr. Chairman.
4 I thought Joel's explanation of why we're going with
5 an EA instead of an EIS was a good one, but I also
6 understand that the New England Council, as well as
7 a number of other Councils, when doing an omnibus
8 are doing an EIS. Is that a different process that
9 they're going through or is there some difference?
10 Or is that just a choice on their behalf?

11 JOEL MACDONALD: I'm not familiar
12 with what the other Councils are doing John and I'm
13 not sure whether their document is more expansive
14 than what we're considering here. Ours is more of a
15 framework. Their documents may get into more
16 substantive issues which may cause a threshold of
17 significance to be exceeded.

18 COUNCIL CHAIRMAN RICHARD ROBINS:
19 John, I think too the New England actions are
20 incorporated along with other management actions and
21 amendments. So for example, Sea Scallop Amendment
22 15 would include ACLs and AMs but it includes a lot
23 of other measures including new overfishing
24 definitions, etc., etc., and so I think it's a much

1 more substantial, or much more different type of
2 action than what we have here. John?

3 JOHN BOREMAN: Thank you, Mr. Chair.

4 A couple of comments before we leave this slide on
5 the ABCs on the concerns about the framework
6 process, how stocks would be classified. What the
7 SSC is doing now is as we review each stock this
8 year to develop specs, once we develop the specs we
9 are assessing what level that stock would fall out
10 under the Level 1, 2, 3 and 4. So of the six stocks
11 that we looked at in our last meeting, loligo,
12 quahog and surf clams are all assessed at Level 3
13 and the butterfish, illex and mackerel were assigned
14 Level 4. The comment that, and we'll do the same in
15 our next meeting for black sea bass and scup and
16 bluefish and summer flounder. But that level may
17 change from year to year, so once we decide on a
18 level for a species it's not going to be that level
19 forever. It depends on what's in front of us in
20 terms of assessment information for that year. The
21 comment that the ABC should be more formulaic, well
22 for Level 1 and 2, it is. It's totally formulaic,
23 100%. For Level 3 it depends. Level 3 means we
24 have an OFL but we're not satisfied with the

1 probability distribution associated with that OFL or
2 one does not exist at all. We may either come up
3 with our own probability distribution based on other
4 examples from the literature or just, maybe like we
5 did in our last meeting, for the three Level 3
6 species, we used a fallback of 75% of the OFL and
7 set that as the ABC. So I know there was some
8 comments related to that by the public saying that
9 Level 3 should have a default value of 75% of the
10 OFL and I tend to agree with that and I would
11 probably encourage putting that into the document
12 for the next round, for the final round. So, that's
13 it.

14 COUNCIL CHAIRMAN RICHARD ROBINS:

15 John, would you... would you set that at 75% of the
16 F associated, like Fmsy or 75% of the OFL value?

17 DR. JOHN BOREMAN: Well, that's
18 something -- what we've done -- this past round, I
19 think we did a mix of one of the other. I've got to
20 go back and look at my notes, but for the most part,
21 I think it was the Fmsy or Fthreshold or the proxy
22 for F at msy.

23 COUNCIL CHAIRMAN RICHARD ROBINS: So
24 75% of that Fmsy or the proxy for that. Okay.

1 Peter?

2 PETER DEFUR: Thank you, Mr.

3 Chairman, I was going to comment on -- largely what
4 John talked about is that they do have a list of
5 criteria by which they put species in the category.
6 I mean it's not just a random discussion. But
7 they're -- they've got a list, so I guess this goes
8 back to Jessica having looked at the comments in
9 much more detail, I saw this point made, but I
10 didn't understand -- I didn't see any
11 recommendations about what should be done
12 differently or how it should be more formulaic than
13 it already is. Because as John pointed out and as
14 we've discussed here, we have very clear formulas
15 for 1 and 2 and then you've got lists of criteria
16 specific factors to be considered. So was there a
17 suggestion about what should be done to make it more
18 formulaic?

19 COUNCIL CHAIRMAN RICHARD ROBINS:

20 Peter, I know -- I know there was some concern about
21 Tier 4 and there was some comments that suggested
22 that recent catch be used to characterize or to find
23 OFL and then buffer from that for ABC. That's being
24 done by the South Atlantic. I think one of the

1 issues you get into with that is that if you use
2 recent catch to define your OFL, you're implying
3 that you've been overfishing 50% of the time. And
4 that may or may not be the case. I think the SSC
5 has expressed a preference thusfar for maintaining
6 flexibility in Tier 4. That's when we're in a
7 situation when we don't have an analytical
8 assessment, we don't have reference points, they
9 want to use a total evidence approach and try to
10 account to the best of their ability for the
11 scientific uncertainty and recommend an ABC to us.
12 But I think the imposition of an OFL where there's
13 not a quantitative basis for it can be problematic.

14 I think the South Atlantic's already experiencing
15 that, but John, could you follow-up on this issue
16 with Tier 4.

17 JOHN BOREMAN: Well you basically
18 covered what I was going to say. I think, again,
19 the comments -- the frustration that I sense in the
20 comments where there was no formulaic approach was
21 for Level 4. My preference -- I'm not, and I guess
22 I'm reflecting the SSC's preference is to keep as
23 much flexibility in Level 4 as possible so we can
24 look at all the evidence in front of us and for a

1 given stock it may be different. It may vary from
2 stock to stock, what we have in front of us,
3 landings or survey data or whatever. To lock us in
4 at that point to a formulaic approach may limit our
5 abilities to set a really -- as solid an ABC as we
6 can for that level.

7 PETER DEFUR: Thank you. I mean I
8 agree entirely with that. I just didn't understand
9 and didn't really agree with trying to impose some
10 formulaic for Tier 4 especially.

11 COUNCIL CHAIRMAN RICHARD ROBINS: And
12 John, can you just clarify the idea of a default for
13 Tier 3. The preference for Tier 3 is that we --
14 well the proposed approach has been that we would
15 have a PDF that was created by the SSC, presumably
16 using the co-efficient or variation to do that, to
17 account for the uncertainty in the OFL estimate and
18 then you'd still apply the Council's ABC control
19 rule or risk policy to that to generate the ABC. But
20 if you wanted a backstop, that would only be applied
21 -- I mean what I understand you to be suggesting is
22 that we have a default or a backstop of 75% of Fmsy
23 and we only apply that if the SSC is unable to
24 achieve a consensus on what would be an appropriate

1 CV or PDF to apply. I think the PDF approach would
2 still be preferred, but you're proposing a backstop
3 that would be applied if you couldn't achieve a
4 consensus on a PDF that would characterize the
5 uncertainty. Is that -- is that what you're
6 proposing?

7 JOHN BOREMAN: Basically yes. It's a
8 case where -- you know, as you can see, I think it
9 was in the case of loligo, there was a PDF provided
10 to us for the OFL but we didn't think that that PDF
11 or that, which represented the variability in the
12 OFL, accounted for all the variability that should
13 be out there. But we weren't in a position to come
14 up with an alternative and in that case we used the
15 default of 75% which has been in the National
16 Standard 1 guidelines for -- since 1998; and it's
17 basically what the New England Council is using for
18 most of their stocks too, that is the 75% of OFL.

19 COUNCIL CHAIRMAN RICHARD ROBINS:

20 Okay, thank you John. In order to move forward on
21 this issue, what's the pleasure of the Council on
22 incorporating this default into the Tier 3 control
23 rules?

24 PETER DEFUR: I move that we

1 incorporate that 75% into the control rule for the
2 Tier 3 determination.

3 COUNCIL CHAIRMAN RICHARD ROBINS: As
4 a default?

5 PETER DEFUR: As a default for...

6 COUNCIL CHAIRMAN RICHARD ROBINS: So
7 it would be 75% of Fmsy. Is there a second to the
8 motion? Seconded by Pat Augustine. Discussion on the
9 motion?

10 (No audible response.)

11 COUNCIL CHAIRMAN RICHARD ROBINS: Is
12 there any objection to the motion?

13 (No audible response.)

14 COUNCIL CHAIRMAN RICHARD ROBINS:
15 Seeing none, it is approved by consensus. Thank you.
16 Jessica?

17 JESSICA COAKLEY: Okay, Jan, if you
18 could move to the next slide. We've already talked
19 about the EIS issue. The risk policy issue. Two
20 things were brought up, one, that's essentially the
21 ABC framework and the risk policy. We had a -- a
22 couple of commenters felt that it was hard to make
23 the connection between how those two pieces would
24 fit together and they felt when the document was

1 restructured for the EA, it would be better to make
2 that connection a bit more clearer. And I think
3 that's something that the FMAT, as we write that ABC
4 section and have the risk policy and ABC as part of
5 that, we can address that. The other comment was
6 where the risk policy should reside. You'll recall
7 we scoped that it could be part of the SOPPs and
8 modified either via the SOPP process or you could
9 recommend a modified SOPP process just to address
10 that risk policy or it could reside as essentially
11 within the FMP as part of that process. And that
12 was some of the recommendations we had --
13 recommended that it be part of the FMP and not
14 actually reside in the SOPPs.

15 COUNCIL CHAIRMAN RICHARD ROBINS:

16 Okay and Jessica you've already indicated that
17 you're going to try and clarify in the narrative of
18 the document to strengthen that section between the
19 ABC tiers or the assessment tiers and the
20 application of the risk policy and the ABC control
21 rules, right. Okay. This other action though, or
22 the other issue is an issue that the FMAT did want
23 guidance on from the Council in terms of where the
24 risk policy should reside and as I read the NS1

1 guidelines, I mean the risk policy is the key
2 component of the ABC control rules and the ABC
3 control rules are to reside in the FMP itself. I
4 would look to the Council for a preference. Lee?

5 LEE ANDERSON: Mr. Chairman, thank
6 you. I'd like to make a motion that the risk policy
7 reside in the FMP.

8 COUNCIL CHAIRMAN RICHARD ROBINS:
9 Second by Peter Defur. Discussion on the motion?

10 (No audible response.)

11 COUNCIL CHAIRMAN RICHARD ROBINS: Is
12 there any objection to the motion?

13 (No audible response.)

14 COUNCIL CHAIRMAN RICHARD ROBINS:
15 Seeing none it's approved by consent. Thank you.
16 Jessica?

17 PRESTON PATE: A quick question on
18 that point. At the last meeting and it relates to
19 how putting it in the individual FMP affects our
20 ability to make changes in the future, if we can do
21 that by a framework or if we have to do that by an
22 amendment. We discussed this briefly at the last
23 meeting of going through some of these individual
24 and specific aspects of the -- of the procedure and

1 the policy. You're trying to identify those that
2 could be frameworked and would require an amendment
3 and Joel noted that doing that could help protect us
4 in the future against some full-fledged amendment if
5 we've had some upfront consideration about adding
6 them in one place or another. And I was just
7 curious if there was any more thought given to
8 providing that analysis to us?

9 COUNCIL CHAIRMAN RICHARD ROBINS:

10 Jessica?

11 JESSICA COAKLEY: Yes, actually I've
12 got a series of slides to talk about how we would
13 modify things via specs, framework and amendment
14 including how to deal with the risk policy and how
15 we would modify that if it resides in the FMP. And
16 I can get to all that -- if you're willing to wait,
17 I can get to all that once we get through -- through
18 these issues and I can present all that in sequence.

19 PRESTON PATE: No, that's fine. This
20 just raised that broader question and I just wanted
21 to make sure we were covering it somewhere, so I'm
22 fine.

23 COUNCIL CHAIRMAN RICHARD ROBINS:

24 Thanks Jessica, the next issue there is for specific

1 comments on the risk policies. We got -- we got a
2 lot of comments, I think, suggesting that the
3 maximum risk of overfishing be lower. We received a
4 number of comments suggesting that we do take the
5 other factors into consideration in making the
6 decision including life history, etc. We received
7 some comments suggesting that we simplify. I think
8 one of the options related to, was it Option 2, I
9 think, Jessica? That included life history and
10 whether or not it had ever been overfished to just
11 simplify it to include life history. So we received
12 a lot -- a lot of comments on the risk policies and
13 -- you know, still look to make a final decision in
14 August. It's not necessary to identify a preferred
15 alternative here today because we will not be
16 setting specs using the ABC control rule in August
17 as we discussed yesterday because of the regulatory
18 issues associated with the implementation of the
19 specifications.

20 But Jessica, could you -- I tried to
21 incorporate one of the -- one of the comments about
22 the need to incorporate life history in the decision
23 and I noticed that we didn't have a simple option
24 that does that now. And so we do have a simple

1 control rule that's a single rule that goes across
2 relative biomass but it doesn't have any
3 consideration for life history; so I thought one
4 possibility would be to just add an add-on to that
5 that would incorporate life history. That appears
6 in some of the other options, but it only appears in
7 those options that also have tiers as a decision
8 point. So I asked Jessica to just put together a
9 slide that would have that option on it. Jessica,
10 do you have access to that?

11 JESSICA COAKLEY: I do. Jan, it's
12 that very last slide.

13 COUNCIL CHAIRMAN RICHARD ROBINS:
14 That's a modification of the simple option we added
15 at the last meeting and it just adds an additional
16 buffer for any typical life history, so it takes
17 that factor into account. It very much parallels
18 the other option we had in the document, but that
19 reflects, I think, some of the concerns that we had
20 about being sure to incorporate life history but it
21 does so without having the tiers. We already have
22 another option that does include the tiers. John?

23 JOHN BOREMAN: That's fine. I think
24 somewhere there should be a definition of what is

1 atypical. We got into this discussion somewhat at
2 the SSC and there are differing opinions around the
3 table of what is atypical so there should be a clear
4 statement, I think, somewhere in the document is
5 what is defined as atypical. What is defined as
6 typical life history just so there's no down the
7 road confusion over that.

8 COUNCIL CHAIRMAN RICHARD ROBINS:

9 Thank you, that's an excellent point and Jessica I
10 would look to staff to enhance the narrative there,
11 thank you. Lee?

12 LEE ANDERSON: I would make a motion
13 that we modify this option to include this atypical
14 thing specifying that we do have a definition of
15 what atypical means and that the exact inflection
16 points of both of these curves are sloped for
17 discussion. But this thing, have the typical and
18 atypical. That's the essence of my motion.

19 COUNCIL CHAIRMAN RICHARD ROBINS:

20 Well, do you want to add it as an option?

21 DAN FURLONG: As opposed to
22 modifying.

23 LEE ANDERSON: Would you prefer an
24 addition? Okay. Let's add it as addition. Then we

1 have this one a clean one.

2 COUNCIL CHAIRMAN RICHARD ROBINS:

3 Hang on a second while we talk to staff and see
4 what's the cleanest thing to do.

5 Do you have a strong preference for
6 whether this is added or modified?

7 JESSICA COAKLEY: Well, that's
8 actually what we were talking about at this point.
9 Because we scoped with a series of options and we
10 did discuss that within the scoping document that
11 you were considering modification to some of these
12 values, this option is essentially a modification of
13 Alternative 2B, incorporating this typical/atypical
14 factor that's in -- that you have in Alternative 2F.

15 So, it's sort of a combination of those two. So, I
16 think you could either consider adding this to those
17 options. Or, if there's an alternative that you
18 really don't like and want to take it to consider it
19 but reject it, I think you could sub that in.

20 However, what I was also asking Joel
21 about is in terms of what these values are
22 associated with these alternatives, those need to be
23 firmed up today. We can't simply say we like this
24 option but we're not sure about the 40 percent and

1 we'll think about it later. When we walk away with
2 these options and develop that EA, they're going to
3 appear in that document and have to move forward as
4 they're designated.

5 So, if you want to consider slight
6 modifications within the scope, the public hearing
7 that we did, that would have to happen now.

8 COUNCIL CHAIRMAN RICHARD ROBINS:

9 Thank you, Jessica. I think based on your advice, I
10 would suggest that we add the option, and then we'd
11 have a slightly broader suite. But it's simply a
12 combination of the elements of other options that
13 have already been scoped.

14 Lee, is your motion to add the
15 option?

16 LEE ANDERSON: Yes. But I think it
17 may be wise to spend a few minutes, do we -- where
18 that dotted line is, is that what the Council wants?
19 Is it at that level? If they do, that's fine.
20 Let's move on. But I think we -- the record should
21 show that we have given it some specific
22 consideration.

23 COUNCIL CHAIRMAN RICHARD ROBINS:

24 Okay. Well, again, it's essentially a modification

1 of the option that we already have in the document
2 that accounts for some additional precaution for
3 stocks that have atypical life histories, that
4 reflect some of the public comment we received, the
5 differences essentially of five percent buffer.

6 Peter.

7 PETER DEFUR: Thank you, Mr.

8 Chairman. Apart from black sea bass, what would be
9 the other atypical species that we have? Do loligo
10 and illex fall because they've got a one-year life
11 history?

12 COUNCIL CHAIRMAN RICHARD ROBINS: No.

13 I think you're -- I think the species that would
14 fit the profile would be those that are confounded
15 by things like protogenie or fish that are of a
16 viparis that have low reproductive potential. So,
17 the spiny dogfish might fit that bill. Black sea
18 bass would go into protogenesis stocks. Longevity
19 might be another consideration. And in that case,
20 quahogs would fall into it. John, are there others
21 off the top of your head that would fall into that
22 camp?

23 PETER DEFUR: Does a short life cycle

24 fall into that category?

1 COUNCIL CHAIRMAN RICHARD ROBINS:

2 John.

3 JOHN BOREMAN: Well, again, on the
4 short life cycle, the squids, they aren't going to
5 be subject to the ABC.

6 COUNCIL CHAIRMAN RICHARD ROBINS:

7 Well, we still have an ABC recommendations, but
8 they're not subject to ACL/AM's, right. Howard.

9 HOWARD KING: If we add this, then we
10 would then continue to identify a definition for
11 atypical? I mean this is something that can be
12 applied, but until we develop the criteria, it
13 wouldn't necessarily be applied; right?

14 COUNCIL CHAIRMAN RICHARD ROBINS:

15 Well, I think we'd have to clarify in the document
16 what would constitute atypical. But I think -- you
17 know, we just covered some of those things, things
18 that reflect the overall vulnerability perhaps of
19 the stock. It could be reproductive strategies,
20 longevity, those factors that make a stock
21 potentially vulnerable to exploitation.

22 HOWARD KING: Okay. But once that's
23 established, then would it be mandated that this
24 buffer be applied or is it still optional?

1 COUNCIL CHAIRMAN RICHARD ROBINS: It
2 would be applied, because at that point, the SSC
3 would be applying it through the control process
4 when they set the ABC. Jim.

5 JAMES WEINBERG: I was thinking
6 tilefish might go on that list. You'd have to talk
7 about it. But they build nests; so, that makes them
8 carve out a patch. Just like the black sea bass on
9 a reef, they have a nest that they guard and mate
10 there. So, they may be considered vulnerable in
11 that sense.

12 COUNCIL CHAIRMAN RICHARD ROBINS:
13 Thanks, Jim. Lee.

14 LEE ANDERSON: Given the discussion
15 around the table, then I'm happy to have my motion
16 say that we use it exactly as it's on the board
17 there. But with the staff is going to have to come
18 up with a definition of atypical.

19 COUNCIL CHAIRMAN RICHARD ROBINS: And
20 we already have a number of options in the document
21 to deal with typical and atypical, so, we have to do
22 that anyway. Is there a second to the motion?
23 Second by Peter DeFur.

24 COUNCIL CHAIRMAN RICHARD ROBINS:

1 Discussion on the motion?

2 (No response audible.)

3 COUNCIL CHAIRMAN RICHARD ROBINS: Is
4 there any objection to the motion?

5 (No response audible.)

6 COUNCIL CHAIRMAN RICHARD ROBINS:
7 Seeing none, it's approved by consent. Thank you.
8 Yes.

9 ADAM NOWALSKI: Thank you, Mr.
10 Chairman. A couple of comments on this. First off,
11 I think an overall concern with this section here is
12 just that -- you know, this was expressed earlier,
13 the August meeting, there's already going to be a
14 lot going on in having six options already in here,
15 and now, potentially adding to the number of
16 options. August is already a contentious meeting
17 with regards to recreational and other specification
18 settings that needs to take place. Anything and
19 everything that gets done today, I think, is
20 imperative in streamlining this document. And
21 adding options without potentially taking something
22 out, I think, is going to further contribute to the
23 complexity and perhaps cause a loss of focus on the
24 real issues at hand when we get to August when an

1 option actually has to be decided on.

2 With regards to the introduction and
3 use of the atypical definition, the RFA would be
4 against the use of it here for a number of reasons.

5 First off, that's likely to already be taken into
6 account if there's an assignment of a stock to tiers
7 as has been proposed, if that's the direction it's
8 going to go. That's already being taken into
9 consideration as a scientific uncertainty component.

10 That's part of what it is. That atypical component
11 is scientific uncertainty.

12 Secondly, by reducing the potential
13 level of harvest to punish the fishermen, atypical
14 doesn't necessarily mean bad. Atypical mean these
15 fish may be more resilient than we're giving them
16 credit for. Atypical doesn't necessarily mean
17 resilient. You know, I can appreciate the fact that
18 vulnerable, there would be more concern about. A
19 species that is non-resilient or more subjective to
20 something, yes. But the fact of the matter is,
21 we're labeling these fish as atypical. In a lot of
22 cases, it simply means we just don't know a lot
23 about it, which it doesn't mean it's bad, doesn't
24 necessarily make them more vulnerable. The fact

1 that a species changes sex may just mean that it's a
2 genetic capability to be better suited for
3 reproduction. So, to penalize the fishermen by
4 going to an atypical status simply because we don't
5 know more about it, we need more research, doesn't
6 mean it's an issue of vulnerability. It may
7 actually mean the stock is more resilient. So, I
8 would be against using the atypical definition here
9 for going ahead and lowering the amount of catch
10 that would be associated with these fisheries. And
11 that would be the comments for the Recreational
12 Fishing Alliance. Thank you.

13 COUNCIL CHAIRMAN RICHARD ROBINS:

14 Thank you, Adam. Pam.

15 PAM GROMAN: Thank you, Mr. Chairman.

16 Pam Groman with the National Coalition for Marine
17 Conservation. Just as the Council or the FMAT or
18 Jessica works on the definition of atypical species,
19 I would encourage the Council to think about the
20 ecological role of species and the impacts of
21 overfishing, species that have a very significant
22 ecological role like forage species, and thinking
23 about including those in that tier system as well.

24 COUNCIL CHAIRMAN RICHARD ROBINS:

1 Thanks, Pam. Jessica.

2 JESSICA COAKLEY: Okay. Well, in
3 terms of the risk policy, you've added that Option
4 2G. I just want to make it clear that the interim
5 public hearing draft that's behind the tab, there
6 are all those other options, that the Council
7 intends to include all of those. So, we'll have 2A
8 through 2G, with the values as they appear in the
9 document at this point.

10 So, for 2A, we've got that 25 percent
11 constant probability -- that's for 2B, excuse me.
12 For 2C, you've got a maximum probability of
13 overfishing of 40 percent, that stock replenishment
14 threshold at .1, were it goes to zero percent,
15 that's on Page 17 of the public hearing document.
16 And then you've got two options that incorporate
17 assessment level, one with a single inflection
18 point, double inflection points. And then 2F, which
19 included stock history, whether it's been overfished
20 before or not, life history pattern, atypical or
21 typical, and assessment level. And all those
22 values. So, we would move forward with all of those
23 values exactly as populated for the final document
24 unless you indicate otherwise.

1 COUNCIL CHAIRMAN RICHARD ROBINS:

2 Thank you, Jessica. Lee.

3 LEE ANDERSON: I'd just like to
4 respond to Adam's comment about atypical. I'm sure
5 that when we define atypical it will mean that
6 atypical should have lower probability, not a higher
7 probability. We can handle that.

8 COUNCIL CHAIRMAN RICHARD ROBINS:

9 Chris.

10 CHRISTOPHER ZEMAN: I just want
11 to hear John Boreman's thoughts about that comment
12 that -- I mean, do you sort of take that into
13 account when you evaluate scientific uncertainty?

14 COUNCIL CHAIRMAN RICHARD ROBINS:

15 John.

16 JOHN BOREMAN: Thanks. The
17 issue is do the assessment models incorporate that
18 life history pattern when they're generating the
19 biological reference points, yes or no. For black
20 sea bass, the answer is no, they don't. This sex
21 change, it's still the major source of uncertainty
22 and is not showing up. If the life history pattern,
23 as unique as it is, it's still managed to be
24 accounted for during the assessment modeling
process, then -- you know, we shouldn't add a double
whammy her and hit it twice. So, I think that also

1 has to be factored into the definition of typical
2 verses atypical. Adam is right. I mean, sometimes
3 these life history patterns are incorporated into
4 the model, so it's already part of the uncertainty
5 and comes out of the model in terms of their
6 variance.

7 But in other cases, the modeling is
8 not to a state where you could account for sex
9 changes for example, or ovo-viviparity or whatever.

10 So, those -- in those cases, then, I would say that
11 would be atypical, atypical of what we see in the
12 normal life history modeling process.

13 COUNCIL CHAIRMAN RICHARD ROBINS:

14 John, I think that's an important point then to
15 incorporate in the definition that it would be --
16 that we would be accounting for unaccounted for
17 attributes that are not already incorporated or
18 fully accounted for in the assessment process.
19 Okay.

20 Jessica, you want to go on to the
21 next section?

22 JESSICA COAKLEY: Sure. Dan, if you
23 could get the next slide. There we go. Okay. The
24 other comments that we received, we've already

1 talked about the tilefish incidental fishery. There
2 were some comments on ACT's and the use of an ACT
3 control rule. That's something that's already
4 described within the document. And I know the staff
5 has had a lot of discussion about the ACT control
6 rule, how it would be developed and how it would be
7 communicated. And the process that you described is
8 that the Monitoring Committee would develop the
9 recommendations for the ACT and explain their
10 decision process and basis for developing any
11 adjustments to deal with management uncertainty,
12 which is essentially your ACT control rule to be
13 communicated through the spec package when you set
14 those ACT's or those actual ACT catch levels for the
15 upcoming fishing year. So, that's something that is
16 laid out in the document; and based on discussions
17 with FMAT, we believe that is clearly addressed.

18 There were also comments that the use
19 of the ABC's and these ACL's and ACT's automates the
20 Council decision process. I think that's a general
21 comment, not necessarily something you need to
22 address. There was also the comment that the
23 comment period should be longer. And one of the
24 constraints we had with the comment period was

1 having a comment period that would end so that we
2 could compile all the comments and get them here to
3 the Council in June. So, you essentially had a one-
4 month comment period from the time you left the
5 April Council meeting. We posted a notice that we'd
6 be having hearings, got notices out, and that
7 wrapped up on May 21st.

8 Could you go to the next slide, Jan.

9 COUNCIL CHAIRMAN RICHARD ROBINS:

10 Jessica, before you go on, can we talk a little bit
11 about the ACT. I think that is a section of the
12 document that would benefit from a bit more clarity.

13 And I think we need to make it clear that in terms
14 of how that would transpire, that the Council would
15 communicate in terms of reference to the Monitoring
16 Committee and ask them to identify all the sources
17 of management uncertainty and take those into
18 account in establishing the ACT recommendations so
19 that the ACL would not be exceeded.

20 But I think we need to make it clear
21 that there would be -- you know, sort of an
22 overarching set of terms of reference that would
23 govern that. And I don't know that that's in the
24 document right now, so, I think, that's part of the

1 narrative that we could strengthen. But could you
2 comment on that.

3 JESSICA COAKLEY: Sure. I don't know
4 if Joel is still in the room; but before we started
5 this, that's exactly what he and I had talked about,
6 that when we come out of this meeting, that that's
7 an issue that's come up and that we'll need to talk
8 through how that process would be structured, how
9 the TOR's would potentially be developed to guide
10 the Monitoring Committee in that decision process,
11 that process making recommendations so that the
12 Council can make their decision.

13 COUNCIL CHAIRMAN RICHARD ROBINS:

14 Lee.

15 LEE ANDERSON: Jessica, I agree with
16 what Rick has said, and I -- you know, when you talk
17 about those discussions among the FMAT and
18 discussions between you and Joel, I'm sure they're
19 there, but at least when I read the document, I
20 didn't see that, and I would feel more comfortable
21 if the document be as explicit as it can be of what
22 kind of codes and processes and templates will be
23 used as they go to it.

24 JESSICA COAKLEY: Yes. And we

1 definitely identified that as one of those things we
2 need to expand on. It came out in the comments and
3 it's come out in the last few days. So, we'll --
4 we'll expand on that so it's more clear when we have
5 the full EA developed for you to review how that
6 process would be laid out. But the general --
7 you've got the general theme here. It's the
8 Monitoring Committee is going to play that role for
9 the ACT and development of an ACT control rule. And
10 we're going to set up some general guidelines for
11 them for when they meet and go through that decision
12 process and then communicate that catch level and
13 the control on through the specifications. We just
14 have to hash out some of the minor details within
15 the document.

16 COUNCIL CHAIRMAN RICHARD ROBINS:

17 Jessica.

18 JESSICA COAKLEY: Okay. Jan, oh,
19 Kathy, if you could go to the next slide.

20 There were a series of -- there were
21 issues raised with respect to the MRFSS data and the
22 application of it for in-season types of management
23 measures and how those could be developed.

24 And if you could jump to Slice 11,

1 Kathy, do you have the numbers?

2 Well, basically, within the document,
3 you've got two sets of ways to deal with in-season
4 accountability. You've got general in-season
5 closure authority that's described within the
6 document, that would be general authority for the
7 Regional Administrator that's in the fluke, scup,
8 sea bass, Atlantic mackerel and bluefish options.
9 As well in the fluke, scup, sea bass section, you've
10 got prescriptive triggers that are described within
11 the document. It was a 15 percent, a 50 percent,
12 and a 40 percent trigger. That if landings through
13 Wave 3 have exceeded the -- have hit that percentage
14 of the recreational harvest limit, then the
15 recreational season would close for the remainder of
16 the fishing year.

17 That was something we received a lot
18 of comments on. There were concerns about using
19 those prescriptive triggers and that MRFSS
20 information for in-season measures. So, I think
21 that is something important that you may want to
22 talk about right now. Do you think -- do you want
23 to include those prescriptive in-season triggers in
24 this final EA? Do you want just general in-season

1 closure authority? Do you want to include both of
2 them? Or, do you want to include neither of them?
3 How do you want to respond to those comments?

4 COUNCIL CHAIRMAN RICHRD ROBINS:

5 Thank you. And I think we do have a slide that has
6 those options up there. I don't know if we can find
7 that. I think it's several ahead of this one.
8 Pete.

9 DAN FURLONG: What's the heading?

10 JESSICA COAKLEY: The heading, it
11 says, any modifications or sub-options considered
12 but rejected in-season recreational measures.

13 COUNCIL CHAIRMAN RICHARD ROBINS:

14 There you go. Pete Himchak.

15 PETER HIMCHAK: Thank you, Mr.

16 Chairman. Yeah, I'd like to step into this issue,
17 because it's overwhelmingly the most contentious
18 part of the document insofar as the public hearing
19 in New Jersey anyway. And some points to consider
20 with proactive AM's in the recreational fishery. I
21 could see two pitfalls to this strategy. Well,
22 three actually.

23 The availability of fish along the
24 coast as to who gets the first shot at the fish.

1 That certainly plays into who benefits from an early
2 closure. States can actually set their seasons.
3 They can frontload their seasons as with summer
4 flounder. You know, we always come up with the
5 dilemma, well, we want to straddle Memorial Day and
6 Labor Day if we can. We have to give up the season.

7 We move forward. We may want to even start earlier
8 in May given the prospects of any kind of a
9 shutdown. So, that's a second factor that I see as
10 problematic to proactive AM's. And then the third
11 issue is that if there's no -- if there's no action
12 taken by the ASMFC within state waters, then the
13 action taken in the EEZ, it may benefit some, it may
14 benefit no one. And it may not benefit the fish,
15 because if like with summer flounder, almost 90
16 percent of the sport fishery is taken in state
17 waters. So, it varies. Scup, 94 percent. Black
18 sea bass, 27 percent in state waters.

19 So, this -- this is going to be very
20 problematic with early closures. And I don't have a
21 good alternative to this, but I think this is --
22 this is certainly something that should be brought
23 up and highlighted. Thank you.

24 COUNCIL CHAIRMAN RICHARD ROBINS:

1 Peter, that's an excellent point. It came up in the
2 discussions at the ASMFC hearing, if you recall, you
3 sat as hearing officer there, and I think a number
4 of the commissioners raised these issues as well in
5 terms of how this could play out at the state level.

6 And I think we need to -- you know, we need to keep
7 that in view. We don't know what the ASMFC's
8 response is going to be to accountability yet. If
9 they eventually get a state-by-state accountability,
10 I think that would cure some of the issues that you
11 raise about how it might play out, but it's not
12 clear, it's not clear at all, what they're going to
13 do.

14 But I think there are two different
15 issues. One is with the in-season triggers versus
16 the general closure authority. But if there is no
17 -- if there is no ability to have an in-season
18 closure, then you could -- I mean, in the past, if
19 there was an overage -- you know, it didn't
20 necessarily have the extent of the consequences it
21 will have now. Because now, if you have AM's in
22 place and corrective AM's are invoked after an
23 overage and you have a payback, then the potential
24 consequences and impact on the fishing public are

1 much different. And so -- you know, it seems to me
2 there needs to be some provision for in-season
3 closure, but the options in the document are either
4 built around prescriptive triggers or just general
5 closure authority. Pat.

6 PAT AUGUSTINE: Thank you, Mr.
7 Chairman. Along the lines that Peter was moving, I
8 see a major concern here and that we don't have a
9 current update status as how MRIP is going to be
10 able to supply any more information that MRFSS will
11 supply. Or, if it does supply it, I understand that
12 there are a lot of changes that have been made in
13 process and so on, and Pres may be able to update us
14 at least a little bit to give us a little bit more
15 comfort level.

16 But, as this things stands, I'm
17 totally opposed and against in-season recreational
18 measures. As we saw with black sea bass, we have
19 many examples today of some -- a perfect example is
20 dogfish. Massachusetts was smart enough to go for a
21 big quota. They caught it all. North Carolina was
22 -- they started their fishery for two or three years
23 in a row and we made some adjustments with that.
24 The black sea bass debacle was another one. But it

1 just seems to me that we're moving down a line
2 making commitments at a point in time in accordance
3 with Magnuson and so on, but at the same time, are
4 the process in place to give us Council members and
5 the Commission a comfort level to know that we're
6 not -- to use the expression screwn over -- due to
7 the commercial/recreational fishermen. In this
8 case, it was the recreational sector. I think we
9 have to have some consistency. We don't have a
10 (inaudible) on recreational yet.

11 We don't have a mechanism, as far as
12 I know, that will give us any more accurate
13 information than we have with MRFSS. And in recent
14 -- just a recent dilemma that we've had with the
15 MRFSS survey people, the contractor, there was a
16 major debacle this past year.

17 So, the recreational anglers, I
18 think, have a right to be concerned that we're
19 setting in place a mechanism that's going to insure
20 that they will have no control, other than through
21 the Regional Office, to shut down a fishery mid-
22 stream. Where again as Peter mentioned, some states
23 will have benefitted from having fished earlier,
24 others will not get any benefit at all.

1 Current situation -- one more example
2 is the highly migratory species, bluefin tuna.
3 North Carolina has developed a tuna fishery over the
4 last four or five years. They argued, bargained,
5 and were able to get the states to -- yeah, the
6 states to agree. And through HMS to agree to give
7 them a quota, this year again, they overfished the
8 small school. And the large fish are out of the
9 picture completely. We've had to transfer fish from
10 a reserve which we don't have in our -- the way
11 we're set up -- a reserve where we can say, oh,
12 we'll take ten metric ton or a hundred million
13 pounds, 100,000 pounds, whatever it is, and transfer
14 it from here to the sector or group that has not had
15 benefit of fishing on that stock.

16 So, that's my concern. I'd like to
17 hear from, if possible, Mr. Chairman, some feeling
18 of where we are with MRIP and how we will make sure
19 that by doing this, fishermen will get an equitable
20 and fair chance.

21 COUNCIL CHAIRMAN RICHARD ROBINS:

22 Pat, these are excellent points. As you know, there
23 are changes ongoing right now to the MRFSS survey,
24 the intercept protocols have been changed. But it

1 reminds me that it has been a while since we've had
2 an update on the program as a Council and perhaps an
3 update at our next meeting or the October meeting
4 would be a timely update.

5 I had John McMurray.

6 JOHN MCMURRAY: Thank you, Mr.
7 Chairman. I just wanted to add to Pete's list of
8 concerns here; that there's likely to be an effort
9 shift if we do have in-season closures and an
10 extraordinary effort shifts in some of the species
11 that we manage that we're going to have to deal
12 with.

13 Regarding Pat's comments re: MRFSS
14 and MRIP. I know that there were some comments that
15 I had read that some folks were suggesting we throw
16 the whole document out because we don't have -- but
17 my understanding is that this document is to deal
18 with uncertainty and to create buffers based on that
19 uncertainty. So, you know, I'm not sure whether we
20 should get rid of the in-season closure authority
21 altogether; but at the very least, I would like to
22 see it separated out from the document as an option
23 that the public can consider. Can we do that?

24 COUNCIL CHAIRMAN RICHARD ROBINS:

1 John, when you say separate it out of the document,
2 right now, we have -- we have three options as I
3 understand it. One would be no action; one would be
4 to allow for in-season closures; and one would be to
5 have prescriptive triggers for in-season closures.
6 Is that how it's set up now? We have those options?

7 JESSICA COAKLEY: Yeah. You could
8 choose not to have -- because this is a proactive
9 measure, you could choose not to have proactive in-
10 season measures. And you're right, you could either
11 have the general closure authority, which the
12 Regional Administrator would have so that it doesn't
13 have to be done under emergency action the way we've
14 had to do the closures in the past. Or, you could
15 have that -- that prescriptive trigger. Right now,
16 both are in the document as potential.

17 COUNCIL CHAIRMAN RICHARD ROBINS:

18 John.

19 JOHN MCMURRAY: Well, the more I hear
20 about this and the more I read about it, it's not
21 going to do anything to help the fishery, the in-
22 season closures. It's just going to redirect
23 effort. It's going to punish the states that have
24 later seasons. So, I'm kind of thinking we should

1 just take it out.

2 COUNCIL CHAIRMAN RICHARD ROBINS:

3 You're suggesting taking out the general in-season
4 closure authority as well? I mean, if --

5 JOHN MCMURRAY: Well, I'd like to
6 hear some discussion on it first.

7 COUNCIL CHAIRMAN RICHARD ROBINS:

8 Okay.

9 JOHN MCMURRAY: But right now, that's
10 where I'm leaning, yes.

11 COUNCIL CHAIRMAN RICHARD ROBINS:

12 Well, I think the issue with removing -- entirely
13 removing the in-season closure authority, we could
14 be at a point where we're in Wave 3 and we've
15 already caught 110 percent of the quota and the
16 service doesn't close the fishery and then we have a
17 corrective AM that's invoked the following year.
18 And then, if you have a massive overage, you could
19 potentially have no fishery the following year.

20 So, I think that's -- I think that's
21 the problem with eliminating the in-season closure
22 authority altogether. Now, the prescriptive
23 triggers are a different issue.

24 JOHN MCMURRAY: Okay. Well, with

1 that said, maybe we should deal just with the
2 specific triggers. And it's my feeling, again, when
3 I look into this that we should be focusing our
4 efforts on increasing the buffer between ACT and ACL
5 and managing very precautiously so we don't -- we
6 don't have the overages in the first place.

7 COUNCIL CHAIRMAN RICHARD ROBINS:

8 Thank you, John. Pat.

9 PAT AUGUSTINE: Thank you, Mr.
10 Chairman. Along those same lines, maybe we should
11 figure out how we should put the word adjust in
12 there as opposed to close. If you have, as John
13 just described, if you have a large enough buffer
14 and it appeared at Wave 3 you're getting pretty
15 close where you should have some concern, you could
16 be able to -- you should be able to adjust the
17 remaining quota that you have for the year. And it
18 would seem to be that that process could work well
19 through ASMFC because we do have regulatory
20 authority to change very quickly. So, I think that
21 may be a consideration that will allow us to go
22 forward with this, but also give you the flexibility
23 to use an adjustment.

24 You're right about the buffer, John.

1 I think we need a -- maybe a little bigger buffer.

2 COUNCIL CHAIRMAN RICHARD ROBINS:

3 Well, Pat, I think the FMAT may have had some
4 discussion about that issue, but I'll move it to
5 Jessica.

6 PAT AUGUSTINE: Good. Thank you.

7 JESSICA COAKLEY: Yes. We talk about
8 this issue and this was one of the reasons we had
9 NMFS SMT staff, Tom Smeeky, brought onto the FMAT to
10 engage in these discussions, because the guidelines
11 contemplate that your accountability measures are
12 something that has to be -- have to be automatic.
13 So, it's not something that when you're mid-season
14 through the fishery that you're going to do a whole
15 another analysis to evaluate what those rec.
16 measures should be for the last couple of months of
17 the fishing year, because that isn't a true
18 accountability that's consistent with the way that
19 it's contemplated.

20 We did, as an FMAT, discuss the idea
21 instead of having prescriptive triggers for closure,
22 having triggers to change the management measures
23 part way through the season. And where we ended up
24 on that issue is, we have limited information to

1 figure out what we should do for the upcoming
2 fishing year for the entire year, and we'll be very
3 limited in-season with the data we have in that year
4 to figure out what you should do for the remainder
5 of the fishing year.

6 Just as we're dealing with this big
7 lag in Waves, we'll be dealing with lags in
8 intercept data, small sample sizes, all of those
9 things that are going to make it really difficult to
10 figure out what you should do. So, the FMAT didn't
11 recommend these adjustments to management measures
12 in-season. We didn't think that the data supported
13 it. We did put the in-season triggers into the
14 document because while the data is still -- still
15 limited, it's a policy call whether you want to try
16 to close the fishery based on that limited
17 information versus the potential to accrue a very
18 large overage and then have to take a big adjustment
19 the next year.

20 People have raised -- you know, there
21 are issues that if action was taken to close the
22 fishery in federal waters that no complementary
23 state action may make it less effective, especially
24 things like summer flounder where 80 percent of the

1 landings are in state waters. So, even if you shut
2 the EEZ down to summer flounder recreational
3 fishery, you still may accrue a large amount of
4 landings. We talked about there's the potential for
5 states to shift their seasons around if they know
6 there's a trigger, maybe they move their fishing
7 seasons earlier into the season to try to beat that
8 trigger. That's a possibility. But, you know,
9 there are pros and cons and you've got to weigh it
10 with the implications of going way over are if you
11 don't have something in-season to try to slow that
12 accrual of landings.

13 COUNCIL CHAIRMAN RICHARD ROBINS:

14 Pat.

15 PAT AUGUSTINE: A follow-up, Mr.
16 Chairman. I won't belabor the point. If the feds
17 shut down the federal water, as we all know --
18 federal waters, as we know, those recreational
19 fishermen who fish in the EEZ are shut out of
20 business. If they have a federal permit, they will
21 not be able to fish in state waters, if I understand
22 that.

23 But, if ASMFC is able to control
24 their bag size and season by virtue of slowing down

1 the harvest -- when I use the word adjust to be
2 included in there -- could there not be then the
3 ability of ASMFC to come forward with a new quick
4 plan -- I'll call it a new quick plan because we can
5 implement a change of bag size and season in the
6 state, I think, within a short period of time --
7 some states are going to be advantaged, some are
8 going to be disadvantaged. But the fact of the
9 matter is all states would not end up suffering if
10 they had not already worked in that fishery in an
11 earlier part of the years.

12 So, it just seems -- seems to me one
13 word in there that would be adjust, if that would
14 satisfy the need to be in the guideline, unless the
15 guideline is a law, at the same time giving the
16 states the flexibility to continue to prosecute the
17 fisheries. It seems to me we've got to think
18 outside the box on this, look outside the
19 sideboards, to come up with language that's going to
20 include ASMFC. Right now, it's a slam-dunk. Maybe
21 I'm wrong on that, but I need some clarification.
22 Thank you.

23 COUNCIL CHAIRMAN RICHARD ROBINS:

24 Well, Pat, again -- you know, part of that depends

1 on the ASMFC's response to accountability. I mean,
2 if they end up with the state-by-state model, then I
3 think --

4 PAT AUGUSTINE: Right.

5 COUNCIL CHAIRMAN RICHARD ROBINS: --
6 I think it cures a lot of that. But, Pat.

7 PATRICIA KURKUL: To expand on that a
8 little bit too, we can't rely on the ASMFC and the
9 states to take action in a federal plan. The
10 federal plan has to stand alone.

11 You could certainly specify in the
12 plan that -- you know, the ideal situation is that
13 the states react in a situation where we are clearly
14 over the ACL. But you can't, as I said, rely on
15 that.

16 Now, I think one thing you want to
17 make clear in this is that it's an option available
18 and not necessarily an automatic when the ACL is
19 exceeded. And if you do have a big enough buffer
20 between the ACT and the ACL, and you've exceeded the
21 ACL significantly, then you've got a serious
22 problem. And so, you want some kind of a tool to
23 react to that.

24 So, if, you know, it's a -- if as

1 Jessica said -- you know, it's a policy option
2 basically, in an extreme circumstance, then you've
3 just built in some flexibility to allow yourself in
4 the situation where you're going significantly over
5 and that's going to impact the future, to be able to
6 take some kind of action. So, you know, if you put
7 it from that perspective, then you've just given
8 yourselves a tool. You may never use it. You
9 hopefully would never use it, but at least you have
10 it there.

11 PAT AUGUSTINE: To that point. To
12 that point, Mr. Chairman. Thank you for that
13 clarification, Pat. You helped very greatly.

14 I do think that if we leave this
15 language in here the way it is that, as you just
16 mentioned, there should be a description as to under
17 what circumstance you would use that. Similar to
18 the difference between typical and atypical, there
19 should be some further explanation as to what we
20 mean by each of those.

21 I think you're right. It's a great
22 tool to have. Hopefully, you're never going to have
23 to use it.

24 COUNCIL CHAIRMAN RICHARD ROBINS:

1 Pat, did you have a -- Pres.

2 PRESTON PATE: Yes, Mr. Chairman, if
3 you'll indulge me in just a brief response to Pat's
4 question about the -- and his reference to MRIP. We
5 are certainly making progress in improving that
6 program after a couple of years of trying to
7 establish some foundation from which we would move
8 forward with some specific pilot projects that will
9 test some new sampling methodologies. And I think
10 that over the next few months, we'll be able to
11 deliver some products from those projects that are
12 being thoroughly peer reviewed and validated through
13 all comprehensive scientific reviews process.

14 We completed one project that will
15 change the estimation procedures that have
16 historically been used for the angler intercept
17 survey. And we're redesigning the intercept survey
18 with a pilot in North Carolina. And we're testing
19 some different sampling methodologies that may have
20 merit both in terms of precision and the timeliness
21 of delivery of data.

22 But even after we complete that
23 process and make the vast improvements in the
24 surveys that we anticipate, there will still be

1 surveys. And the in-season adjustments, if we still
2 go -- if we choose to still keep that as a
3 management tool, will be based on those surveys.
4 And because they are surveys, by their very nature,
5 they will be opposed and argued against by the
6 skeptics. And there's nothing that you're going to
7 be able to do about that unless you go to a complete
8 census of the recreational angling public, and
9 that's practicably impossible. So, that's something
10 to keep in mind as we go forward.

11 We're certainly not at a point in
12 developing the MRIP program now to be able to
13 quantify the improvements that have been made. We
14 won't be able to do that until we apply the new
15 survey methodologies over a couple of years and run
16 some side-by-side comparisons with them and the
17 current MRFSS's methodology.

18 But again, I'll just underscore the
19 basic principle. There will still be surveys that
20 we will use for management. And I think we need to
21 be very sensitive to and careful to not extend those
22 improved surveys beyond their capabilities like
23 we've done with MRFSS or with the period from 1976
24 until now.

1 COUNCIL CHAIRMAN RICHARD ROBINS:

2 Pres, thanks for that explanation. Chris.

3 CHRISTOPHER ZEMAN: Yeah. I

4 generally, I agree with Pat's point and the need
5 that -- you know, there should be some factor in
6 this plan has in-season closure authority to stop a
7 significant cut, I mean, even a complete closure of
8 the following year due to an extreme overage in one
9 year. And I think even recreational fishermen if
10 they saw that happening would want that to stop
11 immediately so that the following year is saved.

12 You know, what's unfortunate here is
13 that we only have one alternative in this plan, and
14 that alternative is based on MRFSS, and that is
15 really just the key -- the real Achilles heel in the
16 way we do this. And it's a shame that there aren't
17 other factors that we can consider other than MRFSS.

18 We don't have any other sound-boards or other ways
19 to verify so that we can look at MRFSS as one factor
20 and other factors as well so that we see that this
21 is such an extreme situation we need to -- we need
22 to leave in-shore closure authority.

23 So, you know, while I think that -- you know,
24 while I think that we need to have that option in

1 there, I think -- is there a way for the Council --
2 that the Council decides or makes a motion for in-
3 season closure authority, so it's not the RA, it's
4 actually the Council can meet at anytime to -- and
5 basically by a vote of the Council we implement the
6 closure.

7 That way, we sort of incorporate all
8 these facts and we basically say, well -- because if
9 there's unanimous support here for a closure, then
10 we should have the right right-of-way to close it
11 down. There are a lot of times, I know, when we --
12 you know, we all felt that action had to be taken,
13 but then there's no mechanism in the plan. We would
14 need a -- we can't do it in the specs. We can't do
15 it in the regulation. So, if there's a way that we
16 could sort of -- if we made -- you know, the buck
17 stops with us -- we make that decision, then I would
18 be supportive of that authority.

19 COUNCIL CHAIRMAN RICHARD ROBINS:

20 Joel.

21 JOEL MACDONALD: Chris, there's no
22 ability on the part of the Council to implement a
23 regulation to close a fishery. That's the only
24 mechanism we have. That's a prerogative reserved to

1 the Secretary and -- you know, his designee.

2 Otherwise, you would have -- you know, probably some
3 appointments clause violations in the Constitution.

4 Because, you know, because as I said, it would be
5 the Council who would be taking the action when it's
6 really reserved to the Secretary.

7 COUNCIL CHAIRMAN RICHARD ROBINS: And
8 we're both going to be -- I think if we tried to do
9 that, somehow we'd both have the same catch
10 information in front of us and we'd both be bound by
11 NS 2. So, I don't know that that gets us --
12 advances us anywhere. Chris.

13 CHRISTOPHER ZEMAN: This goes to the
14 point we were talking about. It just goes to the
15 point we were talking about yesterday about having a
16 sort of fishermen's perspective approach as well as
17 a part of these plans where we set -- I understand
18 that there's more to this. There's actual -- there
19 needs to be -- we can't just have sort of have an
20 automatic thing based on MRFSS, because it really is
21 -- I mean for us to really think about this and look
22 at it and try to figure out what the data is telling
23 us because MRFSS is not -- is far from perfect.
24 It's far from being a catch-reporting methodology.

1 So, unless we have that -- unless it's sort of a the
2 buck stops with us, I'm very concerned with having
3 that in-season closure authority done by someone
4 else based upon -- based upon -- you know, something
5 that I -- you know, I find unreliable, unless that -
6 - you know, unless that system was modified.

7 COUNCIL CHAIRMAN RICHARD ROBINS:

8 We're going to think -- I think the problem we'd run
9 into is the fact that the overage is going to be
10 accounted for based on MRFSS and that's the reality
11 of the future impacts if action isn't taken in
12 season. Jason.

13 JASON DIDDEN: I thought Pres gave a
14 good quick summary, but I wanted to add just a
15 couple of points from my role on the operations
16 team. The MRIP is a long-term process and there
17 will be some improvements that probably come online
18 in 2011, but probably major improvements over two to
19 four years. And I could anticipate incremental
20 improvements for a decade.

21 And the changes so far address the
22 methods. And some of those methods may improve the
23 CV's, but they could reveal that we've under
24 anticipated the CV's. And it may only be the really

1 significantly increased sampling that you actually
2 get to what people -- most people think is a CV,
3 although Pres said sampling, there will always be
4 people who have issues with it.

5 And eventually, probably, MRIP, some
6 MRIP money will be shifted from the methodology to
7 the sampling. But it's unclear -- you know, if that
8 will happen, how it will happen, and what the
9 overall CV impact -- and also, the issue of
10 recalculating historic things came up and comes up
11 often, and some of the changes will lend themselves
12 to that, and others won't. And if it's done, it
13 probably won't be done for the whole times series.
14 You know, they may go back and do it for a few
15 years. So, just to add a little bit of some of the
16 caveats of what to expect from MRIP. Thank you.

17 COUNCIL CHAIRMAN RICHARD ROBINS:

18 Thank you, Jason. Pete.

19 PETER HIMCHAK: Yes. Thank you, Mr.
20 Chairman. I just want to follow up with Chris'
21 point of view on the in-season closures. Okay.
22 Whatever the Council cannot do, that's one thing.
23 And then it falls back to the states to act within
24 state waters under the Atlantic Coastal Fisheries

1 Cooperative Management Act, and whether -- I don't
2 know -- black sea bass, scup, an addendum would have
3 to be developed to give the states the authority to
4 close or give the states -- or tell the states to
5 close, not give them the authority.

6 But then again, there's the
7 regulatory delay in once a state sets its size,
8 season and possession limits. So, if the ASMFC told
9 states to close their waters in July, we'd have to
10 do a notice of administrative change. We'd have to
11 go before our Marine Fisheries Council. We'd have
12 to get it -- you know, published in the Register.
13 So, you're talking about several months just to make
14 an in-season adjustment. That would be tough.

15 COUNCIL CHAIRMAN RICHARD ROBINS: The
16 states have variable abilities to implement
17 regulations as we know. I had Greg DiDomenico.

18 GREG DIDOMENICO: Thank you, Mr.
19 Chairman. Greg DiDomenico of Garden State Seafood
20 Association. I guess I had some -- needed a
21 clarification on something. And in order for me to
22 do that, I've got to make a little bit of a
23 comparison. I spent the time on the FMAT phone call
24 where this issue was really kind of thoroughly

1 debated, and I had my own sort of perceptions about
2 it, and I want to make sure that I'm correct.

3 The issue of the recreational
4 management under this -- under the Omnibus
5 Amendment, I'm just going to use an example from the
6 commercial fishery.

7 The Winter 1 scup fishery is
8 approximately 4.4 million pounds. We have a 30,000
9 pound possession limit or landing limit that can
10 occur in a two-week period. The fishery shuts off
11 at 80 percent. So, at 80 percent, it goes to a
12 thousand pounds, a thousand pound possession limit.

13 Over the next couple of weeks, like it happened
14 this year, that over the weeks after the closure, we
15 get to 96 percent of our quota.

16 So, will the recreational fishery be
17 able to be managed like that? And if not, will the
18 position be or the philosophy be to understand that
19 limitation and not take the risk of going over that
20 quota? I assume that, and maybe I'm wrong, I assume
21 that by monitoring the recreational fishery
22 throughout the year, if the landings appeared like
23 they were going to outpace the quota, then you'd cut
24 back on the possession limit or the -- or the season

1 or something of that nature. And at this point, I
2 guess I understand that that's not the case. And
3 just for my members, I need to be able to understand
4 and to explain to them how the recreational fishery
5 is going to be managed. And I need to know if I'm
6 correct or if my perception is incorrect.

7 JESSICA COAKLEY: No. As you said,
8 for the commercial fisheries, many of them have
9 fixed closure triggers where the directed fisheries
10 close and then you have -- you know, an incidental
11 landings that accrue up to what the landings limit.

12 And in many of our fisheries, you already have
13 landings overage deduction mechanisms that are
14 already in place that will occur anyway.

15 The difficulty with the recreational
16 fishery, we've got a couple of difficulties. One is
17 that the data limitation issue, and that we're very
18 limited, data limited, within the season to figure
19 out what kind of adjustments should be made; and
20 that those adjustments, again, wouldn't be automatic
21 and as contemplated in the NS 1. But also, the
22 universe of participants, when there are changes
23 made to the measures in the commercial fishery, the
24 service has permit holders. They have all their

1 information. They're able to send permit-holder
2 notice letters to them, notify them of the changes.

3 That isn't the case in the recreational fishery.

4 So, you also have to deal with --
5 you've got federal noticing and noticing all these
6 state fishermen -- you know, letting them all know
7 what these changes and adjustments are going to be.

8 And that's one of the difficulties with making
9 those changes effectively within the season that
10 poses a problem. And some of the state directors
11 have highlighted the difficulty of getting changes
12 into place through their processes and noticing
13 everyone as to what these changes are.

14 What we have in here for options.
15 The FMAT focused on closure because of the
16 difficulty with a lack of data developed in-season
17 adjustments. And you know, we've got that general
18 closure authority, which could potentially be a
19 backstop. You know, in the worst case, if you have
20 nothing else, you would have your proactive ACT's,
21 both for the commercial and rec. fishery that you
22 could set such that you don't expect your ACL to be
23 exceeded. That's a form of proactive.

24 And then a general in-season closure

1 authority could serve as another proactive backstop
2 to prevent those landings from being exceeded. But
3 we don't have other types of measures developed.
4 The data just didn't support it.

5 GREG DIDOMENICO: Thank you.

6 COUNCIL CHAIRMAN RICHARD ROBINS:

7 With respect to this section, what's the pleasure of
8 the Council? I'd like to go ahead and wrap this
9 section up. John.

10 JOHN MCMURRAY: Thank you, Mr.

11 Chairman. I absolutely agree with what Pat said
12 that we need this -- the closure authority as a
13 tool. And I understand that now. But the
14 prescriptive in-season triggers, particularly the
15 scup trigger of 50 percent, and we're dealing with a
16 very uncertain survey, I just -- I think it's
17 punitive. I don't think it's necessary really.

18 I guess I'd like to make a motion to
19 take out the prescriptive in-season triggers out of
20 the document.

21 COUNCIL CHAIRMAN RICHARD ROBINS: Is
22 there a second to the motion. Second by Steve
23 Hines.

24 Just to the motion as to remove the

1 prescriptive triggers from the -- move it to
2 considered but rejected. Is there a discussion on
3 the motion? Pete.

4 PETER DEFUR: Thank you, Mr.
5 Chairman. It doesn't mean that we have to do it,
6 but, I mean, it gives an option to go out for
7 consideration within the EA so that we're going to
8 get an analysis of it. And I think it's worth
9 having an understanding on an analysis of both
10 options, both the general closure authority as well
11 as the prescriptive. So, I think it's a good
12 feature to have in there as one of the options we're
13 going to consider in the document.

14 COUNCIL CHAIRMAN RICHARD ROBINS:
15 Other discussion on the motion? Peter Himchak.

16 PETER HIMCHAK: Yes. Thank you, Mr.
17 Chairman. I'm going to support the motion. But at
18 the same time -- you know, we have to put the
19 recreational sector on notice that the accounting
20 for management uncertainty is going to be a very
21 difficult -- there's going to be serious, serious
22 reductions for this because of past performance.

23 So, it -- yeah, I agree about the
24 proactive within season adjustments -- you know, not

1 going down that path for a number of reasons. But
2 we're going to have to take a very, very
3 conservative approach in setting ACT's.

4 COUNCIL CHAIRMAN RICHARD ROBINS:

5 Other discussion on the motion? Chris.

6 CHRISTOPHER ZEMAN: I mean, across
7 the boards and all the comments I've reviewed, the
8 public was supportive of us just relying on the
9 annual process as opposed to prescriptive in-season
10 triggers. Now, I'm assuming that they understand
11 the fact that if we don't -- if we have a major
12 overage, we will then make serious cuts the
13 following year. But I think that that's the more
14 appropriate way to go here because that's really
15 what the system allows for. We don't have -- we
16 don't have the ability to have real-time data like
17 the commercial fishery. I would love to have that
18 for the recreational fishery. And to the extent we
19 can do something like that, it would be great.

20 But really, the approach that we do
21 is similar to what Greg was saying with the
22 commercial fishery, but it's just on a much longer
23 term. We look at the entire year, and we make one
24 change. We look at the entire year, and make one

1 change. Naturally, that will create -- can create a
2 situation where that one change is very dramatic.
3 But as long as the public understands that, then I'm
4 fine with that. I support that motion to remove the
5 prescriptive in-season triggers.

6 COUNCIL CHAIRMAN RICHARD ROBINS: All
7 right. Further discussion on the motion? Adam.

8 ADAM NOWALSKI: Thank you, Mr.
9 Chairman. Adam Nowalski, Recreational Fishing
10 Alliance. The RFA has indicated on written comments
11 is in support of removing the prescriptive in-season
12 triggers based on the use of MRFSS. There's been
13 numerous instances where there's been comments both
14 in the Federal Register by the National Marine
15 Fisheries Service, by the National Research Council,
16 you know. To paraphrase here from the National
17 Research Council, for recreational fishing surveys,
18 the design, sampling, strategies and collection
19 methods of recreational fishing surveys do not
20 provide adequate data for management and policy
21 decisions. So, certainly supporting -- that
22 supports getting rid of the in-season prescriptive
23 measures using MRFSS.

24 I also think that comment supports

1 removal of the general authority provision that's in
2 here. With what we saw last year, the Regional
3 Administrator has already demonstrated a willingness
4 to go ahead and go through the review process to
5 close the fishery. The analyses that took place as
6 part of that decision, I think, are an important
7 component. To back away from that now and simply
8 say, well, we're going to go ahead and do it based
9 on MRFSS, where again, the National Research Council
10 says it's not adequate data for these management and
11 policy decisions. I don't think it's any additional
12 improvement. So, the RFA would like to see the
13 removal of the in-season closure authority as well.

14 Finally, with respect to reductions
15 the future years. I don't really think this is
16 anything new. Every year since the FMP has been put
17 in place, the recreational sector is faced with a
18 reduced fishery based on size, season and bag the
19 ensuing year based on the catch level of the
20 previous year. When conservationally equivalent
21 measures are set, where we go through and sit down
22 with the Advisory Panel and the Monitoring Committee
23 comes up with a recommendation, you don't just look
24 at Year 1 to Year's 2 difference in quota, you also

1 look at any difference -- you look at the catch
2 level from Year 1 compared to the Year 2 target
3 quota. So, every year, we're already faced with the
4 prospects of no fishery essentially.

5 And again -- you know, I think Pat's
6 comment before with regards to the fact that if
7 we're going this far over, there's a major problem
8 here. And going ahead in any type of process that
9 just simply automates this without having review,
10 it's just -- it's not something that can be
11 supported by MRFSS in its current iteration and
12 certainly isn't going to be supported by MRIP in
13 future years until it gets to a point where there's
14 a greater level of confidence in the values that are
15 coming out of it, which may only be satisfied by
16 larger samples. Thank you.

17 COUNCIL CHAIRMAN RICHARD ROBINS: I
18 think the problem with the elimination of general
19 in-season closure authority is the fact that we
20 could have massive consequences in future years.
21 And I think that really gets into a major public
22 interest issue. So, I think the -- I think the
23 motion that we have here is more limited in nature
24 and eliminates some of the problems that have been

1 discussed about the prescriptive triggers.

2 So, is the Council ready for the
3 question?

4 (Motion as voted.)

5 {Move to remove the prescriptive in-season trigger
6 from the considered but rejected option in the
7 ACL/Am Omnibus for in-season recreational measures
8 for Summer Flounder, Scup and Black Sea Bass.}

9 COUNCIL CHAIR RICK ROBINS: All those
10 in favor, please raise your hand.

11 (Response.)

12 COUNCIL CHAIR RICK ROBINS: Thirteen;
13 Opposed, like sign.

14 (Response.)

15 COUNCIL CHAIR RICK ROBINS: One,
16 opposed. Abstentions, like sign.

17 (Response.)

18 COUNCIL CHAIR RICK ROBINS: One
19 abstention. The motion carries. Thank you.

20 Let's go ahead and take a 15-minute
21 break. If you all need to checkout, you can do that
22 now. And we'll come back --

23 (Break: 11:14 a.m. to 11:34 a.m.)

24 COUNCIL CHAIRMAN RICHARD ROBINS:

1 Please, so we can get started.

2 JESSICA COAKLEY: Yes. The last item
3 that I've put up, the issue that we have suboptions
4 in here that you may wish to modify or consider for
5 considered but rejected, it deals with the bluefish
6 recreational harvest limit. When a transfer occurs,
7 and as I've said before, if a transfer does not
8 occur, then there's reactive accountability both for
9 the commercial fishery and for the recreational
10 fishery if the ACL is exceeded in the form of an
11 overage adjustment.

12 But, when a transfer occurs, there
13 are three options. The first is, if the ACL is
14 exceeded, there would be an overage adjustment to
15 the recreational harvest limit if it's rec. landings
16 that were responsible. The second alternative is
17 that the ACL would be adjusted in response to that
18 overage due to recreational landings. And the net
19 effect of that is both sectors would pay for that.
20 It comes off the top, up front, before you do the
21 allocation process. And then the last is that ACL
22 is adjusted and there is a required transfer
23 reduction in the next year, not allowed to transfer
24 more than that amount accounting for the overage.

1 Public comment was leaning towards
2 the second two options. There were some people that
3 commented they didn't like the idea of when that
4 transfer occurs, just that rec. fishery being
5 responsible, and the idea that if only the
6 recreational fishery is responsible for that
7 overage, why transfer anything at all to the
8 commercial fishery, because they could potentially
9 be held responsible. And that's one possible
10 consequence of that first option.

11 So, I just want to ask if there's any
12 modifications were considered but rejected for this
13 suite at this time, at this point in time?

14 COUNCIL CHAIRMAN RICHARD ROBINS:

15 Peter.

16 PETER HIMCHAK: Mr. Chairman, based
17 on the many comments that came in on this, I'd like
18 -- I mean, I would recommend that we whittle down
19 these options today. When a transfer occurs in the
20 recreational -- I would favor when a transfer occurs
21 and the recreational harvest limit is exceeded, that
22 the -- that it does not come off the following
23 year's ACT, that it be accounted for in any
24 potential -- I think these transfers are going to

1 happen for many, many years the way the plan has
2 been running and the landings have been coming in.

3 So, I think in all fairness to the
4 recreational side of the ledger, that the -- their
5 exceedance should come off the transfer in the
6 subsequent year.

7 COUNCIL CHAIRMAN RICHARD ROBINS:

8 Well, Pete, do you want to eliminate that first
9 option that was most problematic? It seemed like
10 there was perhaps the most public support for the
11 third option? Do you want to make a motion?

12 PETER HIMCHAK: I would make a motion
13 to delete both Option 1, the recreational harvest
14 limit adjusted to recreational pays, and Option 2,
15 that the ACL is adjusted and both sectors pay.

16 COUNCIL CHAIRMAN RICHARD ROBINS:

17 Seconded by Erling Berg. The motion would move the
18 first two options to considered but rejected.
19 Discussion on the motion? Is there any discussion
20 on the motion? Okay.

21 Is the Council ready for the
22 question?

23 (No Response Audible.)

24 COUNCIL CHAIRMAN RICHARD ROBINS: All

1 those in favor, please raise your hand.

2 (Response.)

3 COUNCIL CHAIRMAN RICHARD ROBINS:

4 Twelve; Opposed, like sign.

5 (Response.)

6 COUNCIL CHAIRMAN RICHARD ROBINS: One;

7 Abstentions, like sign.

8 (Response.)

9 COUNCIL CHAIRMAN RICHARD ROBINS: One

10 abstention. The motion carries. Thank you.

11 Thank you, Peter. Jessica.

12 JESSICA COAKLEY: Okay. The next

13 thing I'm going to go over, if you can turn in the

14 briefing book tab, it's right behind the Tilefish

15 Trip Limit Analysis. There's a series of

16 spreadsheets that go. They're examples of our

17 process for spec. setting, pre-Magnuson

18 authorization, which I have up through 2007, and

19 then post MSRA for 2008, 2009, and 2010.

20 Right behind the Tilefish Trip Limit

21 Analysis, which is after the comments, so, if you

22 get the big chunk of comments out of the way, the

23 first table is summer flounder. I'm just going to

24 go over that briefly. We have examples for all of

1 the species contained behind -- behind the tab, but
2 for the sake of time savings, I'll just go through
3 that first one.

4 So, essentially, what we've laid out
5 in the table is what the overfishing limit is, which
6 we have these from the prior years from the
7 projections that were done. It's the catch at the
8 FMSY Proxy, relative to the current stock size. The
9 next row is the ABC that was recommended by the SSC.

10 And the ABC process kicked in for summer flounder
11 for the first time in 2009. So, we had
12 recommendations that came in for 2009 and 2010 for
13 ABC's to account for management uncertainty. And
14 then we have the TAC's and TAL's that were
15 recommended by the Council for the upcoming fishing
16 year.

17 And the point of laying this process
18 out was to indicate what -- what aspects of the new
19 processes that we'll be applying through the Omnibus
20 we have started applying. I'm behind the briefing
21 book tab. What processes we have already started
22 applying.

23 So, if you'll look at 2009, in the
24 summer flounder column, the fifth row down, I've

1 indicated the difference between the TAC, the total
2 allowable catch, that the Council has recommended
3 and the OFL. And so, in 2009, the TAC that was
4 recommended by the Council was actually 82 percent
5 of the OFL. And that accounted for both scientific
6 uncertainty that was addressed in specifying the ABC
7 as well as an adjustment to that TAC for management
8 uncertainty of about a million pounds that the
9 Council had taken into account for that fishing
10 year.

11 So, some of these -- in terms of
12 figuring out what some of these processes might look
13 like in the future, we can't predict what those
14 future catch limits are going to be associated with
15 the process because we can't predict what stock
16 status is going to be in upcoming fishing years.
17 And a lot of the decision points for what level or
18 class -- fish stock would be classified to, what
19 decision the SSC would make for an ABC, and what
20 recommendations the Monitoring Committee would make
21 for an ACT to the Council, and what the Council
22 would recommend, those processes haven't played out
23 at this point, so we can't predict that. But you
24 can look through each of these spreadsheets and look

1 at how we have started applying some of these
2 things. And it will give you a feel for when these
3 new processes kick into place, how different those
4 might be.

5 So, there is one for each of these
6 species. And you can look through. You know,
7 surfclam is one example that I think stands out.
8 The TAL that's been set relative to the OFL is 15
9 percent of the overfishing limit. So, that's a
10 place where the Council, in trying to address
11 optimum yield, has taken a very precautionary
12 approach to setting that relative to the OFL.

13 So, when these new processes to
14 address scientific and management uncertainty kick
15 into place, they may be subsumed within that
16 adjustment that the Council has made when they
17 specified that TAL. It will depend on what we get
18 for an ABC recommendation and a Monitoring Committee
19 recommendation. But those do -- they may actually
20 be subsumed, so you may not end up with an
21 adjustment lower than that. It may be part of that
22 encompassed within that 85 percent adjustment that's
23 already occurred.

24 So, one for each of the species. And

1 we can go over those in more detail at the August
2 Council meeting if you'd like to go through that.

3 The next thing that I'd like to go
4 over, the last item that we have, is the process to
5 modify actions. This starts on Slide 24.

6 COUNCIL CHAIRMAN RICHARD ROBINS:

7 Jennifer, if I could just jump in real quickly.
8 That series of documents Jessica has just given you,
9 a quick illustration of the summer flounder example,
10 but that series of documents is, I think, a very
11 important description of the status quo. And it was
12 pretty clear when we had the risk policy discussion
13 that I think there were a lot of questions about the
14 current practice, recent practice, et cetera, and
15 how that would relate to the process going forward,
16 and this is an effort to really thoroughly describe
17 the past few years of how we've set specs. and how
18 the SSC for example has recommended ABC in
19 relationship to OFL.

20 These are directly relevant to the
21 ultimate decision we make in August about the risk
22 policy selection. But I think it would be very
23 helpful for us to review this ahead of the August
24 meeting and then have another presentation by

1 Jessica of that before we make that final decision.

2 But that's what this was developed in response to.

3 And I think it's a good illustration in detail
4 about how ABC and TAC's related to the OFL over the
5 past few years. So, I think it provides some
6 context for that discussion in August. Go ahead,
7 Jessica.

8 JESSICA COAKLEY: Okay. The last
9 section to discuss is the process to modify actions.

10 As you know, there is really three potential ways
11 we can modify actions. We can do it through out
12 specifications process which takes about a half-a-
13 year, about six months, from the time the staff
14 submits the package to go through -- the staff
15 develops and submits the package and then go through
16 the NMFS rule-making process -- you know.

17 One example, my summer flounder,
18 which moves very quickly. Council votes in August.

19 We usually get the final rule from the service the
20 last week of December, just prior to January 1. So,
21 we're looking at about a half-a-year process for
22 that.

23 Frameworks typically take anywhere
24 from six months to a year and-a-half. Six months

1 would be if it's a really quick issue, that
2 framework is developed very rapidly, and then it
3 moves through the NMFS rule-making process.
4 Framework actions require a minimum of two Council
5 meetings. There's a Framework 1 meeting. If there
6 are no major modifications, it can then go to a
7 Framework 2 meeting, and then the Council can
8 finalize it. If there's modifications that take
9 place, it may require more meetings. And again, you
10 still have the NMFS rule-making process on the back-
11 end of that, which adds a few months.

12 Amendments can take anywhere from one
13 year, which is a really fast-track amendment, to
14 five years, six years. We've had amendments that
15 have taken multiple years. It includes scoping
16 hearings, multiple Council meetings, and then the
17 rule-making process.

18 So, in developing a process to modify
19 actions, the FMAT focused heavily on trying to make
20 this process adaptive. It's clear ACL's and AM's
21 are intended to be an adaptive process. So, we want
22 to take advantage of our ability to work through
23 specifications and work through the framework
24 process as much as possible so that the Council can

1 be responsive to the current fishing conditions and
2 not have these really long, year-long lags before
3 things could kick into place.

4 So, who recommends modifications?

5 Well, the ABC control rule framework modifications
6 recommendations for modifications to that would come
7 from the SSC to the Council and they would have a --
8 they would have a performance review of their ABC
9 controls periodically.

10 The ACL and AM recommendations would
11 come from the Monitoring Committees. Or in the case
12 of surfclam motion quahog, it would come from staff
13 to the Council and there would be an ACL/AM
14 performance review. And we've previously flagged
15 that one in four years that the National Standard
16 Guidelines has indicated if you're going over your
17 ACL more than one in four years, it suggests you
18 should review the system of ACL's and AM's to
19 evaluate how those are performing.

20 So, that's where your recommendations
21 would come from.

22 Now, in terms of how to actually do
23 the modifications. For ABC and the ABC control rule
24 framework, there's four levels in tiers. The catch

1 level associated with ABC would be communicated
2 through the specifications process annually. And it
3 could be up to three years if you're doing three-
4 year annual spec. setting. So, that ABC would be
5 communicated. And the specific ABC control rule
6 values, if there are CV's that are set for the OFL's
7 and specific description of how that rule is
8 applied, including the level of which a stock was
9 classified, which determined how that control is
10 defined, that would all be communications through
11 the specifications process.

12 For the framework, those four levels,
13 modification of the ABC levels, aspects of them, the
14 numbers of levels that are contained, the criteria
15 within the level, you'll note there's four or five
16 criteria under each level, if there are
17 modifications that need to be made, the SSC could
18 recommend those to the Council and the Council could
19 communicate those to the Regional Administrator
20 through the specifications process, and they could
21 be codified through that rule-making process.

22 So, we're talking about small changes
23 to that framework, but that same -- the intent in
24 that same framework process would still be applied.

1 Complete wholesale elimination of
2 those levels in lieu of something else different
3 than the process already described, that would
4 require either a framework or an amendment. And
5 that's something that at the time depending on what
6 types of changes are being proposed, we would need -
7 - we would need to evaluate how that would be
8 handled. But it's clear that isn't something that
9 could be communicated through that specifications
10 process.

11 Further Council risk policy, the
12 modification depends on where it takes up residence.

13 Earlier you identified your preference for having
14 that reside in the FMP as opposed to the SOPS. So,
15 that first part doesn't apply.

16 But for the Council risk policy, once
17 it's established in the FMP, for policy variable
18 values, so if you lay out your framework and there
19 are changes to the value range or the inflection
20 point that the Council is contemplating, it could be
21 recommended by the Council to NMFS through that
22 specifications process and it could be codified
23 through that rule-making process.

24 Now, these are small changes to that

1 framework. However, if there's a wholesale change
2 to that defined policy or a major deviation to the
3 way the Council wants to define that police, that
4 would again either require a framework or an
5 amendment. And at the time, depending on how big
6 the changes are, we need to determine whether it is
7 framework or amendment. But we're trying to, as
8 much as we can, take advantage of that, the
9 timeliness of the specifications to communicate all
10 of these things.

11 You've already given me guidance on
12 where that -- the risk policy will reside.

13 Next slide. Next slide. There we
14 go. Thanks.

15 For the ACT and the ACT control
16 rules. The specifications are going to be used to
17 communicate annually or up to three years, if it's
18 multi-years, the ACT and the associated control
19 rule. We've already talked about the role of the
20 Monitoring Committee. And through their committee
21 processes, they're going to make a recommendation
22 for the catch limit associated with the ACT. And
23 they're going to describe the methods that were
24 applied, the control rule, for deriving that. So,

1 that will be communicated to the service through
2 that specifications process each year or every three
3 years if we're using multi-year processes.

4 For AM's that already exist within
5 the FMP. You know, things where we already have
6 trip limits or trip limit triggers that are already
7 in place, those kinds of adjustments, the
8 modification for those AM's could be recommended by
9 the Council through specifications and again
10 codified. That's something we already do. We can
11 already make adjustments to trip limit triggers, to
12 our trip limits, and things like that during our
13 normal process, so that this -- that aspect is not a
14 departure.

15 New accountability measures, the
16 addition of new AM's that have been contemplated
17 within the amendment, could be adjust through a
18 framework process. And what we would like to add to
19 the alternative that's contained within the document
20 right now is a list of frameworkable items. And if
21 you go into each of our plans, we already have a
22 series of frameworkable items that are listed:
23 minimum fish sizes, gear restricted areas, time area
24 closures, trip limit set-asides for bycatch; and now

1 we're going to have some new accountability measures
2 that are being introduced through the new amendment
3 document.

4 So, what we're going to do between
5 now and the August meeting is develop a
6 comprehensive list of all of these actions that are
7 potentially frameworkable that we -- through this
8 process and things that we're already contemplating
9 that the Council is going to need to do or make
10 modifications to in order to respond to the dynamics
11 of the fishery, changes in the fishery to ensure
12 that these ACL's and AM's function as intended, and
13 that includes trying to anticipate things like data
14 improves. The improvements in the recreational data
15 collection system and the data is more timely or
16 more precise, the Council may want to do things in
17 terms of new accountability measures. And that's
18 something that we're going to try to contemplate in
19 here so you have the ability to bring these things
20 online through framework.

21 Other measures. Things that would be
22 completely new or novel -- AM approaches that aren't
23 in that list of framework items and are so different
24 that we haven't really contemplated them anywhere in

1 the document, they would need to be incorporated
2 through an amendment. And to be honest, if it's
3 something so new and novel that we haven't thought
4 about it previously at all before, it really seems
5 like that would be the most appropriate way to deal
6 with something like that.

7 This approach, as the FMAT has laid
8 out, would provide the maximum flexibility for
9 adaptive management for the process. However, I do
10 want to highlight, we're laying this proposed
11 process out. When any action is proposed, we always
12 have to sit down and take a look and re-evaluate as
13 a staff how we think it -- what we think the most
14 appropriate mechanism to modify it might be.
15 Because we could lay this plan out and there could
16 be litigation on a specific issue that would prevent
17 us from say using a framework or using an amendment
18 -- you know, that we laid it out in the FMP, but
19 that it's no longer possible to use that venue.

20 So, we're trying to lay out a
21 strategy here that we think is going to be adapted
22 and will hopefully give the Council flexibility in
23 the future. So, to use that specs. and use that
24 framework process as much as possible.

1 COUNCIL CHAIRMAN RICHARD ROBINS:

2 Jessica, the control rules are bound to evolve over
3 time. I think this gives us the flexibility we want
4 in terms of modifying values. But if we were to
5 make a change let's say for whatever reason after we
6 finish the management strategy evaluation and we
7 concluded that some species might be better managed
8 with the species-specific control rule, would that -
9 - could that be done through the specs. or would
10 that have to be done in the framework? I mean, I
11 think that's a question you might want to anticipate
12 as you try to categorize these or make your list.

13 JOEL MACDONALD: It depends on how
14 large the change is. You know. I've often
15 mentioned that CLF lawsuit on Scallop Amendment 10,
16 where there was language that you can't introduce
17 new concepts or eliminate ones that were previously
18 established through an amendment or something like
19 that. So, we'd have to make a value judgment as to
20 how significant -- you know, a change as you suggest
21 would be to see what type of mechanism we should --
22 we could use to implement it.

23 COUNCIL CHAIRMAN RICHARD ROBINS: I
24 would just suggest that we might want to consider

1 that question to the extent that we can when you
2 come up with the list.

3 Are there other questions on the
4 proposed modification process? Pres, did that
5 satisfy some of your earlier questions and concerns?

6 PRESTON PATE: Yes, it did, Mr.
7 Chairman. I appreciate Jessica and others working
8 on that. I think it's going to be real helpful for
9 us.

10 COUNCIL CHAIRMAN RICHARD ROBINS:
11 Okay. Well, by consent, we'll move forward as staff
12 has proposed here. I'm sorry, Peter.

13 PETER DEFUR: I have a question on a
14 different matter than the modification process.

15 COUNCIL CHAIRMAN RICHARD ROBINS: Go
16 ahead.

17 PETER DEFUR: Yeah. This goes back
18 to what Jessica pointed out earlier, that any
19 numerical changes that we have need to be
20 incorporated into this as we go forward into the EA
21 as the whole document. And that goes back to the
22 risk policy; is that right?

23 COUNCIL CHAIRMAN RICHARD ROBINS:
24 Jessica.

1 JESSICA COAKLEY: Yeah. In terms of
2 the way those modifications may be made to the risk
3 policy value changes, it's something that if after
4 you've established through the EA when you submit it
5 in August that document would specify values and
6 then you find that there are changes to those values
7 that you think are appropriate, that you could
8 downstream communicate those through the
9 specifications process to the service that you're
10 recommending those as changes and it could then be
11 codified through their process when they do specs.

12 So, while we're going to move forward
13 with the values as they appear in these alternatives
14 for preparation of the amendment for August and you
15 would look to pick from those alternatives to submit
16 it, you would still have the ability downstream if
17 you find out that there's a reason to modify some of
18 those values and you have a good basis for that to
19 go ahead and change those in the future through
20 specs. if it's just small changes. Again, if
21 they're wholesale large deviations, it may require a
22 framework or amendment.

23 PETER DEFUR: Okay. And the reason,
24 Mr. Chairman, is because as I think I've talked

1 about, mentioned in a couple of previous meetings,
2 alternatives 2D, 2E, that go up to a maximum of
3 probability of 50 percent, I think that that is too
4 high. And there's a reason -- and there's a very
5 specific reason for that, and it's because that
6 management approach only accounts for the
7 probability of exceedance and doesn't -- cannot take
8 into account the magnitude. So, if we have, even
9 under the best of circumstances, we could have a
10 well-managed stock that we understand perfectly, et
11 cetera, et cetera, and we have a 50 percent chance
12 of going over, that overage could be 60 percent in
13 excess. It could be even more. And we're taking a
14 50 percent probability that it could be over. So,
15 that's why -- that's why I'm uncomfortable with
16 going up to 50 percent on all the options.

17 We have had in the past, overages
18 that are quite substantial and we want to be able to
19 keep that under control. And the only way that I
20 see that we can do that is with the probability --

21 COUNCIL CHAIRMAN RICHARD ROBINS:

22 Pete.

23 PETER DEFUR: -- unless there's
24 something -- unless I'm missing something.

1 COUNCIL CHAIRMAN RICHARD ROBINS: No.

2 You're not missing anything. I would just point
3 out that Option 2D and Option 2E which do have the
4 highest value at 50 percent, that that only relates
5 to basically a Tier 1 stock. And presently, we
6 don't have any Tier 1 stocks. So, Option 2D has a
7 maximum value for Tier 2 of 45 percent, and
8 similarly for the other option, it has a Tier 2 max
9 of 45 percent. So, they're backed off from that
10 within the relevant range of Tier 2 and Tier 3
11 stocks, which are also lower.

12 But to your point, if you wanted to
13 make a different decision or different value, we
14 could do it through the specifications process as
15 Jessica has pointed out. So, when we get to that
16 point of actually using this to set specs., it could
17 be -- it could be changed if you felt that it had to
18 be changed. Chris.

19 CHRISTOPHER ZEMAN: In review of all
20 the comments -- you know, the range of recommended
21 risk values was only from -- was from 10 to 40
22 percent. So, can we -- can we at least say
23 considered but rejected for anything higher than 40
24 percent?

1 COUNCIL CHAIRMAN RICHARD ROBINS:

2 Chris, that would modify or that would move -- that
3 would move several suites of options to consider but
4 rejected, and I think it might be premature to do
5 that. I mean, if you wanted to modify a specific
6 value in one of the options at this point in time,
7 you could do that. You know, I don't know -- and I
8 was thinking that we would be able to do that in
9 August. But --

10 CHRISTOPHER ZEMAN: I thought we
11 could just modify --

12 COUNCIL CHAIRMAN RICHARD ROBINS: If
13 you have -- I mean, if you have a focused concern
14 about a specific option, we can discuss it --
15 discuss it now. But I think that moving everything
16 that's higher than that to considered but rejected
17 would potentially eliminate some of these entire
18 packages of options.

19 CHRISTOPHER ZEMAN: That was not my
20 intent to send all these alternatives to considered
21 but rejected. Nor, like, they were just modified so
22 that the range ends at 40 percent. Because I kind
23 of share Peter's same concern is that something when
24 we're going up above 40 percent, we're really right

1 on the verge of having a one in two chance of
2 overfishing. So, it would just be a modification to
3 those alternatives so that the maximum risk policy
4 is 40 percent in all those alternatives.

5 PAT AUGUSTINE: To that point.

6 COUNCIL CHAIRMAN RICHARD ROBINS:

7 Pat.

8 PAT AUGUSTINE: Thank you, Mr.
9 Chairman. To that point, I tried to get to -- if we
10 go to 50 percent, and I kind of almost laughed,
11 because I think with the built in protective
12 measures that the SSC and all the other things that
13 are being taken into consideration, impact,
14 mortality, the stack, stack, stack, stack, I've
15 never asked the question on the record, is what is
16 that protective band that when we get the number
17 from the SSC, how much protection is there in their
18 numbers? Is it 20 percent, 30 percent, 40 percent,
19 50 percent chance? Even if we went to 50 percent,
20 we'd have to be absolute -- absolutely crazy to
21 consider setting anything that's going to allow us
22 to go over and be overfished.

23 You know, so, I think, the buffer,
24 buffer, buffer, and all the elements that are being

1 considered into the natural mortality and other
2 mortality, bycatch and so on, it just seems to me we
3 go to 40 percent or less, it's not only overkill,
4 but I think we will eventually end up hurting our
5 fishermen and the ability to catch more fish. I
6 think that with the management tool that we have,
7 it's our responsibility to make the best judgment
8 based on what the SSC has supplied us and the
9 Monitoring Committee. So, I would not go any lower
10 than 45.

11 COUNCIL CHAIRMAN RICHARD ROBINS:

12 Well, a 50 percent -- a 50 percent risk policy would
13 result in zero buffer relative to the OFL.

14 PAT AUGUSTINE: I understand that.

15 COUNCIL CHAIRMAN RICHARD ROBINS:

16 First of all. And just to Chris' point, I think --
17 you know, Chris if you wanted to modify these, you'd
18 have to then modify all the lower values and you'd
19 have to do that across several of the options.

20 CHRISTOPHER ZEMAN: There's no need.

21 We'll just address this in August. But I guess
22 just to respond to Pat, what I understand is that we
23 sort of -- we make the recommendation of our risk
24 policy. We then tell the SSC based on this

1 percentage, give us back a number, that's your ABC.

2 So, we are asking them to actually give us a limit
3 that has a 50 percent chance of overfishing. So,
4 there's no --you know, if they try to account for a
5 buffer it would contradict that directive. So, the
6 SSC is being like specifically directed not to -- to
7 basically, just give us a higher number. And I
8 don't know how that -- how that -- you know, how
9 other portions of addressing management uncertainty
10 or any other issues is duplicative of that or we'll
11 sort of address that.

12 COUNCIL CHAIRMAN RICHARD ROBINS:

13 Well, Chris, I think the application -- you're right
14 about the flow. I mean, so, we'll be establishing
15 the control rule. The SSC will be applying it.
16 It's a probabilistic approach. In some cases, we
17 have options that are below 50 percent. We have one
18 control rule that maxes out at 40 percent. And we
19 have one that's fixed across the boards at 25
20 percent. And again, we could change this through
21 the specification process. You know.

22 I think what we have is a reasonable
23 starting point for consideration. Other discussion?

24 PAT AUGUSTINE: Move to approve all

1 this.

2 COUNCIL CHAIRMAN RICHARD ROBINS:

3 Okay. Jessica.

4 JESSICA COAKLEY: Just one other
5 thing of note and John is sitting quietly over
6 there, but I think if the Council recommended a risk
7 tolerance for overfishing that was completely
8 inappropriate, that the SSC does have the ability to
9 recommend ABC's that deviate from the framework as
10 described. So, if it turns out it's -- you
11 recommend a 50 percent probability of overfishing,
12 but in fact there is uncertainty that needs to be
13 characterized, it seems unlikely the SSC would then
14 give you back that OFL value, OFL equal ABC.

15 But there is one other issue after
16 this that we probably should touch on. Have you
17 gone through the process for 2010? I know you
18 talked about that in the Executive Committee, but we
19 might want to take a minute to hit on that before we
20 break up for the day.

21 COUNCIL CHAIRMAN RICHARD ROBINS:

22 Yeah, we did. But I just wanted to again remind the
23 Council that Jessica has these documents prepared in
24 this briefing book that go back through each species

1 for about the last five years. And it's directly
2 relevant to this issue of the maximum risk of
3 overfishing. Because if you look at summer
4 flounder, for example, there's about an 18 percent
5 buffer in there between OFL and ABC for the last
6 couple of years. And so, if we fished at 50
7 percent, we'll be significantly more risk prone than
8 we are -- than we have been in recent history. And
9 I think that's an important context.

10 So, when we make that final decision
11 in August, I think we ought to reflect on those
12 status quo documents that really describe the recent
13 historical decisions that we've made. Because, you
14 know, I don't think we want to be departing or being
15 more risk prone than we have been in the recent
16 history. I just wanted to again remind the Council
17 those documents are in there and I think they're
18 very useful for a frame of reference for that
19 decision. Pete.

20 PETER HIMCHAK: Yes, Mr. Chairman.
21 Specific to those documents, and I was looking at
22 the -- you have a full impact of how useful and how
23 critical they can become at the August meeting, what
24 is not built into those documents is an analysis

1 performance by the commercial and the recreational
2 sectors separately. And I think that's going to be
3 our big challenge is to -- we're going to have two
4 levels of management uncertainty obviously. And
5 that's going to be tough.

6 COUNCIL CHAIRMAN RICHARD ROBINS:

7 Well, Pete, we are. And I think that's -- just as
8 we discussed yesterday, the procedures for
9 accounting for Canadian catch, the process by which
10 the Monitoring Committee accounts for management
11 uncertainty in the future by sector is a process
12 that we're going to want to start working on now
13 rather than later with the Monitoring Committee.
14 So, I would suggest that we pursue that with them
15 just in the same way that we're going to discuss
16 this Canadian question. Jessica.

17 JESSICA COAKLEY: I'm sorry. We're
18 moving onto?

19 COUNCIL CHAIRMAN RICHARD ROBINS:

20 Yes. Did you want to go into your next issue?

21 JESSICA COAKLEY: Oh, just the last
22 two issues. One was I wanted to make sure we hit on
23 the process for 2010. And the last slide we have up
24 there.

1 And then the other issue, I just want
2 to make sure the FMAT walks out with clarification
3 on is Amendment 11. The slides not there, Jan.
4 Just stay on this one. Amendment 11. And if
5 Amendment 11 is moving forward, whether it will move
6 forward on the same time line as the Omnibus, if
7 it's going to be ahead of the Omnibus, behind it,
8 and just so the FMAT knows whether we're including a
9 rec. ACT; if there's a hard allocation within the
10 Omnibus document, or if we're having general fishery
11 accountability and only a single ACT; and that
12 allocation is subsumed within the DAH, that's the
13 flowchart 26 and 29 that are in the document.

14 COUNCIL CHAIRMAN RICHARD ROBINS:

15 Jessica, we had this discussion yesterday. I think
16 the -- I think the sense is that we'll move forward
17 just behind the Omnibus, because I think we're going
18 to go back out for public comment on an additional
19 amended option. And the expectation right now is,
20 that that would come back to the Council for final
21 action in October. So, it might be two months
22 behind the Omnibus, but I'll look to Jason to
23 clarify that.

24 JASON DIDDEN: I think that's a

1 reasonable estimate. So, maybe it makes sense to
2 leave both in at this point. Is that a possibility
3 or --

4 JESSICA COAKLEY: Well, if we're --
5 if we're going to leave the general fishery
6 accountability in in that aspect, then the FMAT is
7 going to have to flesh that out a little more and
8 draft that section. Because, you'll recall,
9 originally we had this section completely drafted
10 with a rec. ACT and a commercial ACT, and then we
11 need to then expand if you want to have a second
12 option in there.

13 I guess the question is, if -- if you
14 don't move forward with Amendment 11 before the
15 Omnibus, then if the Council can't take action on
16 setting up rec. ACT's, does it have to then be added
17 to your document if it's occurring later in the time
18 line? Because if the Council takes action to set up
19 rec. ACT's and there's no hard allocation in place,
20 I see a disconnect in terms of what's actually in
21 the regs.

22 COUNCIL CHAIRMAN RICHARD ROBINS: But
23 I don't think either one is going to be governing
24 the fishery when it starts in 2011. I'll ask George

1 about that. George?

2 GEORGE DARCY: No, that's right.
3 You're not going to have the -- either amendment
4 effective the beginning of next fishing year. So, I
5 would think it would be 2012 before any of those
6 measures would be in place. But you'd want to
7 consider them in your spec. setting process for that
8 fishery next June presumably.

9 COUNCIL CHAIRMAN RICHARD ROBINS: Does
10 that clarify things, Jason? I think if we are on an
11 October time line for Amendment 11, we could do
12 without the general accountability here and just go
13 with the option that we have been planning on as if
14 Amendment 11 were going into effect?

15 JASON DIDDEN: I think Jessica's
16 process question is that what happens if the Council
17 goes that way in August, but in October, decided for
18 some reason or in the implementation, that it was
19 decided not to do the recreational allocation. And
20 there's a little bit of a process issue there.
21 Certainly, I think the anticipated -- probably the
22 likelihood -- the likely scenario would be in effect
23 for 2012. But again, I think it's a process issue
24 that she is referring to.

1 COUNCIL CHAIRMAN RICHARD ROBINS:

2 Jessica, do you think you need both (inaudible)?

3 JESSICA COAKLEY: Well, I'm trying to
4 think this through. I think we could -- we could
5 include both of them in. And if the Council in
6 August chooses to submit the preferred -- as their
7 preferred alternative the two ACT's and for some
8 reason it turns out that that becomes derailed in
9 Amendment 11, there is no hard ACT, we'd at least
10 have analysis and information to support the
11 alternative approach, which would be just to have a
12 single ACT in a fishery level accountability. It
13 would be in there. Would that be okay with the
14 service in terms of having both contained in there?

15 And if for some reason something happens before you
16 go to final rule, you'd have the ability to go to
17 the Council non-preferred as an approach.

18 GEORGE DARCY: No. I think that will
19 work as long as you're clear in the document exactly
20 what you've got there and what your intent is.

21 COUNCIL CHAIRMAN RICHARD ROBINS:

22 Thanks, George. I think then we'll just leave both
23 of them in there for the time being to manage that
24 risk. Okay. That's it? Jessica, thanks again.

1 That was a very thorough presentation of the Omnibus
2 and I appreciate that.

3 We're ready now to move on then to
4 committee reports. I'm going to recognize John
5 Boreman of the SSC. John has to leave here in a
6 minute, so, we're going to go ahead and take the SSC
7 report.

8
9 SCIENTIFIC AND STATISTICAL COMMITTEE REPORT

10 JOHN BOREMAN: Thank you, Mr. Chair,
11 and thanks for accommodating my flight schedule.

12 Very short report. You see the
13 report behind Tab 12, is it, 12 yeah, of our meeting
14 that was held on the 10th and 11th of May where we
15 set specs. for squid, mackerel, butterfish,
16 surfclams and quahogs. That meeting was preceded
17 two weeks earlier by a Webinar where we discussed
18 those species and the data scientific uncertainty
19 associated with them with the Monitoring Committee
20 for those species that a Monitoring Committee, and
21 the Center scientist, the lead scientist in the
22 Center for each of those species.

23 So, the SSC had a chance to ask some
24 questions after they had reviewed the white paper --

1 the issue paper prepared by the Council staff.

2 Just a note so no feelings are hurt.

3 The attendance, the Vice-Chair and Chair of the
4 Council attended both days of the meeting. They
5 weren't listed for the second day, but somebody else
6 was inadvertently left off and expressed to me that
7 they had very hurt feelings that they weren't noted
8 to be in attendance. So, I didn't want to offend
9 the Council Chair and Vice-Chair. So, they were
10 there both days.

11 COUNCIL CHAIRMAN RICHARD ROBINS:

12 Absolutely no offense taken from up here.

13 JOHN BOREMAN: Okay. Good.

14 COUNCIL CHAIRMAN RICHARD ROBINS: We
15 were in the shadows.

16 JOHN BOREMAN: Our next SSC meeting
17 is going to be held on the 27th and 28th of July
18 where we are going to be discussing black sea bass,
19 bluefish, scup, summer flounder specs. It should be
20 an interesting meeting. That will also be preceded
21 two weeks earlier on July 13th by a Webinar
22 involving the Monitoring Committee and the Northeast
23 Fisheries Science Center scientists to discuss
24 questions that are raised by the SSC members when

1 they review these documents concerning data and
2 scientific uncertainty. So, that constitutes my
3 report. Thank you.

4 PAT AUGUSTINE: Vice-Chair?

5 LEE ANDERSON: Protected resources.
6 Protected resources.

7 PAT AUGUSTINE: I happen to be HMS.
8 You want to do HMS?

9 LEE ANDERSON: HMS is good. Go
10 ahead.

11
12 HIGHLY MIGRATORY SPECIES COMMITTEE REPORT

13 PAT AUGUSTINE: Thank you, Mr.
14 Chairman. There are a large number of publications
15 behind Tab 12, I'm not going to over in any detail.
16 But you will start with the first one in the 2009
17 Atlantic bluefin tuna landings. Flip to the very
18 next page, you have Atlantic shark commercial
19 fishery updates through March 31st. All the details
20 are there. We're harvesting that at a relatively
21 low rate at this point in time. The next piece is
22 Atlantic swordfish landings, commercial/recreational
23 update, again, the same there. Then the following
24 one is the Atlantic swordfish landings update, that

1 takes you a little further into the year, dated May
2 5th. Then we have a landscape change in the ship
3 that came in. It was a commercial North Atlantic
4 swordfish landings breakout of the north area in the
5 first half of the year.

6 Then to follow on with the Highly
7 Migratory Species Advisory Panel meeting. I have in
8 there the copy of the agenda to give you an idea as
9 to how broad-based this advisory panel is and the
10 element that we are attacking as a group and
11 recommendations that have been made. The group has
12 been extremely effective. And I must admit that we
13 in the Mid-Atlantic are getting considerable amount
14 of I guess attention because we're active. We're
15 one of the most active councils there. And through
16 the support of our chairman in writing letters and
17 responses to various positions, we have raised our
18 status pretty significantly.

19 Going onto the next page, Atlantic
20 bluefin tuna, angling category 2010, there have been
21 some changes. It looks like the south did a bang-up
22 job in harvesting more than their fair share of
23 quota. Some transfer has been made from reserve to
24 support and allow the northern group to be able to

1 fish on those species of fish. You will note in
2 their further, considerations that were made. All
3 the detail, all the background. And as a final
4 recent report came out from -- through e-mail from
5 HMS, that the recreational landings have been set
6 and it looks like the regular recreational angler
7 will be getting one school or large school of
8 bluefin tuna this season from 27 to 59 per day for
9 all of those types. And that the party boat,
10 charter boat, head boat types, they'll be able to
11 take one school bluefin tuna 27 to 47, and one large
12 school bluefin tuna 47 to 59. And then beyond that,
13 all the next size large 73 and up, have been closed
14 to the south, and the north has a transfer quota
15 from reserve to allow the north to catch their
16 quota.

17 There is a breakout on caveats as to
18 what the result was that net -- that HMS put
19 together. HMS has a to-do list. To give you an
20 idea as to how aggressive this group has been in
21 doing what they're doing, we have a breakout with
22 the bluefin tuna working group. We discussed all
23 aspects of where we are with bluefin tuna and all
24 the other tunas, including a brownscale fish. And

1 then we have a bluefin tuna working group, shark
2 working group.

3 I won't belabor the point. Very
4 extensive swordfish issues, VMS issues, and their
5 applicability, and all of the concerns that the
6 folks have been making about billfish and what we're
7 going to do with them and how we can address the
8 fact that our commercial fishery has not expanded in
9 recent years, although our quota is pretty
10 significant and up around 3,000 metric ton. And
11 that we, the U.S., will probably stand a pretty good
12 chance again this year in ICAT in losing that and
13 having it being reduced significantly.

14 Upcoming actions 2010, swordfish
15 specs., followed up on shark issues, announcements
16 of changes to squid. The final Amendment 3, we did
17 report and respond with recommendations that were
18 incorporated in the final rule. Reminder of things
19 that are happening.

20 We also sent out a sheet there
21 through HMS. It tells you you need your travel
22 receipts due by a date, when the next workshop is
23 going to be, upcoming workshops, and follow up and
24 so on. So, that's that. And I'll say thank you on

1 that.

2 The final points from the AP,
3 bluefin/tuna working group, very detailed as to what
4 specific issues came up and recommendations by all
5 the participants collectively came up with a break
6 on an angling category, longline category, purse
7 seine category, general category and harpoon
8 categories. If you have any specific questions,
9 I'll talk with you about that after the meeting.
10 The shark working group had a report out that did
11 the same thing, heavily detailed in the breakout
12 discussion, but then itemized by brief bullets.
13 What we were doing about overfishing, overall
14 fishery direction, information sharing, which are
15 being addressed, most of them are being addressed on
16 an ongoing basis. And that other species to assess
17 would be blacktip, hammerhead and so on. A variety
18 of sharks that are still in the mix.

19 And then, HMS has developed a series
20 of outreach programs and they're listed. That's
21 about to the end of it. And I think there are some
22 charts as to the status of harvest of various sizes
23 of bluefin tuna. And I think that's the end of my
24 report, Mr. Chairman. Thank you.

1 COUNCIL CHAIRMAN RICHARD ROBINS:

2 Thank you, Pat. Any questions for Pat? Okay.

3 Seeing, none.

4 The joint spiny dogfish. We have a
5 letter here, a memorandum, that documents the
6 results of the Joint Spiny Dogfish Committee
7 meeting. Rich, are you -- are you going to run
8 through that, or is --

9 HOWARD KING: Who's the chair on
10 Protected Species?

11 COUNCIL CHAIRMAN RICHARD ROBINS: I'm
12 sorry. Howard.

13 HOWARD KING: Thank you, Mr.
14 Chairman. the Vice-Chair had called for the
15 protected resources. The Vice-Chair had called for
16 the Protected Resources Committee report. Do you
17 want to mention the letter in the briefing book
18 regarding loggerhead turtles?

19 RICHARD SEAGRAVES: I can take that
20 one. Red had asked me to do the protected
21 resources.

22 COUNCIL CHAIRMAN RICHARD ROBINS:
23 Yeah. I knew some of these were being handled by
24 staff, Rich, that's why I looked your way.

1 RICHARD SEAGRAVES: I can do that
2 one. Howard's going to do joint dogfish. Okay.
3 You want me to do -- whatever your pleasure is, Mr.
4 Chair.

5 COUNCIL CHAIRMAN RICHARD ROBINS:
6 Yeah. I'm sorry. Go ahead, Rich, if you would.
7 Then go ahead with the loggerhead letter.

8
9 PROTECTED RESOURCES COMMITTEE REPORT

10 RICHARD SEAGRAVES: Okay. Well,
11 actually there's two items. Red Munden is attending
12 the South Atlantic Council meeting this week.
13 Couldn't be here. He has asked me to present the
14 committee report. And the reason we had a Webinar
15 that was held last Wednesday, June 2nd, was that --
16 because Red couldn't be here to attend, so we had to
17 hold that meeting in advance of the Council meeting.

18 There are two agenda items that were
19 addressed. The first was it announced a ANPR
20 relative to NMFS proposal to implement parts of the
21 MMPA that basically holds foreign fisheries
22 accountable to U.S. MMPA standards. So, what you
23 have is a handout that you should find in front of
24 you that we addressed that issue. And then we

1 addressed the loggerhead sea turtle changes listing
2 status as a second agenda item. And that resulted
3 in the drafting of two letters, which I put
4 together, and need to be endorsed by the Council.

5 So, the first in the handout, the
6 first thing you'll see is the ANPR relative to
7 imposing the U.S. standards on foreign nations
8 relative to marine mammal takes. The comments there
9 are June 29th. Essentially, under Section 101A2 of
10 the NPA, it states that the Secretary of the
11 Treasury shall ban importation of commercial fish or
12 fish products which have been caught with commercial
13 fishing technology which results in incidental kill
14 or mortality take or mortality serious injury of
15 ocean mammals in excess of U.S. standards. So,
16 basically this -- they're announcing their intent to
17 develop some sort of system where we would hold
18 foreign nations accountable for incidental injuries
19 or mortalities in excess of what's currently being
20 applied against U.S. fisheries. And they propose to
21 use -- so they'd have to establish standards and
22 there are eight of nine of them in there.

23 And then the next issue would be the
24 process by which they would impose or enforce those

1 standards. And they propose to use a similar
2 mechanism that's currently in effect in the Highly
3 Migratory Drift Net Moratorium Act, which is
4 essentially a process where foreign nations that
5 have known -- and there they're looking at protected
6 living marine resources, which is a broader array of
7 species. Here we're just talking about, in this ANP
8 we're talking about marine mammals. But the idea
9 would be to use the mechanism that's used in the
10 High Seas Drift Net Fisheries Moratorium Act to
11 enforce U.S. standards.

12 So, the committee discussed -- or I
13 highlighted to the committee what those standards
14 might be that related to either the PBR, which is
15 currently used to set the standard for whether or
16 not take reduction plan needs to be developed. And
17 depending on what actual take is, relative to PBR.
18 PBR is potential biological removal.

19 And then there are some other
20 measures, the MRG, which is zero mortality rate
21 which is ten percent -- which has been defined as
22 ten percent. So, there are a number of various
23 standards that are proposed, listed in this ANPR.

24 And so, the committee reviewed those

1 and essentially resulted in the letter that follows
2 the ANPR, it's the first letter, to the Director of
3 Office of International Affairs, which basically the
4 upshot is, that the committee's discussion was, I
5 tried to capture was, that yes, there was general
6 agreement that the U.S. should develop standards and
7 they should be enforced for species which are
8 currently under the management or conservation in a
9 take-reduction plan to the extent that a foreign
10 nation would be impacting or taking animals that
11 were -- within the same stock that were under U.S.
12 management.

13 So, the upshot of the letter is that
14 we -- that the Council, under Council letterhead,
15 would support the establishment of standards and
16 enforcement. And basically, the rationale is one of
17 fairness. Foreign fishermen should be held to the
18 same standards as U.S. fishermen. And then the
19 second justification or reason would be that
20 additional mortality outside of U.S. control would
21 undermine efforts to conserve marine mammals that
22 are currently undertaken under our MMPA based on
23 restrictions placed on our fishermen. So, there are
24 the two justifications.

1 There was also the idea that, and
2 it's noted in the letter, that it would be most
3 effective if this thing, if this process were to be
4 implemented or enforced through existing or future
5 international treaties or agreements. So, that's
6 what's currently in the letter. And so, we're just
7 looking for -- we could stop on the first letter.

8 Now, the only thing I would add would
9 be if you're -- you know, thinking about this, we
10 had the meeting and I turned the letter around
11 pretty quick. But I would beg the indulgence of the
12 Chair to maybe consider after rereading it again,
13 there's a lot of technical stuff in there about what
14 the standard should be, and I think it would be
15 useful to add another little section in the letter
16 that says, basically, that we should utilize the
17 existing scientific review group. And again, this
18 is a national policy, national thing, so it would
19 Atlantic and Pacific scientific review groups. They
20 should be consulted as well as perhaps the take-
21 reduction teams that would be appropriate to consult
22 to actually comment directly on what the standards
23 should be based upon. So, I would add that to the
24 letter in addition to what you see.

1 COUNCIL CHAIRMAN RICHARD ROBINS:

2 Rich, I think that would be fine. Without
3 objection, we'll ask Rich to review that part of the
4 letter and I'll review the final draft before
5 signing it.

6 RICHARD SEAGRAVES: Okay.

7 COUNCIL CHAIRMAN RICHARD ROBINS:

8 Okay. You want to go on to loggerheads.

9 RICHARD SEAGRAVES: Okay. The second
10 one is relative to -- then you'll see after that
11 first letter, there's another Federal Register
12 notice that announces -- again, we were -- the
13 Council was, if you recall, was briefed in depth by
14 Jim Lecky, the Chief of the Office of Protected
15 Resources on the announcement that NMFS and U.S.
16 Fish and Wildlife Service proposed to change the
17 listing status of loggerhead sea turtles for the
18 distinct population segment in the Northwest
19 Atlantic, which would impact us, from threatened to
20 endangered. And so, the Council was briefed on
21 that.

22 I presented the same PowerPoint
23 presentation to the committee and so it was
24 obviously decided we wanted to comment on that

1 change of proposed listing. The letter captures,
2 and I circulated both letters to the committee and
3 we also met with advisors and the advisors had a
4 chance -- I've got -- so, these drafts that you see
5 represent comments that I received and I've already
6 incorporated them. So, this is basically blessed by
7 the committee and advisors.

8 But in terms of the change in listing
9 status, basically, it was noted that the change in
10 status is based largely upon a fairly significant
11 decline in nesting counts for loggerhead sea
12 turtles, particularly in the Florida peninsula
13 recovery unit. And the letter basically says that
14 while this is a concern, there's also a concern that
15 nesting counts is perhaps not the best method to
16 determine what the actual status of the loggerhead
17 sea turtle population is currently. They have a
18 protracted age at maturation, 25 to 30 years. So,
19 any take-reduction efforts, bycatch mitigation
20 measures, TED's and various things that have been
21 implemented over the last 10 to 15 years wouldn't be
22 expected to bear any fruit in terms of nesting
23 counts until probably 2020 and beyond. So, that
24 concern is noted in the first paragraph.

1 And the second paragraph highlights
2 the fact that to actually determine what the status
3 of the loggerhead sea turtle juvenile/adult portion
4 of the stock is, you really need in-water surveys
5 and NMFS has committed or at least had indicated at
6 our last meeting that they were committing to
7 conducting such surveys. And there's been some talk
8 now with the stress on resources because of the Gulf
9 oil spill and various other reasons that maybe those
10 surveys might not get funded. So, the letter
11 basically has a strong recommendation that NMFS
12 immediately conduct in-water surveys and those
13 surveys should be conducted over a period of years
14 to allow direct observation of the -- estimation
15 population abundance and trends.

16 In addition, there's language in
17 there that it felt -- the committee felt that there
18 was inadequate coverage to estimate bycatch in
19 appropriate fisheries and that bycatch levels --
20 observation levels -- sea sampling, observation
21 levels, and sampling should be increased. And this
22 would help with the resolution of what the actual
23 major factors are relative to fishery and turtle
24 interactions and then ultimately would improve our

1 efforts to mitigate those interactions.

2 And then finally, there's one
3 paragraph that says basically the committee noted
4 that the proposed rule focuses on fishery
5 interactions and that there are a lot of non-fishery
6 effects on sea turtles, including things that cause
7 direct mortality such as ingestion of plastics or
8 balloons, et cetera, and many indirect man-made
9 factors which can affect the reproduction success,
10 including alteration of habitat, loss of -- direct
11 loss of beach-nesting habitat and other kind of more
12 subtle effects on the reproductive aspect because
13 they're so tied to nesting on beaches.

14 So, basically, that's the upshot of
15 the letter. So, in summary then, we would urge that
16 they would immediately implement some sort of in-
17 water sampling and increase bycatch observations and
18 sub-sampling of the fisheries.

19 Now, the proposed rule was extended
20 till September 13th, which gives us a little
21 breathing room.

22 What we didn't come to resolution on
23 was what our actual position is relative to this
24 status change -- you know, listing change from

1 threatened to endangered. And so, what the letter
2 says at the end is that while we're submitting these
3 comments immediately because we feel it's imperative
4 that the -- that this in-water sampling survey begin
5 as soon as possible, that the Council would reserve
6 the right to make the determination or offer an
7 opinion on the actual change in listing status.

8 The only other thing I would add
9 after thinking about it again, just like the first
10 letter, I think we can probably add an obvious
11 example of the direct mortality and indirect, either
12 one, would be oil spills. I mean, obviously,
13 this -- I think that's the issue that the committee
14 was particularly concerned about was the fact that
15 there are a lot of other factors that weren't really
16 being -- the focus is on fisheries, and rightly that
17 they should be a factor, that there are other
18 factors that need to be considered. And that would
19 conclude my report.

20 COUNCIL CHAIRMAN RICHARD ROBINS:

21 Rich, thank you for that. You know, I think the
22 ultimate question for the service at the end of the
23 day is what is the risk of extinction, and that's
24 where that in-water survey information could be very

1 important. And I would suggest as a Council that we
2 not take a position for or against the listing, but
3 rather advocate for the service making the most
4 informed decision possible and making that extra
5 effort as they committed at the last meeting to
6 getting that in-water survey done, because that will
7 provide a snapshot of the population that they don't
8 presently have above and beyond the nesting
9 information. So, I think -- I think as long as we
10 continue to advocate for getting that additional
11 scientific information so the decision is well
12 informed, that's probably the best place for us to
13 be in terms of taking a position. But I would look
14 to the Council for that.

15 So, I would suggest that we just do a
16 final review of the letter, perhaps incorporate some
17 additional information in there, Rich. And I think
18 we do need to relate the importance of the in-water
19 survey to the ultimate analysis that would be done
20 that would try to determine the risk of extinction.

21 That's why it's such a critical piece of
22 information. Any other comments on the letter?
23 Chris.

24 CHRISTOPHER ZEMAN: What's our

1 abilities to have NMFS evaluate the impacts of that
2 oil spill on loggerhead sea turtle populations?
3 Crucial information. I mean, from what I'm seeing
4 right now, it seems to me like an endangered listing
5 is going to be inevitable because of that, because
6 that is really the key location for the majority of
7 the loggerhead populations. It's just very
8 concerning that that's allowed to go on -- you know,
9 and I don't know. Based on what I've been reading
10 in the New York Times it's like that process of
11 endangered species consultations to authorize such
12 activities has been done in a negligent manner. And
13 I can only -- I don't know how we do this, but I'd
14 like to stress to NOAA that the more that those
15 process non-fishing impacts processes like gas and
16 oil development is done through a process that is
17 not up to par, it's only going to hurt fisheries in
18 the future. I think that message really has to get
19 across, because I know there are 3,000 other oil
20 rigs in the Gulf. They've all been approved.
21 They've all got ESA consultations. And they've all
22 passed and there's been no -- no estimate of
23 endangered -- you know, sea turtle interactions.
24 And then, lo and behold, this happens. So, how can

1 that -- how could that -- how can that sort of mesh?

2 There needs to be -- something has to go on after
3 that. Either we -- either NOAA has to reconsider
4 all those other consultations to take this into
5 account, but no way can sort of these consultations
6 just stand, because I think that the recent oil
7 spill has really just violated all of the
8 assumptions that were the basis of these
9 consultations. Because you really just have one oil
10 rig blow that could really wipe out loggerheads in
11 the Gulf. And, you know, the longer nothing is done
12 on this is the longer that fisheries, commercial and
13 recreational, are just at risk. We're really like
14 under their thumb.

15 COUNCIL CHAIRMAN RICHARD ROBINS:

16 Chris, I think we can follow up with Jim Lecky's
17 office in terms of what analysis is being done
18 relative to that. Greg, you had a comment? No.
19 All right. Thank you. Thanks for the report, Rich.
20 We'll make some final reviews of the letter and
21 finalize it.

22 The next item was joint spiny
23 dogfish. Howard?

24 HOWARD KING: Yes, thank you, Mr.

1 Chair. If Chairman Munden did ask you to present
2 the report, you should do that, I think, Rich. No.

3 Thank you. It only trickled down to me because of
4 the absence of the Chair and Vice-Chair, but please
5 continue.

6 DAN FURLONG: That's not exactly
7 right. Jim Armstrong contacted you and it was
8 agreed that you would do it. So, you're not getting
9 off the hook.

10 HOWARD KING: Fine.

11 COUNCIL CHAIRMAN RICHARD ROBINS:
12 Howard, it's all you.

13 _____
14 SPINY DOGFISH REPORT

15 HOWARD KING: Rich, please chime in
16 if I leave anything out. The Joint Spiny Dogfish
17 Committee did meet via Webinar on June 3rd. In
18 attendance were four committee members, four
19 advisors, ably facilitated by Mid-Atlantic Council
20 staff Jim Armstrong, and had one each staff person
21 from the New England Council, one from ASMFC, one
22 from the Northeast Regional Office.

23 The committee discussed the results
24 of scoping and discussed seven issues under

1 consideration in Amendment 3, and those issues were:

2 RSA, quota allocation, sex-specific management,
3 recreational fishery, limited access, EFH updates,
4 and management measure rollovers. Under each of
5 those, the reason that these were issues to be
6 considered.

7 Currently the FMP does not
8 accommodate an RSA which would permit research on
9 dogfish or RSA as now defined by the mission
10 statement for the RSA Program. Quota allocation.
11 There was a mismatch between the federal allocation
12 and the state allocations that resulted least --
13 sex-specific measure for management. It's judged by
14 some that there is an overabundance of male dogfish.

15 There is no allowance for sex-specific fishery or
16 male-only fishery. The recreational fishery is not
17 currently recognized. Currently seven percent of
18 the total catch is attributable to the recreational
19 fishery. Limited access. Even though there's not a
20 lot of momentum for limited access in dogfish
21 fishery, it is certainly an item being considered
22 broadly for other fisheries and may have a place in
23 the dogfish fishery.

24 Administratively, MSA essentially

1 dictates that we need to update the dogfish, the
2 essential fish habitat, for all life stages. And
3 currently, there is no allowance for management
4 quota rollover. For instance, in any fishery year,
5 if the current year regulations are not in place,
6 there's essentially no quota and no fishery. So,
7 under consideration was a measure to allow the
8 previous year's quota to be in place until the new
9 measures are adopted, which would allow that early
10 fishery.

11 And so, these were discussed over a
12 three-hour period. And a lot of the discussion
13 really centered around sex-specific management
14 measures. In the end, it was thought that this was
15 probably not feasible at this point. But in the
16 interest of public process, it was decided to leave
17 that in.

18 Also, limited access, not a lot of
19 momentum at this point. But again, for due public
20 process and to allow the opportunity for more
21 information to develop on limited access to the
22 dogfish fishery, it was also decided to leave that
23 in.

24 In fact, at the end of the day, after

1 three hours, the committee felt that all seven
2 issues should remain in the process, but that
3 another committee meeting would be necessary to
4 further flesh out the alternates for each of those
5 issues. And so, at this point, the committee would
6 have to meet again in the not to distant future to
7 continue this process.

8 COUNCIL CHAIRMAN RICHARD ROBINS:

9 Howard, thanks for that briefing. It sounds like no
10 Council action is required at this time, but we
11 would look for the committee to take that next step
12 and come back to the Council with options. I guess
13 I'll be pleasantly surprised if the male fishery
14 proves to be commercially viable. But I know
15 there's been an interest specifically in looking at
16 that. Pete.

17 PETER HIMCHAK: Yes. Thank you, Mr.
18 Chairman. Recognizing that with tighter budgets and
19 less travel available to us, and the increasing of
20 Webinars, these are going to be like really
21 important to getting work done in the future. You
22 know, this one for some particular reason, it was
23 just like the noise factor. You know, we might have
24 to develop some kind of Webinar etiquette for people

1 to sit still, don't talk to other people in the
2 room, don't listen to your cell phone; I mean, it
3 makes it very difficult to conduct the Webinar. So,
4 seriously -- you know, this is the way of doing
5 business in the future, obviously. I don't know how
6 we get the message out, but you know.

7 COUNCIL CHAIRMAN RICHARD ROBINS:

8 Well, I think that's a message we can communicate.
9 Go ahead, Rich.

10 RICHARD SEAGRAVES: Yeah. Thank you,
11 Mr. Chairman. And I appreciate Pete's comments. We
12 had -- the first Webinar was for the remand on black
13 sea bass went almost flawlessly. So, I thought,
14 well, this is really easy. And I think almost every
15 one of them got worse and for various reasons. So,
16 we -- our staff is aware of that and we are going to
17 relook at how we do the Webinars and maybe have
18 training for Council members to make sure that --
19 the main problem has been on hardware on the user's
20 end. I think the Webinar thing is fine. But we
21 will address that issue in the near term here.

22 COUNCIL CHAIRMAN RICHARD ROBINS:

23 Yeah. We'll try to limit the number of barking dogs
24 in the background. Okay. Why don't we go on to

1 squid, mackerel, butterfish. Erling, do you have a
2 motion for the committee?

4 SQUID, MACKEREL, BUTTERFISH COMMITTEE REPORT

5 ERLING BERG: Yes, I do. But first,
6 the committee met in Baltimore on the 26th of May.
7 And Jason is going to review this for us. This is
8 behind Tab 3B. So, Jason, if you could go through
9 that?

10 JASON DIDDEN: Yes, I'll endeavor to
11 do so quickly. The committee met with the FMAT and
12 the AP and came up with some simplified
13 alternatives. Essentially, we'd be modifying 1C and
14 1D to just have Tier 1, Tier 2, and then a Tier 3
15 with a permit-only requirement. There's also a cap
16 on Tier 3 based on the looking at historical
17 landings in that tier. A desire to indicate the
18 simplified 1D as preferred. Motions for no
19 allocation between tiers at the committee. There
20 was consensus by the AP with those motions, it was
21 noted. The committee also clarified that the permit
22 requirement would apply to all tiers. There were
23 motions for trip limits. The AP consensus to those.
24 Yesterday there were motions to also include an

1 option for threshold for Tier 3 of a thousand
2 pounds. And also motions to look at landings for
3 the cap on Tier 3. Also for trip limits for open
4 access at a minimum range.

5 Now, incorporating those into the
6 document piecemeal would be tricky. So, over the
7 last day or two, I looked at how those could be used
8 as a package. And I think that the simplest thing
9 to do would be to substitute the following packages
10 for Alternatives 1C and 1D.

11 Alternative 1C would be the million
12 '97-'07; Tier 2, 100,000, '97-'07; Tier 3, the
13 permit. Permits required for all of them. Also
14 have an option in there for the zero or thousand
15 pound qualification for Tier 3 for '97-'07. No
16 allocations for the tiers, but a range of Tier 3
17 caps, one to six percent. That covers the range of
18 the max and median mean. I recommend not including
19 the minimum for the lowest year that that tier had.

20 It was so low it would be very difficult for the
21 region to monitor.

22 But the final implementation, Joel
23 has advised that it be an up to six percent is
24 better for implementation purposes. There would

1 also be an open-access tier, and there would be a
2 range of 1,000 to 20,000 adjustable during
3 specifications. That's really just an incidental
4 issue. Tier 2 trip limit 135 pounds initially,
5 adjustable during specs. Tier 3, 100,000 pounds
6 initially, adjustable in specs.

7 Also, task the FMAT to add a range of
8 reporting changes for monitoring needs on that Tier
9 3, perhaps weekly VTR. There's potentially a lot of
10 vessels in that tier, and to monitor them, vis-a-vis
11 their cap, the region requested some consideration
12 of additional monitoring on that tier.

13 So, that would be a summary of --
14 related to that million-pound threshold for Tier 1.

15 And all the other motions incorporated as a package
16 that would just replace the existing 1C in the
17 document.

18 COUNCIL CHAIRMAN RICHARD ROBINS:

19 Jason, I'd like to bring just a point of
20 clarification to the group.

21 Right now, we barely have a quorum
22 and we do have several things to vote on. So, just
23 be aware of that. John is in the hall. If he comes
24 back in, if you have to get up and leave the room,

1 just make sure we have a quorum if you would.

2 Jason, this is not projected on the
3 display. Is it possible to summarize these as
4 staff's recommendations for additions to the
5 document or do we need to go through these in detail
6 with separate motions?

7 JASON DIDDEN: I would think perhaps
8 two motions. One for this substitution, one for the
9 other one that's closely related. And these are
10 only kind of packaging the committee motions that
11 could be readily inserted into the document. They
12 were what I ran through. You know, the previous,
13 they were all motions, but rather than bringing them
14 as committee motions, it may be simpler and clearer
15 in the record to just kind of -- if the Council or
16 the Council members wanted to bring this as a
17 package as a motion for seconding and consideration.

18 COUNCIL CHAIRMAN RICHARD ROBINS:

19 Erling, do you mind coming up here and sitting with
20 Jason and reading that motion into the record. He's
21 not able to project it right now. Pete.

22 PETER HIMCHAK: Yes, Mr. Chairman.

23 What we're trying to present here is the outcome not
24 only of the day that we met in Baltimore, but also

1 the additions we made to that segment of Amendment
2 11 that's still in limbo. And here we came up with
3 all these things a couple of days ago as far as Tier
4 3 incidental category, trip limits, et cetera, et
5 cetera. So, it's quite a bit of work. But I think
6 what we're asking for is the Council to essentially
7 endorse it so that it can go on for the public
8 hearing process. And then we would resolve the last
9 remaining issue of Amendment 11.

10 COUNCIL CHAIRMAN RICHARD ROBINS:

11 Certainly. I just want to make sure that we get a
12 good clean record here of what we're adding as we go
13 back out for additional public comment. Because the
14 proposal is to modify the document, go back out for
15 additional comment, and then presumably take final
16 action as a Council in October. But we do need to
17 go back out to accommodate these modifications.
18 Pres.

19 PRESTON PATE: Thank you, Mr.

20 Chairman. I just have a question for Jason before
21 the motion gets put forward. Did you report, Jason,
22 an addition of a zero to 1,000-pound landing
23 threshold to qualify for Tier 3 for the years '97
24 and '07. I thought it included '94 to '07 also. Am

1 I mistaken in that? It was applying that threshold
2 requirement for two periods, I thought. I may very
3 well have been wrong.

4 JASON DIDDEN: And perhaps I
5 misinterpreted the motion. There are two
6 alternatives we're dealing with. One, all the
7 qualification go to '97 to '07. The other one that
8 we'll get to in a minute includes qualifications for
9 the actual tiers that go back to '94 to '07. I
10 thought each of those were linked. If that's not
11 the case, I don't --

12 PRESTON PATE: I think you're right.

13 I just hadn't considered the second part of that.

14 COUNCIL CHAIRMAN RICHARD ROBINS:

15 Erling.

16 ERLING BERG: Move to substitute the
17 following package alternatives for the current
18 Alternative 1C: Tier 1, 1,000,000 pounds, 1997 to
19 2007, a permit 3/21/07. Tier 2 is 100,000 pounds,
20 '97 to '07, again a 3/21/07 permit. And Tier 3 will
21 be 3/21/07 with a permit, zero to 1,000 pounds
22 qualification or zero or 1,000 pounds qualification
23 for Tier 3, '97 to '07. No allocation for tiers,
24 but ranges -- range of Tier 3 caps, one percent to

1 six percent, set annually during specs.

2 Final implementation will be up to --
3 open access would be all vessels that do not qualify
4 for a tier and will be subjected to a trip limit of
5 1,000 to 20,000 pounds adjustable during
6 specification. Tier 2 trip limit, 135,000 pounds
7 initially, adjustable during specs. Tier 3 trip
8 limit, 100,000 pounds initially, adjustable during
9 specifications. Task FMAT to add a range of
10 reporting changes for monitoring needs. A weekly
11 VTR for Tier 3. That's my motion.

12 COUNCIL CHAIRMAN RICHARD ROBINS: Is
13 there a second to the motion? Second by Pete
14 Himchak. Discussion on the motion? Howard.

15 HOWARD KING: Back up there on Tier
16 3, '97 to 2007, is the 2007 also specific for March
17 21st? Zero or 1,000 qualification for T3, '97 to
18 2007, is March 21st appropriate there also?

19 COUNCIL CHAIRMAN RICHARD ROBINS:
20 Jason.

21 JASON DIDDEN: Today, the permit
22 requirement is 3/21/2007. However, landings through
23 all of 2007 have been utilized for estimating
24 numbers of qualifying vessels. And previous

1 committee decisions have said we want to go through
2 all of those seven for considering landings.

3 COUNCIL CHAIRMAN RICHARD ROBINS:

4 That clear, Howard? Okay. Further discussion on
5 the motion? Steve.

6 STEVE HEINS: Jason, I have 1994 to
7 2007 in my notes and I just -- would you please
8 explain that again, the distinction here.

9 JASON DIDDEN: So, you can see on the
10 range for qualifying for these are all '97 to 2007.

11 The other package that would be -- and this is the
12 preferred package by the committee, Tier 1 is '97 to
13 2005; and Tier 2 is '94 to 2005; and so for the cap,
14 the range I looked at for the cap was '94 to 2007
15 for this one and '97 to 2000 for the other one to
16 kind of match the qualification periods.

17 COUNCIL CHAIRMAN RICHARD ROBINS:

18 Steve, are you okay? Thank you. Further discussion
19 on the motion?

20 Is the Council ready for the
21 question? Is there any objection to the motion?
22 Seeing none, it's approved by consent. Thank you.
23 Erling.

24 ERLING BERG: Move to substitute the

1 following package alternative for the current
2 alternatives 1D is preferred: Tier 1, 400,000
3 pounds, 1997 to 2005, 3/21 of 2007 permit required.

4 Tier 2, 100,000 pounds, 3/1/1994 to 2005 and
5 3/21/07 permit. And then Tier 3, is 3/21/2007
6 permit. Zero or 1000 pounds qualification for Tier
7 3, 1994 to '05. No allocations for tiers, but range
8 of Tier 3 caps at two percent to seven percent set
9 annually during specifications. Final
10 implementation will be up to -- open access would be
11 all vessels that did not qualify for a tier and
12 would be subject to a trip limit of 1,000 pounds to
13 20,000 pounds adjustable during specification. Tier
14 2 trip limit, 135,000 pounds initially, adjustable
15 during the specifications. Tier 3 trip limit,
16 100,000 pounds initially, adjustable during
17 specification. Task FMAT to add a range of
18 reporting changes for monitoring needs, weekly VTR
19 for Tier 3.

20 COUNCIL CHAIRMAN RICHARD ROBINS: Is
21 there a second to the motion? Second by Gene Kray.

22 Discussion on the motion?

23 Is the Council ready for the
24 question? Is there any objection to the motion?

1 Seeing none, it's approved by consent. Thank you.
2 Erling.

3 ERLING BERG: I'm going to ask Jason
4 to describe the two scenarios first and then we will
5 have a motion. So, Jason, if you would.

6 JASON DIDDEN: At the May 26th
7 committee meeting there was significant discussion
8 of what the Council and the advisors wanted to see
9 for a final range of alternatives. And the region
10 requested the Council weigh in on this issue as a
11 whole. And essentially, there are two roads the
12 Council could go down.

13 Have a small fleet, maybe 15 or 20
14 vessels that during a good year of mackerel
15 availability, since there are fewer vessels, the
16 season would stretch on a little bit longer perhaps.

17 But in some years, they might not be able to
18 harvest also.

19 A different scenario, and this is
20 described in the Monitoring Committee memo, would be
21 the larger fleets as described in the document, and
22 if there was really good availability, the season
23 may only last a month or two.

24 The consensus of the advisory panel

1 and the committee was that they'd rather see that
2 larger fleet, so that in most years when they're not
3 able to catch the quota, they are more vessels out
4 there to supply processors, search for fish, things
5 like that.

6 And so, I think it would be useful
7 for the Council to go on the record if the Council
8 agrees endorsing that sentiment that was agreed to
9 at the May 26th meeting in terms of providing the
10 additional justification and clear justification of
11 why the Council is moving forward with options that
12 it is.

13 COUNCIL CHAIRMAN RICHARD ROBINS:

14 Thank you, Jason. What's the pleasure of the
15 Council?

16 LEE ANDERSON: I'll make that as a
17 motion.

18 COUNCIL CHAIRMAN RICHARD ROBINS:

19 Motion by Lee Anderson. Is there a second to the
20 motion? Second by Gene Kray. Discussion on the
21 motion? Motion is on the board to concur with the
22 AP and committee in terms of the objectives of the
23 amendment relative to the fleet capacity.

24 Discussion on the motion?

1 Seeing none, is the Council ready for
2 the question? Is there any objection to the motion?

3 UNIDENTIFIED: I abstain.

4 COUNCIL CHAIRMAN RICHARD ROBINS: One
5 abstention. The motion is approved by consent.
6 Thank you. Jason, note the abstention, please.

7 Erling, do you have any other motions
8 for the Council's consideration?

9 ERLING BERG: The next motion is to
10 move to finalize the EIS and submit to National
11 Marine Fisheries Service for review and publish with
12 written comment period.

13 COUNCIL CHAIRMAN RICHARD ROBINS: Is
14 there a second to the motion? Second by Gene Kray.

15 Jason, can you walk us through the process again?
16 We're going to go back out for additional comment
17 and then reconvene on the issue to take final action
18 in October; is that the time line?

19 JASON DIDDEN: Yes. I'll have to
20 build in these changes to the document and then it
21 will be a period of review by NMFS and other
22 agencies that they review EIS's with, and then we
23 would publish a notice of availability, probably a
24 30-day comment period, come back, then the Council

1 could review the comments and make a decision.

2 COUNCIL CHAIRMAN RICHARD ROBINS:

3 Okay. Discussion on the motion?

4 Seeing none, is the Council ready for
5 the question? Is there any objection to the motion?

6 Seeing none, it's approved by consent. Thank you.

7 Erling.

8 ERLING BERG: I want to asks Jason to
9 comment on the two specs issues. So, Jason, if you
10 can comment on that?

11 JASON DIDDEN: There are a couple of
12 specs issues that came -- that I thought about after
13 the meeting. They're relatively minor and kind of
14 procedural in nature. And one, there was a concern
15 raised by -- that did the current methodology
16 establish a precedent? And one option could be that
17 the Council could kind of note that it's in kind of
18 an interim methodology and request the Monitoring
19 Committee kind of review this in more of a holistic
20 fashion before the next specification cycle.

21 ERLING BERG: You want this as a
22 motion?

23 COUNCIL CHAIRMAN RICHARD ROBINS: Go
24 ahead.

1 ERLING BERG: Give me a minute for
2 Jason to put it up. Shall I read this as a whole
3 motion just the way it is?

4 JASON DIDDEN: Yeah.

5 ERLING BERG: Note that the current
6 Canadian catch prediction method is an interim
7 method and the Monitoring Committee is requested to
8 investigate the issue in a holistic fashion before
9 the next specification cycle.

10 COUNCIL CHAIRMAN RICHARD ROBINS: Is
11 there a second to the motion? Second by Gene Kray.

12 So, the motion identifies the current accounting
13 for Canadian catch as a normal approach and requests
14 a more comprehensive evaluation of potential
15 methodologies between now and the next spec. setting
16 cycle. Discussion on the motion?

17 Is the Council ready for the
18 question? Is there any objection to the motion?
19 Seeing none, it's approved by consent. Thank you.
20 Erling, the next item. One more item? Jason?

21 ERLING BERG: Jason, do we have one?

22 JASON DIDDEN: Just one other thing
23 that staff wanted to raise. Typically what happens
24 is that an environment assessment for the specs

1 includes a range of options. Normally staff fills
2 them in after the meeting to create a reasonable
3 range. Given the mackerel issues, I'd prefer to run
4 the alternatives by the Council and get any comments
5 now.

6 Just so folks know what will happen.

7 I anticipate three options. One, the status quo is
8 a NEPA requirement. Two, would be the Council
9 preferred, that's a 47 and 46 ABC/IOY roughly. And
10 then three, to round out the range would be the
11 Monitoring Committee with the updated Canadian,
12 that's the ABC of 38,500 and the IOY of about
13 38,000. I think this range would allow comparison
14 of methods and related risk in the environmental
15 assessment along the lines that Council discussed
16 yesterday. Again, the EA has to have a range --
17 this is a range that I would naturally include based
18 on what's transpired, but just wanted to flag that
19 for the Council and get any comment if there was
20 any.

21 COUNCIL CHAIRMAN RICHARD ROBINS: Is
22 there any comments or any objections to that by the
23 Council? Seeing none, we'll approve that by
24 consent. Thank you, Jason.

1 ERLING BERG: So, that's all I have.

2 COUNCIL CHAIRMAN RICHARD ROBINS: Is
3 there any other business on squid, mackerel,
4 butterfish? Pres.

5 PRESTON PATE: I'd just like to note
6 for the record the important role that the advisory
7 panel played in getting us to this point. They
8 brought to the table some really important
9 information about the prosecution of the fishery and
10 the best steps to reduce and control capacity in
11 that fishery. And I think everybody there
12 appreciated their time and input.

13 COUNCIL CHAIRMAN RICHARD ROBINS:
14 Pres, I would certainly concur. I think that
15 standalone meeting we had to discuss Amendment 11
16 was very constructive and informative. Erling.

17 ERLING BERG: And I also have to
18 thank Jason for everything he has done. Without his
19 help, we wouldn't be here today doing what we're
20 doing today.

21 COUNCIL CHAIRMAN RICHARD ROBINS:
22 Well-noted. Thank you, Jason and Erling. Ready for
23 RSA?
24

1 RESEARCH SET-ASIDE COMMITTEE REPORT

2 PRESTON PATE: Yeah, I've got about
3 30 minutes. Just shoot me now if I get over three.

4 COUNCIL CHAIRMAN RICHARD ROBINS: You
5 may be the last man standing.

6 PRESTON PATE: Mr. Chairman, two
7 meetings ago, we had an RSA Program review
8 presentation by staff of the Northeast Science
9 Center that helped us identify some outstanding
10 quality issues that need to be considered by the
11 committee over time. And at the meeting, after
12 that, we actually went over a listing of what those
13 outstanding issues are and identified the one that
14 we wanted to tackle first, which was the development
15 of a clear mission statement that will help set the
16 goal and the direction that the program will take in
17 the future.

18 So, at the meeting that we had this
19 week, there was a draft mission statement that is
20 included -- that was included behind Tab 2 in your
21 briefing book that was supplemented with an updated
22 draft that I and Peter DeFur and others had worked
23 on prior to our meeting this week. We had quite a
24 bit of discussion about this draft focusing on how

1 to correctly identify the importance of continuation
2 of funding of the NEMAP survey until some alternate
3 source of more permanent funding has been secured.
4 And just some other refinements that added some
5 clarity, and in one or two cases, some expansion to
6 the statement.

7 Rich Seagraves was very integral in
8 putting this together and took better notes than I
9 and will be incorporating the comments from this
10 week into the next version of this, which we'll
11 bring back to the committee at our August meeting in
12 a form that hopefully we can adopt.

13 We also had a presentation by Earl
14 Meredith about the improvements that they're trying
15 to make in their cooperative research program in the
16 Northeast Science Center to more fully integrate all
17 of the interests that exist in research proposals in
18 the Northeast Region and on species that are under
19 management by the Northeast and the Mid-Atlantic
20 Councils, hopefully take maximum benefit of the
21 available resources and a full consideration of the
22 priorities that are identified by all of the
23 partners. That was it.

24 COUNCIL CHAIRMAN RICHARD ROBINS:

1 Thank you, Pres. You would anticipate a follow-up
2 meeting in August to finalize the mission?

3 PRESTON PATE: Yes.

4 COUNCIL CHAIRMAN RICHARD ROBINS:

5 Thank you very much. Questions for Pres? All
6 right. Seeing none, Dr. Kray.

7
8 ECOSYSTEMS AND OCEAN PLANNING COMMITTEE REPORT

9 EUGENE KRAY: Thank you, Mr.
10 Chairman. The Ecosystems and Ocean Planning
11 Committee met yesterday morning. First time was a
12 brief discussion with regard to aquiculture and the
13 draft policy that is being developed through a
14 series of listening sessions. My conversations with
15 the people, including Dr. Lubchenko, at the
16 recreational fishing summit, the draft policy is --
17 we will not have-- the Council will have an
18 opportunity to weigh in on this once the draft
19 policy is developed. They're in the process of
20 developing that now. And to that point, Mr.
21 Chairman, I forgot to mention this at the committee
22 meeting, but if there is anyone who wants to receive
23 -- you're on the e-mail list -- we'll warn you,
24 you'll be getting a minimum of one e-mail a day

1 coming -- bringing you up to date on all different
2 aspects and what's happening. And if you want to
3 get on that e-mail list, just let me know and I'll
4 let Jess Beck know that it's down in the Southeast
5 Regional Center.

6 The second thing, we had a
7 presentation by Stan Gorsky and Karen Green from the
8 regional office, the habitat office, in Sandy Hook,
9 New Jersey. They gave a presentation relating to
10 what's happening up and down the coast for the non-
11 fishing uses of the ocean, including wind, LNG,
12 nuclear turbines, wave energy and cables. The most
13 pressing issue that seems to be on the table is a
14 June 26th end of comment period for the windfarm off
15 Rehoboth Beach, Delaware. And in looking at this
16 and in discussions with the Chairman and others, we
17 are going to take a look at the -- I'm going to take
18 a look at the charts for that area. It seems to
19 overlap a prime recreational fishing area and our
20 concern is access. And if that, in fact, is the
21 case, then I will pass this information on to Tom
22 who will prepare a letter for the Chairman so that
23 we can get this into the habitat office.

24 Also, in the context of windfarms, we

1 had a lengthy discussion about the impact of
2 windfarms and noise and vibrations and what they
3 might have on fish. It was indicated by, I believe,
4 Rich and John Boreman that the only studies that are
5 available are for marine mammals. But there are
6 few, if any, studies done on the impacts on fishing.

7 So, that's something we're going to have to be
8 careful and monitor.

9 And finally, we indicated that we
10 would like to be regularly informed -- we need
11 information on any new non-fishing activities on a
12 regular basis so that we don't get caught into a box
13 like we were this time having a very short window in
14 which to comment. And that's my report, Mr.
15 Chairman.

16 COUNCIL CHAIRMAN RICHARD ROBINS:

17 Thank you, Gene. Any questions for Gene? Okay.
18 Next is the Executive Committee report.

19
20 EXECUTIVE COMMITTEE REPORT

21 COUNCIL CHAIRMAN RICHARD ROBINS: And
22 we had three action items that came out of that. We
23 met yesterday and discussed the excessive shares
24 project with the clam analysis and agreed that if

1 we're unable to secure additional funding or outside
2 sources of funding, that we would move forward with
3 that project utilizing Council funds. The proposed
4 scope of work is in the briefing book. It would
5 entail hiring three independent experts and then
6 following up their analysis with the CIE review.
7 The Science Center would fund the CIE review, but
8 funds are not available through the Science Center
9 at this point to fund the working group.

10 So, we passed several motions. And
11 I'll ask for those. Jan, I don't know if you
12 already have those. Okay.

13 This motion is on behalf of the
14 committee. Move that the Council consider outside
15 sources of funding in the next 30 days for excessive
16 shares. This again is for the clam excessive shares
17 in the amendment. If unsuccessful, the Council
18 should consider using its own funds not to exceed
19 \$100,000. Any discussion on the motion?

20 PAT AUGUSTINE: Call the question.

21 COUNCIL CHAIRMAN RICHARD ROBINS: Is
22 the Council ready for the question? Is there any
23 objection to the motion? Seeing none, it's approved
24 by consent. Thank you.

1 We had two other action items, one
2 related to moving forward with the visioning
3 project. Staff had fleshed out that option for us
4 here in the briefing book and the committee agreed
5 by consent to move forward with the visioning
6 project. And I would anticipate putting together an
7 ad hoc committee to work on that. If you have
8 interest in that, please see me or call me, and I'd
9 look for members to get involved with that. That
10 will take realistically the next 12 to 15 months to
11 complete. It will take six months to get through a
12 PRA clearance. And so, it will be a substantial
13 project. But that was another action item that came
14 out and the group agreed by consent. And I would
15 just ask the Council for approval of that moving
16 forward with that as well.

17 Is there any objection from the
18 Council from moving forward? Seeing none, we'll do
19 it by consent.

20 The third action item was the
21 recommendation to provide for a more structured
22 input from the AP into the spec. setting process
23 whereby we would engage the AP to develop an annual
24 performance report of the fishery. And this would

1 be, I think, a very helpful piece of information
2 that the SSC could consider. It would be an archive
3 document. We'd start out looking back about five
4 years and then update it annually. It would become
5 an archive document that the SSC could consider.
6 And I think when we're in very data poor situations,
7 it would be an important piece of information that
8 would help them in interpreting catch. John Boreman
9 expressed support for the idea yesterday, and the
10 committee passed a motion. I don't know if you have
11 that, Jan. You don't have that motion up. Okay.

12 The motion by the committee was that
13 we would move forward with the development of an AP
14 performance report and they would be incorporated
15 into the spec-setting process. And I would just ask
16 you -- that was on behalf of the committee. Is
17 there any objection to that from the Council? Okay.

18 Seeing none, we'll approve that by consent.

19 I think that provides us with an
20 important opportunity to better engage the AP. And
21 I think that will be a helpful step in the process.

22 It should allow us to reduce uncertainty to the
23 extent practicable and I think it will be
24 beneficial. There's already interest at the SSC

1 with the social science group to work on this.

3 CONTINUING AND NEW BUSINESS

4 COUNCIL CHAIRMAN RICHARD ROBINS:

5 Okay. The final item is continuing and new
6 business, discussing the Squid, Mackerel and
7 Butterfish Amendment 14 scoping schedule, and
8 proposed management actions contained therein. And
9 this relates to the end of the last meeting.

10 At the end of the last meeting, you
11 all agreed to move forward with the visioning
12 project. But we also agreed to move forward with
13 the scoping on squid catch shares and the river
14 herring and shad bycatch issues that are in
15 Amendment 14. And you know, I think -- and I'll
16 blame myself -- I didn't tie those two pieces
17 together at the end, and so, it all -- but I think
18 what would make the most sense now would be -- since
19 we are moving forward with this comprehensive
20 visioning project and the concept of catch shares in
21 the squid fishery is very much still an embryonic
22 issue, it would make more sense to move forward with
23 the visioning project and delay that catch share
24 component of Amendment 14 until after we've

1 completed the visioning process, because the concept
2 is not yet fully evolved. The issue though is that
3 we've already set it up for scoping, but it's
4 alongside the other issue, which is an important
5 issue, of river herring bycatch, shad interactions
6 potentially in the mackerel fishery. So, I think we
7 still need to go forward with scoping.

8 But I spoke with Jason before the
9 meeting to see how we might reconcile these two
10 issues. And one way to do it might be to declare as
11 a matter of intent or preference as a Council that
12 we would prefer to develop -- delay the developing
13 of the catch share alternatives until after we have
14 completed the visioning project. And that way --
15 you know, we avoid the negative excitement through
16 the scoping process and delay that until we've
17 completed this visioning. And that way, we get to
18 the point where we have a stakeholder driven vision
19 that's governing the subsequent actions.

20 But I think that sequencing is
21 something that I didn't reconcile at the end of the
22 last meeting. But that we should consider, because
23 otherwise we may find ourselves in the situation
24 that New England was in where we move forward and

1 then, you know, trying to go back after the fact and
2 trying to decide what they really wanted. So, I
3 think the sequencing here is important. Pres.

4 PRESTON PATE: That would not cause
5 us to delay going forward with the bycatch component
6 in the scoping document; would it?

7 COUNCIL CHAIRMAN RICHARD ROBINS:

8 Yeah. I want to make sure the record is clear that
9 we would still go forward with the scoping on the
10 bycatch issues, monitoring issues related to that,
11 and you know, it wouldn't affect that at all. But I
12 think we ought to send -- since we are moving
13 forward with the visioning project, and that issues
14 is not fully developed, it wasn't a -- it wasn't
15 really in a fully-developed state when it came to
16 the Council, it was a suggestion from industry, but
17 it wasn't fully developed, that it would make sense
18 from a sequencing standpoint that we go ahead and
19 engage the public, engage the industry in the
20 visioning work and then come back and put that issue
21 -- basically delay that issue until then.

22 But I think, Jason, if you could
23 comment on the mechanics of the scoping and how we
24 might accomplish that.

1 JASON DIDDEN: I think what you
2 described would work fine. When Rich and I go out
3 for -- he's doing two of the scoping hearings, I'm
4 doing two -- when we go out and do that, we could
5 just kind of let folks know. And if it was in a
6 press release beforehand, that way folks wouldn't
7 kind of show up expecting that this was still a very
8 likely issue and then we could kind of flag the
9 issue at the scoping meetings also.

10 COUNCIL CHAIRMAN RICHARD ROBINS:

11 Okay. Well, then, by consent, can we agree that
12 we'll express a preference for developing the catch
13 share alternatives after we've -- or consider catch
14 shares after we've completed the visioning project
15 relative to squid? Rich.

16 RICHARD SEAGRAVES: Yeah. I mean,
17 that's fine. I guess the issue we want to be clear
18 as we've already got this in the mix and it's --
19 we're going to be taking comments. So, if we were
20 to get an overwhelming response back that says we
21 don't want you to wait, we want catch shares, is
22 that still on the table? I guess my question is,
23 are you saying that we're going to put this off
24 until we do visioning? Or we're leaning that way?

1 Or would the door still be open to entertain
2 including catch shares in 14? I guess that would be
3 important to know.

4 COUNCIL CHAIRMAN RICHARD ROBINS:

5 Well, I think we could consider the comments, but
6 express a preference as a Council for taking action
7 after we've completed the visioning project.

8 RICHARD SEAGRAVES: But it wouldn't
9 preclude a later decision to keep it in, I guess, is
10 my question?

11 COUNCIL CHAIRMAN RICHARD ROBINS: But

12 I don't anticipate that at this point in time.

13 JASON DIDDEN: Yeah. I think just
14 procedurally since we're looking for comments, it
15 may be -- you know, express the likely intention and
16 then actually drop it out once the comments have
17 been received since it's in the scoping document.
18 I'm not sure if doing so beforehand would create
19 some kind of procedural issue.

20 And just one other quick note. I
21 appreciated the thanks from Erling, but as
22 evidenced, that Rich is doing two of the public
23 hearings on 14, we do do squid, mackerel,
24 butterfish, as a tag-team and I wouldn't be nearly

1 as up to speed on it if it wasn't for him. So, just
2 to note that. That's all, thank you.

3 COUNCIL CHAIRMAN RICHARD ROBINS:

4 Hear, hear. Okay. Thank you, Jason.

5 Well, then by consent, can we agree
6 that will be our preference that we focus on that
7 after the visioning? Okay.

8 Is there any other business to come
9 before the Council?

10 PAT AUGUSTINE: Move to adjourn.

11 COUNCIL CHAIRMAN RICHARD ROBINS: All
12 right. Seeing none, we're adjourned. Thank you
13 very much.

14
15 WHEREUPON:

16
17 THE MEETING WAS CONCLUDED AT 1:25 P.M.
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3

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF NORFOLK

I, PAUL T. WALLACE, a Professional Court Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing transcript represents a complete, true and accurate transcription of the audiographic tape taken in the above entitled matter to the best of my knowledge, skill and ability.

In witness whereof, I have set my hand and Notary Seal this 7th, day of August, 2010.

PAUL T. WALLACE. Notary Public
My Commission Expires

October 8, 2015

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