

Atlantic States Marine Fisheries Commission

Atlantic Menhaden Management Board

May 2, 2018
10:45 a.m. – 12:30 p.m.
Arlington, Virginia

Agenda

The times listed are approximate; the order in which these items will be taken is subject to change; other items may be added as necessary.

1. Welcome/Call to Order (*N. Meserve*) 10:45 a.m.
2. Board Consent 10:45 a.m.
 - Approval of Agenda
 - Approval of Proceedings from November 2017
3. Public Comment 10:50 a.m.
4. Review and Consider Approval of Terms of Reference for the 2019 Atlantic Menhaden Single Species Benchmark Stock Assessment and Peer Review (*K. Anstead*) **Action** 11:00 a.m.
5. Review and Populate the Atlantic Menhaden Stock Assessment Subcommittee Membership (*K. Anstead*) **Action** 11:15 a.m.
6. Review and Consider Approval of Terms of Reference for the 2019 Atlantic Menhaden Ecosystem-Based Benchmark Stock Assessment and Peer Review (*K. Drew*) **Action** 11:20 a.m.
7. Review and Consider 2018 Fishery Management Plan Review and State Compliance Reports (*M. Appelman*) **Action** 11:45 a.m.
 - Review State Implementation Plans for Amendment 3
8. Other Business/Adjourn 12:30 p.m.

The meeting will be held at the Westin Crystal City, 1800 S. Eads Street, Arlington, Virginia 22202; 703.486.1111

MEETING OVERVIEW

Atlantic Menhaden Management Board Meeting

May 2, 2018

10:45 a.m. – 12:30 p.m.

Arlington, Virginia

Chair: Nichola Meserve (MA) Assumed Chairwomanship: 05/18	Technical Committee Chair: Joey Ballenger (RI)	Law Enforcement Committee Representative: Capt. Kersey (MD)
Vice Chair: Vacant	Advisory Panel Chair: Jeff Kaelin (NJ)	Previous Board Meeting: November 13 and 14, 2017
Voting Members: ME, NH, MA, RI, CT, NY, NJ, PA, DE, MD, PRFC, VA, NC, SC, GA, FL, NMFS, USFWS (18 votes)		

2. Board Consent

- Approval of Agenda
- Approval of Proceedings from November 2017

3. Public Comment – At the beginning of the meeting public comment will be taken on items not on the agenda. Individuals that wish to speak at this time must sign-in at the beginning of the meeting. For agenda items that have already gone out for public hearing and/or have had a public comment period that has closed, the Board Chair may determine that additional public comment will not provide additional information. In this circumstance the Chair will not allow additional public comment on an issue. For agenda items that the public has not had a chance to provide input, the Board Chair may allow limited opportunity for comment. The Board Chair has the discretion to limit the number of speakers and/or the length of each comment.

4. Review and Consider Approval of Terms of Reference for the 2019 Atlantic Menhaden Single-Species Benchmark Stock Assessment and Peer-Review (11:00-11:15 a.m.) Action

Background

- The Technical Committee drafted terms of reference for the upcoming benchmark stock assessment for Board review and approval (**Briefing Materials**).

Presentations

- Review single-species benchmark stock assessment terms of reference by K. Anstead

Board actions for consideration at this meeting

- Approve single-species benchmark stock assessment terms of reference

5. Review and Consider Approval of Atlantic Menhaden Stock Assessment Subcommittee Membership (11:15-11:20 a.m.) Action

Background

- The next benchmark assessment for Atlantic menhaden is scheduled for review in 2019
- The Stock Assessment Subcommittee is repopulated prior to a benchmark assessment.

Presentations

- Stock Assessment Subcommittee membership by K. Anstead

Board actions for consideration at this meeting

- Approve Stock Assessment Subcommittee membership

6. Review and Consider Approval of Terms of Reference for the 2019 Atlantic Menhaden Ecosystem-Based Benchmark Stock Assessment and Peer-Review (11:20-11:45 a.m.) Action

Background

- The Ecological Reference Point Work Group drafted terms of reference for the upcoming Atlantic menhaden ecosystem-based benchmark stock assessment for Board review and approval (**Briefing Materials**).

Presentations

- Stock Assessment Subcommittee membership by K. Drew

Board actions for consideration at this meeting

- Approve Stock Assessment Subcommittee membership

7. Review and Consider 2018 Fishery Management Plan Review and State Compliance (11:45 a.m.-12:30 p.m.) Action

Background

- Annual state compliance reports for Atlantic menhaden are due April 1st
- The Plan Review Team (PRT) reviewed the reports and drafted the 208 Fishery Management Plan (FMP) Review (**supplemental materials**).
- The FMP Review includes updated 2018 state quotas and the PRT's review of state implementation plans for Amendment 3

Presentations

- 2018 FMP Review and State Compliance by M. Appelman

Board Actions for Consideration

- Consider the 2018 Fishery Management Plan Review and State Compliance

8. Other Business/Adjourn

Atlantic Menhaden

Activity level: High

Committee Overlap Score: High (SAS, ERP WG overlaps with American eel, striped bass, northern shrimp, Atlantic herring, horseshoe crab, weakfish)

Committee Task List

- TC, SAS, BERP – January-March – 2019 Benchmark stock assessment planning and data collection
- TC – April 1st: Annual compliance reports due
- TC, SAS, ERP WG – April 23rd-27th – Data workshop
- ERP WG– September – Data/Modelling workshop

TC Members: Joey Ballenger (SC, TC Chair), Jason McNamee (RI), Lindsey Aubart (GA), Jeff Brust (NJ), Matt Cieri (ME), Ellen Cosby (PRFC), Micah Dean (MA), Corrin Flora (NC), Kurt Gottschall (CT), Jesse Hornstein (NY), Rob Latour (VIMS), Behzad Mahmoudi (FL), Ray Mroch (NMFS), Josh Newhard (USFWS), Derek Orner (NMFS), Amy Schueller (NMFS), Alexei Sharov (MD), Jeff Tinsman (DE), Kristen Anstead (ASMFC), Max Appelman (ASMFC)

SAS Members: Amy Schueller (NMFS, SAS Chair), Matt Cieri (ME), Micah Dean (MA), Robert Latour (VIMS), Behzad Mahmoudi (FL), Ray Mroch (NMFS), Jason McNamee (RI), Alexei Sharov (MD), Kristen Anstead (ASMFC), Max Appelman (ASMFC), Josh Newhard (USFWS), Joey Ballenger (SC, TC chair)

ERP WG Members: Matt Cieri (ME, BERP Chair), Jeff Brust (NJ), Michael Celestino (NJ), David Chagaris (FL), Micah Dean (MA), Rob Latour (VIMS), Jason McNamee (RI), Amy Schueller (NMFS), Alexei Sharov (MD), Howard Townsend (NFMS), Jim Uphoff (MD), Kristen Anstead (ASMFC), Katie Drew (ASMFC), Max Appelman (ASMFC)

DRAFT PROCEEDINGS OF THE
ATLANTIC STATES MARINE FISHERIES COMMISSION
ATLANTIC MENHADEN MANAGEMENT BOARD

BWI Airport Marriot
Linthicum Heights, Maryland
November 13, 2017
November 14, 2017

These minutes are draft and subject to approval by the Atlantic Menhaden Management Board
The Board will review the minutes during its next meeting

TABLE OF CONTENTS

Monday November 13, 2017

Call to Order, Chairman Robert Ballou 1

Approval of Agenda 2

Approval of Proceedings August 2017..... 3

Public Comment..... 4

Amendment 3 for Final Approval..... 4

 Review of Management Options and Public Comment Summary..... 5

 Law Enforcement Committee Report..... 11

 Advisory Panel Report 11

Amendment 3 Reference Points 15

Set 2018 (Either Single or Multi-year) Atlantic Menhaden Specifications 40

Tuesday November 14, 2017

Call to Order, 49

Election of Vice-chair 118

Adjournment..... 118

PLEASE NOTE: PROCEEDINGS OF THE FIRST FEW MINUTES OF THE BOARD RECONVENING ON THE AFTERNOON OF NOVEMBER 14 ARE UNAVAILABLE.

INDEX OF MOTIONS

1. **Approval of Agenda** by Consent (Page 1).
2. **Approval of Proceedings of August 2017** by Consent (Page 1).
3. **Move to adopt reference point Alternative E: BERP Workgroup continues to develop menhaden-specific ERPs with interim use of 75 percent target and 40 percent threshold as described in Draft Amendment 3** (Page 24). Motion by David Borden, second by Nichola Meserve. Motion substituted.
4. **Move to substitute Option B: The BERP Working Group continues to develop menhaden-specific ERPs with the interim use of single-species reference points as described in Draft Amendment 3** (Page 25). Motion by Pat Keliher, second by Russ Allen. Motion carried and becomes the main motion (Page 37).

Main Motion: Option B: The BERP Working Group continues to develop menhaden-specific ERPs with the interim use of single-species reference points as described in Draft Amendment 3. Motion to amend (Page 37).

5. **Move to amend to add set the TAC at 200,000 metric tons for the next two years (2018-2019)** (Page 37). Motion by Robert Boyles; second by John McMurray. Motion fails (Page 39).

Main Motion: Option B: The BERP Working Group continues to develop menhaden-specific ERPs with the interim use of single-species reference points as described in Draft Amendment 3. Motion carried (Page 39).

6. **Move that if a fixed minimum option is selected the following conditions would govern the activity: at the start of each fishing year and no later than January 31, states must declare if they want to participate in the fixed minimum program. States have the option to opt-out of the program and decline their fixed minimum allocation, or maintain 10,000 pounds of bycatch purposes and decline the remainder of their quota**

States also have the right to opt-in to the program and receive their full allocation. In declaring its intent to receive its fixed minimum quota, a state can also choose to receive all, or part, of this amount. If a jurisdiction declines its full allocation it must specifically identify the amount requested. States which opt-in must demonstrate that the state has the intent and the ability to commercially harvest some, or all, of its menhaden quota for the directed or bycatch fishery.

This can be demonstrated through the issuance of permits for applicable gear types or species, historic landings, or the abundance of menhaden in state and/or federal waters. Any quota that is not received by a state is re-distributed to the other jurisdictions based on historical landings

from the time-period selected by the Board in this Amendment (Page 51. Motion tabled until Issue 2 is addressed on Page 55. Motion by Pat Keliher; second by Ritchie White.

7. **Move to table under Issue 2: Allocation Methods and Timeframes has been decided** (Page 55). Motion by Adam Nowalsky; second by Rob O'Reilly. Motion passes (Page 55).
8. **Move to set a total allowable catch; not to exceed 216,000 metric tons until such time that ecological reference points are utilized for Atlantic menhaden management** (Page 56). Motion by Jim Estes; second by Spud Woodward. Motion to substitute (Page 57).
9. **Move to substitute to set a total allowable catch of 240,000 metric tons for 2018 and 2019** (Page 57). Motion by Adam Nowalsky; second by David Bush. Motion fails (Page 60).

Main motion: to set a total allowable catch not to exceed 216,000 metric tons until such a time that ecological reference points are utilized for menhaden management. Motion to substitute (Page 61).

10. **Move to substitute to set a total allowable catch not to exceed 220,000 metric tons for 2018 and 2018 or until menhaden-specific ecological reference points are available for management use, whichever is first** (Page 61). Motion by David Bush; second by Rachel Dean. Motion fails (Page 67).

Main motion: to set a total allowable catch not to exceed 216,000 metric tons until such a time that ecological reference points are utilized for menhaden management. Motion substituted.

11. **Move to substitute to set a total allowable catch not to exceed and be set at 216,000 metric tons for 2018 and 2019 or unless menhaden-specific ecological reference points are available for management use** (Page 67). Motion by Rachel Dean; second by Steve Train. Motion carried (Page 73).
12. **Move to limit debate** (Page 72). Motion by Dennis Abbott; second by Lauren Lustig. Motion carried (Page 72).

Main Motion as Substituted: Motion to set a total allowable catch to not exceed and be set at 216,000 metric tons until such a time that ecological reference points are utilized for menhaden management. Motion carried (Page 74).

13. **Move to choose the following options in Draft Amendment 3: Section 4.3.2 Allocation Method Option C with a jurisdictional allocation with a Minimum Base Allocation of 0.75 percent fixed minimum for the Quota Timeframe of 2012 to 2016. Section 4.3.3 Quota Transfer Option A: Quota Transfer would be permitted. Section 4.3.4: Quota Rollover Option A: Unused Quota May Not Be Rolled Over** (Page 75). Motion by Pat Keliher; second by Ritchie White. Motion to amend (Page 75).
14. **Motion to Amend: Section 4.3.3 Allocation method Option C; jurisdictional allocation with a minimum base allocation of a 1.0 fixed minimum** (Page 75). Motion by Emerson Hasbrouck; second by Nichola Meserve. Motion fails (Page 77).

15. **Motion to Amend: To substitute the first bullet with “Option F under Section 4.3.2; Allocation based on TAC level”** (Page 78). Motion by Rob O’Reilly; second by David Bush; Motion fails (Page 80).

Main Motion: to choose the following options in Draft Amendment 3: Section 4.3.2 Allocation Method Option C with a jurisdictional allocation with a Minimum Base Allocation of 0.75 percent fixed minimum for the Quota Timeframe of 2012 to 2016. Section 4.3.3 Quota Transfer Option A: Quota Transfer would be permitted. Section 4.3.4: Quota Rollover Option A: Unused Quota May Not Be Rolled Over. Motion carried (Page 80).

16. **Move to bring the tabled motion back for consideration by the Board** (Page 80). Motion by Adam Nowalsky; second by Emerson Hasbrouck. Motion carried (Page 80).

Tabled Motion: Move that if a fixed minimum option is selected the following conditions would govern the activity: at the start of each fishing year and no later than January 31, states must declare if they want to participate in the fixed minimum program. States have the option to opt-out of the program and decline their fixed minimum allocation, or maintain 10,000 pounds of bycatch purposes and decline the remainder of their quota.

States also have the right to opt-in to the program and receive their full allocation. In declaring its intent to receive its fixed minimum quota, a state can also choose to receive all, or part, of this amount. If a jurisdiction declines its full allocation it must specifically identify the amount requested. States which opt-in must demonstrate that the state has the intent and the ability to commercially harvest some, or all, of its menhaden quota for the directed or bycatch fishery.

This can be demonstrated through the issuance of permits for applicable gear types or species, historic landings, or the abundance of menhaden in state and/or federal waters. Any quota that is not received by a state is re-distributed to the other jurisdictions based on historical landings from the time-period selected by the Board in this Amendment. Motion to Substitute (Page 85).

17. **Move to substitute that “at the start of each fishing year and no later than January 31st, states may declare if they want to opt-out of the fixed minimum program. States may declare to opt-out of the program and decline all or part of their fixed minimum allocation. If a jurisdiction declines part of their allocation it must specifically identify the amount they do not wish to receive. Any quota that is not received by a state is redistributed to the other jurisdictions based on historic landings from the time-period selected by the Board in this Amendment** (Page 85). Motion fails (Page 93).

Main Motion: Motion that if a fixed minimum option is selected the following conditions would govern the activity: at the start of each fishing year and no later than January 31, states must declare if they want to participate in the fixed minimum program. States have the option to opt-out of the program and decline their fixed minimum allocation, or maintain 10,000 pounds of bycatch purposes and decline the remainder of their quota.

States also have the right to opt-in to the program and receive their full allocation. In declaring its intent to receive its fixed minimum quota, a state can also choose to receive all, or part, of this amount. If a jurisdiction declines its full allocation it must specifically identify the amount

requested. States which opt-in must demonstrate that the state has the intent and the ability to commercially harvest some, or all, of its menhaden quota for the directed or bycatch fishery.

This can be demonstrated through the issuance of permits for applicable gear types or species, historic landings, or the abundance of menhaden in state and/or federal waters. Any quota that is not received by a state is re-distributed to the other jurisdictions based on historical landings from the time-period selected by the Board in this Amendment.

18. **Move to reconsider the allocation method** (Page 93) Motion by Robert Boyles; second by Roy Miller. Motion carried (Page 94). **NOTE: *No verbatim transcripts included for this motion***

19. **Move to reconsider the allocation method: To select Section 4.3.2 Allocation Method: Option C, Jurisdictional Allocation with a Fixed Minimum with a 0.5 percent fixed minimum; Allocation Timeframe: 2009-2011. Section 4.3.3 Quota Transfers Option A: Quota Transfers Permitted**

Section 4.3.4 Quota Rollover Option A: Unused Quota May Not Be Rolled Over. Section 4.3.5 Incidental Catch and Small Scale Fisheries: Option B modified to include purse seines smaller than 150 fathom long by 8 fathom deep would be considered small scale gear. Section 4.3.6 Episodic Events Option A: 1 percent Set Aside (Page 95). Motion by Robert Boyles; second by David Bush. Motion carried (Page 104).

20. **Move to select under Section 4.3.7: Chesapeake Bay Reduction Fishery Cap, Option A. Cap set at 87,216 metric tons, and Sub-option A; limited rollover of unused cap permitted up to 10,976 metric tons** (Page 105). Motion by Rob O'Reilly; second by Adam Nowalsky. Motion substituted.

21. **Move to substitute to select Option B: cap set at 51,000 metric tons and Sub-option B; no rollover of unused cap permitted** (Page 105). Motion by Allison Colden; second by John McMurray. Motion carried (Page 110).

Main motion as substituted: to select Option B: cap set at 51,000 metric tons and Sub-option B; no rollover of unused cap permitted.

22. **Move that states must declare any relinquished quota by December 1st of the previous year. States have the ability to declare how much of their quota to relinquish. Any quota that is relinquished by a state is redistributed to the other jurisdictions based on historic landings from the time period selected by the Board in this Amendment** (Page 110). Motion by Pat Keliher; second by David Borden. Motion carried (Page 111).

23. **Move that states implement the provisions of Amendment 3 by January 1, 2018** (Page 113). Motion by Tom Fote; second by Loren Lustig. Motion amended.

24. **Move to Amend: That states submit implementation plans for Amendment 3 by January 1, 2018, and implement by April 15, 2018** (Page 114). Motion by Robert Boyles; second by Jim Gilmore. Motion carried (Page 116).

Main Motion as amended: That states submit implantation plans for Amendment 3 by January 1, 2018, and implement by April 15, 2018. Motion carried (Page 117).

25. **Motion to recommend to the Commission: the approval of Amendment 3 to the Atlantic Menhaden Interstate Fishery Management Plan as amended today** (Page 116). Motion by Robert Boyles; second by Jim Estes. Motion carried (Page 117).
26. **Move to elect Nichola Meserve as Vice-Chair of the Atlantic Menhaden Board** (Page 118). Motion by Robert Boyles on behalf of the Atlantic Menhaden Board. Motion carried (Page 118).
27. **Motion to adjourn** by Consent (Page 118).

ATTENDANCE

Board Members

Pat Keliher, ME (AA)	Andy Shiels, PA, proxy for J. Arway (AA)
Steve Train, ME (GA)	John Clark, DE, proxy for D. Saveikis (AA)
Cheri Patterson, NH, proxy for D. Grout (AA)	Craig Pugh, DE, proxy for Rep. Carson (LA)
G. Ritchie White, NH (GA)	Roy Miller, DE (GA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)	Rachel Dean, MD (GA)
Sarah Ferrara, MA, proxy for Rep. Peake (LA)	Dave Blazer, MD (AA)
Raymond Kane, MA (GA)	Allison Colden, MD, proxy for Del. Stein (LA)
Nichola Meserve, MA, proxy for D. Pierce (AA)	Rob O'Reilly, VA, proxy for J. Bull (AA)
Eric Reid, RI, proxy for Sen. Sosnowski (LA)	Cathy Davenport, VA (GA)
Robert Ballou, RI, proxy for J. Coit (AA)	Michelle Duval, NC, proxy for B. Davis (AA)
David Borden, RI (GA)	David Bush, NC, proxy for Rep. Steinburg (LA)
Colleen Giannini, CT, proxy for M. Alexander (AA)	W. Douglas Brady, NC (GA)
Sen. Craig Miner, CT (LA)	Malcolm Rhodes, SC (GA)
Jim Gilmore, NY (AA)	Robert Boyles, Jr., SC (AA)
Emerson Hasbrouck, NY (GA)	Spud Woodward, GA (AA)
John McMurray, NY, proxy for Sen. Boyle (LA)	Jim Estes, FL, proxy for J. McCawley (AA)
Adam Nowalsky, NJ, proxy for Asm. Andrzejczak (LA)	Martin Gary, PRFC
Tom Fote, NJ (GA)	Derek Orner, NMFS
Russ Allen, NJ, proxy for L. Herrighty (AA)	Mike Millard, USFWS
Loren Lustig, PA (GA)	

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

Ex-Officio Members

Jason McNamee, Technical Committee Chair

Jeff Kaelin, Advisory Panel Chair

Staff

Bob Beal
Toni Kerns
Katie Drew

Shanna Madsen
Megan Ware
Max Appelman

Guests

Fred Akers, Newtonville, NJ
Julie Akers, Newtonville, NJ
Lew Armistead, Hollywood, MD

Dana Austin, CBF
Amiele Barakey, CBF
Blair Blanchette, CBF

Draft Proceedings of the Atlantic Menhaden Management Board Meeting November 2017

John Bello, VA SSA
F.L. Benson, Lanexa, VA
Sarah Boynton, CBF
Kathryn Bush, CBF
Kim Cable, CBF
Benson Chiles, Chiles Consulting
Robt Crockett, Richmond, VA
Colin Crozier, CBF
Jeff Deem, VMRC

Monty Deihl, Omega Protein
Katherine Denel, PEW
Mark Driscoll, Richmond, VA
Butch Eason, Chesapeake, VA
Paul Erdman, Menhaden Defenders
A.J. Erskine, Lottsburg, VA
Lynn Fegley, MD DNR

Guests (continued)

Christine Fletcher, PEW
Manley Fuller, FL Wildlife Fed
Shaun Gehan, Omega Protein
Rebecca Gagnon, Norfolk, VA
Joseph Gordon, PEW
Ken Hastings, Mason Springs
Marin Hawk, MSC
D. Heinemann, Marine Mammal
Peter Himchak, Omega Protein
Ken Hinman, Wild Oceans
Rich Hittenger, RI Saltwater Anglers
Richard Holewinski, CCA MD
Jerry Hughes, Chesapeake, VA
Jason Hoffman, *Undercurrent News*
Deane Horowitz, CBEC
John Jaackst, Severn, MD
Chris Johnson, CBF
Robert Jones, VSSA
Ron Ketter, Easton, MD
Robert Kersey, MD NRP
Jimmy Kellum, Kellum Maritime
Howard King, Queenstown, MD
Aaron Kornbluth, PEW
Ben Landry, Omega Protein
George Lapointe, Omega Protein, ME
Ken Lewis, CCA ME
Ed Liccione, CCA MD
Bill Lucey, LI Soundkeeper
Rudy Lukavovic, CBEC

Janet Mackey, Easton, MD
William Martin, CCA MD
John Matson, Hampton, VA
Drew Minkiewicz, KDW
David Mussina, Mystic River W
Thomas Miller, FORVA
Chris Moore, CBF
Henry Neville, Ashland, VA
Christiana Perry CBEC
Ken Pinkard, UFCW Local 400
Jamie Pollack, PEW NY
Drew Robinson, CBF
Elizabeth Ronson, CBF
Robert Ruck, Sr., CCA MD
Jim Seagraves, Portsmouth, VA
David Sikorski, CCA
Jonathan Stone, Save the Bay, RI
Thomas Strachle, Westminster, MD
Stan Sutliff, Hampton Roads, VA
Cameron Taggert, PEW
Jeff Taylor, Mayforth Group
Jack Travelstead, CCA
Donna Waddell, UFCW Local 400
Marvin Wells, Dundale, MD
Mike Wills, VA Beach, VA
Michael Wissel, CCA MD
Liz Worsham, Heathville, VA
Tom Zolper, CBF

The Atlantic Menhaden Management Board of the Atlantic States Marine Fisheries Commission convened in BWI Airport Marriot, Linthicum Heights, Maryland, Monday, November 13, 2017, and was called to order at 1:00 o'clock p.m. by Chairman Robert Ballou.

CALL TO ORDER

MR. ROBERT BALLOU: I would like to call this meeting of the Menhaden Management Board to order. My name is Bob Ballou. I have the honor of serving as Board Chair. I would like to begin by extending a warm welcome to all Board members; as well as the many members of the public here in attendance, and listening in via the webinar. We deeply appreciate your time and interest.

Next I would like to introduce the members of staff and committee chairs who are here at this end of the table. To my immediate right is Megan Ware; the Commission's menhaden fishery management plan Coordinator. To Megan's right will be Jason McNamee; the Menhaden Board's Technical Committee Chair.

To Jason's right, or next going to my right is Dr. Katie Drew; the Commission's senior stock assessment scientist. Next to Katie is Shanna Madsen; the Commission's Fisheries Science Coordinator. To Shanna's right is Max Appelman; FMP Coordinator with the Commission, who will be handling the screen as motions are made and considered during the course of this meeting.

At the corner of the table is Toni Kerns; the Commission's Fisheries Management Program Director, and to Toni's right is Bob Beal, the Commission's Executive Director. To my immediate left is Jeff Kaelin; who serves as Chair of the Menhaden Board's Advisory Panel, and to Jeff's left is Major Rob Kersey, who serves as liaison to the Management Board from the Commission's Law Enforcement Committee.

Gathered around the table are the 48 members of the Commission's Atlantic Menhaden Management Board; representing 16 east coast states and our two federal partners. I'm sorry, 16 east coast states in jurisdictions from Maine through Florida; as well as our two federal partners, NOAA Fisheries and the U.S. Fish and Wildlife Service.

All Board members will be afforded the opportunity to participate fully, with regard to all matters that will be before the Board, with the exception of meeting-specific proxies; and I believe we only have one, who will not be able to participate in final voting on final action items. In my capacity as Board Chair, I will be exercising my prerogative to caucus and vote with the Rhode Island delegation; primarily for the purpose of avoiding a null vote from Rhode Island on any given issue, slim as those chances may be. Before we jump into our agenda, for which we have a total of 11 hours allocated through the rest of this afternoon and tomorrow, please indulge me for about two minutes for some brief opening remarks. Without knowing, or even having a reasonable guess as to how this meeting will unfold, I do know one thing and I know it with absolute certainty; and that is that we have reached a major milestone with regard to Atlantic menhaden.

That milestone is characterized by our universal recognition of the soaring importance of this resource; the ecosystem services it provides, and the enormous numbers of people who value and depend on the resource as a source of income, and as a lynchpin of the marine environment along the entire east coast.

On behalf of the entire Board, I want to express our deep appreciation for the many thousands of people, indeed hundreds of thousands of people from all walks of life, who have contributed to the development, analysis, and consideration of the issues that are before us today and tomorrow via Amendment 3.

The contributions from the scientific community, fishing community, environmental community, and all others, including those wearing no particular hat other than one that might read "I care" are duly noted, highly influential, and deeply appreciated. In particular I want to give a shout out to staff, members of the Plan Development Team, and members of the several committees and workgroups who have all lent enormous support to the process; ushering us to where we are today.

This meeting, whatever the outcome, indeed constitutes a milestone for all the reasons just mentioned. Milestones are neither beginnings nor ends; they are points along a journey. With that let's now move forward with our journey; and to all my esteemed colleagues on the Board, may we be guided over the next eleven hours or so by the spirit of doing what's right. Amen.

APPROVAL OF AGENDA

CHAIRMAN BALLOU: Our first item on the agenda is the agenda itself. Before I seek input from the Board, I would like to offer one clarifying suggestion and one minor tweak. First, with regard to Agenda Item 8, which reads Set 2018 Atlantic Menhaden Specifications, I suggest clarifying it to read, Set 2018 (Annual or Multi-Year) Atlantic Menhaden Specifications.

That exact wording is already set forth in the meeting overview; and speaks to the fact that the Board will be deciding upon a total allowable catch, or TAC, for the fishery, and deciding whether to set it for one year or more than one year. As such, I suggest clarifying the wording for Item 8 as indicated; to better reflect the nature of that agenda item.

Are there any objections to making that clarification? Seeing none, we'll make that clarification. Second under Item 4, I would just like to suggest that we reverse the order of two of the four presentations. After Megan

provides the management option review and the summary of public comments, I would like to move next to the Law Enforcement Committee report, and then immediately follow with the Advisory Panel Committee report.

I suggest that only because I think the flow might work a little better. Are there any objections to that really minor tweak? Seeing none; we'll make that minor tweak. Does anyone else on the Board, or does anyone on the Board have any other recommended modifications to the agenda; yes, Rob O'Reilly?

MR. ROB O'REILLY: Before I make a recommendation it may be solved by a question, which is other than Item 8, there is no specific mention as to the order of business for the biological reference points and the allocation as to where they fit within this agenda. If there is already information on that that would be fine, otherwise I will make a recommendation.

CHAIRMAN BALLOU: My intent with regard to Item 4 is to take up the Amendment 3 issues; beginning with reference points, and then proceeding with allocation and the other issues in the amendment. As currently proposed, we would then conclude Amendment 3, and move on to specifications for the fishery; as the item after that. Right now that is the proposed order of business. Do you have a suggested revision to that? Rob O'Reilly.

MR. O'REILLY: I would just wonder why the quota setting doesn't precede the allocation; because certainly one is going to bear on the other, and I just wondered if there was given any thought to that by staff for this meeting.

CHAIRMAN BALLOU: We'll give it a lot of thought at this exact moment; if you want to recommend making that change.

MR. O'REILLY: I would move that change to establish the quota setting to precede the allocation.

CHAIRMAN BALLOU: The request as I understand it is to amend the agenda by inserting Item 8; which is final action on spec setting into Item 4, which is final action on Amendment 3, such that as we are moving through the provisions of the Amendment, which we plan to take up in the order presented in the draft. When we get to allocation methods, we will pause consideration of the amendment issues to take up final action on spec setting; then continue with the rest of the provisions of the amendment. Is that your request?

MR. O'REILLY: Yes, simply to have the specification prior to the allocation.

CHAIRMAN BALLOU: I realize I gave it more words, but I just wanted to make it clear as to what I understand the intent to be. Is there any objection to that request by any members of the Board? Eric Reid.

MR. ERIC REID: Does that preclude any motions that might be bundled in one shot from being discussed at the same time?

CHAIRMAN BALLOU: My interpretation is that it would not; provided that we first move through reference points, after that there can be bundling. Any further discussion is there any further yet concerns? Dennis Abbot.

MR. DENNIS ABBOTT: Going along with Eric's question. Could we not have a more inclusive motion, but yet divide the question at that time if necessary?

CHAIRMAN BALLOU: If it's the will of the Board we'll do that. It will be my recommendation as Chair that we first move through reference points and then take up the other issues in either a bundled form or issue by issue; whichever the Board would prefer. Seeing no other hands, I will take that to indicate that there are no objections to revising the agenda as recommended by Rob O'Reilly. Are there any other recommended changes to the

agenda? Seeing none, oh I do have one; I'm sorry, yes Dr. Rhodes.

DR. MALCOLM RHODES: This isn't to change the agenda, but just a quick question. We'll need a Policy Board meeting. Would we have that before the close of this? Would we adjourn, then have Policy Board, not only to accept these actions but also we had some actions at the South Atlantic Board that we need to get accepted by the entire Commission. I just wanted to know where in the order that comes.

CHAIRMAN BALLOU: Thank you for the question. I'll refer to Bob Beal to answer it.

EXECUTIVE DIRECTOR ROBERT E. BEAL: Yes, Malcolm, you're correct. At the end of the Menhaden Board meeting, once all the decisions are made for Amendment 3, as well as the specifications for next year and any subsequent years. The Menhaden Board will adjourn; we'll go into a Business Session. The Business Session will tackle Amendment 3, the final approval for menhaden, as well as the cobia FMP that was approved by the South Atlantic Board; so at the very end, hopefully tomorrow afternoon, early afternoon.

CHAIRMAN BALLOU: Anything further on the agenda? Seeing no hands, the agenda as revised stands approved.

APPROVAL OF PROCEEDINGS

CHAIRMAN BALLOU: We are now onto the next item which is approval of the proceedings from the Board's last meeting, held on August 2, 2017. Are there any recommended changes to the minutes?

Seeing none; is there any objection to approving the minutes as proposed? Seeing none; the minutes stand approved by consent. I don't see our stenographer, but I assume this meeting is being recorded; and I just received a nod in the affirmative on that.

PUBLIC COMMENT

CHAIRMAN BALLOU: Next on the agenda is Public Comment, Item 3.

This is an opportunity for anyone from the public who would like to comment on any issue that is not on the agenda for this meeting, to do so. Given the nature of the agenda, this is a very narrow opportunity. Through the public comment process the Board has already sought and received extensive and valuable public comments on all components of the draft amendment, and all 158,106 comments are before the Board as part of our meeting materials.

That part has been done and done well. When we get to the issue of setting specifications for the fishery, there will be an opportunity for public comment on that issue; but for now the floor is only open to comments pertaining to non-agenda items, that is items not related to menhaden management. We have only ten minutes allotted for this portion of the agenda, which means we have a hard stop at 1:23. We have just one person signed up, and I am going to go to that person first, and that is Mr. Robert T. Brown. Welcome, Mr. Brown.

MR. ROBERT T. BROWN: My name is Robert T. Brown; President of the Maryland Watermen's Association. I want to talk to you today about eels. The Eel Management Plan, if the east coast quota is exceeded by 10 percent in one year, or less than 10 percent in two consecutive years, it sets off a trigger that all states must have individual quotas. The quota was exceeded by approximately 20,000 pounds or less than 2 percent in 2017. Maryland has already, with its fishermen, agreed to close Saturday's and Sunday's harvest during the months of September, October, and November; and will close the entire month of December. Hopefully to avoid being over the quota in 2017. Remember, if it exceeds a quota by one pound in 2017, individual states will have quotas.

CHAIRMAN BALLOU: Mr. Brown. I should have clarified that we're really looking for comments having to do with menhaden; but not on menhaden management issues. You're welcome to go on, but eels do not seem relevant to this Board's meeting.

MR. BROWN: I've only got about one more minute and I'll be done.

CHAIRMAN BALLOU: Go ahead.

MR. BROWN: Okay. With a quota of approximately 900,000 pounds and only 20,000 pounds at 2 percent, this should be considered good management. There are many things that cause this; with an amendment every three to five years, eel population increases, and with less effort and better harvest. You've heard me say before best science available is a guesstimate. Reviewing my statements, it was a poor choice of words, and so many assumptions into fishery management.

Fishery management has many assumptions. It assumes that harvest reports are correct. It assumes that the data collected gives a true representative of the biomass, spawning stock, age classes, et cetera, and then draws an equation to manage the resource. Let's not have any triggers that mandate a reduction. Let's bring these matters back to the Full Board of the Atlantic States Marine Fisheries Commission for commonsense solutions; and remember, this applies to all species, no triggers with mandatory reductions.

CHAIRMAN BALLOU: Is there anyone else from the public that would like to address the Board on any issue pertaining to menhaden that is not on today's agenda?

AMENDMENT 3 FOR FINAL APPROVAL

CHAIRMAN BALLOU: Seeing no hands, we will move on to Item 4 on the agenda; which is Amendment 3 for final approval. This is clearly

the main focus of this meeting; and here's how we plan to proceed.

First, Megan Ware to my right will be reviewing the management options in the draft amendment. I believe she has about a 20 minute presentation. If any of the Board members have any burning questions for Megan at the end of her presentation, we can take those up; but my preference would be to move through the other presentations first, then return to questions on key parts of the amendment on an issue-by-issue basis, which is how we plan to move through the next 11 hours or so.

Megan's second presentation will summarize the public comments received during the public hearings and public comment period for the amendment. Megan will then summarize, or Major Kersey perhaps, I'm not sure who, will then summarize the Law Enforcement Committee report on the amendment; and take any questions on it.

Then for our fourth and last of our initial presentations, Jeff Kaelin will summarize the AP, the Advisory Panel report on the amendment and take any questions. We will then be ready to roll up our sleeves and begin addressing the first major issue in the amendment; which is reference points. We will allow ample time for questions before getting into motions. If all goes well, we will finish up with reference points by 5:00 p.m. today or thereabouts; and then recess until tomorrow morning, at which time we will take up TAC, allocation, and the remaining issues in the amendment. With that Megan, the floor is yours.

REVIEW OF MANAGEMENT OPTIONS AND PUBLIC COMMENT SUMMARY

MS. MEGAN WARE: Today we'll be reviewing Draft Amendment 3 and the associated comments. Just for an overview, the Chairman just spoke about this, but I'll actually be

combining the management options and the public comment summary in one presentation; I mean I'll try and focus on those public comments.

For an overview of the public comment that we received, for public hearings there were 15 hearings conducted in 13 jurisdictions; ranging from Maine through Florida, 602 individuals attended those hearings. For written comment, a total of 158,106 comments were received. The vast majority of those comments were received through form letters.

However, 99 organizations did submit comments on the draft amendment, and the remaining comments (about 450), generally came from individual stakeholders; including commercial fishermen, recreational fishermen, and concerned citizens. I'm going to jump right into the reference point options.

Just to orient everyone to the screen, the five options are going to be on your left; and I'll highlight which one I'm talking about. Then these are the same figures that are used at the public hearings, so it's just a reminder as to what those reference points look like. The red dotted line was our fishing rate in 2016.

Option A is single-species reference points. For this option the Board would continue to use the single-species reference points in place; and the Board would not pursue ecosystem reference points for menhaden. Here the solid black line is our threshold; and the dotted black line is our target, so that red line is below both the target and the threshold. According to this reference point we are not overfishing.

Next is Option B; which is the BERP continues to develop menhaden-specific ERPs, and in the interim we use our single-species reference points. Here it's the same graph, the same reference points. For this reference point we are not overfishing. Option C is again the BERP continues to develop menhaden-specific ERPs; and in the interim we use the hockey-stick

control rule, which recommends a fishing mortality rate that linearly decreases with changes in biomass until 40 percent unfished biomass, at which point there is a moratorium on fishing.

Here the solid green line is that maximum fishing rate when we're at 100 percent unfished biomass; and the dotted green line is the recommended fishing rate for our current abundance. This reference point is saying that we are fishing at a higher rate than we should be; based on our current biomass.

Option D, again the BERP continues to develop menhaden-specific ERPs, and in the interim we use the 75 percent rule of thumb; which recommends a fishing mortality rate that achieves 75 percent unfished biomass. That is represented here with the mustard colored line. That red line is just above the mustard colored line, so according to this reference point we are overfishing.

Then finally, Option E. Again, the BERP continues to develop menhaden-specific ERPs, and in the interim we would use a reference point that recommends a target fishing mortality rate that achieves 75 percent unfished biomass, and a threshold mortality rate that achieves 40 percent unfished biomass. Here the solid blue line is the threshold, and the dotted blue line is the target; so we're just above the target but well below the threshold. I have received several questions about what action is associated with either a target or a threshold.

I just took some of the text from the draft amendment to preemptively address some of these questions. What this says is, if the current F exceeds the threshold level, the Board will take steps to reduce F to the target level. If the Board exceeds the target, but is below the threshold, the Board may consider steps to reduce F to the target level. If current F is below the target F , then no action is necessary to reduce F .

These are the public comments we received on the reference points; and it might be a little hard to see in the back, but these are the same tables that were in the meeting materials. The greatest support was for Option E, which is that 75 percent target, 40 percent threshold; those who supported E, commented on the implementation of ERPs now to account for menhaden's role as prey for larger fish, for whales and for birds.

Many commented that a precautionary approach is best for the long term management of this species; and will lead to stocking improvements for many other species. As a result, many individuals also commented on the economic benefits associated with this option; in terms of other commercial and recreational fisheries, as well as wildlife viewing operations such as whale watching.

Particularly in the Gulf of Maine and in Florida, individuals commented on the decline of other forage fish species, and the need to conservatively manage menhaden. In the southern states, individuals at the hearings commented that they have not seen the resurgence in menhaden populations that the northern states have seen.

The next most supported option was Option B. Those who supported Option B commented that the existing reference points are precautionary enough, while the BERP continues to develop menhaden-specific ERPs. Some questioned why drastic action is needed if the stock is not overfished, and overfishing is not occurring.

A couple of individuals commented specifically on the work by Hilborn, which raised concerns about the applicability of generalized rules to menhaden. At one of the Virginia hearings, many commented on the potential economic impacts; not only to the reduction plant, but also to associated businesses and local towns.

In reviewing the other reference point options, so I'll start with Option C. Those who supported the hockey-stick control rule commented that is the most conservative option; and some stated that it represents the best available science, commenting that a minimum biomass threshold is used in other fisheries such as in Antarctic krill.

For Option D, individuals supported managing to the 75 percent target; and some expressed concern with the high threshold in Option E, stating that Option D ensures management to that 75 percent unfished biomass. Finally, Option A, those who supported this option generally did not feel that the data on predator/prey relationships is strong enough to develop ERPs, and others did not want to see the management of menhaden tied to predator species, pointing towards horseshoe crab management. I'll now review the allocation options here. We have six allocation options.

First is a coastwide allocation, so there is no division of the TAC. Option B is our current jurisdictional approach; where we would divide the TAC between the different states, and this is the same table from the amendment that shows what those percentages would be for the various timeframes.

Option C is a fixed minimum approach; where each jurisdiction gets a minimum percentage of quota. There are three sub-options here, a half percent fixed minimum, 1 percent fixed minimum, and a 2 percent fixed minimum. Option D is regional fleet capacity. Here we would first divide the TAC into two gear types; a large fleet for purse seiners and pair trawls, and then a small fleet for all other gear types. Then we would divide those gear types into regions; a New England Region, a Mid-Atlantic Region, and a Chesapeake Bay/South Atlantic Region. There is an option here for a soft cap for that small-scale fleet, which would set a target quota for those gear types; but it does not subject them to a closure.

That soft cap does come with a 25,000 pound trip limit per day. Option E is the disposition allocation, where we divide the TAC between the bait and the reduction sectors, and there are two options here; either a 75/25 split or a 70/30 split. That bait portion can be further divided by jurisdiction, gear type, region, or through a fixed minimum approach.

Then finally, Option F is allocation based on TAC level. The level of the TAC would determine the allocation method. If the Board chose a TAC that is higher than 212,500 metric tons, the difference between that higher TAC and the 212,500 metric tons could be allocated in a manner that's more favorable to the bait sector.

There are two sub-options there. That green box can be allocated such that 50 percent goes to the reduction fishery and 50 percent to the state bait fisheries; or 30 percent can go to the reduction fishery and 70 percent to the state bait fisheries. This is our public comment. Obviously this table is quite large with all of the options; so I'm going to break it up a little bit.

But I'll just highlight that the two allocation options that got the greatest support were allocation based on TAC level, followed by fixed minimum. I'll start with that allocation based on TAC level, and discuss that as well as the disposition. The greatest support was for this allocation based on TAC level.

Those who supported Option F stated that this option looks to make all states whole, before allocating more quota to the bait sector, and that specifically the reduction fishery is willing to give a little once the pie is whole from the 2012 reduction. Those who supported this option generally stated that other allocation options represent a fish grab by the other states.

Then I'll talk about the bait versus reduction, because it's on the screen now. There was some support for this option. Some expressed

concern that one company has such a large share of quota; and that this is a way to increase quota for the bait sector without increasing the TAC. I'll switch to the other side of that table now. This is going to include the fixed minimum option, which got the second-most support. Many commented that the current allocation scheme is unfair, given one state has 85 percent of the quota, and they felt the fixed minimum creates fishing opportunities for all states.

Others commented that this reduces the complexity of menhaden management, given the Episodic Events Program and the bycatch provision may not be needed. Some noted a biological benefit of spreading quota out along the coast. There were comments clearly against a fixed-minimum approach; commenting that it moves the Commission away from an allocation based on historic catch, and rewards states which have not invested in the fishery.

Then I'll just move left to right on the screen here. Coastwide allocation: some individual's, mostly commercial fishermen, supported a coastwide quota. However, others expressed concern that it could create a race to fish and shut out certain states from the fishery. Next is the jurisdictional approach: there was some support for continued use of a jurisdictional approach, since it secures quota for each state, and provides flexibility for states to divide between gear types or create trip limits.

Finally, the regional fleet capacity option: there were a couple of individuals that did support a soft cap. However, others did not like this approach, since it groups states with different fishing capacities together, and may limit some states participation in the fishery. Next there are timeframes.

There are five timeframes here; 2009 to 2011 is status quo, 2012 to 2016 is the most recent timeframe, 1985 to 2016 is the longest timeframe, 1985 to 1995 is the most historic timeframe, and then Option E is a weighted

allocation. The intent here is to consider both historic landings and recent trends in the fishery.

In terms of public comment, there weren't as many comments given on the allocation timeframe as on the method. However, the greatest support was for that 1985 to 2016 timeframe. Those who supported this timeframe commented that a longer period is better; because it includes more data, and instead of focusing on recent years the Board should consider a longer and more historic perspective.

The next most supported option was 2012 to 2016. Those who supported this option generally felt that it reflects current fishing efforts in the states. There was some support for keeping the timeframe at 2009 to 2011. Those who supported these years commented that it does not include years under a TAC, and therefore is a fair reflection of all states landings prior to implementing that TAC.

Particularly at the Rhode Island hearing, there was support for the more historic timeframe; which is 1985 to 1995, and there was even support for a more historic timeframe than 1985, commenting that fish were more spread out along the coast. Then there was some support for a weighted allocation, and those who supported this option saw it as a compromise approach.

Next are quota transfers. We have three options here. We can continue quota transfers as they are now, so two states mutually agree. Under Option B we add in accountability measures, such that if the state exceeds its quota by more than 5 percent in two consecutive years, it cannot receive a quota transfer in the third year. Then Option C is quota reconciliation, so if the TAC is not exceeded coastwise then any state-specific overages are automatically forgiven. If the coastwide TAC is exceeded, then any unused

quota is automatically pooled and distributed to states or regions.

Of the options in the amendment, the greatest support was for leaving the quota transfer process as is. Those in favor of this option stated that if the states agree to transfer quota then that is fine. There was some support for Option B, and those who supported this option liked the idea of accountability measures, and liked the idea of dissuading states from perpetually exceeding their quota.

Finally, Option C quota reconciliation, those who supported this commented that completing quota transfers at the end of the year eliminates the race to secure unused quota from specific states. I will note that the greatest support was for no quota transfers. Many commented that this supports horse trading of quota between the states.

Some commented that quota transfers are intended to use every bit of unused quota in the fishery. Next is quota rollovers, there are four options here. Option A is no quota rollovers, Option B is up to 10 percent of the total quota could be rolled over if unused. Option C is a 5 percent quota rollover; and then Option D is 50 percent of your unused quota can be rolled over.

The greatest support was for no quota rollovers, which is Option A. Those who did not support quota rollovers commented that there is generally a reason why a state does not catch all of its quota; and this could foreshadow issues with stock abundance. Others commented that unused quota should not be rolled over, as this leaves fish in the water.

Others noted that quota rollovers distort the quotas initially assigned. Of those who supported quota rollovers, Option D received the greatest support. Those who supported Option D commented that quota rollovers make sense; because if you underharvest what was a safe and allowable catch that unused quota is

allowed to spawn before it is harvested the next year.

Others commented that whenever a state goes over its quota it has to pay it back; so it is only fair that if a state is under its quota it should be allowed to roll that unused quota over into the next year. Next is the incidental catch and small scale fisheries provision. There are six options here, three of which are on the screen now, and what ties these three options together is that the incidental catch is not included in the TAC.

Option A is a trip limit for non-directed gears, so things like pound nets and gillnets. Option B is a trip limit for non-directed gears and small scale gears. This includes the pound nets and the cast nets, and Option B is probably closest to what we have now. Under Option C, we build on that so we maintain that trip limit for the small-scale gears and the non-directed gears, but we set a cap at 2 percent of the TAC.

This is not a set aside, but a threshold by which we measure landings in the incidental catch fishery; and if that cap is exceeded by more than 10 percent in a single year, or by any amount two years in a row, the Board is triggered to take action. The next three options are tied together, in that incidental catch is included in the TAC; and we do this through set asides.

Option D is a 2 percent set aside for incidental catch after the quota is met. Option E is a 1 percent set aside for small-scale gears, and what is unique about this option is that it's for their harvest year round. Regardless of what allocation option the Board chooses, the Board can secure quota for those small-scale gears, and then Option F, all catches included in a TAC. Once the directed quota is met the fishery closes.

The greatest support was for Option F, so no incidental catch fishery. Those in favor of this option supported the statement that all catch needs to be counted towards the TAC. Some

stated that the set aside was designed to accommodate certain fishing methods; but this should not be needed if reallocation is successful. Others expressed concern that it's created a loophole in the fishery.

Those who supported continuation of a trip limit, so either Options A or B, were generally commercial fishermen; and they commented that they are dependent on the current bycatch provision. They frequently commented that unless there is enough quota for a year round fishery, an incidental catch trip limit is needed to sustain the fishery and provide bait for the lobster, crab and recreational fisheries.

Some also noted that with stationary gears fishermen have no controls over what swims into the net; and without a trip limit there would be a lot of dead discards. Those who favor the set aside, so Options D or E, generally supported the idea of including all catch in a TAC, but also wanted to provide a way to reduce discards in the fishery.

They expressed concern that without some sort of incidental catch provision, menhaden would be discarded and the resource wasted. Some fishermen did express concern with a set aside; mainly that since it is a coastwide set aside catch in one state could cause an overage, which would then have to be paid back on a coastwide level, and there was no support for the catch cap and trigger.

Next is the Episodic Events Program. We have three options here. We can keep the set aside at 1 percent of the TAC. Option B is to increase the set aside to 3 percent, or Option C is 0 percent; so that would remove the Episodic Events Program. The greatest public comment was for Option C, so that's ending the Episodic Events Program.

Many commented that if reallocation is successful this set aside will no longer be needed. Others commented that while the set aside was appropriate during stock rebuilding,

menhaden are consistently in New England, and so the set aside is no longer appropriate. Some were against the Episodic Event Set Aside, commenting that it artificially increases New England state quotas.

Those who supported the continuation of the set aside, either Options A, or B, stated that his is needed in the New England state; particularly if a fixed minimum approach is not chosen for allocation. Some commented that it is a worthwhile program which presents fish kills. Finally, our last issue is the Chesapeake Bay reduction fishery cap.

There are three options here. We can maintain the cap at the 87,216 metric tons, reduce the cap to 51,000 metric tons, or Option C is to remove the cap. There are sub-options under A and B which allow for a percentage of unused cap to be rolled over to the next year. For public comment, the greatest support was for reducing the cap to the 51,000 metric tons, and having no rollovers. Those who supported reducing the cap commented that the Chesapeake Bay is an important nursery area for many species, and this is an opportunity to provide greater protection to the Bay. Some commented that if the cap is not being met there are not enough fish in the Bay; and others commented that if the reduction fishery actually caught the cap it would be devastating to the Bay ecosystem.

Those who supported maintaining the cap commented that the cap was started as a way to restrict and ultimately eliminate the reduction fishery. They commented that science shows that there is no localized depletion in the Bay, and there is no scientific basis for the cap. A similar rationale was stated for removing the cap. With that I will take any questions on the public comment.

CHAIRMAN BALLOU: Questions for Megan, recognizing that we will be returning to each of the major management issues for thorough vetting starting with reference points, after the

next two presentations. That said, John McMurray.

MR. JOHN G. McMURRAY: Megan, could you put that I think it was the third or fourth slide; it was a quote about the 40-75 percent. I think, well there it is. The Management Board may consider management measures to reach target. But there is no mandate to manage for 75 percent. If I'm reading this correctly, as long as the Board is in between 40 and 75 percent we're good. Well, maybe you could clarify that before I go on.

MS. WARE: Yes, the management trigger is at the threshold; that's what this is saying. The Board is required to take action when you hit that threshold.

MR. McMURRAY: Mr. Chairman, so there is some management flexibility when you're within those two parameters, there is no set thing that we have to manage for.

MS. WARE: The action is required at the threshold.

CHAIRMAN BALLOU: I think that's a fair characterization, the way you put it, John; other questions for Megan, yes, Craig Pugh.

MR. CRAIG D. PUGH: Megan, I noticed that there was repetition of names between the state hearings; is that commonplace? Was that accounted for?

MS. WARE: It is commonplace for menhaden, I would say. How I did those is if they attended the hearing then they were accounted for at that hearing. If an individual did attend multiple different hearings at different locations and they spoke multiple times, they got a vote. Their comment was written down at each hearing.

LAW ENFORCEMENT COMMITTEE REPORT

CHAIRMAN BALLOU: Other questions. Seeing no hands; our next issue is the Law Enforcement Committee report. Megan, is that you? Okay, we'll go back to Megan for that.

MS. WARE: I'll be very brief here. Whoever was at the Policy Board meeting for annual meeting did hear this. But the LEC met to discuss Draft Amendment 3 at annual meeting. There was really no major enforcement concerns brought up by the LEC. But the discussion did focus on the incidental catch provision, or that bycatch provision. The comments were generally that there is no enforcement challenge with a trip limit. However, a simple closure of a directed fishery when quotas are met is less of a drain on enforcement resources. That's the comment that they gave.

CHAIRMAN BALLOU: Okay, any questions on the Law Enforcement Committee report; yes, Pat Keliher?

MR. PATRICK C. KELIHER: Was there any discussion about the difference between the incidental and small scale fisheries within the Law Enforcement Committee; as far as enforceability? There have been a lot of comments in Maine about the small scale fishery turning into a directed fishery, and the ability to even prosecute; just by saying we're targeting something else.

MS. WARE: There were no comments given by the LEC on that specific issue.

ADVISORY PANEL REPORT

CHAIRMAN BALLOU: Other questions? Seeing none; we'll go to our last presentation; that will be Jeff Kaelin presenting the Advisory Panel report. Jeff is going to run through the whole report briefly, and I've asked him and he's agreed to return tomorrow morning to sort of refresh on the key issues that we'll be addressing tomorrow. He'll run through the

whole report now, and then he'll be back first thing in the morning to refresh. Jeff.

MR. JEFF KAELIN: Good afternoon members of the Board, members of the public. I'm Jeff Kaelin with Lund's Fisheries, and I'm privileged to sit as the AP Chair. We met on October 26. I'm not going to read the seven pages of summary that Megan prepared. It's on the table. But we will go through the slides that quickly summarize the discussion.

I wanted to thank the Chairman and the leadership of the Commission for allowing us to have a face-to-face meeting last month. It was very well attended. Several advisors are here today. Everyone has had a chance to review these slides and the report. We attempt to run these meetings on a consensus basis.

But as you can imagine, that is very difficult to arrive at in most cases, so we just simply record the comments to make sure that all the AP members have their perspective recorded. Motions are appropriate by the process outlined by Robert's Rules of Order, so we had some motions; none of which passed.

On reference points, I'll read through these to get them on the record. There were six AP members that supported Option B; stating that the stock is in good condition, so no need to alter course. Today we're fishing below the F target, and well below historic levels. The Board is already precautionary in managing menhaden. Concerns about applying generalized forage fish rules to menhaden due to lack of stock recruitment relationship and fishery selectivity, commented that other reference point options don't represent the best available science.

There was confidence in the BERP process. Ecological reference points would be appropriate when there is more confidence in the science specific to the menhaden resource. Option B supports industry and provides stability for businesses. Concerns that the

goalpost by which menhaden is managed keep changing. The final comment that increased menhaden abundance in recent years is due to favorable environmental conditions, and not the implementation of the 2013 TAC. Four members supported Option E. Generalized rules for forage fish are more appropriate for menhaden, given their ecosystem role. There is a need to leave fish in the water for ecological purposes. Option E allows the Board to fulfill the needs of the bait states, while keeping the stock moving in the right direction.

Important to implement ecological reference points now, the concern with the BERP completing the menhaden-specific ERPs by 2019. Option E doesn't prescribe how quickly the Board needs to get to the F target, so the Board can phase in management to the 75 percent unfished biomass reference point.

Comment that the 2013 TAC after that was implemented stock abundance increased, so there is a need to err on the side of caution and continue to control catch. On allocations, two AP members supported a fixed-minimum approach. There was support for a 2 percent fixed minimum, giving states that don't want a quota can give it back.

A recommendation that unused quota on November 1st be given to other states. Current allocation method prevents some states from having a fishery; including those that have fishery infrastructure. Three AP members didn't support a fixed minimum approach, moving the Commission away from a history-based allocation was argued. Method does not recognize states which have made an investment in the fishery, and that there are clear losers with the fixed-minimum approach, including New Jersey and Virginia.

Two AP members supported the allocation based on the TAC level. The argument was that if that makes states whole again prior to implementation of the TAC in 2013, and then a greater percentage can be allocated to the bait

fishery. The recommendation that the Board use the 2012 to 2016 timeframe for quota above the 212,500 metric ton threshold in Option B.

On the allocation approach, one AP member supported the 70/30 split between reduction and bait. This is Option E, the disposition quota, the freestanding option. All states have joined the Commission's compact and everyone should get a share of the resource it was argued, and that this option gives the bait fisheries more without increasing the TAC.

Three AP members didn't support the 70/30 split between reduction and bait as the freestanding Option E. Allocation option is arbitrary and not based on historic landings. Under that option it was argued. You can't transfer quota between the bait and reduction sectors without focusing on history, catch history.

Two AP members supported the 2009 to 2011 timeframe. This does not include the years when the harvest was capped under the TAC was the suggestion there. On general comments there was one AP member that recommended that trawls not be included in the small-scale fleet list of fisheries of gear types.

On transfers and rollovers four AP members supported quota reconciliation with accountability rules, Options B and C as outlined by Megan previously. This prevents a state from continually exceeding its quota. Six AP members supported quota rollovers; two supported the 50 percent rollover, Option D. Three supported 5 or 10 percent quota rollovers, but not higher, which are B and C, and stated there may be extenuating circumstances, which makes a small quota rollover reasonable. A 10 percent rollover is used in federal fisheries management, it was pointed out. One supported a rollover of 10 percent or higher. On the incidental catch there were four AP members supporting Option F, no incidental

catch fishery, concern there that the catch is not counted towards the TAC. The 6,000 pound trip limit bridged the gap between Amendments 2 and 3, but should not be used after implementation of Amendment 3.

Bycatch competes with the directed bait fishery, it was argued. One AP member did support an incidental catch limit, and pointed out that the 6,000 pound trip limit provides critical fishing time for the bait fishery. In general comments the current bycatch allowance was noted as a loophole; particularly for purse seines.

It reiterated that trawls should not be included as a non-directed gear type, and a recommendation to clarify definitions of gear types, particularly if purse seines are prohibited to harvest under the trip limit. Finally episodic events, three AP members supported the continuation of this set aside. If there is no reallocation of the quota New England needs this program.

The program should remain no matter what allocation New England gets; but should be increased to 3 percent if New England states don't get more quota. Some New England states have the capacity to harvest large amounts of menhaden; so the set aside is needed today. The set aside is further needed to prevent fish kills.

Three AP members didn't support a set aside. New England states are no longer having episodic events; abundances have been higher for several years. The set aside shouldn't be needed with allocation and a higher TAC. Episodic Event Program has just created another fishery, and this is not equitable that other states have their quota but no access to Episodic Events Program.

Quickly the AP report on Chesapeake Bay Cap, two AP members supported the status quo; saying that studies have shown the possibility for localized depletion in the Bay is small. Three

AP members supported reducing the cap to 51,000 metric tons with no rollovers; Option B and Sub-option B.

Studies on localized depletion were inconclusive and couldn't determine it was happening, concerned about increased reduction harvest from the Bay if cap is not reduced. Chesapeake Bay is an important spawning ground for many species and warrants greater protection. Concerns about the change in ownership of Omega Protein with Cook Aquaculture purchasing that company recently; an international company which may not have a vested interest in the Bay, it was stated.

One AP member supported the removal of the cap, Option C. Since there is a coastwide TAC there should be no Bay cap, and then Virginia purse seiners were already restricted from going in the majority of the Bays; in the Maryland portion of the Bay and the rivers. On the TAC, six AP members supported increasing the TAC.

This is where we had some motions, none of which were successful; very interesting discussion, all with good humor I might add, Mr. Chairman. Two supported the 280,000 metric ton TAC; comment there that one state lost access to 60 percent of the menhaden fishery due to 2013 TAC implementation. One member supported the 250,000 metric ton TAC, helping the industry, not going to hurt the stock. One supported 240,000 metric ton TAC, 20 percent increase. New England Council uses a risk policy of a 50 percent chance of exceeding the OFL, where the Mid-Atlantic has a risk policy of a P-star 40 percent. TC projections show the 314,500 metric ton TAC has a 50 percent risk of exceeding the F target only. One supported a 220,000 metric ton TAC to offset bad years in a fishery you need good years, and to the current cap TACs harvest levels in mediocre years.

Two AP members supported maintaining the TAC at 200,000 metric tons; stating that regardless of the reference points chosen the

TAC shouldn't increase under Options A and B, and don't need to decrease under Option E. The increase in the TAC could negate the progress that has been made in stock abundance since 2012, these members argued.

The AP did make a series of motions regarding these options, but as I stated earlier none passed. In general comments, and there were consensus on these points. It was recommended the AP could be better utilized by the Menhaden Board to provide information on annual changes and trends in the fishery; including AP comments in the Commission's FMP review process was recommended, in a process similar to the Mid-Atlantic Council's Fishery Performance Report.

Finally, the AP expressed concern the fishermen harvesting under the 6,000 pound trip limit today are selling menhaden from their bunt, this is a purse seine gear terminology, and not reporting landings. Need for greater enforcement at the state level was recommended. Finally, the AP recommends that in the future the Technical Committee complete multiyear projections, and that the Board consider setting multiyear TACs for two to three years. With that Mr. Chairman, I end my report, thank you.

CHAIRMAN BALLOU: Questions for Jeff on the AP report. Dennis Abbott.

MR. ABBOTT: Jeff, how many people participated in your discussion? I note that on a lot of issues there were differing amounts of opinions. Were some people ambivalent to certain things? Would you explain that a little bit to me?

MR. KAELIN: Yes, we had 12 members of the AP. For those of you who know me you may be surprised I didn't say much, as the Chairman. That changed the count a little bit. I mean I really think it's important for the members to speak. We had a quorum. I think there are about 18 members of the AP right now.

Again, I wanted to thank the Board for recently repopulating the AP. If it doesn't add up, you know some people were quiet I guess on certain matters, Dennis. But what we wanted to do is just kind of record the breadth of opinion around the table; so the numbers might not add up, and it may just be that some people were more vocal than other people.

CHAIRMAN BALLOU: Russ Allen.

MR. RUSS ALLEN: Thank you for that report, Jeff. Just a quick question and it might be better for tomorrow's discussion. But I just wanted to hear the rationale behind the one AP member not wanting to include trawls in the small-scale fisheries; if you could give me a little bit more information on that.

MR. KAELIN: Sure. I think that the feeling was that the trawl fishery can produce fish at volumes at least as large as the purse seine fishery does. Since the Board had been clear that purse seines shouldn't take advantage of the 6,000 pound incidental set aside up to this point, it was noted that it may be an oversight by the Board to have trawls listed as a small-scale gear, because of their capacity to take large amounts of fish.

CHAIRMAN BALLOU: Additional questions for Jeff, seeing no hands, again Jeff will be back tomorrow morning to kind of refresh on some of the issues that we'll be taking up tomorrow. Questions along the lines of Russ's would be particularly appropriate at that time. But again, thank you, Jeff for your leadership.

The AP has really done an awesome job right through this entire process; and through you to the members, I know the Board very much appreciates the very thoughtful input that has been provided.

AMENDMENT 3 REFERENCE POINTS

CHAIRMAN BALLOU: Okay, now let's turn to the first issue under Amendment 3, which is

reference points; and open the floor to questions from the Board on the reference point options set forth in the draft amendment.

This will be questions only for now. The time for motions will soon follow. I think Megan may be putting up sort of a summary slide just to orient ourselves. But the floor is open to any questions that any Board members may have on any of the issues associated with the reference point options. Does anyone have any questions? Rob O'Reilly.

MR. O'REILLY: I wonder if we could get a brief summary of the assumptions that the Technical Committee listed. There was a recent memorandum that was provided to the ASMFC; and in that there were a number of assumptions related to the different reference points. I wonder if that is available.

CHAIRMAN BALLOU: I'm going to give Jason McNamee the microphone, Chair of our Technical Committee.

MR. JASON McNAMEE: Mr. O'Reilly, could you repeat your question one more time, just to make sure I'm giving you the right info?

MR. O'REILLY: Yes, there were assumptions listed by the TC related to the generalized approaches to the biological reference points. That was just, I think at the end of the week last week; so that would be the first part. Do you have that in front of you?

MR. McNAMEE: I think so.

MR. O'REILLY: It was things such as lack of a stock recruitment situation. There were about four or five different assumptions listed and if you have that then I'll follow up to save time. I would also appreciate hearing how A and B relate; since they're menhaden specific, what type of assumptions there are there. I realize with both there will be recruitment assumptions, but I hope that gives you enough information to respond.

MR. McNAMEE: Yes, I think so. What I think you are interested in is we refer to them as caveats for the projections. I've got that in front of me. If I had my presentation that I'm going to give tomorrow open I could get you a quicker version. But I'll do my best here. We've got a set of general caveats that apply to both; the ecological reference point projections as well as the standard projections that we run, and then a subset that is just about the ecological reference points. One of the first caveats that we noted was that the fisheries are assumed to continue from this point forward.

In the projections they're assumed to continue at their current proportions of total effort. That's important with regard to how selectivity works with the projections. Recruitment, so we're not using a stock recruitment relationship in any of the projections. It's sort of a re-sampling of the existing range of recruitment that we've seen through the time series.

But what's important about that is that we're using a median; and so if conditions are that recruitment has a series of years with low recruitment or high recruitment that is going to impact the performance of those projections. Another big one is that we're using the Baranov Catch Equation, and so that is assuming that catch is occurring for the entire year.

Changes to things like seasons and other items like that again will impact the performance of the projections; because of that underlying assumption. Just a general statement that projections, whether it be menhaden or any other fish in the sea, are highly uncertain. One other less clear one that we often include is that we are basing a lot of the projections on these functional forms; so a single selectivity function, a single recruitment function which I've just described.

What we don't include is structural uncertainty in the model itself. We include a lot of uncertainties and we sample within the range of those uncertainties; but when it comes to the

model that we're using, we're not doing a full blow simulation analysis to identify what that uncertainty might be. Then we had a set of caveats on the interim reference point calculations as well. You're interested in those as well?

CHAIRMAN BALLOU: Rob.

MR. O'REILLY: I guess in particular what I had read was since the BAM model uses a dome-shaped approach, and the generalized Pickett et al do not that with a biomass-based approach, the selectivity did not go down with age with those particular approaches, and could. In fact, there was a statement and it's been a few days since I've read it, but a statement about how that would denigrate the spawning stock, because it was on all ages. Can you comment on that?

MR. McNAMEE: Yes. What you stated is correct. That is one of the major differences between the models used to develop the generalized interim ecological reference points that you all are looking at; versus the single-species menhaden reference points that we've been working with. That selectivity is one of the big issues, or differences not issues.

One of the big differences between the two approaches. You characterized it correctly that in the ecopath with ecosim approaches, the selectivity sometimes they do split it out by groups of the ages. But in either case the selectivity is constant for those groups; whether they're a single group or multiple groups.

Whereas, in the BAM model we do use dome shaped selectivities in a couple of spots, not in all of them, but in a couple of the fleets. That statement that you made is correct. I'm a little puzzled about the linkage you made. The other comment you made is correct that with some of the interim reference points you could fish the population down. It's because those are developed without that context of the age structure; and that was through work that we

did with the Pikitch et al group, to try and create this translation between the two. That is true that selectivity is a part of that but it's not the complete cause of that.

CHAIRMAN BALLOU: Next I have Emerson Hasbrouck.

MR. EMERSON C. HASBROUCK: I have a three-part question, relative to B-0. I'm wondering the first part of the question is what is the value of B-0? Part two is how is it estimated? Then the third question or the third part of that question is what is the 95 percent confidence intervals around that estimate?

CHAIRMAN BALLOU: Jason.

MR. McNAMEE: Excellent questions. I think I will start with the middle question; because that's the one that I can answer most directly. The concept of B-0, I think you were asking, how it is estimated. The way that we generally do that and the way that we did it here for menhaden is you run a projection.

What you do with that projection is you remove fishing, so you set F equal to zero. Then you run that population forward. What's happening at that point is all of the population dynamics are being dictated by recruitment; so new fish coming in, and it's based on all of those assumptions I just talked about a moment ago and natural mortality.

That's the only removal that's occurring, and so what happens over time is that population will reach an equilibrium level. It's that battle between the removals of natural mortality and the recruitment coming in, and I've got a plot I'll show you tomorrow maybe; depending on what happens today, where you can kind of see what it looks like.

In the projections it kind of goes up and wobbles around; and then it eventually flattens out through time, and that's when that equilibrium level is reached. What that value is

you'll have to give me some time. I don't have that off the top of my head. I'll have to hunt that down. Then I don't remember your final question. I have a capacity of two questions, and then I need it repeated.

MR. HASBROUCK: Actually the third part of the question may be more important than the first part. But without the first part I don't know if you can answer the third part and that is; what are the 95 percent confidence intervals around that estimate?

MR. McNAMEE: Yes so that will also, I'll need to look at that. I imagine there are confidence bounds, although the interesting thing with these projections is the uncertainties. The further out you run it they get stable and they shrink. I would have to look that up as well. I don't know that off the top of my head either.

CHAIRMAN BALLOU: Additional questions. Was it Alison or David or both? Okay, David, I saw your hand first. David Blazer.

MR. DAVID BLAZER: I have two questions, and Jason I'll do one at a time, if that will help; because it's kind of a long question. You know there is a lot of confusion surrounding the ecological reference point options; because of the necessity to translate everything into the same currency, based on the total biomass.

This approach does not explicitly account for changes in population reproductive potential; which seems to have led to particular concern about the threshold of the 40 percent unfished biomass. In the projection memo that we got last week, on Page 3 it makes a comment that the workgroup has concerns about the use of reference points that preserve a certain proportion of a total biomass, instead of a spawning stock biomass or fecundity, because they may result in a level of spawning potential well below the fecundity limit.

It goes on to say the level of fishing pressure that reduces the total biomass to the B of 40

percent is higher than anything seen in the history of the fishery; and results in almost total loss of spawning adults. That statement indicates that Option E is kind of risky for the stock; which is a little worrisome, given the discussion that we're having today. I'm trying to get an explanation. If you could explain to me some of the issues and the risks of applying this ERP option as it goes forward.

MR. McNAMEE: That was an excellent retelling of the memo. I think you captured everything really well. I think with regard to Option E. The intent of the Technical Committee, the risk is highest with regard to that threshold level, so that is what those comments about nothing seen before in the fishery and that part of it was with relation to that threshold level.

I think you've captured that well and you're interpreting our intent well. I'm trying to think how deep in the weeds you want to get on this. I think when we received the task from the Board it seemed pretty straightforward to us. I'm sure to you all as well. But then when we sat down and started to think through, we understand this population through our age-structured assessment.

That was where we first ran into this issue of, well we need to figure out a way to translate between how the generalized ERPs are developed and the information that we have available. This was in consultation with the Pikitch et al folks, not the whole group, but a subset of them, on a call.

What we came up with was total biomass, one of the main reasons for that is it gave us a way to weight the F levels that are coming out of the model. When we give you in the single-species context the F that is occurring, sort of our benchmark F that's on a specific subset of the population that the most fishing is occurring on, and so this is different than that.

This is now taking that F and spreading it out across the population; and you need to be

careful when you do that and you need to weight it by the abundances in those various age classes. That's why we went with total biomass. I guess the final point is if you were to ramp up fishing mortality to the level that would allow you to achieve that threshold level, the vast majority of the biomass exists in zeros, ones and then as you enter in the twos the population really starts to decay for fishing and natural mortality and all of those reasons.

That is why that foible of that particular part of the ERPs exists, and that is you can really whack those older ages and drive them down to near zero; but you still have enough biomass in the zeros and ones and twos to meet that metric. But were you to then compare it to your fecundity metrics that you had been using that is where you would see that big difference.

CHAIRMAN BALLOU: Dave, did you have another question?

MR. BLAZER: I'll hold off on my second question for right now. I'm good, thank you.

CHAIRMAN BALLOU: Ritchie White.

MR. G. RITCHIE WHITE: Jason, if one was to select Option E and one was to adopt a quota that was status quo or slightly above status quo; and the plan allows us to fish over the target, so we could do that. Would it be precedent setting to fish over the target for other species?

My thought process is that it would not be, in that this is not single-species management if we select E, where I believe all the rest of our other species we manage are single-species. That is my question. Could you comment on whether you think it would or would not be precedent setting for some of the other species that we manage?

MR. McNAMEE: Me and Katie will tag team this one. I guess as far as precedent goes, I would suggest that in fact most of the federal fisheries fish to a limit and not a target; and so I think

that would be standard for how a lot of the federal fisheries are managed. I think depending on the management plan that you have, it dictates whether you manage to the target explicitly or I guess the intent of having a target is that's your eventual goal.

How long it takes you to get there and that sort of thing I think are usually negotiated within the management plan. But I guess that would be, I don't think it is precedent setting with other fisheries. Other fisheries don't have targets at all and they fish to that limit and try to stay above or below that limit; depending on which metric. But I think Katie wanted to add.

DR. KATIE DREW: Yes just to add to what Jay was saying is that in plenty of our other fisheries we actually do fish above the target; and as long as we're not above the threshold, we kind of let it go. I think striped bass is probably on everybody's mind recently, and that is. But that's because we specifically have a trigger within the plan to say if you're above the F target.

Even if you're below the threshold for a certain number of years and your biomass is between the target and the threshold, then you do have to come back down to the target. But in most of our other plans it's the threshold that triggers management, so we may or may not be above the target for those other fisheries. But you don't do anything about it until you go over the threshold; so in that case menhaden would be in the same boat as all of our other fisheries.

CHAIRMAN BALLOU: Next I have Allison Colden.

DR. ALLISON COLDEN: I don't want to belabor the point on the selectivity between the ERPs and the single-species reference points, but I did want to get clarification Jay, on a comment that you made in responding to Mr. O'Reilly's question. I think you said that in certain sectors of the fishery and in certain places that you don't apply domed-shape selectivity; and so can

you clarify in what situations how the selectivity is addressed?

MR. McNAMEE: Yes the current single-species assessment has a number of fleets. If you remember this is the first time that we had split it into north and south; then there is bait and reduction. I'm pretty sure we're using dome-shaped selectivities in the southern fleets; and the idea behind that is at certain times of the year in particular, the older, larger fish are migrating further north.

It makes biological sense to use a dome-shaped selectivity for those fisheries that are occurring to the south. In the north we're using a logistic, which would be flat-top selectivity, at least for the survey indices up there, and I think for the fishery as well. I would have to dig in to give you exactly which ones we're applying domes and which ones we're not. But there are differences within the model.

CHAIRMAN BALLOU: Follow up?

DR. COLDEN: Yes, quick follow up, Mr. Chair. Do you know at what age in the logistic selectivities that you're moving from low to high selectivity by the fishery?

MR. McNAMEE: I was contemplating just winging it, but I think that is something I could look up relatively quickly and get back to you on.

DR. DREW: Just to add to that. For the single species model for the assessment, we are using the multiple fleets. But then to develop the reference points and to do the projections, we're using sort of a weighted average of a single selectivity to combine all of those different fleets into a single, sort of averaged fleet, based on how much effort they've applied in the past and what their selectivity curves look like.

Some fleets go up and flatten out; some are completely dome shaped, and the end result

sort of average for the reference points, ends up being that dome shaped on the basis of how much effort the fisheries have applied in the past. The different fisheries are sort of composited together into a single selectivity curve for the reference points.

DR. COLDEN: Thank you.

CHAIRMAN BALLOU: Pat Keliher. Roy Miller.

MR. ROY W. MILLER: Thinking about the questions that have previously been asked, and the answers offered by Jason and Katie. With regard to Option A, obviously if I could summarize what I've heard thus far, we're not bound to manage to the F target. But there is a lot of room between the F target and the threshold. What guidance do we have when it comes to picking a TAC that will be somewhere between the target and the threshold?

DR. DREW: There is essentially nothing written down in terms of guidance then, and it would be the Board's prerogative to decide. We can give you projections and say, this is what the stock is going to look like in the near term, over a couple years, under this level of fishing pressure. We can show you some different options between the target and the threshold, which as you say for Option E is a really wide range. Then it would be up to the Board to decide how they felt about the risk, how they felt about sort of the rewards of that.

The way essentially that we've done for our single-species process up until now to discuss, here is the risk of exceeding the target, or here is the risk of exceeding the threshold, and here is the associated TAC and how do you feel about that? How does that impact the fishery? How does that leave fish in the water for ecosystem management? It would be the Board's decision to balance those different competing objectives within the limits that the projections indicate.

CHAIRMAN BALLOU: Roy.

MR. MILLER: Katie, if I could. Would you have the ability to be fairly timely in providing such analysis; were specific TACs to be suggested between now and tomorrow?

DR. DREW: Between now and tomorrow? No. That's not happening. If we knew about what you guys wanted ahead of time, and we had plenty of lead up time. It's not excessively time consuming, but we would like some kind of limits on the range of options you would like.

CHAIRMAN BALLOU: Nichola Meserve.

MS. NICHOLA MESERVE: Jay, you answered a question about the Option E threshold and putting that F rate in the context of the histories of F, and the effect on spawning adults. I'm trying to put the single-species F threshold into a similar context; that's based on a maximum rate from 1960 to 2012. Is it also higher than most of the history of fishing mortality rates, and what is the effect there on spawning adults?

MR. McNAMEE: I may be missing your question, and so how I think I'm understanding it, let me say it back to you and then you can correct me. I think you're still thinking about the Option E and where that threshold is, and trying to compare where that is set relative to what that would look like from the single-species model where that threshold would get us with regard to that. Is that kind of what you're asking?

MS. MESERVE: Yes. Essentially I'm trying to see if the difference in the point estimate between those two thresholds is very different in what it produces in the stock; and how you would compare them. There was a statement about the Option E threshold is higher than almost anything seen in history. Can the same be said also for the single-species F threshold?

DR. DREW: No. The single-species F threshold, the earliest years of the time series are not included in the years that we've looked over.

As a reminder, the way the TC developed those reference points is we took a time period when we thought the fishery was relatively stable, in terms of the yields that it was able to produce, and the population was also relatively stable, and also recruitment showed variability but did not show extreme lows.

We thought over that time period that was a reasonable set of fishing pressure. The target is the median of those years of fishing pressure, and the threshold was the maximum observed during that time period. Prior to that time period, you did see Fs in the fishery that was higher than that maximum.

There was a point within that time period the maximum is the threshold that we proposed, so during that sort of stable period we met that once in the prior to that period. There definitely was fishing pressure higher than that; whereas for the Option E threshold, it really is beyond that F value that comes out as beyond anything we've ever seen in the fishery. In terms of then translating that into fecundity reference points, which is what – so we came up with the F rate based on sort of the empirical or historical observation of the fishery, and translated that into how much fecundity would we expect sort of under long term equilibrium conditions.

I think that is 36 percent for the threshold, so you would expect to see about 36 percent of the egg production of a virgin stock. Whereas, if you translated that into the Option E, it's almost complete loss of the spawning stock or the fecundity, under that sort of long term equilibrium conditions or assumptions.

MS. MESERVE: A quick follow up. I think it's the 21 percent MST for the threshold. How does that compare to benchmarks that are used for other species? What percent are often targets and threshold levels?

DR. DREW: The fecundity estimates or the fecundity reference points are very similar to

the spawning potential ratios that you may be familiar, or SPR in other fisheries, where some of sciaenids which are quick to reproduce, quick to mature, very fecund. Those have targets and thresholds of about 20 percent to 30 percent SPR. Other species have reference points in the 30 percent to 40 percent range, in terms of targets and thresholds.

For sturgeon, we recently tried to look at one for about 50 percent. But again, being a slow to mature, long-lived species that has different, but you have a different risk tolerance for some of that life history. The 20 to 30 percent that we're seeing that we're estimating comes out of those reference points is comparable to some of our other reference points that we use for quick to mature, very reproductively capable species.

CHAIRMAN BALLOU: Robert Boyles.

MR. ROBERT H. BOYLES, JR.: I'm confused. I had my son in the woods last night hunting, and he had very specific instructions on what he was to do. The quarry came within sight. He aimed at the target. He shot. He missed; and he asked me, Dad what happens if you miss? It was kind of a profound question at the time.

We wandered around the woods last night for two and a half, three hours looking, following trails, and we made a mess. I have a son back home who is a little gun shy now, and we've got quarry wandering around the woods perhaps, wounded. Do they go on another property and make a mess for someone else?

Did they stay in the woods where we were hunting to provide biomass, feed for the system? I'm just concerned. You know we call the target a target. I think it's important that we're very, very clear about our intentions on how we manage the fishery. These are good questions and good technical questions.

Mr. Chairman, I would submit that some of these elements are more policy oriented, and I

appreciate the TC and their efforts to answer these questions. But I think I'm becoming more and more confused in terms of target. I told my son, aim for the target, aim for the target. That's what your goal is that's your objective, and if you miss there are pretty serious implications.

CHAIRMAN BALLOU: Additional questions, going next to Adam Nowalsky.

MR. ADAM NOWALSKY: Keeping with the same theme of the questions or concerns about Option E. I think we've made it very clear on the record here the earlier slide that the Board would have the flexibility under Option E to select a TAC; perhaps all the way up to the threshold, which would represent a 250 percent plus increase from where we are now.

As I look through the public comment letters, many of those comment letters that advocated for Option E, also advocated for other options in the document, i.e. no rollover, lowering of the Chesapeake Bay cap, removal of full accounting for incidental catch. That would be characterized as more conservative oriented.

I'm wondering what the sense was from the public hearings. As I look at these suggestions that we use E, which is potentially the least conservative option in this document. What is the thought that the public really expected us to do with Option E? What is the sense you got from the public hearings from input to the Commission from any other commissioners around this table today that have spoken with the members of their public, about what the public expects us to do if we select Option E?

MS. WARE: I can, I'll say briefly talk about those who supported Option E. There was support, I'll say up and down the coast for Option E. Those who tend to support Option E did see it as a more conservative approach to the management of menhaden.

They generally liked that it was an ecosystem approach, and that it was important for them to move to that now, as opposed to waiting for the BERP Workgroup to complete their menhaden-specific ERPs. There were comments in conjunction with the reference points about keeping the TAC at 200,000 metric tons or reducing it. Those were frequently comments given in conjunction with Option E.

CHAIRMAN BALLOU: I have Pat Keliher next.

MR. KELIHER: I appreciated Robert Boyles' hunting analogy. I finally understood one; and it reminded me that it's hunting season. I passed when I was going to ask my last question, and then Roy promptly basically asked the question I was going to bring forward. My concern with Option E is the fact that we seem to be leaning in the direction of knowing that we're going to be going over target; as it's associated to Option E.

I think that is problematic. While federal, Jay your comment on federal fisheries do it all the time. This isn't a federal fishery. I think it is precedent setting for the Commission to move in that direction; and I have a lot of concerns with taking that type of direction. I have many other comments associated with Option E, and I'll reserve those for later discussions.

CHAIRMAN BALLOU: Dr. Duval.

DR. MICHELLE DUVAL: Hopefully just a very quick question. If I recall correctly, as of the update to the benchmark assessment that we just received in August, even though I guess the target is 36 percent MSP Katie, that we are actually at 48 percent MSP. Is that correct as of the update to the benchmark?

DR. DREW: I don't have the number in front of me, but I believe we are above the threshold for the biomass. I believe we are above the target as well; but I don't have the numbers in front of me, I'm sorry.

DR. DUVAL: Just a follow up, Mr. Chairman. I think in terms of the associated fishing mortality rate, my recollection was that we were fishing at a rate that would allow for 48 percent of the maximum spawning potential. Not necessarily that we were actually above the fecundity target.

DR. DREW: Yes, I believe that is also true that the long term equilibrium fecundity associated with that would be about 48 percent.

CHAIRMAN BALLOU: Additional questions. John McMurray.

MR. McMURRAY: I just want to clarify what I think the public expects with E. I think that the intent, at least what the public perceives is the intent is that we would strive to manage towards 75 percent. But there is flexibility there. It doesn't have to be done in one year. It doesn't have to be catastrophic to industry. But it is a goal, and it's where the public expects us to go with this.

CHAIRMAN BALLOU: Dave Bush.

MR. DAVID E. BUSH, JR.: I guess a question, two-part question, very easy I would hope. In general for I guess the panel, as you would call it up front. How long have we been managing with the current single-species reference points that we're currently using, and what has been the general characterization of the overall biomass since we've been using them? Very general would be fine.

DR. DREW: We've been using the current single-species reference points, essentially since the last benchmark assessment. We've set the quota a few times based on that; and in general the biomass has trended up since the lows that we saw in the late '90s to the early 2000s, and it's maintained close to our SSB or fecundity target.

CHAIRMAN BALLOU: Follow out, Dave?

MR. BUSH: Yes, just very briefly. If we continued on this, I know this is hypothetical and you all have many crystal balls at your disposal. Continuing on this current pattern, using the biological reference points we have until we have something species specific, do you all see great concern in continuing with where we're headed at the moment?

DR. DREW: I think the BERP has always advocated for waiting until the reference points that are ecosystem reference points specific for menhaden can be developed. We would not advocate that if we thought that current management was detrimental to the single-species health of the stock. I think we can do what we can do with menhaden-specific reference points. It will be great and a great movement forward for the stock, but I don't think we would have advocated for that if we had serious concerns about the single-species management.

CHAIRMAN BALLOU: Are there any other questions, Emerson that would be your second, which I'm going to allow you. But first I want to make sure to give anyone else a chance to who hasn't yet asked a question to ask. I see no other hands, so Emerson, second bite at the apple.

MR. HASBROUCK: I'm a little confused as well. I thought that I had things pretty well squared away. But then in the response to Nichola's question I'm a little confused. In the document for public review, Table 1 is the reference point alternatives for Options A through E. My assumption there is that these have all been converted, if you will, to a common currency; that currency being the biomass weighted F, so that the single-species reference points in that table have been converted to this new currency. Is that correct?

DR. DREW: Yes, and that's why they don't look exactly. If you looked at the assessment update those numbers would be slightly different from what we sent out to public comment. They've

all been converted into the same scale; that biomass weighted F.

CHAIRMAN BALLOU: Additional questions on reference points? I see a hand in the audience, but we're not taking public comment; that has already been taken through the public comment period. This is for the Board's purview only at this point. Having exhausted questions, and realizing that the next phase would be motions, and given the timing. Let's take a ten minute break; biological break, ecological break, whatever suits your fancy. We'll be returning at 2:51 exactly. Thank you.

(Whereupon a recess was taken.)

CHAIRMAN BALLOU: Okay first, I think Jason McNamee was able to come up with an answer to one of Allison Colden's questions; so Jason.

MR. McNAMEE: Yes. If I remember the question, you were wondering where the logistic curve kind of peaked at what age. I looked that up and it is age 3 is where it reaches that plateau.

CHAIRMAN BALLOU: Allison.

DR. COLDEN: That is implying that the selectivity for ages 3 plus is constant?

MR. McNAMEE: For that combination of fleet and fishery, yes.

DR. COLDEN: Okay and the selectivity for the ERP options were constant at ages 2 and above? Is that correct?

DR. DREW: For the ERP options it was the dome shaped sort of composite selectivity that basically 2, 3 and 4 is where it is the maximized; and so it's much less at age 0 and 1, and less on ages 5 and 6.

DR. COLDEN: I'm sorry, for Option E.

DR. DREW: Oh, so for Option E that is how we calculated it. We used that composite selectivity that we see in the fishery from the model. If you're talking about sort of the EWE models that were used to develop those rules of thumb, those are essentially flat-topped curves that treat either all of them as a single selectivity or sort of small versus large.

CHAIRMAN BALLOU: Okay, I now open the floor to motions on the reference point options. Would any member of the Board like to make a motion? David Borden.

MR. DAVID V. BORDEN: I provided the motion to the staff. **I would like to move to adopt reference point Alternative E: BERP Workgroup continues to develop menhaden-specific ERPs with interim use of 75 percent Target and 40 percent Threshold as described in Amendment 3.**

CHAIRMAN BALLOU: Is there a second to that motion; seconded by Nichola Meserve? It's been moved and seconded to adopt the Reference Point E: BERP Workgroup continues to develop menhaden-specific ERPs with interim use of 75 percent Target and 40 percent Threshold as described in Draft Amendment 3; discussion on the motion, David.

MR. BORDEN: I'm going to try to do this quickly, because I know we have divergent views around the table. There are going to be a lot of people that are probably going to want to speak to the point; also are possibly amendments or substitutes. I just point out for the record that the Commission has a long history of recognizing the critical importance of menhaden to the ecosystem along the coast; and particularly the two specific predator populations, namely striped bass where we've had a major focus.

I went back at one point and looked at the history of this. The history actually goes back to 2001, and I think if I dug further it would go back even further than that. In those days we

embarked on what we called multispecies management. Recently what we've done is we've kind of changed that into the efforts to focus on developing menhaden-specific ERPs.

Unfortunately, the menhaden-specific ERPs, personally I wish they were available today and we could have that debate. But that is not the case. They're not likely to be developed for a number of years. Once they do, most of the people around the table know that we will have to go through a fairly lengthy process to adopt those; which will include a full consideration of a lot of the assumptions that are included in that.

We haven't seen that analysis. One of my conclusions for making this motion in particular is that I think that process is probably going to be delayed beyond where we project it to be. Hopefully I will be proven wrong by the working group. I think this personal view that after 16 years of discussion, I think the Commission needs to get on with fashioning an ecosystem strategy on menhaden.

I think that transition, what I would view since the species-specific targets are not available at this point that we really need to begin the transition through this alternative. I would also note that the Commission has pretty wide latitude. There were a lot of really good questions Rob O'Reilly and others have raised very valid concerns about different issues.

But I would also point out that the Commission has wide latitude on where they set the TACs, which will drive what the removal rates will ultimately be. Just a few more comments, from a Rhode Island perspective menhaden are critical to the ecosystem in the state, namely because Narragansett Bay is one of the major economic drivers of the economy of the state. We have a very vibrant commercial and recreational fishery in the state; including charterboats and party boats. It's kind of the foundation of that is the state of the resource in Narragansett Bay, and that includes menhaden.

Menhaden are a critical economic issue within the state. In recent years things have gone well. We've had fairly high abundance of adults, which has been very pleasant for most of the constituents, and we've also had fairly high abundance of peanut bunker.

I went fishing yesterday in fact, and there were vast schools of peanut bunker still around, even at this point. Things are going well. But my point in making this, I think we need to start the transition from the discussion phase we've been in for 16 years, to moving into the implementation phase. I think this motion; coupled with an appropriate TAC will do that.

CHAIRMAN BALLOU: (Audience Applause) Could I see a show of hands of those who would like to speak in favor of the motion; or perhaps speak in the direction of the motion. Just keep your hands up. We're just going to put together a list, and then I'm going to alternate between pros and cons, so keep your hands up until Megan gives me the okay sign. Show of hands now of those who wish to speak in opposition to the motion. Keep your hand up, please. We'll alternate and I'll begin with someone in opposition, and I'll just start to my right. Pat Keliher.

MR. KELIHER: Mr. Chairman, I actually have a motion to substitute along with my comments.

CHAIRMAN BALLOU: Go ahead.

MR. KELIHER: I would move that we substitute Option B: The BERP Working Group continues to develop menhaden-specific ERPs with the interim use of single-species reference points.

CHAIRMAN BALLOU: Is there a second to that motion to substitute; seconded by Russ Allen? It's been moved and seconded to substitute Option B: BERP Workgroup continues to develop menhaden-specific ERPs with interim use of single-species reference points as described in Draft Amendment 3. Here is how I

would like to handle Board consideration of both the substitute and the main motion.

I would like to afford the Board the opportunity to consider both on an equal basis. I will take comments on both motions; alternating between those wishing to speak in favor of the substitute motion, and those wishing to speak in favor of the main motion. During the process of considering both motions, both will be amendable.

Once both motions have been fully considered, there will be a vote on the substitute in its original form or as amended. If passed it will become the main motion and be subject to final consideration. If not passed we will return to the main motion in its original form or as amended; and it will be subject to final consideration unless there are any other motions to substitute, Yes, Dennis Abbott.

MR. ABBOTT: I don't like to disagree with the Chair, but when Pat made a motion to substitute that becomes what's on the floor. I don't see that we can be discussing the main motion now, because we have a motion to substitute. I think the conversation should be around the substitute motion, and if that passes then it becomes the main motion, and if it fails we go back to the main motion. I think that would be in order in Robert's Rules. I don't think we can discuss both of these motions; because we have one motion before us, and that is the motion to substitute. Correct me if I'm wrong, or I'll look to Bob Beal for a little more guidance. I will say that the Chair does have some latitude, but.

CHAIRMAN BALLOU: I certainly don't like to disagree with my colleague from New Hampshire, but. I do acknowledge that this approach is not one that we typically follow. It is however consistent with Robert's Rules. The intent is to provide for fair and balanced consideration of the two alternatives.

If only the substitute were considered and potentially passed, then the proponents of the original main motion would not have the opportunity to advocate for and possibly improve their motion. This approach will enable the Board to fully consider both options at the same time before voting on them. That is my intent to move forward, unless there is an appeal that is my ruling in terms of how I plan to handle it.

MR. NOWALSKY: One other point of order.

CHAIRMAN BALLOU: Go ahead, Adam Nowalsky.

MR. NOWALSKY: I had heard you mention the ability to amend the main motion during this process. I would contend that should not be allowed; with regards to Robert's Rules allowing one motion at a time that we would be modifying. I don't see how we could go back and amend the original motion until we dispense with all of the subsequent motions.

CHAIRMAN BALLOU: I believe we can do it as described, but I would look to Bob Beal for at least an acknowledgement that this might be at the discretion of the Chair.

EXECUTIVE DIRECTOR BEAL: We made it farther into this meeting than I thought without having to get in the middle of a few commissioners, it's great. The initial conversation between you and Dennis, you know Option B and Option E is the crux of a lot of what is going to be talked about today.

I don't know how you can separate out those conversations. I think they are going to be intertwined regardless of how that is packaged, as far as procedurally. To Adam's point, kind of you, Mr. Chairman and Adam are both right. But I think logistically to sort out substitute motions or motions to amend, to two different motions at the same time is really hard to track.

I think if you let the conversation sort of evolve and talk about the pros and cons of Option B and E at the same time. I think that part is very manageable. But I would suggest to just have any potential amendments to motions just focus on the substitute for now; just for ease of tracking those, and making sure everybody is on the same page.

CHAIRMAN BALLOU: I appreciate that guidance. I'm going to follow it. I'm going to go forward as I had suggested, however I will take Adam's comment to heart and not allow amendments on either motion, unless or until they become a main motion. At which point they would be then opened up to further amendment. Thank you for that. I think we've reached a good compromise in terms of process, and now I'll look to Pat Keliher, who was the maker of the substitute motion for your comments on your motion. Pat.

MR. KELIHER: I made a comment earlier in the day about the precedent setting nature of it, and I do believe there is precedent setting as it relates to Option E. Option B is a continuation of Amendment 2; Amendment 2 is working. The fishery is expanding in size and in scope. When I say scope I mean geographically.

Managers already implemented precautionary reference points, while the BERP was finishing its work that was done with Amendment 2 in 2011. The statement of the problem for that action was the new reference points are intended to be interim benchmarks, while the Commission's Multi-Species Technical Committee develops the ecological reference points, so we would be continuing in that vein.

Option E, any of the options in the document, management is based on total biomass rather than reproductive capacity. While this is appropriate for the goals of providing more forage, it ignores the reproductive capacity of the stock. More biomass won't necessarily increase the reproductive output if most of that biomass is in juvenile fish.

Lastly, I would say the biomass approach ignores the known reproductive capacity of the stock, in particular ignores the known increase in fecundity with age at size. Therefore, it is inconsistent with the goals that we did set forth in Amendment 2. I have other comments, but I'll save those for a later time.

CHAIRMAN BALLOU: Thank you, and now I do plan to alternate between pro and con, and now given the new context it might be appropriate to start your comments with an indication of which option, either the main motion or the substitute you support and why. Next I have Ritchie White.

MR. WHITE: I support Option E, only if there is a TAC attached to it. I was just prepared to amend, which I'm not doing it now. I was prepared to amend that to add a quota. If Option E with a quota did not pass, then I'm willing to support Option B. My plan is if Option B fails, I'm going to make a motion to amend Option E to add a quota.

CHAIRMAN BALLOU: Next I have Steve Train.

MR. STEPHEN TRAIN: I'll speak in favor of the substitute motion, Option B. I was going to speak against Option E. I think one of the reasons I support Option B, Pat was real good about speaking about. But I hadn't decided until I got here where I was. During this meeting I heard at least three people say Option E is bad for the spawning stock biomass.

Now I'm not a scientist, I'm a fisherman, but that is one thing I learned a long time ago. If something is bad for the spawning stock biomass you don't do it. If Option B is better for that for the population of the fish, I'm for Option B.

CHAIRMAN BALLOU: Dr. Duval.

DR. DUVAL: My comments are in regards to the main motion. You know this is an issue that we have struggled with considerably, and you know

we absolutely support the management of menhaden for its ecological role. We believe that one of the great benefits of the work that has been done by the Lenfest Forage Fish Taskforce and others is that it has raised awareness of the importance of forage species, and has provided managers with tools to evaluate the tradeoffs of different policy decisions. You know science does not tell us how to make those decisions; it just informs us what the impacts of those decisions could be. You know we support the types of approaches embodied in Option E and Option C, but we do have significant concerns about the metric, as others have expressed.

It's clear that while total biomass is absolutely the appropriate metric to meet the needs of predators; our concern is that it does not meet the needs of menhaden, and specifically that it is not protective of the reproductive component of the population that's actually producing the future biomass for predators. Other concerns have been expressed around the table about the TAC associated with the 40 percent biomass threshold, and the significant impacts that that would have on the mature ages in the population.

The department is offering extremely qualified support for Option E. Quite honestly we would prefer a metric that meets both the needs of predators and prey; which is why we are supportive of the efforts of the BERP Workgroup, and are anxious to implement the results of those efforts as soon as possible, and we appreciate all the efforts of the BERP Workgroup to date to work with the Lenfest Taskforce Members to develop the translations that we have in front of us.

CHAIRMAN BALLOU: Russ Allen.

MR. ALLEN: I'm speaking in support of Option B. I thought Robert and Pat hit some really good points that setting a target that you know you're going to exceed right off the get go is counter intuitive to what all the Boards that I've

ever served on have thought about. That really bothers me for some reason.

I thought Katie answered a question earlier really well, and that the Technical Committee, who we're supposed to listen to and we hear that constantly at the Board meetings. Listen to the Technical Committee, listen to the BERP, listen to the stock assessment folks, because they're the ones doing the work, and they're comfortable under the current reference points that we are right now.

They know that where we're going to be once the BERP group is done will put us in a better place. I don't see why we would change things in mid flow right here on something that seems to be working. You know our egg production is constantly ramping up, and I don't understand why we would change that now. It's not overfished, overfishing is not occurring. I think we're better off staying the way we are. I don't see the need to make this kneejerk reaction to reference points that aren't even menhaden based. I'll leave it at that.

CHAIRMAN BALLOU: Allison Colden.

DR. COLDEN: I wish to speak in support of the main motion, Option E. I think it provides a lot of positives, which would be helpful in managing the menhaden fishery. Some of these have already been touched on. First is the flexibility. Some of the other options that are included within the document don't include the type of flexibility that is afforded by Option E, while also applying an ecosystem context.

This is not a harvest control rule; it allows the Board to manage to a target that would be protective of the ecosystem and all of the predators that depend upon it. But we've already seen from Megan this morning that there are different methods by which the Board can reach those objectives, and I believe that we will be discussing those later.

The other one is the relative stability. In my interpretation of the current single-species reference point is that they can fluctuate, because it's based on a mean and a median the addition of additional data points, as we saw in this year's stock assessment update means that those reference points change over time, because they're informed by the information that is coming out of the surveys and the indices.

We saw particularly in the stock assessment update that the Northern Adult Index had a very strong influence on the estimates coming out of that assessment; and there were some additional comments by the TC about looking into that. I would suggest that the 75/45 percent of B-0 is the stable proportion of the population that may not be as influenced by those types of fluctuations. I want to also touch upon the comment that Robert Boyles had earlier about managing to a target. There has been a lot of discussion thus far about the threshold associated with Option E.

I would argue, as this Board seems to have done in the past is that managing to the target is really where we need to be. If we were to be discussing the single-species reference points in the same context as people are discussing fishing to the threshold of Option E, we would also be looking at dramatic increases in the TAC, which I don't believe many members of this Board would be in support of either.

In terms of looking at the single-species reference points, if we were to harp on the threshold of Option E, I would offer that we should also be considering what sort of TACs would be associated with fishing to the threshold of the current single-species reference points, and whether or not the Board members think that those levels of fishing are also appropriate.

Finally, I just wanted to bring to bear again the vast number of public comments in support of Option E. I think that it's very indicative of the

public's perception on this, how many people are following it. Obviously we have a room full of people here today; and I think that it should be within the back of all of our minds making this decision the types of activities that people wish the menhaden population can support, and the types of economic activities even beyond fishing that the ecosystem can support with a growing population of menhaden.

CHAIRMAN BALLOU: David Bush.

MR. BUSH: I guess to sum it up very briefly. I know that we've had a lot of conversation already and a lot of great points have been made. I support Option B. I'm looking at Option E, and I've heard great concern over many of the issues with it, such as an arbitrary TAC. Why would we have a target if it's irrelevant?

As long as you don't cross over the second line we're good makes plenty of sense to me, because I'm looking for direction as someone new here, trying to figure out why we're here. Why would we have a target at all if we're not going to pursue it? The second thing is the transition to an ecosystem-based fisheries management style. If we're going to do it let's do it right. Let's not just do it just because we've got to do it. Put one foot in front of the other until we get somewhere. We know where we want to be, we're headed there, and it's not like we've got another 16 years to go before we're going to see results. We've actually got fairly time-certain commitments on when this will be available to us. Thirdly, addressing the fact that we do have a roomful of folks in this room that have also seen increases in the menhaden fishery, and they want to continue to see these increases.

Those have been achieved by using our current single-species reference points; and understanding that we're going to be chasing a biomass down or the spawning-stock biomass down with Option E confuses me. It would

make no sense for us to set fire to the house we're trying to build.

CHAIRMAN BALLOU: Jim Gilmore.

MR. JAMES J. GILMORE: I'm actually not going to commit right now, because I have a feeling these things are going to be changing, so I have a question maybe to help me and maybe the other commissioner's to decide. Through the plethora of e-mails that we all got, communications particularly the last week, I think the one concern maybe with the second motion was that on paper we have ERPs coming in two years.

But a lot of the discussion doesn't have a lot of confidence in that. We've heard, well it won't be for five years, it won't be for eight years. A lot of the support on one really seems to stem from not believing that we're going to have ERPs in two years. The question, and I hate to put staff on the –

This is more a feeling from you guys, because it would be nice if we have the probability of hitting the target or whatever. What is the probability of us hitting ERPs in two years, again, I don't want a percentage but a sense that maybe you could help me and everyone else in the room decide? Are we really going to have them? I mean is there a confidence of that or is it something that will take a lot longer?

MS. WARE: I am hearing from the BERP folks at the table that they are cautiously optimistic that they will be ready for peer review in 2019.

CHAIRMAN BALLOU: Rob O'Reilly.

MR. O'REILLY: That was a good question, Jim Gilmore. Certainly Dave Borden started off with the main motion, and gave a number of situations that are normal to our lives, which is a lot of things take time. I am in support of the substitute motion; and the reason is I think everyone in this room is united already, some

are not as patient perhaps, and that's their choice.

I think that 2001 is a long time ago. My first memory of sort of looking at multispecies management in Chesapeake Bay was 1998. Everyone was very excited. We've maintained our excitement about ecosystem management in many different venues, and I don't think there is any reason not to continue that excitement and to look forward to it.

But we have to do it right. I'm not convinced that Option E is right, because it's not menhaden specific. About a year and a half ago or a year and three-quarters ago, I asked the Technical Committee when they came out and more or less indicated that the Pikitich et al approach was not for menhaden as such, because it wasn't menhaden specific. I came back about eight months ago; I'm using this loosely, and asked the same question, and the Technical Committee, which is a wonderful group said well, essentially we can accommodate our work to whatever we can. Whatever is put before us, and that's a good Technical Committee.

But at the same time, many of the comments that have been mentioned today are pretty startling to me. I do believe we have to manage to the target. I do believe that if we go down the route of Option E, we will have to have a situation where we look for 75 percent unfished biomass. I just believe that.

I also think that we haven't looked at the risks carefully. The risk to the reference point, I may be incorrect but I think we're at 46 percent of unfished biomass, and 40 percent is a real problem, essentially a moratorium. I also think there is a risk to the fleets, there is a risk to the communities, and I think that my timeline starts in 2010, where the Board was told it would be two to three years before we'd have the biological/ecological reference points.

But this takes time, and I think we need to make sure that we get it right. I'm not against anyone who wants Option E; it's just that I think the better course for management is to wait for the biological/ecological reference point group to finish their work. Now we hear it is 2019, a little bit of patience, we get it right. It's not going to be perfect

I think that Jay has already told us that in the workshop we had about a year and a quarter ago that you can't encompass everything into this approach. But you can certainly accomplish a lot more than we've been able to look at so far. The substitute motion is what I'm going to support, thank you.

CHAIRMAN BALLOU: Dennis Abbott.

MR. ABBOTT: Originally when I raised my hand it was to amend the main motion to put a figure in there. I think that we've been hearing for some time now that overfishing is not occurring, we're not overfished and we should be increasing the quota. I thought there was a realization that we should modestly increase the quota from, presently I think it's 200,000 to some figure.

I was in support of Option E, and to put a number on that of somewhere in the vicinity of 216,000 metric tons would have been my motion. We did hear strong arguments, I thought on the one side; that even though we would be above the target we would be well, well below the threshold. It wouldn't be precedent setting, so therefore we wouldn't be doing anything so damaging. That was my original intent, and I'll leave it at that.

CHAIRMAN BALLOU: Adam Nowalsky.

MR. NOWALSKY: I think the comments, particularly from the public with regards to Option E, the expectation was clear. While it's great to hear the words of well the TAC right now is okay, or maybe as Mr. Abbott just alluded to an increase might even be okay.

That would move us further away from the target, and to Mr. Boyles' anecdote earlier, I hope that his son quickly learns that our biggest asset as human beings is to have a short memory. While that would be very beneficial to his son, I think it would be very detrimental to this Board in the not too distant future, when people are asking us why are you setting a TAC that is moving farther away from the target? That is the reason why I cannot support Option E at this time; and Option B would keep us at or below the target, which I think is consistent with the expectations of the public and the actions of this Commission as a whole.

CHAIRMAN BALLOU: John McMurray.

MR. McMURRAY: Allison covered some of what I was going to say, but I'll try to simplify it some for the public, and maybe take it a little bit farther. The public doesn't support Option B; because we have this benchmark stock assessment, a single-species stock assessment that allows us to increase, if I'm understanding correctly, by another 40 percent.

That's pretty scary, given what's happened and where we are now. With that assessment, we will continue every year to get pressure from industry to increase our quota. I'm sure that we're probably maybe will increase the quota again today or tomorrow. I think the idea with this interim 75/40 deal is to try to avoid some of that. The question is, and really this is kind of the first I'm hearing about it is the risk to the spawning stock biomass.

I think we could still go with Option E and clarify that the intent is to manage towards 75 percent, and I think we'll still be okay. I don't think it would be terribly hard to do that. Again, with the timeline, and I think everybody wants these menhaden-specific reference points and we want them quickly. But a lot of us find it hard to believe that we're going to have peer reviewed, ready for primetime reference points in 2019. They have to be

tested somehow. I'm not a scientist, I don't know that process.

But I do know that particularly if they appear like they're going to be constraining, the public is going to want to comment on them. I don't know how we do new reference points for a species, without doing at least an addendum. Anyway that is really the rationale for E, and frankly if we could get rid of some of that uncertainty I support Option E, and I think the vast majority of the public does also.

CHAIRMAN BALLOU: John Clark.

MR. JOHN CLARK: I think most of the points have been made. I mean I appreciate the concern the public has shown in support of E, but all the problems with it that have been reiterated around the table about managing, with the situation where we're already fishing above the target, and yet we're so far below the threshold stand.

For Option B, we want to manage with the best available science. Our BERP Working Group has several times come out in recommendation of continuing with the single-species reference points that we're now using until the new menhaden-specific ERPS are available. With those also, I just don't want to see another fishery that we take a reduction where we're not overfishing and overfishing is not occurring.

CHAIRMAN BALLOU: Nichola Meserve.

MS. MESERVE: I speak in support of the initial motion for Option E. Many of the points have already been raised for them, but there is a growing body of scientific work that supports the 75 percent Target and 40 percent Threshold. I feel that they provide an acceptable intermediary step to managing menhaden in the context of their environment, on our way to adopting menhaden-specific ERPs, which is the end goal from everyone around this table it sounds like. Because the Option E reference points are not specific to

menhaden, as raised some concerns from our Technical Advisors, which deserve some serious consideration.

However, it is because the Option E reference points are general that I have comfort in not immediately managing to the target and even with a possible increase in the TAC as has been suggested might be a motion to amend. There have been comments that the stock is growing and expanding since the Amendment 2 reference points have been put in place; but it's notable that the Board has not set a TAC that corresponds with that target.

The concern regarding Option E, the threshold there, it's certainly not my intention to manage menhaden to the threshold for either Option E or Option B. I feel that Option E will provide the Board with the guidance to set a risk prone TAC in the interim and safeguard the stock growth that we've seen since Amendment 2 was put in place, and support the wide age structure of menhaden that is responsible for the availability and abundance of menhaden throughout the range, including New England and the South Atlantic.

CHAIRMAN BALLOU: Dave Blazer.

MR. BLAZER: I'm speaking in favor of Option B for a couple different points, one that I think we're in a pretty good place right now as far as the fishery is concerned. As has been referenced, we've got an expanding stock. The stable harvest over the last couple years, and we're still leaving about 40 percent of the unfished spawning potential in the water right now.

To me Option B seems to be working. I don't want to change that approach. Option E, although as mentioned, I think everybody here is very favorable of ecological reference points; setting those guardrails of the target and threshold with Option E from 147,000 metric tons to a threshold of 744,000 metric tons.

Those guardrails are way too wide compared to what you've got with Option B, of only going to like a 314,000 metric ton option. To me I'm in favor of Option B. I would also like to say this discussion today just puts more emphasis on the importance of the work of the BERP Group, and I wish them all good luck and Godspeed to you.

CHAIRMAN BALLOU: Mike Millard.

MR. MIKE MILLARD: The Fish and Wildlife Service support the substitute motion; and we do so taking very seriously the first phrase about continuing to move towards ecosystem reference points. The Service is a strong supporter of that and as has been mentioned around the table several times, we really hope the Board is committed to keeping that train on track.

Second point and I hope I'm not misquoting you; Jason was I think I heard Jason say, and again this has been brought up. Option E has the potential to allow complete removal of the spawning stock biomass. That is fairly one of the more alarming statements I think I've heard around this table, and it strikes me as a rule of thumb which is probably not mature yet and ready to be put to use.

CHAIRMAN BALLOU: Emerson Hasbrouck.

MR. HASBROUCK: I support the substitute motion, Option B, and my comments are science based, based on the science that we have before us today. One item is that we heard earlier that the Technical Committee recommends that the BERP Working Group has always advocated for keeping single species until the menhaden-specific reference points are available.

Also, if we went from Option B to Option E, we would be going from a very conservative management approach for menhaden to a very high risk approach for menhaden, where the guidance from the Technical Committee shows

us that there is an 88 percent risk of exceeding the target, even at the current TAC under Option E.

Then thirdly, again in the Technical Committee memo, it states that the level of fishing pressure that reduces total biomass to 40 percent B-0 is higher than almost anything seen in the history of the fishery and results in almost total loss of spawning adults. Those are my reasons for supporting the substitute motion.

CHAIRMAN BALLOU: Senator Maker, welcome to the Board, the floor is yours.

SENATOR JOYCE MAKER: Of course I'm in favor of Option B. Setting a quota over the target, or making false targets that are not managed will land the stock in trouble if recruitment declines.

CHAIRMAN BALLOU: Andy Shiels.

MR. ANDREW L. SHIELS: I would like to speak in support of the main motion, which is Option E, and the reason for that is this provides an opportunity for the Board to seriously commit to ecosystem management. We've heard a lot of discussion about we want to get there. We all agree we want to get there. We may get there in a year or two; we may get there in three years.

This is a more realistic approach to getting there sooner and not kicking the can any further down the road. In addition, as mentioned earlier by some other commenter's, Option E gives the opportunity for some flexibility in management since there is a range, and it buys some time to get the ecological reference points developed, while not losing any ground.

In addition to that the public support for this, I think I heard the word was unprecedented. The number of public comments in support for Option E, compared to all other options is unprecedented. That has to have some weight

up and down the coast, from folks that interact recreationally, commercially through headboats, through the procurement of bait, through people that just go fish off the dock and use menhaden for crabs.

All the letters and all the correspondence we've received in Pennsylvania has been very specific, and has supported Option E. That is the first time that's happened in my short tenure with this particular group. In addition to that I would like to tell a brief story; and somebody mentioned earlier about memory. I have a very good memory on certain things, of course. A memory that I have is from the late 1970s. When I look at the updated stock assessment, and look at the graphics for biomass and recruitment, I see that the population in the late 1970s is very similar to what it is now, with a big dip in the 1990s and early 2000s. I would like to paint a picture for you that is very etched in my own memory. Even though I might be from Pennsylvania, I grew up fishing in New Jersey every weekend at the Jersey Shore. I've mentioned this more than once in the past. It is early fall in late 1970s, and it's flat calm and there are wave after wave after wave of what we call bunker, not menhaden. Schools of bunker just outside the surf zone off of Ocean City, New Jersey, literally as far as your human eye can see.

There is nothing like the roar when those menhaden all come out of the water in a school the size of this square in front of us, at the same time, because there are predators under them. It is awe inspiring. What is also awe inspiring is the first time you ever see a whale. We never saw whale before, but there was a whale in the middle of the pack of one of these schools of bunker.

They came out of the water; the whale came out of the water. We had bluefish and weakfish and sharks. We were pounding the bluefish and weakfish, it was epic. It's one of the best days we've ever had. While we're in the midst of

this late in the afternoon, here come some airplanes, zipping along just above the water.

My Dad says, "Those are bunker planes." What's a bunker plane? "Those are bunker planes, they spot the fish, and the nets will show up after." We get up early the next morning, because we had such an epic day and evening the night before. We're ready to roll, and what do we see when we get there? I don't remember what the rules were off the Jersey coast back then.

I thought you weren't supposed to net within two miles of shore. But the boats were there, the bunker was gone, the predators were gone. That image sticks in my mind through this entire discussion; and that's the lens that I see this through, because I can picture what an abundance of bunker can do.

From the reports I've seen on the internet, what I've heard from people who have testified up and down the coast in these last two or three years. They're seeing the same thing that I saw once in my life, and they're seeing it throughout the range. For that reason I support the first motion and Option E; because I can picture what this can become. Thank you very much for my time.

CHAIRMAN BALLOU: (Audience Applause) Thank you, thank you. We need to continue on, thank you. Doug Brady.

MR. W. DOUGLAS BRADY: I'm just trying to get my arms around Option E. I mean I think we are all for moving toward ecological reference points. I don't think there is anybody on the Commission that wants to slow that down or is not in favor of getting to that as quickly as possible. Now, maybe I'm wrong.

But I'm having a hard time, unless with Option E saying we want to support Option E, but we don't want to pay attention to the 75 percent Target or the 40 percent Threshold issues that drive what that will be. We want to feel good

that we are adopting BERPS, but we're saying we're going to throw the rest of it out.

We're not going to reduce the TAC. Maybe there are people; I think we just need to be frank. If you adopt Option E, you may support dropping the TAC to 143,000, I'm not sure. I think we need to say that if that is why we're wanting to support Option E. If not, we're just saying we're going to adopt Option E, because we feel good about getting quicker to saying we're adopting ecological reference points, although they are not menhaden specific. But we're not going to pay any attention to what Option E says. I mean I just don't understand where we're going with that one. You know we talk about where we are in the menhaden abundance. I think everybody agrees that the stocks are in great shape.

They've been managed with a stock-specific reference point; and they are in good shape. Can they be in better shape with the BERP, with the ecological reference points that we'll get to three years, or hope two to three years down the road? Of course, and I think everybody supports that. But I just cannot support moving to an option that says, this is what the option says we're going to do from a Target and Threshold perspective, but we're not going to pay any attention to that. For that reason I support Option B.

CHAIRMAN BALLOU: Are there other members of the Board who have not yet spoken; who wish to speak on this issue? Yes, Marty Gary.

MR. MARTY GARY: I would like to speak in support of the substitute motion. For our jurisdiction and our 20 pound net fishermen, the current status quo allows us with our quota and the bycatch allowance to get through the season to provide bait for our crabbers, to provide bait for our charterboat fishermen.

By going to the alternative for E, it would be counter intuitive to not manage to the target; so I'm assuming that we're going to do that and

by doing that that would upset the fragility of our fishery, and risk the season for our pound net fishermen. I cannot support the original motion, and I would support the substitute motion.

CHAIRMAN BALLOU: Again, before I go to any members of the Board who wish to speak a second and final time, I'll ask is there anyone on the Board who has not yet spoken who wishes to speak? Seeing no hands; I'll go to Robert Boyles.

MR. BOYLES: If I may quote the author, Oliver Wendell Holmes, who said "I find the great thing in this world is not so much where we stand as in what direction we are moving." I too appreciate the vibrant and robust public comment and public engagement that we have seen from our constituents, who have come here today.

On behalf of the Board, thank you everyone who has commented, everyone who has come here today. I find myself in the position, I support both motions. I think Doug Brady said it rather well. We've committed to moving to ecosystem reference points, and that is something that I think we should not lose sight of.

That train is on the tracks. It is my great hope that in fact in two years that we will see that submitted for peer review, and then we will update menhaden management accordingly. Given that we are now with the substitute motion, I will support the substitute motion. I think it's important that we recognize, I have a very, very difficult time in trying to share with you all the illusion of my son; frantic, pacing around the woods last night, having missed his target.

I just think it is very, very important that we be honest with one another. I think it's important that we be honest with our constituents, and I think it's important that we be honest with the 160 some odd thousand people who weighed in

on this discussion. I want us to do ecosystem reference points. I don't think there is any argument about that around the table. But I think this is important that we do this; that we do this right. We had a very important meeting that came out of a recent noncompliance finding.

I think now more than ever, it is important for us to be intellectually honest with our constituents, intellectually honest with each other, and do the right thing. I support both motions. The question before us will be the substitute motion, so I will support that.

CHAIRMAN BALLOU: Are there any other comments before I call the question? Dennis Abbott.

MR. ABBOTT: I was just going to say, I think everybody probably has their mind up. It might be time to take a vote, and I would like to request a roll call vote.

CHAIRMAN BALLOU: We'll caucus for one minute, and then we'll vote and it will be a roll call vote. All right I'm going to call the vote. I'm going to ask Megan to go down moving north to south. Megan.

MS. WARE: All right, Maine.

MR. KELIHER: Yes.

MS. WARE: New Hampshire.

MR. ABBOTT: No.

MS. WARE: Massachusetts.

MS MESERVE: No.

MS. WARE: Rhode Island.

MR. BORDEN: No.

MS. WARE: Connecticut.

MS. COLLEEN GIANNINI: No.

MS. WARE: New York.

MR. GILMORE: Yes.

MS. WARE: New Jersey.

MR. ALLEN: Yes.

MS. WARE: Pennsylvania.

MR. SHIELS: No.

MS. WARE: Delaware.

MR. CLARK: Yes.

MS. WARE: Maryland.

MR. BLAZER: Yes.

MS. WARE: PRFC

MR. GARY: Yes.

MS. WARE: Virginia.

MR. O'REILLY: Yes.

MS. WARE: North Carolina.

MR. BUSH: Yes.

MS. WARE: South Carolina.

MR. BOYLES: Yes.

MS. WARE: Georgia.

A.G. "SPUD" WOODWARD: Yes.

MS. WARE: Florida.

MR. JIM ESTES: Yes.

MS. WARE: NOAA Fisheries.

MR. PETER BURNS: Yes.

MS. WARE: U.S. Fish and Wildlife.

MR. MILLARD: Yes.

CHAIRMAN BALLOU: **The motion to substitute passes 13 to 5; it now becomes the main motion.** Is there any additional discussion on what is now the main motion? If not, is the Board ready to vote on this as now the main motion? Allison Colden.

DR. COLDEN: I just wanted to add one quick observation relative to the stock assessment update under the current single-species reference points; and that is we're not currently meeting the fecundity target for the stock under the single-species reference points. I hope all the comments that have been made that were relative to the previous motion in Option E, in terms of managing to a target will remain true when we move forward with this as the main motion.

CHAIRMAN BALLOU: Robert Boyles.

MR. BOYLES: I would like to motion to amend, please.

CHAIRMAN BALLOU: Go ahead.

MR. BOYLES: **Mr. Chairman, I would like to amend the motion to tie this to TAC specifications for the next two years; that the TAC specification would remain at 200,000 metric tons.** (Audience Applause)

CHAIRMAN BALLOU: Moved by Robert Boyles, seconded by John McMurray to amend the motion to add that the total allowable catch for the menhaden fishery shall be established over a two-year period at 200,000 metric tons. Do I understand your motion correctly?

MR. BOYLES: Yes, sir.

CHAIRMAN BALLOU: Discussion on the motion to amend. We are obviously now moving into the TAC issue sooner than I had anticipated; but it certainly is in order to do so, if the Board feels comfortable doing so. If not, we can suspend and take up TAC separately. Really by your vote on this, you would be dispensing with the issue of specifications for the fishery and there would be no returning to this tomorrow. I'll just pause for a second and again ask if there is anyone who wishes to comment on this motion to amend. Jim Gilmore.

MR. GILMORE: I apologize, but could you remind me of the modifications to the agenda in terms of the sequence we're going to be doing this.

CHAIRMAN BALLOU: We are in sequence now in that I had asked, well it's arguable. We're in a gray area right now, I'll say that. I had urged that the Board deal first with reference points; then with the rest of the issues, including TAC, including allocation. This does change that dynamic, but it's the will of the Board as to how you would like to proceed. Thank you for reminding me that this is not exactly the way that I had urged we go forward; but I think it's close enough, in terms of the way the agenda has been laid out that it's in order. Rob O'Reilly. MR. O'REILLY: I'm not sure I would call this a point of order, but when we went to the agenda earlier the request was made to take the ecological reference points or the biological reference point issues first, and then subsequently look at the TAC specification, and then after that look at allocation.

Again, I can understand that while yes the TAC is coming second here. But I had envisioned that we would also have a situation where we were able to debate at the TAC independently of the ecological reference points or biological reference points. This greatly bears on the third step, which is the allocation. It has obviously implications.

We've heard at least one comment that we're underachieving on the quota that we have on the total catch, in that we're not keeping up with what the assessment says the capabilities could be for a quota. Certainly, 200,000 metric tons would be underachieving. I was hoping we would have that discussion as well. Again, a little different than what was expected.

CHAIRMAN BALLOU: I thank you for that and I think it's clear that given the nature of this amendment, it speaks to both process and substance. It speaks to the Board's willingness to take on a shift in order, which Rob just spoke to, as well as the substantive issue of what the TAC should be.

If this were to be approved, as I said earlier, and then of course it becomes the main motion. It would have to be voted on again. But it would dispense of the specification setting discussion. If it were to be not approved, we would be back to the main motion solely on the issue of reference points, and we would then take up TAC separately. I think that really is the two-part aspect of the motion to amend that is up on the board. I saw some hands up. Dennis Abbott, you were one.

MR. ABBOTT: Though I don't disagree with a quota of 200,000 pounds as it probably affects my little state. I see us if we pass this, well back up a little. I think there was an expectation when we arrived here that we were probably going to try to do what we could to make the states a bit more whole.

We were going to try to do something to help the state of New York with an increased quota, and I know Maine wants quota. Adopting this and then getting into tomorrow's discussion about who's going to get the numbers when we've talked about allocations. No one will accuse me of being a friend of Omega Protein, particularly I'm only a friend of equity, because it's my strong belief that when we advantage someone we're going to disadvantage someone else.

By adopting a quota of 200,000 pounds and then getting into tomorrow's discussion. There may be a lot of people who end up feeling very disadvantaged. I'm concerned about where 200,000 gets us; because it really is going to put us in an adversarial mode tomorrow when we're trying to give some of the states what they surely deserve. One of the outcomes of this should be some sort of equity.

I liken this to the fact on the one hand that one state has been getting a very high proportion of the catch, and things have changed. It's like the geese are migrating down to the Chesapeake Bay area for years and the good hunters like Robert Boyles is shooting them all down there. Now, those geese are landing in New Hampshire on the one hand, and we can't shoot anything because we've never had any quota. What my point is, I think if we vote this in we're really setting ourselves up for some battles tomorrow.

CHAIRMAN BALLOU: Are there any other comments on the motion to amend? David Bush.

MR. BUSH: I know I'm sitting precariously close to the maker of the motion. However, I might remind him of the story I heard recently about setting a target. This seems to achieve just that. We've set a target and then we've sort of disregarded that target and decided something else.

CHAIRMAN BALLOU: Any other comments before I call the question? *This is on the motion to amend, and I'll read it into the record. **To amend to add to set the TAC at 200,000 metric tons for the next two years (2018-2019), 30*** second caucus and then we'll vote on the motion to amend.

MR. ABBOTT: Request for a roll call.

CHAIRMAN BALLOU: We'll have that roll call vote.

MS. WARE: NOAA Fisheries.

MS. WARE: Connecticut.

MR. BURNS: No.

MS. GIANNINI: Yes.

MS. WARE: Florida.

MS. WARE: Rhode Island.

MR. ESTES: No.

MR. REID: Yes.

MS. WARE: Georgia.

MS. WARE: Massachusetts.

MR. WOODWARD: Yes.

MS. MESERVE: No.

MS. WARE: South Carolina.

MS. WARE: New Hampshire.

MR. BOYLES: Yes.

MR. ABBOTT: No.

MS. WARE: North Carolina.

MS. WARE: Maine.

DR. DUVAL: No.

MR. KELIHER: No.

MS. WARE: Virginia.

CHAIRMAN BALLOU: **The motion fails 5 to 13. We're back to the main motion.** Is there any further discussion on the main motion? Seeing none; is the Board ready to vote on the main motion? Is there a need to caucus? Seeing no need; is there a need for a roll call vote? Seeing no need; all in favor of the main motion please raise your hand.

MR. O'REILLY: No.

MS. WARE: Potomac River Fisheries Commission.

MR. GARY: No.

Keep your hands up, please. Hands down, thank you. Those opposed please raise your hand. Are there any null votes? Are there any abstentions? **The motion passes 16 to 2; with no abstentions and no null votes.** I take this to mean that we have completed our work on reference points, and given the time we now have to decide whether we want to forge ahead.

MS. WARE: Maryland.

MR. BLAZER: No.

MS. WARE: Delaware.

MR. CLARK: No.

MS. WARE: Pennsylvania.

MR. SHIELS: Yes.

We do have time left in the agenda, so it seems like the appropriate thing to do. Let me just confer with Megan for a second, just to make sure I'm clear on what would be the next step. All right, so here is what we're going to do. Given the way I had suggested the agenda should go, we are now essentially at specification setting.

MS. WARE: New Jersey.

MR. ALLEN: No.

MS. WARE: New York.

MR. GILMORE: No.

By the way that was pursuant to the Board's agreement to modify the agenda; to now do specification setting. To launch that part of our meeting, Jason McNamee I believe has a presentation and we'll ask Jason to provide that. Then we'll have time for questions afterwards. We'll be at ease for five minutes while Jason gets ready.

Please don't leave the room or go anywhere. We're just going to be at ease for five minutes.

**SET 2018 (EITHER SINGLE OR MULTI-YEAR)
ATLANTIC MENHADEN SPECIFICATIONS**

CHAIRMAN BALLOU: Okay, the next item on our agenda, given the change made to the agenda is to Set 2018, either single year or multiyear Atlantic menhaden specifications. To begin that part of the agenda Jason McNamee, Chair of the Technical Committee has a presentation. Jason.

MR. McNAMEE: Not that I wasn't paying rapt attention to the discussions that were going on, but I slimmed this down from the original version, so it should be pretty quick. It is something that you all have seen a couple times already; because we are now back to the original reference points. I thought I would start off just refreshing folks on current stock status.

Here is a look at current stock status with the single-species reference points with regard to fishing mortality. You can see we are under both the target and the threshold. This is based on the update assessment from 2017. This is what is the fecundity reference points. You can see we are above the threshold but below the target; though closer to the target than the threshold.

A couple of slides on the methodology, again I've said this to you guys probably about a dozen times over the past year and a half. I'm going to go pretty quick through these. But the way that we run the projections is we have a

Monte Carlo bootstrap run from our base assessment. This one of course is based on the 2017 update.

That is the basis for the projections. The original standard projections were run under the Board requested scenarios for four years since the terminal year; so that's 2017 through 2020. The starting conditions include initial numbers at age, which were estimated numbers at age for year 2017 from the update assessment for each of the Monte Carlo bootstrap runs.

It kind of goes in and it grabs one of these different runs, and that's how we are getting the uncertainty around those estimates. Just to put a fancy equation up on the board, here is what the numbers at age look like, and the main takeaway here, we should have showed this slide to the gentleman we were talking to on the break.

You can see you've got your numbers at age, and that decays based on Z, which is total mortality, and so that is both fishing mortality and natural mortality. That is how those age classes progress from year to year. Natural mortality for each of the projections was a vector, again from each of the Monte Carlo bootstrap runs.

Selectivity also a vector also has uncertainty around it, and those are selected for each of the fisheries northern and southern fisheries. Those are from the last time period; so some may recall that we have a set of blocks within the model that we estimate separate selectivities for, and they're based on changes to the fishery.

For instance, the reduction plants up and down the coast going out of business or closing up shop, and so that's all in the assessment document. But just so you know, we are grabbing the selectivity from the most current period of time. Fishing mortality is estimated to

match the annual landings for the constant total allowable catch projections.

The annual landings are calculated using the Baranov Catch Equation and the weight of those landings; so we convert everything into weight. The recruitment is projected without an underlying stock recruitment function. It's based on the median recruitment observed for each of the runs. Then variability is included as a deviation from that median; and it's selected randomly with replacement from each of those Monte Carlo bootstrap runs. The outputs that we get include fecundity, fishing mortality recruitment, and landings. You can ignore those sub bullets now.

Fecundity is the number of fish in each age times the reproductive vector at age; and so we have information on the level of maturity for each age class of menhaden, and that's how we're deriving our spawning stock biomass and then applying an equation that gives us the number of eggs each of those can produce.

Specifically, maturity from the final year of each of the runs, we assume a 50/50 sex ratio and a mean fecundity at age were used to produce the reproductive vector at age. Back into the caveats, I gave you these already today so I'll go really quickly. There is no structural or model uncertainty considered.

All of this information is conditional on a set of functional forms. The fisheries were assumed to continue at their current proportions of allocation; and so the bait and reduction fisheries are assumed to continue proportionately like they are now. If future recruitment is characterized by runs of large or small year classes, this would impact the information coming out of these projections.

Again, the projections apply the Baranov Catch Equation, which assumes mortality is occurring throughout the year, and so changes to that assumption by way of seasonal closures and things like that would affect a performance of

the projections. These are the projections that we have run. These were tasked to us by the Board.

You asked us for six versions of increasing the TAC, and so what you see in this table is what the current TAC is, 200,000 metric tons, and then you asked for a series of increases to that TAC from 5 percent, 10, 20, 30, and 40. What you see to the right are the TACs associated with those increases from that 200,000 metric tons.

Then what you see in this chart is the risk of exceeding the target. You can see there is a certain level of risk of exceeding the target for each of these variations on what you wanted to see. They increase as you increase the TAC, not shockingly; that risk decreases as you go forward in time, and that's because that recruitment is coming in underneath to bring that population size back up.

Here is the same structure as the last table, but in this case what you're looking at is the risk of exceeding the F threshold. Here you can see there is virtually no risk of exceeding the threshold for the first three runs that you wanted to consider; and then very small risk for the remaining three. You also asked for a set of projections that were based on risk; and that is risk of exceeding the F target.

The first one you asked for was a 50 percent probability of being below the F target in 2018, and then a 55 percent and then a 60 percent. What you see to the right of the descriptions are the TACs associated with those varying degrees of risk. The risk is decreasing as you go down the rows. Just a quick slide or two on the graphs, and this is not necessarily, well this one is. What you're looking at, we wanted to explain again what we're trying to indicate to you is the uncertainty that we're estimating with all of these different metrics. The first two arrows that you see up there are the 75th and 25th, I'm sorry the 95th and 5th quantiles. In this case we're looking at the recruitment. If

Max should click one more time that is the 75th and 25th quantiles, and then a final click gets you to the median. In our normal context that median is the answer, like that is the point estimate that we're usually looking at.

But it's important to note that it is actually not a point estimate. There is uncertainty around that middle zone. If you now go to the next slide, what I wanted to show you here was there were a lot of questions about our new memo with the ERPs and what you are looking at. I think it's still worthwhile in case we revisit this in the future.

Max, if you click that is the fishing mortality rate plot from the previous set of plots I was just showing you. What you are looking at in the newer memos was a cross-section from a single year, and so that red line is kind of a slice through 2018. Then as you click again, Max, here are the new plots, what they look like.

You can probably click I think three more times, four more times. These line up with what were horizontal lines on the old plots, are now vertical lines, but they match. I just wanted to give you a sense of that and it will allow you to interpret that information a little bit better. But that's it. I'm not going to tick through all of those plots. With that I will stop and answer any questions.

CHAIRMAN BALLOU: Excellent presentation as always. Questions for Jason on the presentation, yes Allison Colden.

DR. COLDEN: Hopefully this gets back to some of the process questions, but I just wanted to have a clarification. Jason, you said that these projections can change with any changes in assumptions about the fisheries or the allocation among sectors. Can you provide some sort of insights on what parts of the model would you expect to change, or how you would expect the projections to change, considering several of the allocation options, which we will be taking up after this would

presumably set different proportions in terms of the fisheries and the various sectors?

MR. McNAMEE: It's a good question and thank you for paying attention to our caveats. We're often not sure if people are actually listening to those. I think to illustrate the example; I think your question was directly relating to how the fishery might change. A lot of it stems from the selectivity that we have in those assumptions; and remember that those are static.

They have uncertainty around them but they're a static functional form that we're using for each of the projection years. If the fishery were to shift into one of the fleets where if you had a fleet that had a let's say logistic flat-top selectivity, and the amount of harvest that was occurring in that fleet were to increase that would change a lot of the information that goes forward now into the subsequent years of that projection.

In other words, that protection that would be offered by a dome-shaped selectivity function for those older year classes wouldn't be there anymore, they would all be, if that assumption is correct, those fish would be equally harvested by the fishery at that equal selectivity rate. That's what we're talking about there. Those are things that kind of impact, and if that were to occur that would reduce whichever fleet you're talking about, it could reduce the number of adults and then that would feed back into the projections as less adults, and that would bring fecundity down as an example.

DR. COLDEN: Is it fair to say that moving into this discussion there is an additional level of uncertainty associated with these projections; because of the opportunity to change the allocations after the TAC is specified?

MR. McNAMEE: Yes that is exactly the point we are trying to get across for a couple of reasons. It impacts the performance of the projections, and so when we come back in year 3 and stock status is different than what we anticipated per

the projections, this would be one of the reasons why that can happen.

CHAIRMAN BALLOU: Rob O'Reilly.

MR. O'REILLY: My question is, Jay I think you did the risk analysis back for the February, 2015 meeting. I think that may have been the initial time that you did the 5, 10, all the way up to 40 percent. Has very much changed in the interim time period, in terms of the risk? You may not have that with you, but I mean just sort of qualitatively?

MR. McNAMEE: I can answer that very specifically, and that is what you're looking at up there is exactly the same thing that you were looking at back then. That hasn't changed.

CHAIRMAN BALLOU: But just to clarify, Rob. I think you said 2015. There was a memo underlying these projections based on the stock assessment update, and that memo was provided to the Board and reviewed at our August meeting. I don't think anything has changed from that memo, but I think things have changed since the prior 2015 memo and associated projections. Go ahead.

MR. O'REILLY: That was my question, and I know Jay didn't bring everything with him, but that was the first time I think we saw the risk.

MR. McNAMEE: Yes, so sorry about that Rob. I didn't mean to misinterpret, I thought you were asking about the existing projections based on the update. Yes, I do not have that. I mean I could, not right now on the spot, if there is a chance to chat afterwards I can look that up quickly, and I can let you know. I mean there was a big shift in our understanding of the population based on that update assessment, and we talked about that a little bit earlier.

CHAIRMAN BALLOU: Go ahead, Rob.

MR. O'REILLY: Here is where I get in a little trouble with this next question, because I think

I've asked it before and it's not an easy one to ask, but your portraying risk. But does risk occur on either side of that type of a projection? In other words, when you say 240,000 metric tons has a 2.5 percent risk to exceed the target. Not to call confidence intervals, but is there anything else besides that sort of finite line of risk? How does that work?

MR. McNAMEE: I think I understand your question. All of the proportions that we're talking about, with regard to risk, are from a symmetrical distribution. I think you said 2.5 percent, let's make the math easy. If it was a 2 percent risk of exceeding some target there would be, if there was a 2 percent risk of exceeding it that would mean there is a 98 percent risk of probability of not exceeding it.

CHAIRMAN BALLOU: Emerson Hasbrouck:

MR. HASBROUCK: Just to follow here; Jason, thank you for your presentation. I'm wondering in the memo that we're referencing here, in terms of the risk. Is that the June 30 memo from the Technical Committee, does anybody know?

CHAIRMAN BALLOU: That's correct, Emerson, and unfortunately it's not in the meeting materials for this meeting. It was in the meeting materials for our August meeting. Additional questions for Jason? Seeing none; what I would like to do now is offer the public an opportunity to comment on the issue of specification.

This was not an Amendment 3 issues per say, as such it was not subject to public review and comment during our recent comment period. I think this would be an appropriate time to offer the opportunity for anyone that's here today from the public who wishes to comment on the issue of specifications to do so.

By a show of hands, is there anyone who would like to do that? I see at least three. Could you please come up? The microphone is up in the

corner here, the public microphone, and I'm pointing to it. I don't know if you can see where I'm pointing; if you could just come up, and actually it would help if you sort of lined up.

Maybe those waiting could be on the side over here, and as each speaker is done the next person could slide right in. I would appreciate it if you could limit your comments to a minute or two, just given the number of people who apparently would like to comment. Please introduce yourself first. Welcome. You'll need to press the button.

DR. PAUL SPITZER: Okay, well somebody has got to go first, I guess. My name is Paul Spitzer; I'm an independent scientist. I live over on the eastern shore of Maryland on the Choptank River. Over the last 50 years I've studied the biology of ospreys, which in many areas from Virginia up to southern New England have a heavy dependence on menhaden.

The last 30 years I've studied the migration and winter biology of loons, which from the Carolinas up to Chesapeake Bay also take a lot of menhaden, running heavily to peanuts. My particular question today actually is mostly addressed to Lund Fisheries, because Lund has initiated a winter trawling harvest of fish off New Jersey, and the way this relates to the model is the question of R, and how R might vary, how management strategies might vary over the course of the year.

As I learn my menhaden biology down in Beaufort when I was a visiting scientist there, although reproduction occurs throughout the year, it's concentrated heavily in the winter season, and also the recent papers Buchheister and Miller suggest that these northern populations which are showing recovery now, may be self-generated.

Therefore, I'm suggesting there may be a possibility of risk in winter trawling off of New Jersey by Lund and any other agents. Again, the issue of what the R might be specific to the time

of year of harvest and then the larger question that this is not quite as much a uniform, broad Atlantic population as the book might have suggested it is that the emerging data on that suggests that it's more complicated than that. Thank you.

CHAIRMAN BALLOU: Thank you. The next speaker is welcome to now take the microphone. Welcome, and please introduce yourself.

MR. KEN PINKERT: Good afternoon, Mr. Chair. My name is Ken Pinkert, and I've been traveling this Atlantic Coast for the last 33 years on a menhaden boat with Omega Protein. I also serve as Vice President of United Food and Commercial Workers Union Local 400 out of Landover, Maryland; representing myself and coworkers on these vessels.

My concern, I fully supported Option B, and my concern is that it does give the science that's necessary and it's good science, it seems. But we haven't gotten back the 20 percent we were cut three years ago, four years ago maybe. We were actually cut 20 percent. What we have to think about with bunkers, as we call them, and others around the table call them.

We are paid by how many bunkers we catch. Either way, any decision that is made by this Commission is made by the Council at actual dollars in my membership's packets and in our family's livelihoods. I would like for you all to be conscious of that as you make decisions, either way that you make them.

Normally I would have yellow shirts, I'll have you all know, a couple of busloads of them, but they are actually out there fishing. This is the first year in my 33 years on the Atlantic coast that we've had four named storms in less than three weeks-time, two named storms in one week on the Atlantic coast. That affects us as a resource. That's one of the other variables that we have to consider when we take jobs on these vessels that are dangerous jobs. Just be

mindful of that as you make your decision today, and I appreciate your support.

CHAIRMAN BALLOU: Thank you; next.

MR. JEFF REICHLE: My name is Jeff Reichle; I'm the Chairman of Lund's Fisheries in Cape May, New Jersey, and I would like to first address the statement made by one of the previous speakers, and just let him know that even though, first of all it's not our boat. The boat's owner-operated vessel are trawls in the wintertime, been fishing with us for generations. The quota in New Jersey is strictly limited for trawl. I think it's less than 5 percent of the New Jersey quota is allowed to be trawled.

That 5 percent is shared with other fisheries as well, so it's very, very limited. First of all I would like to thank this group for voting for Option B; I think that's the best way to go forward at this moment, until we get a little further down the road move to act something like Option E. I would hope that we would pick one of the, at least middle to higher ranges of options that were put up before you here not too long ago. I would like to remind the Board that in 2012 or 2013, New Jersey took a 60 percent cut in our quota.

Our boats and the people that work on those boats, and the people that work in our plant went from starting work in April and finishing in October, to starting work in April and finishing before the end of July. The economic impact on our company and the people that work for us was pretty huge. If we managed the resource well, which it certainly looks like we have, we should get an increased quota. Thank you.

MR. THOMAS LILLY: Ladies and Gentlemen of the Commission, I'm Thomas Lilly; I live in White Haven, Maryland, and I would like to speak to you and recommend that if you do make a change in the TAC that you be conservative. Any change in the increase in the TAC, as you

well know, will be felt by us in Maryland, more than any other state.

We are the state that is on the receiving end of the loss of menhaden. We have a terrible menhaden deficiency in the Maryland Bay. I'm an old guy. Twenty years ago I can remember going out on the Bay and seeing those beautiful schools of adult menhaden that may have stretched, you know three-quarters of a mile.

Now, you won't find menhaden schools in the Bay. Recent fishing has shown us that our rockfish, it's a 20 inch limit right now, and nine out of ten of them have empty stomachs. They are fighting like crazy to find something to eat out in our Maryland Bay. The same thing is true of our ospreys.

This Commission is not studying the effect on the Maryland Bay of what the factory fishing people are doing. We don't know how many of those schools, and keep in mind that Omega takes thousands, thousands of those schools of adult menhaden in their purse nets, not hundreds but thousands. We don't know if any of those schools are making it into Maryland.

There is no evidence that they are. We don't know whether Omega is taking 50 percent of the fish that should be coming into Maryland, 80 percent, 90 percent, it's not being studied. It should be studied. People in the Maryland Bay, millions of people, a lot of saltwater fishermen, and our communities are suffering. You know I can just leave you with this thought. We want our menhaden back. Thank you.

MR. STEVE WEINER: My name is Steve Weiner; I am the Chairman of CHOIR, which is a coalition that is focused pretty much on herring in Gulf of Maine, Georges Bank, New England, founding member of East Coast Tuna, founding member of Atlantic Bluefin Tuna Association. I've been harpooning tuna fish for longer than I want to remember.

I would advocate, had I been able to speak on the reference points, I would have advocated

for E. I think what I heard was, I guess what I heard, and well that's a dangerous option because it's got such a wide range between the targets. In other words it could be a high number; it could be a low number.

I advocate for it to stay at 200,000 as a Mainer. Seeing menhaden when I was a kid and periodically during my life, there are more of them there now than there has been in a long time. It's probably got as much to do, I guess with Mother Nature and environmental situations, as it does good management. But it seems awful coincidental that as you took a reduction in catch, that we've got more fish north. I think this group has to look at the spatial concerns of all the members.

Having menhaden ranging pretty much from the backside of the Cape all the way to downeast Maine, and my guess is if we manage them properly in the future they're going to range even further east. You have an obligation to all of us in New England, in northern New England to keep this quota at a safe place and I hope you do it. I was disappointed at the last discussion that none of us had an opportunity to say something about reference points. This discussion today kind of changed what was going on; and I think it changed the situation so some of us in the public should have been able to speak to it.

I really think it felt like a pretty hypocritical discussion when E was shot down; that somehow it was the more dangerous option. No way was it the most dangerous option. This group of people has the ability to set the quota, whether it was B or whether it's E. It could have just as easily been E with the responsible.

CHAIRMAN BALLOU: Sir, we're on specifications now. We've already dealt with reference points.

MR. WEINER: Okay, I hope you keep it at 200,000. Thank you.

CHAIRMAN BALLOU: Next.

MR. RICHARD HITTINGER: My name is Rich Hittinger; I'm with the Rhode Island Salt Water Angler's Association, and I just want to point out that in Rhode Island, well we represent 4,500 recreational anglers. Our members understand how important menhaden is to those fisheries that we're involved with.

We have members who spend a lot of money fishing for striped bass, fishing for bluefish, fishing for bluefin tuna. Those members are very concerned about the health of menhaden stocks. We've been fighting the menhaden issue for about 20 years in Narragansett Bay. Our members, when they see a commercial purse seine boat in Narragansett Bay, they call us.

They are saying, why are they allowed to take so many fish, when all we want to do is leave fish as forage for those fish that we spend our lifetime pursuing? They get very angry about this. Now, we're trying to leave as many fish in the water as possible. We were very much in favor of ecological reference points.

We understand that they may be coming in two, four, six, eight years from now; depending upon on how everything goes with peer review, with putting together a management structure. But for now, the best science on ecological reference points recommends 75 percent to remain in the ecosystem. The only number that the Technical Committee gave you regarding achieving that goal, is achieving that goal in one year, 2018.

Now that was 147,000 metric tons. Anything that is a harvest level above 147,000 metric tons goes against what is the best ecological data right now from the scientist. We would have been in favor of 200,000 with ecological reference points. At this point I don't think you're going to be able to pass anything below 200,000, but you should.

I think you need to keep it at 200,000 metric tons at a maximum; because what's going to happen is as soon as those boats come in to harvest in Narragansett Bay, the recreational fishermen are going to be calling our office by the hundreds, and actually they're going to be calling Jason McNamee's office too, so he'll get some of those calls.

I urge you to be conservative with this species. I think you already understand, and that's how you've been managing. You've been managing at roughly half of the target F value to date. You know you could have set a much higher harvest level based on single-species management, but I urge you to stay at 200,000. CHAIRMAN BALLOU: I'll take three more. I see three folks standing, so we'll take those last three comments. Welcome, sir.

MR. ROBERT T. BROWN: Robert T. Brown; President of Maryland Watermen's Association. Throughout my travels across the Chesapeake Bay Bridge over the past several months, have been some calm evenings when I've been going across it; the amount of menhaden that you see school after school on top of the water. I don't know where these people are coming from saying that they don't see menhaden in the Chesapeake Bay.

What we have is fish have changed their migration patterns some in the river, because of the amount of rockfish that we have there. I am a pound netter, I fish on the Potomac River. The rockfish that we're catching and selling are top quality. They've had plenty to eat. Also, these fish, what they have done to me on the Potomac with the amount of rockfish that we have.

I've had to move my nets in different areas, to try to get where I wasn't catching as many rock, so I could catch the menhaden for my crabbers. In Maryland, our quota gets caught probably about August of most years, and we need that bycatch to keep us fishing the rest of the season

to provide crab bait for our crabbers and lobstermen, it goes up north too.

Also we need it for our charterboats and our sports fishing industry. With the quota the way it is now, and the way it's divided up, we cannot remain fishing an entire season unless we have a bycatch, or incidental catch, however you want to talk about it. But we can see where we have plenty of menhaden, but they have just changed their practices. They're staying more out in the middle of the rivers and in the Bays. I urge you to see that you can keep us fishermen fishing the entire season. Thank you.

MR. SCOTT SNIDER: My name is Scott Snider; I'm from Charleston, I grew up fishing, big advocate right along the coast there, watched menhaden over time. Our smaller menhaden size of the schools, frequency of the schools, we've got a lot of menhaden down there. Schools seem to be a little bit fewer and further in between, but we can still find menhaden for sure, definitely still some menhaden there.

I'm listening to this panel mention repeatedly about they're dedicated to restoring the population to the 70 percent target number. I hear about the unprecedented amount of public feedback that we've gotten on this specific discussion, which from your words are talking about how much people care and how much people are passionate about this topic.

I just wanted to say, I really hope that we're not about to increase this quota and continuous skirting along right along at that threshold number, just 40 something percent or whatever that was, and not let this overflow happen and spillover effect happen, and boost in the numbers to get towards that 70 percent number, which was really a lot of the energy behind Option E. Let us really start building towards that number. I hope we're not about to drastically increase this quota. Thanks.

CHAIRMAN BALLOU: Thank you, last comment.

MR. PATRICK PAQUETTE: Patrick Paquette, I'm a recreational fishing advocate from Massachusetts, and I am a member of the AP; speaking on behalf of the Massachusetts Striped Bass Association. We had a discussion at our board meeting a couple of weeks ago, and we talked about what would happen if this is exactly the way this meeting played out.

I would urge the Board to put some teeth in the rationale, in the discussion of the decision that was just made. What I mean by that is that we just hinged a lot that a transition to ecosystem management to menhaden-specific ERPs was going to happen in 2019, or the discussion that those models will be in that action, so I'm assuming it goes in the water in 2020. I would say this.

To put some teeth in that decision, real teeth in that decision, to keep the commitment to the public what it is today would be two actions regarding the TAC. One would be that you set the TAC today, or tomorrow however this discussion plays out this afternoon; that you set that for two years and not a day more than two years.

The TAC should be set for the 2018 and 2019 season, because if we're really going to have a management action in the fall of 2019 that's going to effect on-the-water management in 2020. If the ERPs, if the menhaden-specific ERPs are out, then we only have to set the TAC for two years. The second thing is, if we're actually going to wait for models that aren't finished.

If we actually believe, and that's based on the decisions made today that that is the opinion that carried the day here today earlier. If that is actually true that we believe they're going to be peer reviews, that we believe the action is going to happen for 2019, then I would suggest that there is no reason for a significant raise in quota.

It's clear that people want a raise in the single-species quota based on that management, to go above 2012 without knowing what the cutting edge, menhaden-specific reference points are, would be irresponsible to industry, never mind to the general public or the recreational community, because industry should not be fooled into thinking there is going to be a higher TAC, when you've got menhaden-specific science coming.

After 20 years of a downtrend, it is absolutely the public's belief that the 2012 reduction is what kicked off the recent growth in menhaden. I understand that there is science that doesn't believe that. But menhaden-specific ERPs should give us some guidance on that to go to a high increase today is irresponsible to trick industry in thinking that a high increase, and that the markets that develop.

Today was a bad day for striped bass and a good day for Canadian owned pet food. That being said, please carry your commitment through, and if you're going to wait until 2019 to take specific cutting edge science, then it only makes sense that you be conservative until you know what that science says. If not, maybe somebody knows something else here.

If not, maybe ASMFC continues its absolutely horrible, horrible reputation of continued delay. But the commitment to me, looking here and being hurt and not liking the decisions that were made today is that if those decisions are really based on what was discussed around this table, it would be no more than a two-year TAC, and it would be a modest increase at best, not bigger than 2012, until the new science comes in, in two years. Thank you. (Audience Applause)

CHAIRMAN BALLOU: Thank you to everyone who commented. We very much appreciate your input. I need to gauge the interest of the Board, in terms of how you would like to proceed. It is 4:46; we had scheduled the

meeting such that we would recess today at 5:00. We're not bound by that. That's really just a forage fish guideline. But we should probably think carefully about whether we want to get into motions now, or whether we want to recess now and begin anew tomorrow morning; given the possibility that motions might involve just TAC, or potentially be bundled with other allocation methods.

I think there is interest in potentially all of the above. This could be a situation where we could start, and just simply end wherever we may be in 13 minutes, if that is how the Board wants to move forward, or we could end now. I say end, I mean recess now, or any other direction that the Board wishes to go. I am now seeking input from the Board as to how you would like to proceed. David.

MR. BUSH: I'm usually chomping at the bit to get things done, but as over the past year I've seen in quite a few of the different meetings. At the late hour weird things start to happen, so I would be very much I guess for possibly starting this in the morning when we can finish it with a much safer mindset than some of us who have traveled since 4:00 this morning might be able to offer you. Thank you.

CHAIRMAN BALLOU: That sounds like one vote to recess now. Dennis Abbott.

MR. ABBOTT: It's always been my belief that you don't make good decisions on empty stomachs, so maybe a motion to recess might be in order.

CHAIRMAN BALLOU: I don't think we need a motion; I'm looking for a consensus. Pat Keliher.

MR. KELIHER: I don't have, I actually have a bundled motion prepared that I'm not going to make right now; but prior to that I have a motion prepared that would set governance on specifications in regard to opting into fisheries, and would like to ask if you would consider that

type of a motion now, or if you would rather wait until tomorrow.

CHAIRMAN BALLOU: I think that really speaks to the overall issue that I'm looking for guidance on. That opens the can of worms, so to speak, on a range of potential motions on a range of potential issues. We can either start now or wait until tomorrow morning. Tom Fote.

MR. THOMAS P. FOTE: I agree, we basically make decisions bad after we're sitting around here for a long time; and a lot of us traveled long distance driving and you're tired right now. It would be nice to come with a fresh mind in the morning and think, oh we'll have some discussions over dinner tonight too.

CHAIRMAN BALLOU: Is there any objection to recessing now? Seeing none; I am going to make the call that this Board is in recess until 8:00 a.m. tomorrow morning. We're going to begin at 8:00 a.m. sharp. Enjoy your evening, thank you very much.

(Whereupon the meeting was adjourned at 5:00 o'clock p.m. on November 13, 2017)

**November 14, 2017
TUESDAY SESSION**

The Atlantic Menhaden Management Board of the Atlantic States Marine Fisheries Commission reconvened in BWI Airport Marriot, Linthicum Heights, Maryland, Tuesday, November 14, 2017, and was called to order at 8:00 o'clock a.m. by Chairman Robert Ballou.

CALL TO ORDER

CHAIRMAN BALLOU: Good morning everyone, welcome back. I'm going to call this meeting of the Atlantic Menhaden Board back into session. This is a continuation of the meeting that began yesterday, and is slated to continue through a good portion of today. Just a quick sense as to how we plan to proceed today.

First, I just thought it might be helpful to provide a brief reset on the issues that remain before the Board for final decision that includes the specifications, and the allocation issues and other issues other than reference points that are in Amendment 3. Megan is going to quickly run through those, just to make it clear as to what the suite of issues and options are that are before the Board for final decision today.

I will then open the floor to questions. We really didn't get much into that yesterday, but any questions that any Board member may have for Megan on any of the remaining issues. I think we covered specifications well yesterday, so I think we're past that; in terms of questions, although I think Jason would be more than happy to answer any if there are questions on that.

But once we get through that which I don't anticipate should take much time, I'm going to open the floor to motions; and I'll just have a brief comment on that before I do so. But for right now I'm just going to give the floor to Megan for just a brief rundown of the issues that remain before the Board.

MS. WARE: Just a reminder, there are seven issues for the Board to decide today. The first is the total allowable catch, which is basically the size of the pie that we will be dividing, and then next would be quota allocation; so how we're going to divide that pie. The third is quota transfers; so how is quota move between the different jurisdictions.

The fourth is quota rollovers; can unused quota be rolled over to the next year. The fifth issue is incidental catch and small scale fisheries; so how do we deal with bycatch landings or landings after a directed quota has been met. Sixth is the episodic events set aside; so do we want to set aside quota for episodic events in New England, and how much? Then the seventh issue is the Chesapeake Bay Reduction Fishery Cap; so is there going to be a cap on the

reduction fishery in the Bay, and what is that cap going to be?

CHAIRMAN BALLOU: Thank you, Megan. Just for the Board's edification, all of those issues are laid out in full detail in the draft amendment, beginning at Page 46 and running through Page 72. That is the chunk of the document that we're essentially working through for the rest of today. Are there any questions for Megan on any of the issues pending before the Board?

CHAIRMAN BALLOU: Nichola Meserve.

MS. MESERVE: Megan, regarding quota transfers, Option B, the quota transfers permitted with accountability measures for overages. Would a transfer that occurs before quota closure occurs that would not factor into the trigger, right? The 5 percent overage is just for transfers that would occur after a state closes a fishery. Is that correct?

MS. WARE: Let me see if I am understanding your question. If a state exceeded its quota two years in a row, in that third year are you asking? No, okay.

MS. MESERVE: If a state received a transfer from another state prior to a quota closure that would not count as a transfer in excess of the 5 percent that would factor into the trigger.

MS. WARE: Correct. Yes. That is part of their now quota, and they would have to exceed that by 5 percent, yes.

CHAIRMAN BALLOU: Other questions. All right, it looks like we are ready to go. I would urge that it might make the most sense to deal initially with specifications and then take on the various allocation and other issues in the amendment. That said, I'm fully aware that there is interest in perhaps bundled motions.

Any member of this Board may make any motion that they wish to make, and it would be

in order, at least ostensibly. But I just wanted to offer that suggestion for what it's worth; it's just a suggestion to kind of try to keep things as straightforward as possible. But consider that for what it is, which is just a recommendation not a decree by any means. With that the floor is open for motions on any of the issues left pending before the Board. Pat Keliher.

MR. KELIHER: Staff has a motion regarding an opt-in provision that I would like the Board to consider. If you could pull it up, if I get a second I'll be happy to give some further justification. **I would move that if a fixed minimum option is selected the following conditions would govern the activity: at the start of each fishing year and no later than January 31, states must declare if they want to participate in the fixed minimum program.**

States have the option to opt-out of the program and decline their fixed minimum allocation, or maintain 10,000 pounds of bycatch purposes and decline the remainder of their quota. States also have the right to opt-in to the program and receive their full allocation. In declaring its intent to receive its fixed minimum quota, a state can also choose to receive all, or part, of this amount.

If a jurisdiction declines its full allocation it must specifically identify the amount requested. States which opt-in must demonstrate that the state has the intent and the ability to commercially harvest some, or all, of its menhaden quota for the directed or bycatch fishery. This can be demonstrated through the issuance of permits for applicable gear types or species, historic landings, or the abundance of menhaden in state waters. Any quota that is not received by a state is redistributed to the other jurisdictions based on historical landings from the time-period selected by the Board in this Amendment.

CHAIRMAN BALLOU: Is there a second to that motion? Seconded by Ritchie White.

MR. WHITE: For the purpose of discussion.

CHAIRMAN BALLOU: Thank you and Pat to you for discussion on your motion.

MR. KELIHER: I know this motion is a little Dave Pierce style. I apologize for that so there is a lot of moving parts. But according to the amendment the jurisdictions have the right to participate in the fixed-minimum program at their sole discretion. Under this option the states are entitled to receive a fixed percentage of the TAC. However, states have the rights to decline the fixed minimum allocation.

For the clarity purposes I'm calling this an opt-out provision. A potential concern is that the amendment does not provide specifics on how the forgone quota is to be redistributed among the other states. In addition, there are no specifications that a state must meet to keep their quota. At the August Board meeting concerns were raised about this opt-in process; and a motion was made to consider an opt-in provision, whereby a state would have to manually declare their intent to use the fixed minimum.

The motion failed as the prevailing side convincingly argued that the Board did not need to get into the details at that time. In addition, the Board retained the right to craft these provisions during the final approval process. That specific point is reflected in the minutes of the meeting; and since we're about to vote on the fixed minimum provision, I think it is imperative for us all to have a similar understanding of the conditions under which we operate before we vote on the issue.

CHAIRMAN BALLOU: Pat, for clarification, I believe I just heard you just heard you characterize this as essentially an opt-out provision; and I do see a lot of opt-out language in here. But I also see right up front, essentially an opt-in requirement as well. I therefore consider it to be both. Is that a fair characterization?

MR. KELIHER: Yes sir, Mr. Chairman.

CHAIRMAN BALLOU: Discussion on the motion; Ritchie White.

MR. WHITE: I guess a question for Pat. Would you be willing to, let's see where it says about if you prove abundance of menhaden in state waters. Would you change that to adjacent waters; because there can be large amounts just outside state waters that could be harvested and landed in a state?

MR. KELIHER: Yes, I would accept that as a friendly.

CHAIRMAN BALLOU: Is there any objection to amending the motion as just suggested? Seeing none; so if staff could just make that tweak to the motion. There was no objection to it, so that would be considered a friendly amendment, and that will go forward without objection from the Board, unless I see Robert Boyles objecting. Robert.

MR. BOYLES: No objection, just a question for clarification. Ritchie, do you intend, is adjacent indicating federal waters? We're not bunched up like you all are up there. I mean what is adjacent?

MR. WHITE: I would mean federal waters when I say adjacent, so I guess we could change it to state and federal, and/or federal.

CHAIRMAN BALLOU: Back to comments, and I have Jim Gilmore next.

MR. GILMORE: Pat, the concept of it is fine. The thing I'm getting stuck on is at the start of each fishing year. If you read through that we're going to be doing quite a bit of administrative work every year for staff; and then back at the states to go through this whole thing. It seems to be a lot of work. Is there a possibility that maybe we could do this at a longer time period?

Again, that is a lot to go through each year and again, some of it's going to be a bit of a crystal ball, because you're going to start at the fishing year and try to decide what's going to happen later on in the year. Like we've been seeing the last two years with menhaden, I don't have a problem this fall; last year I had fish kills all over the place. It just got a little bit more complicated. That's my only hang up is really that we would have to repeat this every year.

CHAIRMAN BALLOU: Pat, a response?

MR. KELIHER: It's not meant to be administratively burdensome. If a state is going to receive its allocation, it's just to ensure that that state gives a heads up that it doesn't need all of its allocation. Now I certainly understand that there is a crystal ball available here that is probably cloudy, depending on how the state wants to promulgate its fishery.

In this case what I'm looking for is for some more certainty up front, in regards to what may be available for a fishery. Then if a state does ask for it, tries to move forward with the fishery, you don't have the fish. There is a potential for a quota transfer provision to be voted on later in the day. Again, I'm not looking for making this administratively burdensome.

CHAIRMAN BALLOU: Let me go to John Clark next.

MR. CLARK: This is very interesting, Pat. I just had a few process questions on it. When you say a fixed minimum or receive all or part of this amount. Are you looking at that in increments or could a state just request anything up to whatever the minimum chosen? Then the second is how does this work in with the incidental catch? Are you looking to use this minimum so that we no longer have an incidental catch provision? Does it tie into that; because we're a state that has used the incidental catch provision pretty heavily over the last few years?

MR. KELIHER: I'm going to start with the second. This has nothing to do with any incidental or small-scale fisheries. This is purely for the allocation options that are potentially in play after a TAC would be set. John, remind me of your first question, because unlike Jay, I can handle one at a time not two.

MR. CLARK: I'm just wondering when you say a fixed minimum; receive all or part of this amount. This could get kind of messy each year. Would a state change how much they're requesting each year? For example, if it was like a 2 percent minimum that's I think about 100 times more than we're actually landing in a state like Delaware. We could just request part of that but do you want it in like half a percent, 1 percent, 2 percent? Just for administrative purposes, I'm just wondering what would be simplest here.

MR. KELIHER: I think it could come in just about any way, shape, or form; whether you wanted 50 percent of your quota available to that state or naming it as a pound. I think staff is going to have to translate that into what that number is for them to send out a redistributed amount to the states to be able to harvest.

CHAIRMAN BALLOU: Tom Fote. Are you passing, Tom? David Bush. David Borden.

MR. BORDEN: Not speaking pro or con, it just goes back to Jim's point about the administration. Would it simplify the administration if we just put a date in this? For instance, prior to December 31, or whatever other date. I'm not proposing that. January, well I think the problem as I understood Jim's issue is the fishing year starts January 31. Doesn't the fishing year start on January 1st?

CHAIRMAN BALLOU: Yes.

MR. BORDEN: To me, maybe I didn't understand Jim's point totally correctly. But to me the part of the mechanics of this is that this is going to have a direct impact on allocations

that are spread in other portions of this FMP. To me it would make sense to just back it up to December 1. Prior to December 1 for the following fishing year you would specify this; and then the staff would then have the ability to calculate the shares and splits of the quota for the state, and send out a memo to that affect. Maybe I'm not following this.

CHAIRMAN BALLOU: Megan, do you want to just speak to the comment you just offered me?

MS. WARE: Yes, I'll just remind the Board that we don't finalize the quotas for that current year until April, when we get the compliance reports, because we're not going to know overages or unused quota, things like that. At the May meeting that's when we come to you guys with final quotas for that fishing year. The intent was to be a bit ahead of that. But that's how we do it now.

CHAIRMAN BALLOU: Dave, a follow?

MR. BORDEN: Yes, disregard everything I just said.

CHAIRMAN BALLOU: Next I have Adam Nowalsky.

MR. NOWALSKY: For clarities sake, the start of this motion begins with, if the fixed minimum option is selected. Is the intent of this to only apply if we select Option C or Option E from the allocation decision? Is that the belief here? If that is in fact the belief, I would consider. I mean I think this is good discussion to have as a precursor to that knowing what a state or some other states may be thinking. But if this would apply only to those, perhaps it might be best to proceed with tabling this motion until after we have the allocation method discussion. But at least we've had this precursor to know what we might be looking at.

CHAIRMAN BALLOU: If put in the form of a motion we could consider that suggestion. Next I'm going to go to Senator Miner.

SENATOR CRAIG A. MINER: I guess because this is such a new denomination in Connecticut, one of my concerns is that I don't know how quickly that is the first year, you could ever demonstrate that you have the ability to catch whatever your quota might be. I could almost imagine that after a year we could look at this again; and make a determination whether or not some states ever intended to catch any of their quota.

But the winner in that if that were to occur, would be conservation, in my view. If we were not able to get up to speed and completely allocate a million pounds or whatever; the harm in that case would be I guess that the environment wins, if you believed in conservation. I would suggest that this is premature.

I appreciate the conversation; but I think it's premature on that front, and also just because you didn't get your quota in one year doesn't mean. How would you then demonstrate, as the rest of the paragraph goes on that you have the ability to actually use your quota? I do have one question, I guess, and that is there any other species where we have this requirement; through you, Mr. Chairman?

CHAIRMAN BALLOU: I see heads shaking in the negative by staff; so it's my understanding that there are no other species for which we would have a provision like this.

SENATOR MINER: I know there were some other people that wanted to speak, but I think it's premature.

CHAIRMAN BALLOU: Loren Lustig.

MR. LOREN W. LUSTIG: I'm sorry for my sore throat. I was earning a living yesterday, so I didn't get a chance to be here. I'm going to defray my spot to speak to my colleague Andy Shiels, but I would like to be allowed to offer comments after he has concluded, Mr. Chairman.

CHAIRMAN BALLOU: Andy, go ahead.

MR. SHIELS: Senator Baker (Baker?) raises a good point. If I read this from the lens of Pennsylvania, it feels like we're being targeted here. I feel like the state of Pennsylvania should have the right to do with its allocation what it chooses to do. As he suggested, the winner might be conservation if you don't harvest your entire allocation, and then how would you prove it?

Somebody said hang on. Oh, he was talking on the phone. I thought he meant me. Who knows in this room? I'm concerned as I'm starting to understand what's going on here. I feel like Pennsylvania should have the right to do what it wishes with its allocation. If it chooses to use that allocation as a set aside or reserved for conservation that language doesn't allow us to do that.

CHAIRMAN BALLOU: Loren, did you want a follow on now?

MR. LUSTIG: Yes, thank you, Mr. Chairman. Everyone here knows that I am not a fishery scientist. I am an environmental educator. I always hearken back to the wishes of the children of Pennsylvania. My proposal is to vote for this amendment. However, we reserve in Pennsylvania, the right of the children to choose the gear that is used to collect our part of the commercial harvest.

I would be willing to bet they're going to use the lousiest gear you can possibly imagine, full of tears and rips, and about 99.5 percent of our commercial harvest is going to escape unharmed back into the water. But we will harvest. We will abide by the specifications of this amendment with about one-half of one percent. All right, because the children of Pennsylvania wish it. In fact my grandchildren demand it, and I'm not going to turn my back on them.

CHAIRMAN BALLOU: Rob O'Reilly.

MR. O'REILLY: I think if there is a motion made to table, I think that's the way to go. You know I know that Pat has put up sort of an idea here on how things could go, but it is too early, and there is no magnitude here. I think Pat did that on purpose just to sort of get the opt-in or opt-out; but it is too early, so I agree with that.

CHAIRMAN BALLOU: Pat.

MR. KELIHER: I would not be opposed to actually seeing this tabled for discussions as it relates to Option C and E. I think Adam's points are valid. That was going to be my original intent, but I wanted to ensure that we had a good conversation around this opt-in/opt-out concept. Frankly, from my point of view, allowing for this type of opt-in or opt-out provision allows me to consider a lower TAC amount.

Because if we know what we're going to get up front versus at the end of the season, the state of Maine could be better prepared to understand what our targets will be. Understanding that up front also allows us to consider a more conservative TAC at the end of the day.

CHAIRMAN BALLOU: Pat, would you like to make a motion to table? I'm sorry; I didn't want to put words in your mouth. I wasn't sure if that's where you were going; maybe not. Adam.

MR. NOWALSKY: Move to table until after we've had the Issue 2 discussion.

CHAIRMAN BALLOU: Is there a second to the motion to table.

MR. NOWALSKY: The Issue 2 decision.

CHAIRMAN BALLOU: Moved by Adam Nowalsky, seconded by Roy O'Reilly to table this motion, which would postpone consideration of it until later in the meeting; so it just sets it aside temporarily and it can be

brought back later in this meeting. It's not debatable. Is there any need to caucus? Megan?

MS. WARE: Just get clarity on what Issue 2 is, what do you mean by that?

MR. NOWALSKY: Allocation methods and timeframes.

CHAIRMAN BALLOU: Tabling does not move it to a time or point certain in the meeting, although it can be brought at any time that anyone wishes it to. To me, the motion to table just simply puts in abeyance for the time being to be brought back at any point during this meeting. Are you comfortable with that Adam, or do you wish to change your motion to postpone to a time certain?

MR. NOWALSKY: I believe the motion to table is very direct about when this would come back off of the table and in front of the Board for discussion.

CHAIRMAN BALLOU: Understood, so let me read the motion into the record. Actually, I have it in front of me I think. No, I don't. **Move to table until after Issue 2: Allocation Methods and Timeframes have been decided.** Again, because it is a motion to table it is not debatable. Is there any need to caucus?

Seeing none; is the Board ready to vote? I believe so. **All in favor please raise your hand. Thank you, hands down; opposed, null votes, abstentions, the motion carries unanimously.** Would any other member of the Board like to make a motion? Dennis.

MR. ABBOTT: To remove it from the table is only going to require a majority vote?

CHAIRMAN BALLOU: Yes that is correct. The floor is now open for any other motions on any other issues. Jim Estes.

MR. ESTES: I would like to get back to specifications if we could please.

CHAIRMAN BALLOU: Go ahead.

MR. ESTES: I think that we have a motion. If I can put it up there I'll read it, and if I can get a second I'll explain. **I move to set the total allowable catch not to exceed 216,000 metric tons until such a time that ecological reference points are utilized for Atlantic menhaden management.**

CHAIRMAN BALLOU: Is there a second to that motion? Seconded by Spud Woodward, moved by Jim Estes and seconded by Spud Woodward to set a total allowable catch not to exceed 216,000 metric tons until such time that ecological reference points are utilized for Atlantic menhaden management. Jim.

MR. ESTES: I know that yesterday we disappointed a bunch of our stakeholders. I think we did the right thing. But part of the reason at their disappointment is, they fell like we could easily kick the can down the road; as far as developing these ecological reference points. I think that this motion does a couple things.

Number one, I think it would hopefully give them some confidence that we mean it; and also because we are tying it to allocation, or excuse me to the TAC, which we all think is important. It makes us somewhat accountable; and so that is the purpose of the motion.

CHAIRMAN BALLOU: Show of hands, who would like to speak in favor of this motion; keep your hands up, we'll take questions. First of all I just want to get a sense, so I want to be able to be able to allow for a balanced discussion. You can put your hands down. Those who wish to speak in opposition to the motion, or even leaning toward that.

I will give everyone on the Board a chance; I just want to get an initial list going. I'm sorry, was it Steve that you just had a question? Are you on

the list? Did you put your hand up? Well, we'll put you on the list, Steve, so you're on the list. Okay, I'm going to ask Megan for that list then I'm going to go right down in order in which she wrote it; starting with Ritchie White.

MR. WHITE: I want to speak in favor of it; but first a question if I may, and that would be that this is open ended time-wise, and if a situation arose by which menhaden declined substantially, and we had to take a cut in the quota, this would not alter our ability to do that. That would be my question first; then I would like to speak to the motion.

CHAIRMAN BALLOU: Jim.

MR. ESTES: Oh that was my intention, was that we could go down but we can't go up.

MR. WHITE: Thank you. I agree with the concept. I think 216 is a compromise. I know there are states that would like to see 240, and there are states that would like to see 200. I think 216 is an excellent compromise in the middle. I think 216 with an individual state allocation that I also believe will come up later.

I think it allows Virginia and New Jersey to stay whole while allocation goes to all the states that don't presently have allocation, and I think that's a fair compromise. I think it also leaves menhaden in the water; compared to 240,000 metric tons. I think all said it is something we should support.

CHAIRMAN BALLOU: Adam Nowalsky.

MR. NOWALSKY: I'll get right to it. I've always said that menhaden is one of the easier species for me here around the table; because of the involvement of the assemblymen that I represent, very involved with the fisheries. His goal at home was that the health of the resource argues in favor of something more. **I'm going to move to substitute to set a total allowable catch of 240,000 metric tons for 2018 and 2019.**

CHAIRMAN BALLOU: The motion is up on the board; is there a second, seconded by Dave Bush? I'm going to stay true to my procedural plan to allow discussion on both the main motion and the substitute; as we did yesterday. Speaking in favor of the substitute is often the same as speaking against the main motion; so there really isn't much of a distinction here.

However, I just want to make it clear that as you comment on the now substitute motion, you are welcome to comment as well on the main motion, offering your support for the main or your support for the substitute. That is how I would like to handle the ensuing discussion. I'm going to continue down the list and go to Allison Colden next.

DR. COLDEN: I would like to speak in opposition to the substitute motion. There was a lot of discussion of this body yesterday about the concepts of intellectual honesty and integrity; and along those lines Option E was seen as, or characterized as a not conservative option. Along those lines I would challenge the Board to think about whether 240,000 metric tons is indeed a conservative alternative to that option.

Additionally, we talked about not selecting a target that is arbitrary; relative to the current reference points. We currently have a fecundity reference point which we are not achieving the target. It would seem following that conversation that a TAC should be set which would move towards achieving both the fecundity and the fishing mortality rate targets.

I would support in concept the main motion. I think that Jim provided a lot of strong suggestions on why we should put some real momentum behind the development of the menhaden specific ERPs. I think we heard in the spoken public comment yesterday some great points about really putting some weight behind the Board's commitment to moving toward the menhaden specific ERPs, and I think that the main motion would achieve that.

CHAIRMAN BALLOU: John McMurray.

MR. McMURRAY: I don't support the substitute, and I think it's important here to give you guys a perspective of somebody who spends most of their life on the water, and who is absolutely dependent on this resource. My season is dictated by spatial and temporal aggregations of menhaden.

It is absolutely the driver of my business; and a lot of businesses up the coast now. As you guys are very well aware, we've had this super abundance of fish that has flooded our coast. I'm enjoying it right now. It's right off of the south shore of New York. With it are striped bass, whales.

I took my son out the day before, we had one come up right by the boat, screamed his first cuss word, it was awesome. I tried to act angry; but I just couldn't. But the point is that this is not some oily bait fish that can just be sucked up without impacting everybody else. This is a huge increase.

I know that there is no stock recruitment relationship, and I understand environmental factors that probably contributed to this resurgence that we're having now. But to say that that reduction had nothing to do with this abundance of fish, I don't understand it. I think it defies common sense. Not only are we going back to those pre-2013 levels, we are exceeding them by a lot.

If there is anybody around this table who believes that that is not going to affect the coastal stock that we're not going to see a contraction again. I hope that you are in touch with the public about this. They want this abundance. This is good for them, it's good for us. This is absolutely irresponsible to even suggest this right now, when we had all this public comment. Frankly, I can't see how anybody would support it.

CHAIRMAN BALLOU: Dr. Duval.

DR. DUVAL: I can't support the substitute motion. You know we have been on the record in the past as supporting modest increases in the TAC when the science allows for that. We received our assessment update in August; which indicated stability in the assessment, and indicated that we were below both our fishing mortality target and thresholds, based on our fecundity reference points.

One of the other things that we have emphasized in the past is that significant changes in the TAC do not provide stability to industry. That's why we would be more supportive of the main motion. I think also, echoing some of the comments that have already been made around the table, modest adjustments in the TAC better position us to implement the menhaden-specific ecological reference points that we've made a commitment to down the road.

CHAIRMAN BALLOU: David Borden.

MR. BORDEN: Ritchie made one of the points and Michelle just made the second point, so I'll make the third point, which is I'm opposed to the substitute motion. Just note that really to me the deciding difference here is Motion 8 caps the catch at 216,000 and Motion 9 basically establishes the catch for two years based on that level. There is a significant difference between the two.

CHAIRMAN BALLOU: Rob O'Reilly.

MR. O'REILLY: I'm going to look at this a little differently. I don't support the 216,000 metric ton TAC, because just like we heard with what Pat Keliher presented earlier, everything is nested here. You know if we had a huge blackboard with arrows, we could probably wend our way through this process a lot easier.

But to say 216,000 metric tons is right. We don't know what that means yet. Is that going to be the total? What happens to bycatch, what happens to episodic events, you know

things that may make a difference? You've heard about the pound net fishery in Maryland and Virginia. Depending on what is attached to these 216,000 metric tons has a lot to do with where we end up today.

My particular desire here is just to say that I don't agree with 216,000 metric tons; because we don't know what else is going to go along with that. We have a menu, but really the menu as we go through it is interwoven, in a sense, and it makes it very difficult at this time to support 216,000.

CHAIRMAN BALLOU: Steve Train, did you still want to offer a question or comment?

MR. TRAIN: Yes, thank you Mr. Chairman. A lot of the questions I had have been answered. I think I like the hard dates in the substitute motion. The open-ended dates in the first part make me nervous. We're hoping to have everything out by 2019, but we might not. If we have a very healthy resource we have room to move up a little bit from 216, and we wouldn't be able to do that.

I think 214 sounds reasonable sometimes when I see the statistics we have, but I also see the pecuniary numbers, and I think that may be a little bit overreaching. I think we have a possibility of increasing the harvest on this resource for years and years, a little to a time, if we don't take too much at once. I think that benefits every user of it. There are parts of each one of these motions I could speak in favor of. Either one of them individually I'm not quite ready for.

CHAIRMAN BALLOU: Steve, just for clarification. You said 214; did you mean 240 in your comment just now? Thank you; that was a yes for the record. Roy Miller.

MR. MILLER: I think I oppose the substitute motion in favor of the original motion; for all the reasons that have been state thus far, but also I have to look at the optics of this situation.

The original motion has a modest increase, about 8 percent. I think that is prudent; considering the overwhelming public support that we heard yesterday. I think it's a little premature at this time to bump it up to 240,000 metric tons.

CHAIRMAN BALLOU: Dennis Abbott.

MR. ABBOTT: Surely everything has been said on this subject at this point. I don't support the substitute motion like many of my colleagues, and I think we've heard enough discussion about where everyone individually stands. It is clear to me that it's time to make a vote on how big the pie is going to be; then following that we'll figure out how many pieces of pie that we're going to cut it up into. I would like to ask that we think about taking a vote; because I don't think that any further discussion is going to change anyone's point of view at this time.

CHAIRMAN BALLOU: I do have three others on my list. I would like to at least move through those and then see whether the Board does want to call the question. Next I Have Robert Boyles.

MR. BOYLES: I'll pass, Mr. Chairman. Thank you.

CHAIRMAN BALLOU: Loren Lustig.

MR. LUSTIG: If Dr. Seuss was here in the room with us, he would remind us of the limitless forest of truffula trees, and wouldn't you know it, something called a Thneed could be made from them. If you're wondering what the final outcome of over harvesting was I can tell you at our break? I do reserve the right sometime today to use the word unless. Some of you will also remember that.

CHAIRMAN BALLOU: Pat Keliher

MR. KELIHER: I'm going to refrain from my Dr. Seuss quota that I was going to go into. I'm going to speak against the substitute motion.

While I support setting a TAC for the 2018 and 2019 years, I think as Dr. Duval stated, an incremental step in moving forward I think is called for at this time.

CHAIRMAN BALLOU: I was just going to ask the Board if there was any objection to ending debate and calling the question. Two hands went up. I'm going to go to those two hands, and then I'm going to ask that same question. Dr. Rhodes.

DR. RHODES: Listen, all the discussions we've had, this Board is committed to the ecological reference points. It's just a matter of how we're getting there. Thirty-three years ago, I took another doctor's commitment that was to first do no harm. But I really want to go back to what Hippocrates said, and of the epidemics. I'm going a Robert Boyles to get us all in place here. But the physician must be able to tell the antecedents, know the present and foretell the future. He must meditate these things and have two special objects in view, with regard to disease.

We can substitute menhaden; namely to do good or to do no harm. I think the 240, while it may be allowable, is not allowing for the least likelihood of doing no harm, and doing the most good for the resource. The 216 will make a lot of people whole, will allow for states that want allocation to get it without negatively affecting states that currently have allocation.

Having it set until the ERP is ready to go allows the staff to not get caught up or this management Board to get caught up, in setting these same discussions year after year after year. Hopefully, allowing the ERP to be done that much more rapidly, so in a two-year or three-year time period we're ready to have the next level of discussion, so a different doctor, but same process.

CHAIRMAN BALLOU: David Bush.

MR. BUSH: Obviously once again we've got some excellent points around the table and points of view to consider. Some of the things that we've talked about are stability, and we do need that. We need that in the industry, we need that in the environment. I completely respect that. But we talk about stability a lot more when we're considering an increase. However, whenever the numbers start dropping, well stability is not as important as the resource.

Okay well I get that. I mean it's got to play fair both ways, given that setup. But the other thing is, the promises that we made yesterday. I had some interesting conversations yesterday evening and you know was put on the spot. I agree. I think we made some promises and we wrote some checks that we need to make sure that the bank has the money to cover when it comes up here in a few years.

We've mentioned the conservative nature of one number over the other. Just to point a couple of numbers out. I looked up yesterday while we were discussing this. From 1950 to 2016, our average landings in metric tons were 333,000 metric tons. From 1950 to 1980, it was 410,000 metric tons, and from '80 to 2016, it was 266,000 metric tons. Keep in mind that we haven't exceeded 266,000 metric tons since before 1995, but up through 2016 that is still our average. As far as being conservative, we're talking about 216 to 240.

I was looking yesterday at the numbers put up on the board, and it seems like that 230, 240 appears to be a crossover point to where once you get above that some of the zeros start shifting into whole numbers. I don't know if maybe this would be appropriate if the makers of the motions might consider it, maybe amending the motion to include some of the better values of both of these motions. If so, I would be willing to do that if I could get some help.

CHAIRMAN BALLOU: I think first of all I would like to ask is there any member of the Board who has not yet spoken on either of these motions, who would like to speak? Seeing none, and taking David Bush's comment into consideration. Is there any objection to calling the question and moving forward with the vote on the substitute? Seeing no objection; we will caucus for one minute and then vote on the substitute. All right, I'm going to call the question. **This is a vote on the move to substitute to set a total allowable catch of 240,000 metric tons for 2018 and 2019. All in favor of the motion please raise your hand. Hands down, all opposed please raise your hand. Hands down, null votes, abstentions; the motion fails 4 to 14.** We're back to the main motion; further discussion on the main motion. David Bush.

MR. BUSH: As I mentioned earlier, there were some very valid points in both. I think we need to, in my opinion, as soon as the ERPs are out use them. That needs to be in there. I think specified years, it's been mentioned a few times that we need to mention those exactly as well. While I think I agreed to second the motion with 240,000, it was more for discussion purposes, but also because I believe that these modest increases while they are great, you know to say that they're modest.

You know these folks who rely on stability also rely on good years, and they never experience the good years, only the bad. I think looking at the numbers that we looked at yesterday, we can certainly see that there are quite a few higher numbers that have been shown to be more than fair to both the environment and the fishery. With that being said, if you're willing to take an amended motion or to amend this motion to include some of those finer points, I would appreciate the opportunity.

CHAIRMAN BALLOU: You're welcome to do so if you would like.

MR. BUSH: All right, and I'll need some assistance, but I would move to amend to set the total allowable catch and not to exceed 220,000 metric tons for 2018 and 2019. Sorry, help with the wording, or if the ecological reference points are available before then, however we would best word that.

CHAIRMAN BALLOU: Staff is putting the motion up on the board. Dave, I take this actually to be another move to substitute. Are you comfortable making that?

MR. BUSH: That's fine.

CHAIRMAN BALLOU: I don't see this as an amendment.

MR. BUSH: But I would want the maximum timeframe to be two years. I want it to be readdressed if we do not have these ERPs available by then it needs to be addressed, and not continue on. Whenever you're ready, I would like to speak to it for just a moment.

CHAIRMAN BALLOU: Yes let's just make sure we get it correct. First of all, and I realize this is a fine point. It could well be an amendment. But I just would like to suggest that it read; move to substitute, so Max if you could make that change, ***to set a total allowable catch not to exceed 220,000 metric tons for 2018 and 2019, or until ecological reference points are available for management use, whichever is first. Dave is that your intent to make that motion?***

MR. BUSH: **Yes.** I don't believe it needs to be specified, but I'm referring to the species-specific ecological reference points, but if that needs to be in there then that is fine as well.

CHAIRMAN BALLOU: Is there a second to that motion; seconded by Rachel Dean, Dave, discussion on the motion?

MR. BUSH: Yes sir and I mention this allot, I'm the new kid on the block here. I'm trying to

understand what our goals here when we show up at each one of these meeting. I've talked to some of you earlier; you know on the federal side it's pretty easy, there is a lot more doctrine, there is a lot more guidance. These are the goals; this is what you should be striving towards.

Here it's not quite so easy. But I understand that we need to take care of the environment. I understand we need to take care of those who rely on it as well. I really do believe if we're willing to provide reductions to protect the fishery in a bad year, we should also have the intellectual honesty to provide the ability to harvest during good years as well.

Now that may go against the philosophy of stability; but at the same time you can't only have average years and bad years. There is only one way to get an average year, and that is to take a bad year and provide a good year to offset it. I think this does that. I think arguing once again for numbers, simply because they're round is silly, and I hate to be part of a discussion that does that like we did last year.

I chose 220, because I think 220 is the point where a lot of our zeros turn into again whole numbers, when we're talking about the possibility of exceeding certain targets or thresholds. That is my reason for choosing 220. If the seconder would like to provide any other comment, I would appreciate it.

CHAIRMAN BALLOU: Rachel, I will go to you, but first just by a show of hands, who else would like to speak? I'm assuming Rachel wants to speak in favor, although she doesn't necessarily need to. Who else on the Board would like to speak in favor of this motion to substitute? Just put your hands up so I can go down the list, at least initially. I see three hands. Thank you, those who wish to speak in opposition. I see two. With that I will go to Rachel Dean.

MS. RACHEL DEAN: Dr. Seuss, I am here, I am here. I struggled with this. My first meeting I got to go through as we were setting the TAC the last time. It was brutally painful. But there is something that has always resonated with me as I've participated in fisheries management, and that is that we are so quick to take and so reserved when it's time to give credit where credit is due.

I've heard both sides of the argument. I have heard that decreasing the TAC did nothing; which I would sit here and apologize to fishermen then. That weight is on me now as I look at a 0 percent chance; a 0 percent chance of exceeding the F target; which means 100 percent chance of not exceeding the F target.

If this was successful management, if this got us to where we are to where we're starting to see a resurgence of menhaden, bunker, peanuts, up and down the coast. Then I would ask that we give some credit where credit is due. This isn't putting us back to harvest levels that got us into an awful situation.

This is by no means putting us back to where we were. This is just putting us somewhere where we have put credit into the management system so far; and saying to our fishermen that management does work. Have a little faith, because it will be given back to you when it allows for it.

CHAIRMAN BALLOU: Ritchie White.

MR. WHITE: I'm going to oppose the substitute motion. There is also a piece of giving and taking, certainly is for the fishermen. But there is also for the resource that needs menhaden. We're certainly going to take some from all the description we've heard about the whales, the bluefish, the striped bass, and the birds that also need menhaden.

We've had a lot of comments about the support for ecological reference points. Clearly those, when we get those, are going to have us leave

more menhaden in the water. I think the 216 is a compromise from the people I talked with last night and yesterday afternoon that I was hearing 201,000 as a possible motion and 240. I think the 216 is a fair motion.

I also oppose putting the dates in there. I oppose putting the dates in there, because what if the reference points are not ready in 2019? Do we want to go through this process again for one year? I don't think so. I think the original motion allows a little bit of time to make sure that the reference points are in place.

CHAIRMAN BALLOU: Russ Allen.

MR. ALLEN: I thought Rachel hit all the points very well, so I won't reiterate what she had to say. I just know that this to me is a good compromise between the resource and the fishing industry. If we decide to move forward with some sort of fixed minimum, it should make everyone whole and give everyone enough of the resource for their own states.

I think it really is the good between 200 and 240. As Rachel said, there is a 0 percent chance of going over the target with this number. That came from the Technical Committee, which I believe would have no problem moving forward with this either.

CHAIRMAN BALLOU: John McMurray.

MR. JOHN McMURRAY: This is bizarre to me. This is a public resource. It's like nobody looked at or read the public comment or went to the public hearings. The public wants enough of these fish to stay in the water so they have access to these whales; they have access to the striped bass, access to the bluefish.

Does anybody care what the public wants? A 20,000-pound increase is a lot of fish; it is hundreds and millions of fish. The analysis that we have right now in impact is single species; it's based on a single species stock assessment.

We have no idea what the impact on predators will be.

I would argue that we should wait to see what that impact is, and that we know the tradeoffs. We have science to base those decisions on before doing something like this; which is just way over the top in my opinion. Frankly, 16,000 metric tons is a hard pill for me to swallow; but I think it's reasonable, 20,000 pounds is not. The public frankly is going to flip about this, and they have a good reason to. I'll leave it at that.

CHAIRMAN BALLOU: John, several times you said 20,000 pounds. You meant 20,000 metric tons, I believe.

MR. McMURRAY: Yes sir, thank you.

CHAIRMAN BALLOU: David Blazer.

MR. BLAZER: I'm in support of the substitute motion. I think the 220,000 metric tons is kind of a moderate increase; based on what the Technical Committee has provided for us and the risks that are involved there. I'm also supportive of just setting this for the two years. You know we fully want the ecological reference points to be here as soon as possible. We kind of mentioned that yesterday. But I think if we start to manage to that third and fourth year out, I think we need kind of a two-year timetable to kind of reevaluate at that time. If we've got to go through a TAC setting exercise in two years that is our responsibility. That is us as management Board, so I feel very comfortable in making those decisions in two years, and I think that's our job to do that so I'm fully supportive of the motion to substitute.

CHAIRMAN BALLOU: Dennis Abbott.

MR. ABBOTT: I'm not in support of the substitute motion. One of the comments that struck me this morning, we've talked about Dr. Seuss and other things to add a little levity to the conversation. But a comment that John

made across the table, having his son out there and seeing a whale and saying awesome.

Well, this spring or early summer Ritchie White took me and my grandson from Milwaukee out striper fishing. My grandson caught a nice striper; and his first comment was awesome. The awesome came from the fact that the stripers that we were catching this summer were extremely healthy. I don't know if it has a lot to do with menhaden in particular.

But Ritchie White and I fished a lot, and we would always when we had a fish on the line, how big, how big. Ritchie would always overestimate the size of them, because the fish seemed to be so strong. What I'm getting at is the general public wants to see menhaden in the water; thousands and thousands and thousands of people from, (Audience Applause) thank you but hold that back, we don't need that. We appreciate it, but we don't need it.

But, it's true that the general public wants to see fish in the water. Whether it's 216, 220, it might seem like a small figure. But I think the general public would really like to see that number under 200,000. If you really get down to it, they don't want to see the extraction of menhaden to go to fish meal or a lot of products for whatever that they don't understand.

But they understand what they see out in the water. For that reason I think that there is a compromise figure of 216, which comes out. It should keep most people whole, give all the states some piece of the pie, and keep the states of Virginia and New Jersey hopefully in a good position. I urge you to vote down the substitute motion. Vote on the main motion. I mean we could go on all day. We can go from 220, we can go 280.

Maybe I'll be prepared to make a motion next, or if 220 passes to make another motion for 214. But 216, seems to be the best compromise figure; and I urge my colleagues to vote down

the substitute motion. Vote for the main motion of 216,000 metric tons, and let's move on to the allocations.

CHAIRMAN BALLOU: Rob O'Reilly.

MR. O'REILLY: I don't know about a compromise when you start off with 216,000 metric tons. I'm not sure we have a flowing recollection of all the different steps that we've taken. But I have heard repeatedly about making states whole again; specifically Virginia, New Jersey, and also Maryland.

Starting in 2013, those were the three states that were above 1 percent, in terms of the allocation. I think that during the allocation process, when Robert Boyles was hosting at least eight calls. Most of the comments were about capacity; and I kept urging through the series of those phone calls, capacity isn't what you're doing now.

We want to know what capacity is as you look down the road a little bit. I'm not sure that that ever occurred. I'm not sure there were every enough discussions about what capacity really is. I do know Rhode Island has capacity that wasn't there many years ago; or at least the boats weren't ready to embark on taking some of that capacity from the total allowable catch.

I also know that Maine ran into a situation where the episodic problem was more than episodic; it was bordering on catastrophic, with the constructs that we have, and with the episodic being held at 1 percent. I also know that New York was sweating bullets; having gone through two seasons of menhaden kills, and somehow being included with New England, which is fine, in the episodic events.

We have these situations that when I saw 216,000, if you'll notice, I didn't speak in favor of 240,000. I said 216,000 is not the right amount. We have a little way to go. Pat Keliher started the situation today and made me a little

bit nervous; because it was sort of open ended on this minimal quota situation.

No matter where you look, you're talking minimum being 39 million, with a half percent, 70 million with 1 percent, and 83 million that probably couldn't be used out of 141 million that would be for 2 percent. I know everyone has good intentions; and I think they stand by that and I stand with them, in terms of the reference points.

But we made a decision, and the decision was we're still united. We want those biological/ecological reference points. We have a pretty good feel that it's going to be sometime in 2019 for peer review. I think the substitute motion gives a little more assurance that two things can be captured today.

One will be to make states whole on a situation which I'm not going to recount; unfortunately, many of you remember as I do what we've been through, all the steps. I won't recount them on where we are today compared to where we were in 2012. The second thing is there is capacity that hasn't been there before.

That has to be recognized, and that is fair. I can't tell you right now how many menhaden are left in the water; because when they did the updated assessment and you had the NAD situation, you had those northern fish, which sort of perturbed the model a little bit. It's difficult to say whether the 68 percent that were left in the water at the time of the benchmark is higher or not. We just don't know; and I have asked that question, because there is concern for forage, definite concern. There is also a concern by all of us for forage in the form of herring; forage in the form of the alosine. Menhaden is not exactly the only forage species out there; and I think as we go through this, whatever we do we ought to start making renewed commitments on the alosine, and we ought to get the New England Council to maybe make some renewed commitments

on herring. Thank you for your time. I do support the substitute motion.

CHAIRMAN BALLOU: Allison Colden.

DR. COLDEN: I would just like to make a comment, and maybe reframe. Actually Rob just touched on this. Reframe the concept of the timelines that are included in each of these motions. Option B was adopted as our reference points yesterday by this Board; with many of the comments expressing confidence that the menhaden-specific ERPs would be ready for primetime in 2019, or at least out for peer review.

Personally, I don't see if the Board was so confident in that fact yesterday, why it would be necessary to change or limit the TAC setting exercise here for two years, if there was a high level of confidence that those models would be ready as we saw in our discussions yesterday.

CHAIRMAN BALLOU: Ray Kane.

MR. RAYMOND W. KANE: Yes, I'm going to speak. I'm going to oppose the substitute. I'm in favor of the main motion. I've heard around the table fishermen want to see an increase. Well, if I'm not mistaken we started at 185,000 metric ton, and then we went to 200,000 metric ton. Once again, we're increasing.

Fishermen should be able to walk away from here saying well we did get an increase. What nobody has reflected on is the bluefin tuna fishery in New England. For the first time in years the vessels, 35 and 40 foot vessels, didn't have to steam 130 miles out to the Hague Line to catch the quota in general category.

We had fish, many a fish were landed within three miles of the coast this year, and I venture to say vessels didn't have to fish more than 30 miles offshore. If you've ever fished for a living, you know what I'm talking about. When you're on a 35 foot vessel or a 100 foot vessel;

hundred foot vessels belong 130 miles offshore, 35 foot vessels don't.

My concern is also ecological reference points. I think this is a modest increase. People will be happy with it. I've had a lot of constituents back home, the bluefin tuna fishermen especially; tell me why are they going to raise it at all? We finally have menhaden back in our waters. I mean we had 800 pound bluefin tuna in 20 feet of water this year.

A pod of them came up in 30 feet of water. To address Mr. O'Reilly, you know there is an issue with herring. There is a reason why all these big animals came that close to the shore, because of the abundance of menhaden on the backside of Cape Cod. Once again, I oppose the substitute, and I'm in favor of the main motion.

CHAIRMAN BALLOU: Is there anyone who has not yet spoken on the substitute who would like to? David, you had your hand up. Last crack, final comment then we'll vote.

MR. BUSH: A couple of points I guess I would like to bring out. One, we've talked about reinvesting for a conservatory effect. Given the allocation schemes, states can do what they want with what they get; so if their particular state is now seeing an increase in menhaden and what not, and they don't want to use that as a fishery base. That is up to that state to sort of determine what they would do with that; and we'll be discussing that in other options here shortly.

I mean that's certainly the potential; I'm not saying that would be the case, but it could. Another thing I guess I would like to point out. You know our current trajectory, our management philosophy has gotten us where we are, not a particular number. While it's nice that we've finally seen an increase from where we were to 200,000 metric tons, you know we're also at the lowest point, the lowest harvest limit we've ever been at.

Again, I spoke of the averages over the years. We've never come close to our average, even over the past 20-30 years for the last ten years. It's not because they're not out there, it's because they've been limited from catching it. We've gotten to the point now where it's once again fighting over scraps.

We forget the big picture. We forget that there is more fish; and we certainly don't want to do things to cause harm to the ecosystem. But we don't even have the capacity to harvest what we use to harvest for decades; and we still have those fish and the predators that relied on them. I've talked to the bad guys, the big bad guys that are in the room before today, before this meeting.

I've never once had them come to me and ask me, we need you to get all you can get. We want you to double the quotas. They've never asked that. They said this appears to be what's fair. This appears to be what the science supports. You know I've talked to them. I've talked to the other folks. Well, they say the same thing; this appeared to be fair what the science supports.

If we're going to do a modest increase, and we have the range from about 200 to 240, 220, I mean my math is a little rusty. But that seems about in the middle. Again, it doesn't crossover that threshold that starts putting us in harm's way. Then I guess the final note. You know the abundance is either due to our management actions or it is not. If it is due to our management actions, we're doing the right thing. If it's not due to our management actions, then apparently we have less control than we thought.

CHAIRMAN BALLOU: One minute caucus and then we'll vote on the motion to substitute. Okay I'm going to call the question. I'm sorry, Andy.

MR. SHIELS: Could we have a roll call vote, please?

CHAIRMAN BALLOU: We can, and we will, and we will move south to north and Megan will call the roll.

MS. WARE: U.S. Fish and Wildlife.

MR. MILLARD: No.

MS. WARE: NOAA Fisheries.

MR. BURNS: No.

MS. WARE: Florida.

MR. ESTES: No.

MS. WARE: Georgia.

MR. WOODWARD: No.

MS. WARE: South Carolina.

DR. RHODES: No.

MS. WARE: North Carolina.

DR. DUVAL: No.

MS. WARE: Virginia.

MR. O'REILLY: Yes.

MS. WARE: Potomac River.

MR. GARY: Yes.

MS. WARE: Maryland.

MR. BLAZER: Yes.

MS. WARE: Delaware.

MR. CLARK: Yes.

MS. WARE: Pennsylvania.

MR. SHIELS: No.

MS. WARE: New Jersey.

MR. ALLEN: Yes.

MS. WARE: New York.

MR. GILMORE: No.

MS. WARE: Connecticut.

MS. GIANNINI: No.

MS. WARE: Rhode Island.

MR. BORDEN: No.

MS. WARE: Massachusetts.

MS. MESERVE: No.

MS. WARE: New Hampshire.

MS. CHERI PATTERSON: No.

MS. WARE: Maine.

MR. KELIHER: No.

CHAIRMAN BALLOU: **The motion fails 5 to 13. We're back to the main motion;** and I believe Megan has a suggested clarification on that so I'm going to turn the microphone over to Megan.

MS. WARE: For the main motion, this sets a number that the TAC cannot exceed, but this does not specify what the TAC is in 2018 and/or 2019. If the intent for the maker of the motion is to set it at 216, perhaps we could do a friendly amendment. It says move to set a total allowable catch to not exceed and be set at 216.

MR. ESTES: That's fine.

CHAIRMAN BALLOU: Let's put that up there. **The revised motion, which is the main motion, which is the motion before the Board is to move to set a total allowable catch not to**

exceed, and be set at 216,000 metric tons, until such time that ecological reference points are utilized for Atlantic menhaden management. I was going to ask if there is any objection to making that friendly amendment. Seeing no objection; the motion as amended is before the Board, and we have apparently comments on it starting with Roy Miller and then Rachel Dean.

MR. MILLER: Did I hear Megan mention 2018 and 2019 as part of that friendly motion; because that wording didn't make it onto the board.

MS. WARE: I didn't. I think the intent, and makers of the motion please correct me, was that there not be years in this so I have not put in years. But I was just trying to clarify that the 216 is actually the TAC that they are interested in.

CHAIRMAN BALLOU: Rachel Dean.

MS. DEAN: I would like to think that this is a friendly amendment; but I think that we're probably going to want it as a substitute motion if I may. Can I do that at this time?

CHAIRMAN BALLOU: Well there is a big difference between a friendly and a substitute.

MS. DEAN: Let me read it out. Let me share where I'm going, and we'll go. I think that I would like to move to make a substitute motion that would say: **Move to set a total allowable catch not to exceed and be set at 216,000 metric tons for 2018 and 2019 or until such a time that ecological reference points are utilized for Atlantic menhaden management.**

CHAIRMAN BALLOU: I don't think that's a friendly. It could be an amendment, it could be a substitute. Let's just call it as substitute, just to kind of keep on track here.

MS. DEAN: I would like to speak to it if I could.

CHAIRMAN BALLOU: I'll give you that chance. I just want to make sure that it's up on the board clearly and accurately as you intend. This would be to, once Max gets done, move to substitute to set a total allowable catch not to exceed and be set at 216,000 metric tons for 2018 and 2019 or until such time that menhaden-specific ecological reference points be available for management use. Is that your motion, Rachel?

MS. DEAN: Yes.

CHAIRMAN BALLOU: Is there a second to that motion; seconded by Steve Train? Rachel, would you like to speak to your motion?

MS. DEAN: At this point in time I guess I'm really kind of, Ritchie White said it that you know, I don't really think that I want to go through this again. To be honest, I'll go through it as many times as I need to, I will. I'll come here, I'll pack the bags and I'll come here. To be honest, I think that the public will too.

This isn't necessarily so that only the fishermen can state their case. But I think that I want the reference points. I'm ready for them. I just don't know if we can accomplish the timeframe. If we see something that tells us that we can increase that TAC, then I think that we should come back to the table and we should have that discussion. Just like we included the language that says not to exceed, so suggesting that we could reduce that.

CHAIRMAN BALLOU: Just so I understand exactly what this would do. This would set the quota at 216,000 metric tons for 2018 and 2019. You know this issue that it can't exceed; I'm not really sure how that plays in now, so I'm looking for clarification from either you or other members of the Board as to how they would view this.

Then it goes on to say or until such time that menhaden-specific reference points, which I guess would imply that it could happen sooner and if it does they would trump. But if they

don't happen sooner, it would be 216 for 2018 and 2019, and I'm just sort of wrestling in my own head with what not to exceed now, how that plays into this. Rachel.

MS. DEAN: Yes, and we would be back here at 2020, and I'll leave the second part of that question to I guess back to maybe the seconder.

CHAIRMAN BALLOU: That would be Steve Train, so Steve you're next.

MR. TRAIN: When I seconded this, my understanding would be that with the dates on there we could decide after 2019 whether to continue to wait if the numbers were not available, or we could act and set a new number. That's where the "or" is. That is what I thought I was seconding.

The reason I think that is important is although we have a lot of faith in getting the ecological reference point numbers out for 2020. If the peer review doesn't accept it, or we run into other problems, we could be into 2023, working under 216,000 metric ton. I think a date certain is important; but it gives us a chance to extend it if we think we're getting close with this "or" in this part of the motion.

CHAIRMAN BALLOU: Robert Boyles.

MR. BOYLES: This is good conversation, and I'm struggling with this as well. I think my interest in this portion of the discussion and the debate is and Mr. Estes made the comment at the very beginning about accountability. I think in some of my conversations over the last several weeks, I may have shared with you concerns over further delays in biological/ecological reference points.

My interest in the main motion as I understand it and in reference to Mr. Estes was this was some internal accountability. Having said that and I would look to you, Mr. Chairman. I don't know that anything that we do here today necessarily binds a future Board. If conditions

change, I would think that as Ms. Dean referenced, we would come back and look at those conditions to see, is it time for a course correction?

But again, my interest in the main motion, and I think in the substitute, I'm not clear, is some internal Board accountability. To take Mr. McMurray's point, you know we had thousands, tens of thousands of comments from the public saying you all commit, you all do this. You all do biological/ecological reference points.

I think the message, I hope that was sent yesterday is we are committed. I've seen no disagreement about that around the table. This is just designed to provide a little bit more internal accountability. I need to wrestle with the substitute; but again, if we can get to the substitute. If the substitute ensures that internal Board accountability then I can support it.

CHAIRMAN BALLOU: I've got Adam Nowalsky next.

MR. NOWALSKY: I'm in support of the idea of adding a timeline. My question with the two years at this point, as we've gone through the discussion and I know it was my motion earlier. Is that enough or if we're going to go down the road of holding ourselves accountable as a Board. Before I get to that question, let me just say that accountability to ourselves and the public. You know we've heard comments asking why we aren't doing exactly what the public asks us to do. Well, there were other comments that asked us to do certain things here.

Just because we didn't do exactly what any one of those people wanted us to do, didn't mean that we haven't considered it, and it hasn't strongly factored into our ultimate decision that we make around the table here today in future decisions. I think all of that public comment on both sides is excellent. It's needed; and it helps hold us accountable, and I think that we're being responsive to it. But my question at this

point is that should the ERPs get done as we heard yesterday what their cautiously optimistic about, I think was the term I heard, and should they be peer reviewed in 2019. Would our spec setting process for 2020 already have occurred by the time they're available to use, and would the timeframe here not be better for 2018, '19 and '20, because our spec setting process would already have occurred in 2019?

MS. WARE: There is not obviously a date for that peer review yet in 2019; so I can't say what month that is going to occur. It is important to consider that specification process for 2020. What I can say is that Amendment 3 says that the Board can following peer review of those menhaden-specific ERPs, can adopt those through Board action or through an addendum process. An amendment is not needed, so if it's through Board action those could be implemented in 2020. An addendum would obviously take a little bit longer, but it facilitates public comment if the Board is interested in that.

CHAIRMAN BALLOU: Adam, do you have a follow?

MR. NOWALSKY: Does staff feel if the cautiously optimistic timeline of development of ERPs comes to fruition, is 2018 and 2019 spec setting enough? Would those ERPs be useful to us in a reasonable timeframe for 2020, or would we still need spec setting for 2020 without use of the ERPs?

CHAIRMAN BALLOU: Bob Beal.

EXECUTIVE DIRECTOR BEAL: Let me give it a try. Keep in mind that spec setting is not part of Amendment 3. That is outside the Amendment 3 framework. Specs are something that needs to be done either multiyear, single year, however this Board chooses to do that. If 2020 is added to this motion, and I'm not saying whether it should or shouldn't be.

Then if the ecological reference points are available and the Board wants to modify the 2020 total allowable catch that will take a two-thirds vote by the Board. Robert Boyles hinted at this a minute ago. You know the actions of this Board really can't tie the hands of any subsequent Boards or subsequent meetings of this Board.

Even though this motion says 216, not to exceed 216 for the next two years, if there is a compelling reason and this Board votes through a two-thirds majority to make a change, even in 2019. They have that ability. The Board can't tie the hands of future Boards. ASMFC and the Policy Board and the Charter reflect that.

There is a Commission-specific provision that any final actions taken by the Commission and spec setting is a final action, can be rescinded or modified through a two-thirds vote. Including 2020 in here would then have that two-thirds majority requirement in place to change 2020. The flexibility is still there, the hurdle is just a little bit higher, and I think it would need to be compelling to more of the Board to make a change in 2020. That is the quick procedural summary of where we are, and the Board can decide where to go from there.

CHAIRMAN BALLOU: Dennis Abbott.

MR. ABBOTT: I'll pass.

CHAIRMAN BALLOU: Dr. Rhodes.

DR. RHODES: Well, this is just a question. I don't see a difference between these two motions; other than we're setting a limit for two years and having an "or" in there. If we do not have the ecological reference point's ready in 2020, we default back to 216. It's an identical motion the way it's written with the "or" in there, I believe. I mean I'll stand for other people reading it. But the way it reads is we're setting it for '18, '19, and then we have "or" so if 2020 it's not ready, doesn't it default back to 216 the way it's currently written?

CHAIRMAN BALLOU: Let me do this. I have several folks on the list, but I would like to ask if anyone has a response to the issue just raised by Dr. Rhodes; and I see three emphatic hands up, so I'm going to go left to right, Robert Boyles first.

MR. BOYLES: Point of parliamentary inquiry, Mr. Chairman. What is two-thirds vote of this Board?

EXECUTIVE DIRECTOR BEAL: It depends. The provisions of the Charter say that there are 18 votes on this Board, so two-thirds; you know you get the math. But there is a provision that if the Federal Services abstain, the denominator can change so it can be 18, 17, or 16, depending on the number of votes cast by the Federal Services, so it depends.

CHAIRMAN BALLOU: Rob O'Reilly, and if you could, Rob, just specifically to the point that Dr. Rhodes raised a minute ago regarding the difference between these two motions. I think it's important to kind of focus on that first, and then we'll go to the other comment.

MR. O'REILLY: Highly focused. I think, do we have a default position? Didn't we run into a little bit of trouble when we realized we really couldn't fall back to a quota from the previous year or a TAC? If that has not been remedied then Dr. Rhodes suggestion might run us into a problem again.

CHAIRMAN BALLOU: Are you speaking to the Indecision Clause that's in the document?

MR. O'REILLY: And what we did with the Indecision Clause, yes.

CHAIRMAN BALLOU: We agreed that if the Board could not agree on specifications for the next year that specifications in place for the last year, the current year as it were, would continue forward. It would be a status quo situation.

MR. O'REILLY: Thank you, Dr. Rhodes.

CHAIRMAN BALLOU: Rachel Dean, on the specific issue of the difference between these two motions.

MS. DEAN: Yes, I think that we've mentioned before that sometimes it's just to keep it in our memory, and by including the 2018 and 2019, my intention there was just that we would be reminded that these discussions can happen. That is not to say that those discussions wouldn't happen if it wasn't in there; but again, I just want that reminder that the option is there.

CHAIRMAN BALLOU: I have four more people on the list, and then I'm going to see if the Board would like to move forward with voting on this. Next is Tom Fote.

MR. FOTE: Our long history of setting two-year, three-year specs have not worked out so well; especially with some of the species we've gone through like summer flounder, black sea bass and others. I agree with Malcolm; this is a lot to do about nothing. Either one of the motions mean the same thing to me, because we're going to bring it up for discussion.

I guess the first motion is just clearer. I don't like putting years in, because we have a habit of pushing years off anyway. The Board can decide. It reminds me of New Jersey's budget. Most people don't realize in New Jersey that when you pass a budget every year it supersedes all the other budgets.

All the dedicated funds you made for the last 20 years can be superseded by the next budget, which is unusual I think for any other state but New Jersey, because we do things kind of funny there. This reminds me of that; because we always have the option of coming back and doing whatever we want the next following year, it just takes a two-thirds vote, and if anything is that strong we should do it. I support 11, just because it makes it clearer.

CHAIRMAN BALLOU: Dr. Duval.

DR. DUVAL: It was really more a point of information. My understanding, in terms of timeframe, you know with regard to the menhaden-specific ecological reference points that the peer review is right now currently expected to be completed by 2019, in conjunction with the new benchmark assessment, correct? Okay I'm seeing nods from staff around the table. That was the only point I wanted to bring up is that those will be in conjunction with the new benchmark.

CHAIRMAN BALLOU: Loren Lustig.

MR. LUSTIG: First of all I would like to sincerely complement Rachel, for her use of the word honesty. Not only did she use it sort of introspectively for herself, she also referenced the honesty given to us by the recreational anglers who are in this room, who represent tens of thousands of additional recreational anglers.

I'm really big into honesty and civility during this discussion. Now, somebody mentioned the word levity recently; especially in regards to Dr. Seuss. I assure you I am deadly, deadly serious about this whole matter, okay. There is a time for levity, but there is also a time for serious consideration.

CHAIRMAN BALLOU: Ritchie White – pass, last comment on this, Doug Brady.

MR. BRADY: To Dr. Rhodes point. Under 13, do I take it to read that there is no possibility until ecological reference points are available that the TAC could be over 216,000 metric tons? I mean I think both motions are saying that if you adopt either one there is no possibility the TAC would be set over 216,000 metric tons until we get ERPs. Is that the way I would read this?

CHAIRMAN BALLOU: My reading is that Motion 13 specifies that for 2018 and 2019 the TAC shall be set at and shall not exceed 216,000 metric tons. That could be trumped, because it then says "or" until such time that menhaden-

specific ecological reference points be available for management use.

I take it therefore that it would be open; in terms of what the specifications would be for 2020. It would require a subsequent Board action versus Motion 12, which would enable that same metric, if you will, to continue forward beyond 2019. I don't see that and maybe I'm misreading it, and if I am and I see Rachel's hand up, please clarify, so Rachel.

MS. DEAN: I think it should probably say "or unless."

CHAIRMAN BALLOU: Do you want to urge that that be modified as such?

MS. DEAN: Please.

CHAIRMAN BALLOU: ***Let's see if there is any objection to modifying the substitute to replace the word "until" with the word "unless." Is there any objection to making that amendment to the substitute motion? Seeing no objection; the substitute motion is so amended.*** Are there any other particularly members of the Board who have yet to speak on this issue who would like to before we call the question? There has been obviously a little bit of an added wrinkle just noted. Eric Reid.

MR. REID: At this point we're splitting hairs, and in my case I don't have the luxury of being able to do that all that much. That's levity without Dr. Seuss if you don't mind, I appreciate that. That is what we're doing. What I would really like to see is take a five minute break. Let the four people involved in these two motions figure out what they really want to say and get it over with; instead of spending the entire Board's time trying to do the same thing, Mr. Chairman.

CHAIRMAN BALLOU: Dennis Abbott.

MR. ABBOTT: I've been sitting here for, when I was going to speak the last time that I was

interested in making a motion to limit debate; which would require a vote of the Board, because I think we've heard enough. Just like Eric just said, it's time to vote, and if the Board is interested in voting, **I think I would like to make a motion to limit debate.**

CHAIRMAN BALLOU: Is there a second to that motion? Seconded by Loren Lustig, **is there any objection to the motion to limit debate and vote on the substitute motion? Seeing no objection; we will close debate and we will caucus for 30 seconds and then vote on the substitute motion.** Okay, before I call the question I believe Robert Boyles has a point of inquiry.

MR. BOYLES: I was asking ISFMP Director and the Executive Director to clarify for me what staff's interpretation of the difference between the two. My question specifically related to the question of binding future Boards. I think Toni had some comments that helped clarify it for me that may help the Board.

CHAIRMAN BALLOU: Toni Kerns.

MS. TONI KERNS: Two things that Robert and I talked about; sort of the difference between these two motions. Under 13 the Board would come back and revisit specifications after 2019; regardless of the progress of the ecological reference points. Under 12, you could continue on until perpetuity, I guess.

Then under either motion, if the Board wants to have a TAC that is different than 216 in future years, you would have to come back and do a two-thirds majority vote, because you have set a TAC at 216, even if it is less than 216. Under Motion 12, you still have to come back and have a two-thirds majority vote, because you've set it at 216 in this motion. Under 13 you only have to do the two-thirds majority vote for '18 and '19, because you haven't set a TAC beyond that in Motion 13.

CHAIRMAN BALLOU: Does that answer your question, Robert?

MR. BOYLES: Yes sir, thank you.

CHAIRMAN BALLOU: We've ended debate. Are there any clarifying questions? Really, Loren, I'm hesitant to go to you only because we really have closed debate, caucused, and we're really ready to vote. I would take a question, but only on a point of order. Go ahead, Loren.

MR. LUSTIG: Pennsylvania requests a roll call vote.

CHAIRMAN BALLOU: That is an appropriate request. We will have a roll call vote; and I will ask Megan to call the roll moving from north to south.

MS. WARE: Maine.

MR. KELIHER: Yes.

MS. WARE: New Hampshire.

MS. PATTERSON: Yes.

MS. WARE: Massachusetts.

MS. MESERVE: No.

MS. WARE: Rhode Island.

MR. REID: No.

MS. WARE: Connecticut.

MS. GIANNINI: Yes.

MS. WARE: New York.

MR. GILMORE: No.

MS. WARE: New Jersey.

MR. ALLEN: Yes.

MS. WARE: Pennsylvania.

MR. SHIELDS: No.

MS. WARE: Delaware.

MR. CLARK: Yes.

MS. WARE: Maryland.

MR. BLAZER: Yes.

MS. WARE: Potomac River.

MR. GARY: Yes.

MS. WARE: Virginia.

MR. O'REILLY: Yes.

MS. WARE: North Carolina.

DR. DUVAL: Yes.

MS. WARE: South Carolina.

MR. BOYLES: No.

MS. WARE: Georgia.

MR. WOODWARD: No.

MS. WARE: Florida.

MR. ESTES: No.

MS. WARE: NOAA Fisheries.

MR. BURNS: Yes.

MS. WARE: Fish and Wildlife.

MR. MILLARD: Yes.

CHAIRMAN BALLOU: The motion passes 11 to 7. The substitute becomes the main, and I would like to think that we might be ready to take final action on this particular issue; and

then perhaps have a break and take on the other issues. Unless anyone wanted to make any other motions to amend or substitute. I'm not encouraging that I'm just making the offer. Dennis Abbott.

MR. ABBOTT: I would make another motion to limit debate. I think we've had enough debate on this; it's time to vote.

CHAIRMAN BALLOU: Okay. Is there any objection to limiting debate and taking final action at this point? Seeing no objection; I appreciate the sentiment. I don't think we need to put that in the form of a motion. There is unanimous consent on the part of the Board to do that; so we will now do that. This will be the main motion. We will take a vote. Is there a request for a roll call? Oh, it has to be a roll call because this is final action on specifications. That said; we'll call the roll and we'll just stay with the flow on going north to south.

MS. WARE: Maine.

MR. KELIHER: Yes.

MS. WARE: New Hampshire.

MR. ABBOTT: Yes.

MS. WARE: Massachusetts.

MS. MESERVE: Yes.

MS. WARE: Rhode Island.

MR. REID: No.

MS. WARE: Connecticut.

MS. GIANNINI: Yes.

MS. WARE: New York.

MR. GILMORE: Yes.

MS. WARE: New Jersey.

MR. ALLEN: Yes.

MS. WARE: Pennsylvania.

MR. SHIELS: No.

MS. WARE: Delaware.

MR. CLARK: Yes.

MS. WARE: Maryland.

MR. BLAZER: Yes.

MS. WARE: Potomac River.

MR. GARY: Yes.

MS. WARE: Virginia.

MR. O'REILLY: Yes.

MS. WARE: North Carolina.

DR. DUVAL: Yes.

MS. WARE: South Carolina.

MR. BOYLES: Yes.

MS. WARE: Georgia.

MR. WOODWARD: Yes.

MS. WARE: Florida.

MR. ESTES: No.

MS. WARE: NOAA Fisheries.

MR. BURNS: Yes.

MS. WARE: U.S. Fish and Wildlife.

MR. MILLARD: Yes.

CHAIRMAN BALLOU: **The motion passes 15 to 3; and** we have dispensed with that agenda

item, and we are now going to take a ten minute break and reconvene at 10:04. Thank you.

(Whereupon a recess was taken.)

CHAIRMAN BALLOU: I'm going to call the meeting back to order. The next order of business is to continue forward with the other issues in the amendment. Moving in sequential order the next would be quota allocation and timeframes. As set forth in the amendment there are six options for allocation methods; and five options for allocation timeframes. The intent is to find a way to move on both; a sort of Tier 1 approach combined with a Tier 2 approach. With that is there anyone who would like to make a motion on the issue of quota allocation and timeframes? Pat Keliher.

MR. KELIHER: Last night I had indicated I had put together a bundled motion; and after thinking through it last night, and after going through this morning, I have broken it apart and I have sent Megan some language that needs to be tweaked just a little bit. She may have already tweaked it.

I would move to choose the following options in Draft Amendment 3: Section 4.3.2 Allocation Method Option C with a jurisdictional allocation with a Minimum Base Allocation of 0.75 percent fixed minimum for the Quota Timeframe of 2012 to 2016. Section 4.3.3 Quota Transfer Option A: Quota Transfer would be permitted. Section 4.3.4: Quota Rollover Option A: Unused Quota May Not Be Rolled Over. I will end there; Mr. Chairman.

CHAIRMAN BALLOU: Is there a second to that motion; seconded by Ritchie White? Moved by Pat Keliher; seconded by Ritchie White to do just what Pat read into the record, and is now up on the screen. Is there discussion on the motion? Emerson Hasbrouck.

MR. HASBROUCK: I would like to offer an amendment to that motion.

CHAIRMAN BALLOU: Go ahead.

MR. HASBROUCK: Such that Section 4.3.3 Allocation method Option C; jurisdictional allocation with a minimum base allocation of a 1.0 fixed minimum.

CHAIRMAN BALLOU: Is there a second to that motion to amend? There is, Nichola Meserve moves to second the motion to amend, so moved and seconded to amend the main motion by changing what I understand to be the first part, and that is in lieu of a 0.75 percent fixed minimum, a 1 percent fixed minimum. I'm sorry, I know Max is putting that up on the board, but Emerson did you want to maintain the quota timeframe of 2012 through 2016?

MR. HASBROUCK: Yes.

CHAIRMAN BALLOU: Maybe we don't need that. I guess we're just modifying that one portion therefore of the first bullet in the main motion; discussion on the motion to amend, Jim Gilmore.

MR. GILMORE: I actually can support both motions. But we're back in the same issue is that a 1 percent to me is cleaner; because we essentially cover I think everybody's fishery, in terms of both bait harvest and possibly episodic event. We go into a 0.75 then I would feel more comfortable, and I probably would argue later on that we go and have some episodic event, you know because we're kind of pushing up against maybe some of the actual harvest going on right now. It's another chicken and egg thing. I like 1 percent without episodic event. I like 0.75 with an episodic event.

CHAIRMAN BALLOU: David Borden.

MR. BORDEN: I would just like to follow up on Jim's point; and point out a nuance of the linkage here with other issues. The percentages can be used by any state; regardless of what the percent is. The percent can be used by any state for catches in both state and federal

waters episodic program can only be used for catches in state waters.

Now that sets up the dynamic where, and I'll use Rhode Island as an example of this so everybody understands it. The guy sitting immediately to my right had some of the vessels in Point Judith landing menhaden from federal waters. They were part of a herring catch. If you have one program you can land those, and if you have the other type of program you can't land those. This subtle distinction that a percent is, I think more desirable from a coastwide perspective as opposed to the episodic program.

CHAIRMAN BALLOU: Pat Keliher.

MR. KELIHER: I'm not opposed to the motion to amend. I think I would still argue for some sort of an episodic, because of the potential for fish die offs that we have within the state of Maine are real, and have big economic impacts. I was trying to not look like I was going for too much of a fish grab here; to be honest, trying to have some recognition to both New Jersey and Virginia and also to the other jurisdictions to the south. I can go either way; but I would want to see some sort of an episodic, and obviously I'll talk to that later.

CHAIRMAN BALLOU: Emerson Hasbrouck.

MR. HASBROUCK: My motion to amend does not preclude an episodic event. My motion does not relate to episodic events at all. That's another issue. But also, in terms of minimum allocation, states like New York and there are other states as well, did not have a very good data collection system in place for bait fisheries, which includes menhaden.

There were other species as well. In New York, we weren't able to get our reporting system in place until just over the past few years. Now that we've got that reporting system in place, we realize that the fishery is more extensive and more robust than what was originally

recorded or not recorded. I think with again at least a 1 percent, it could even go for more.

But 1 percent brings us to a place where we can cover our current fishery with a slight expansion. Additionally, in terms of public comment, we've heard a lot yesterday and today about public comments. I know that in New York, and I don't recall from Megan's presentation yesterday public comment in other states. But there was significant public comment in support of states having at least a 1 percent fixed-minimum.

CHAIRMAN BALLOU: Ritchie White.

MR. WHITE: I struggle with this, but I'm going to oppose the amendment. When I originally talked about a 216,000 ton quota, I talked about compromise and I talked about trying to meet everybody in the middle. My concern with the 1 percent is that it will not keep Virginia and New Jersey whole in this process.

I say that we don't have to keep Virginia and New Jersey whole. This is allocation. But I think in a compromise situation, I think it will be wise to. I think the three-quarter percent; I believe we can make both those states whole, combination of the quota they would get and then added to that would be some chance at the unused allocation that would go into a pool from the states that would not be using their three-quarter percent. Based on that thinking I'm going to oppose 1 percent and stick with the original motion.

CHAIRMAN BALLOU: Rob O'Reilly.

MR. O'REILLY: I oppose the amendment, the 1 percent, also in opposition to the idea that having a combination, which was mentioned of Episodic Event, which is about 4.8 million pounds, and then tacking on this 0.75, which is pretty close to about 58 million pounds. They are definitely not linked in magnitude. I mean a 1 percent Episodic Event is relatively small; compared to providing a minimum, even at a half a percent to all the states.

The problem is the way things stand now. If you look at 2012 through 2016, the best performance by the states that would be receiving the minimal, in addition to the three states that are already above 1 percent is there would be a lot of unused quota. That might be okay for some states that wish to do that.

We talked about opt-in and opt-out; but clearly, I don't want to call this a precedent, because it's been around, but other than American eel, where certain states were provided 2,000 pounds that did not have previous landings. That was done in the quota-building process, and the quota hasn't come due yet. But that was in a process taken by the ASMFC. Here we already have a quota system; and part of the situation is going to be a minimum, which we're not sure what will happen. Clearly, I would rather substitute for this if you don't mind.

CHAIRMAN BALLOU: I prefer to vote first on the amendment; and then entertain a motion to substitute.

MR. O'REILLY: I think that's fine; but please know that Virginia is opposed.

CHAIRMAN BALLOU: Other comments on the motion to amend. Is the Board ready for the question? Is there a need to caucus; 30 second caucus? Robert.

MR. BOYLES: Maybe a question for staff. At the TAC at 216,000 metric tons, just for my purposes can you tell me what that equates to in pounds?

CHAIRMAN BALLOU: Megan is looking that up.

MR. BOYLES: And what 1 percent equals, if you would, please Megan.

MS. WARE: The total TAC in pounds is 476,198,486; and for 1 percent it is like 4.76 million, roughly.

CHAIRMAN BALLOU: Okay I'm going to call the question. All in favor for the motion to amend please raise your hand. Hands down; those opposed please raise your hand. Hands down; thank you, null votes, abstentions, we have two abstentions. **The motion fails 6 to 10 with 2 abstentions. We're back to the main motion. Rob O'Reilly, did you want to offer a substitute?**

MR. O'REILLY: Yes, and I'll have some brief remarks about it. **But I would move to substitute Option F under Section 4.3.2 as the allocation method.**

CHAIRMAN BALLOU: Is there a second to that motion; seconded by Dave Bush. Moved by Rob O'Reilly and seconded by Dave Bush to substitute what I understand to be, is it your intent, Rob to substitute the entire main motion with your substitute motion?

MR. O'REILLY: My understanding, it would just be at the top of the main motion with the allocation method; not the transfers and not the rollover.

MS. WARE: Rob, there are two sub-options for Option F. Do you want to include which sub-option you are interested in?

MR. O'REILLY: I was hoping that would be discussed after this; because that has an importance of its own, in terms of the allocation. I think really what we're looking at in F is we have reached that situation with Sub-option 1, where it would be a 50/50 distribution between bait and reduction, and Sub-option 2 is 70 percent to bait, 30 percent reduction.

The reason I'm hesitant to declare one is I think, just like Robert Boyles just did. I think it's important that we know the outcome of Sub-option F; in terms of what's going to be available. I don't think anyone is working on their calculator fast enough to help me out on that. We're looking at when 212,500 are exceeded, which with 216,000 it is.

That's going to leave approximately another 212,500 is 468.4 million, and 216,000 metric tons is 476.1 million. We're looking at about 8 million pounds. I think in the sense of fairness, I think we ought to know that the Board can say, well that either does help my situation or it does not. That is a really long response, Megan.

CHAIRMAN BALLOU: It's okay, and it does sound like that if I understand how this would go that if the Board were to approve this amendment, there would then be a subsequent motion to clarify the particular sub-option associated with this.

MR. O'REILLY: That's correct.

CHAIRMAN BALLOU: Okay I'll take comments both in favor and opposed. If you wish to speak in favor of this motion, please raise your hand, question, John Clark.

MR. CLARK: Option F states that the timeframe is 2009 to 2011; whereas the motion states the timeframe is 2012 to 2016. Could Rob clarify which timeframe he wants to use for Option F?

CHAIRMAN BALLOU: I think Megan has a response.

MS. WARE: The part up to the 212,500 metric tons that is our current allocation method; so that is based on the 2009 to 2011. The part above, so the difference between 216 and 212,500 metric tons, I am assuming that is what that 2012 to 2016 timeframe is applying to. We can try and clarify that if you would like in the motion.

MR. CLARK: Well, that is kind of confusing, because under Option F the additional is just either divvied up between the bait and the reduction fishery. It doesn't say anything about a timeframe there. The base option F does specify a timeframe; and it's not the timeframe that is in the motion right now. That is where we need some clarification.

MS. WARE: Yes, so what the amendment says is for the sub-options; depending on if it's a 50/50 or a 70/30 split. That distribution is "based on landings during the timeframe chosen in Tier 2," which is the timeframe options. That difference, and if we need to I can pull up the picture that describes this option, because maybe that will help. But I'll look to Rob to see if he is looking to have that difference be based on the 2012 to 2016; and maybe if he is we can clarify that in the motion.

MR. CLARK: Well, Megan I'm just saying that it says at or below a TAC of 212,500, which is our base situation. The quota is allocated based on average landings from 2009; you know the current allocation method, whereas this motion up here would imply that no, we're not using that timeframe. It makes a big difference to states like ours which timeframe is used.

CHAIRMAN BALLOU: John, this is my take on where we are. Rob's motion to substitute would replace all of the first bullet in the main motion. That quota timeframe 2012 to 2016 would not apply; because it's not applicable to Option F. ***This is a motion, and make sure it's correctly worded.***

Substitute Option F under Section 4.3.2: fully replacing the way the current main motion is proposed with regard to Option C, and what Megan has been referring to is that if this motion were to pass, we would necessarily have to come back and address the timeframe issue associated with a delta between 212,500 and 216. Does that make sense?

MR. CLARK: Yes, I have that. Okay, it's just the way the motion is. I see, so the entire timeframe is gone then from the original motion.

CHAIRMAN BALLOU: That is my interpretation. Rob, do I have that correct?

MR. O'REILLY: You do, and Megan had it right as well. Another decision would have to be

made if this passes. Then we'll have to choose one of the sub-options and also the timeframe is under Tier 2.

CHAIRMAN BALLOU: Okay, we have a few hands up. I guess I'll just try and just alternate back and forth, without necessarily figuring out if it is pro or con. I'll go next to Adam Nowalsky.

MR. NOWALSKY: We have a motion to substitute; but if I'm clear on what you're saying, we're not substituting 18 for 16; we're only amending 16 to remove the first bullet point with the information contained in 18.

CHAIRMAN BALLOU: That's correct.

MR. NOWALSKY: Okay so that would probably best be clarified as an amendment to the original motion then.

CHAIRMAN BALLOU: I concur, so let's make it that; thank you for that clarification, so motion to amend the first bullet in lieu for substituting for the entire motion, thank you. It is now a motion to amend and it only refers to the first bullet under 16; with that further discussion on the motion to amend. Nichola Meserve.

MS. MESERVE: I can't support the substitute motion. I don't feel that this Option F meets one of the main objectives of this amendment document; which is to develop a management program which ensures fair and equitable access to the fishery for all regions and gear types. Given the TAC that we have selected, this is going to redistribute a very small amount of quota to the other states, and not meet the needs that we have identified.

There has been some discussion that while we can use the Episodic Event Program to address those needs still. But as pointed out that doesn't provide for the state flexibility to manage that episodic amount as best fits the needs of the states. I can't support the substitute and support the main motion.

CHAIRMAN BALLOU: David Bush.

MR. BUSH: One of the reasons why I supported this, and let me preface it with it's no front page news that North Carolina has long had a reduction fishery until of recent years when we decided that was the route we didn't want to pursue anymore. We would most certainly like to have more poundage than we have; at least enough to make it economically feasible to pursue a bait fishery. We most certainly would love to do anything we can to get that without damaging those who depend on it on a regular basis.

We won't pursue that bait fishery at the expense of communities that rely on it. We understand that different states have different fisheries that they are heavily reliant on. We all know that North Carolina has a big fishery that we're reliant on. While we would pursue a bait fishery at almost all cost, we would not do so at the expense of other communities, other infrastructures, other states that have grown to rely on it due to the actions of this Board.

CHAIRMAN BALLOU: Pat Keliher.

MR. KELIHER: I want to echo Nichole's comments. I'm having a real hard time with this being equitable. What I was trying to move forward in the original motion was some sort of balance between the jurisdictions. Maine caught over 4 million pounds alone; and if my rough last year and my rough estimates, this would split between jurisdictions just under 5 million, if our math is right. I've got very big problems with this motion; and I will be opposing it.

CHAIRMAN BALLOU: Emerson Hasbrouck.

MR. HASBROUCK: I'm also opposed to this amendment. I agree with Pat and Nichola that this does not meet the goals of equitable distribution to states that don't have much quota.

CHAIRMAN BALLOU: Any other comments on the motion to amend? Seeing none; is the Board ready for the question? If so, do you need time to caucus? Let's give it a 15 second caucus, just to make sure. Okay, it looks like the Board is ready. **All in favor of the motion to amend please raise your hand, thank you. Those opposed, please raise your hand, thank you. Any null votes, any abstentions? We have two. The motion fails 1 to 15 with 2 abstentions. We're back to the main motion.** Is there any further discussion regarding the main motion? Seeing none; is the Board ready to vote on the main motion, which has three parts? There it is up on the board. This would be a vote on all three parts; the allocation methodology, the timeframe, quota transfers and quota rollovers. It would address all three components.

If the Board is ready for the question I will call it. **All in favor of the motion please raise your hand, thank you. Opposed please raise your hand, thank you; any null votes, any abstentions? We have two. The motion passes 14 to 2 with 2 abstentions.** We are moving along. Now up to, let me pause. There is a motion that was tabled. Is there any interest in bringing that back now or at any point? I guess that's a decision for the Board. Adam Nowalsky.

MR. NOWALSKY: **I would move to bring that previous motion, take it from the table.**

CHAIRMAN BALLOU: Is there a second to that motion to bring the tabled motion back? There is; it is seconded by Emerson Hasbrouck. Moved by Adam Nowalsky and seconded by Emerson Hasbrouck, to bring back the tabled motion for consideration by the Board. I forget whether this is even debatable or not.

But let's just see if there is any objection to doing that. Seeing none; that motion is back before the Board and we'll wait for Max to try to catch up and see if we can get that back up on the screen. Okay, I think we have it up. Let's

just make sure we've got it correct. I know there were a couple tweaks made to it. I assume this is the motion as it stood prior to when it was tabled earlier this morning; so it's back before the Board, discussion on this motion. Emerson Hasbrouck.

MR. HASBROUCK: I have a question about process here. I generally support this motion. However, is the decision on states opting in or opting out, is that going to be brought back to the Board for decision at our February meetings, or is this going to be a staff decision or an Administrative Committee decision? How is that going to work?

CHAIRMAN BALLOU: Pat Keliher.

MR. KELIHER: The way it is crafted is that any quota that is not received by state is then redistributed to the other jurisdictions. I see it this is a staff effort to say this is where we are, as far as what states have requested. It goes into a pot, and then that would be automatically redistributed.

CHAIRMAN BALLOU: Emerson Hasbrouck.

MR. HASBROUCK: Thank you, yes follow up on that. I'm referring to the part that says in terms of opting in: that the states which opt in much demonstrate that the state has the intent and ability to commercially harvest some or all of its menhaden quota, et cetera, et cetera, and how it could be demonstrated et cetera. I understand the part of it just going into a common pool; but who is going to make that determination as to whether or not the states have the ability to catch their allocation if they opt in?

CHAIRMAN BALLOU: Pat, do you want to speak to that?

MR. KELIHER: I'll try, Mr. Chairman. The way I've envisioned it, maybe wrongly here, is that states would submit with their request what they have for regulations on the books

associated with that fishery. If a jurisdiction didn't have regulations on the books associated with that fishery, then they wouldn't be able to request quota associated with it. In concept that is where I was trying to go.

CHAIRMAN BALLOU: Discussion on the motion; John Clark.

MR. CLARK: Just further clarification I guess; because you have the option to opt out of the program, so you can either opt out or opt in. You have to opt in, and if you do opt in you have to prove you can catch what you're – I'm sorry if I'm repeating some of the things here. It just seems a little contradictory here, these first two lines.

CHAIRMAN BALLOU: I'll leave that open unless somebody wants to grab onto it. Next I have Steve Train.

MR. TRAIN: I like this option. The last thing we just voted on prevents rollover; which I think is a good thing. But we're talking about a highly migratory species up and down the entire east coast. Sometimes they're in some places and sometimes they aren't. We're not allowing the rollover, yet the population might be healthy.

We have some jurisdictions that might not choose to prosecute this fishery; but we've determined that the resource is healthy, and some areas may be seeing a larger abundance. To allow this to happen and go back in a general pool, I think is perfectly reasonable and a very healthy thing to do as far as the fishery goes.

CHAIRMAN BALLOU: Jim Gilmore.

MR. GILMORE: Just to go back to Pat's comment, because it made me feel a lot more comfortable with this motion. The bar would be if you have regulations in place to harvest that would be the only requirement you would need; and if that's the case, I'm completely okay with this and support the motion.

CHAIRMAN BALLOU: Pat, do you want to say that on the record, please?

MR. KELIHER: That's the intent.

CHAIRMAN BALLOU: That could be clarified in the motion. It's up to the Board to decide whether they want to try to perfect this, clarify it. But we've just had a good exchange regarding intent. Next I have Rob O'Reilly.

MR. O'REILLY: I think roughly it looks like about 43 to 44 million pounds from the last motion on the 1 percent would be allocated; and clearly that exceeds the capacity that we think we know around the table. My question is, the last motion also talked about the transferability. I'm wondering how that coupling works with the opt-in situation opt out. For example, which comes first or are they coupled together? A state may choose to opt out, and then does the state have the ability to transfer right after that?

CHAIRMAN BALLOU: Pat Keliher.

MR. KELIHER: There are probably a hundred different "what ifs" here. Again, the intent, jurisdiction opts in; they don't have fish within their state waters. They are not harvesting those fish. They end up with a surplus at the end of the year. The ability is for another state could request a transfer to help with any overage that might have happened within their jurisdiction. I'm trying to create some certainty up front for states that will promulgate fisheries; and the flexibility on the back end, in case they go over what their targets are.

CHAIRMAN BALLOU: Russ Allen.

MR. ALLEN: I have a few problems with this motion. One of those hits really hard at New Jersey; because we already have two species where we have quota that we do not use. One is striped bass; where we have a commercial quota, and we have as everybody knows, a

recreational program that allows some of that harvest.

But we do not reach the total harvest. The other is horseshoe crabs; where we have a quota that we do not use. I would really have a hard time if this passed; trying to defend how we don't use that horseshoe crab quota. It's really hard for me to even think about this. I can feel for Pennsylvania on that one; where they are trying to be conservative, and this doesn't let them do that.

CHAIRMAN BALLOU: Senator Miner.

SENATOR MINER: I'm trying to get, I guess a feel for the sentence that says any quota that is not received by a state would then be redistributed. Is it the intent here that that redistribution could occur either at the front end or in the back end of that given year; so it either could be used to cover overages of another jurisdiction or it could be used in the pool on the front end, to theoretically increase the quota that states might get that are still in the fishery?

CHAIRMAN BALLOU: Pat Keliher.

MR. KELIHER: The intent is for it to be redistributed on the front end. The ability within the last motion spoke to the ability to transfer. That would be on the back end of the fisheries.

CHAIRMAN BALLOU: Dr. Duval.

DR. DUVAL: A couple things I guess. I apologize that on the previous motion, I just wanted to clarify for the record that our vote was based on the timeframe, not necessarily the method that was used. That timeframe was not really good for North Carolina; but it is what it is. I'm still struggling with demonstrating intent and ability to commercially harvest some or all of that quota; and I guess I'm concerned about if there are years where due to whatever.

I mean we're in a hurricane belt; you know that impacts a lot of our fisheries pretty significantly, and if folks don't have the opportunity to get out there that it would impact our ability to opt in to our full allocation. I'm still struggling a little bit with that part of the decision making process. I absolutely appreciate what Pat's trying to do here; just trying to wrap my head around it.

CHAIRMAN BALLOU: I'll just say, my understanding of the way this motion reads is that there are three ways that you could demonstrate your intent and ability. One would be the issuance of permits for applicable gear types or species. The other would be via historic landings. The other would be the abundance of menhaden in state and/or federal waters. As I read this motion literally, those are the three standards that would be applied to a state's request. Dr. Duval.

DR. DUVAL: Follow up. I mean right now the timeframes for harvest that we're using in this amendment did not allow states and jurisdictions that previously had reduction fisheries to be able to. Those landings were not included in those historic timeframes; so are we going to be allowed to use that as demonstration of availability of menhaden in our waters?

CHAIRMAN BALLOU: I guess I have my interpretation; but I would rather look to the maker of the motion as to what your intent is with regard to historic landings, and how that should be applied.

MR. KELIHER: To the literal sense, historic landings. I was trying to be inclusive; as we developed this in trying to give some flexibility. It is any one or combination of those three criteria. In my mind, Maine had a reduction fishery at one time. That would come into play here if we were in the situation to want to consider the use of this.

CHAIRMAN BALLOU: I'll just challenge you; if you don't mind. Does historic in your opinion mean any time prior to, or at some fixed time prior to or during some fixed timeframe prior to?

MR. KELIHER: In my mind it is any time prior to.

CHAIRMAN BALLOU: That clarifies the intent. Andy Shiels.

MR. SHIELS: We're in a unique position; and I really appreciate Russ Allen mentioning that. This really looks extremely complicated for something that could be very simple. The question I have as almost an objective observer is what is the need for all the language? We just said what the distribution is going to be; three-quarters of a percent.

You take the total amount; somebody already calculated it, what each state should have. You divide that up, and that's what the state's quota is and you're done. There doesn't seem to be a need for a state to determine now or at the beginning of the year whether they're going to be in or out of the fishery.

If they decide, if two or three states decide to hold their quota for whatever reason, maybe because the environmental activist and encouragers and the recreational fishermen say to that state, we really don't want you to catch that full quota. We know it's available; but we would like to meet with you, and we think maybe you should only take 50 percent of the quota that's due you, because it's affecting our local waters.

That option would exist if you don't have all this language. This seems to me that it's almost like a states' rights issue that the states now are going to give up their authority to make a decision how they want to spend their marbles. We were all given 200,000 marbles or 212,000 marbles; metric tons are marbles yesterday. Today we're given 216,000 metric tons of marbles. New Hampshire might decide to keep

all their marbles; or they might decide to give some of their marbles away. That should be their right that I don't think should be predetermined at the beginning. Let the state's decide how they want to spend their marbles.

CHAIRMAN BALLOU: Robert Boyles.

MR. BOYLES: I'm struggling with this. You know we've just made, if this amendment passes, if the whole amendment passes, we have just allocated 3.5 million pounds. You all have given me 3.5 million pounds, the Palmetto state 3.5 million pounds of menhaden that we don't have those fisheries developed. I think that is clearly a policy call.

That is a motion that passed; and if the amendment passes that will be our operating stance. I appreciate the intent of the motion, you know as one of the states with really not a dog in this fight. I appreciate the intent of the motion to perhaps soften the blow or to ease the impact of the entire amendment, whatever we pass here today.

At the same time, I struggle with the whole idea. I should have prefaced this at the beginning. It is my full intent that we will have biological/ecological reference points; which will first determine how many fish we're going to leave in the water. This is I think I've described to a number of you, at its essence an allocation amendment.

The first order question is how much to leave in the water. I think we've committed to that through our actions yesterday and today and through the intent of the amendment. Once we've determined what that level of ecosystem services is, then the real question is how are we going to split this portion of the pie that we take out of the oven to eat?

I struggle. You know South Carolina just has no capacity for 3.5 million pounds of menhaden at three-quarters of a percent. I'm certainly willing to play ball for the good of the cause in

implementing this policy of managing these species for ecological services; as well as supporting a bait and a reduction fishery.

But I struggle with this. I don't know that the Commission, I would look to staff, is this precedent setting, in terms of giving a state a share of the pie that we have absolutely no intention of using? That is another policy call that I'm just struggling with. I've enjoyed the conversation. Let me rephrase that. I'm learning a lot through the conversation; and will continue to grapple with it.

CHAIRMAN BALLOU: I do know you asked a question. We'll see if we can get a staff response to that. But I'll next go to Ritchie White.

MR.WHITE: I support this and I'll give you the example of how this will affect New Hampshire; and how I see this working. Presently we have negligible landings. We also have a large purse seine vessel that lands millions of pounds of herring in New Hampshire annually. This year they talked about landing mixed loads of herring and menhaden.

It didn't happen this year. They also talked about additional availability of menhaden showing up; and they may want to land total loads of menhaden, and they come in at 400,000 pounds a trip. This would allow us to, we would opt in, and I'm just guessing, maybe a million and a half pounds. Put the balance right out of the gate into the pool; and see how it went for a few years. Maybe we would opt out of all of it in the future; if that vessel stopped landing in New Hampshire. But this gives the flexibility of us not being in a position where we would have to lock a fishery out; having no quota that we presently have. I think that is a fairness issue.

I also support this; because I think this is the compromise originally in the 216,000 metric tons that I was talking about. This gives each state a chance at a fishery; and this fishery is

changing, so we need some ability for states that haven't been fishing in recent times to have a chance to fish now. But it also puts back into the pool the fish that aren't used.

That gives the ability to try to make some state whole that may not be whole; with the use of the three-quarters of a percent going to the new states. I think that is the compromise; this balances it. I understand the angst of Pennsylvania. New Hampshire doesn't use their small, commercial striped bass quota either.

But I think looking at this in its entirety; and thinking about it in a compromised situation, and how without doing it this way maybe the 220,000 metric tons was a fairer target. That was my thinking in this whole process; starting with the 216. I hope the states will consider that approach to this and support it.

CHAIRMAN BALLOU: Toni Kerns, could you take a crack at answering Robert Boyles' question; which as I understood it was whether there is any precedent for an approach like this with regard to any other FMP that involves state-by-state allocation? Robert is involved in a sidebar right now; so hold on that Toni. I'll come back to you; because I want to make sure Robert's focused. Adam Nowalsky, you're next.

MR. NOWALSKY: I see this motion as having two relevant parts that we're discussing; one is the element of opting out, and being able to redistribute that to states that may need or want it. The second element of this is this opt-in provision which forces states, in my opinion, to demonstrate the intent to use their quota and if not, a sense that it would be taken from them without their consent.

That gives me trouble; and I hear that concern from some other members around the Board here as well, both in terms of how it might impact other species, precedent setting et cetera. I'm going to make a motion to substitute, Mr. Chairman. I believe it's going to include a number of these terms, so maybe

staff just wants to start with cut and pasting. I'll go along here with it.

My motion to substitute is: at the start of each fishing year and no later than January 31st, states may declare if they want to opt-out of the fixed minimum program. States, do you want me to just read the whole thing or just let staff go along with me and read as it comes up on the board?

MS. KERNS: Adam, do you have it on a piece of paper or no?

MR. NOWALSKY: I can come up there and give it to you if you would like.

MS. KERNS: You can read it into the record; and then if you could just come up and help us get it up on the screen appropriately.

MR. NOWALSKY: That would be fine. At the start of each fishing year and no later than January 31st, states may declare if they want to opt out of the fixed minimum program. States may declare if they have the option, and decline their fixed minimum allocation or maintain 10,000 pounds for bycatch purposes, and to decline the remainder of the quota.

If a jurisdiction declines its full allocation, it must identify the amount they do not wish to receive. Any quota that is not received by a state is redistributed to the other jurisdictions based on historic landings from the time period selected. Essentially what I'm doing is removing the requirements for opting in; and focusing on opt out entirely.

CHAIRMAN BALLOU: Let's do this. The Board will be at ease for five minutes as we get that motion up on the board.

MR. NOWALSKY: I think a lot of people want to take the break; but it's pretty darn close with what's up there.

CHAIRMAN BALLOU: We'll take a five minute break; just to get this motion up, and then we'll pick up right where we left off, starting with is there a second to the motion.

(Whereupon a recess was taken.)

CHAIRMAN BALLOU: I would like to resume; and I would like to go back to Adam to first ensure that the motion he has up is accurate, in terms of what he intends. Then I am going to see if there is a second. Then I'm going to allow Adam to speak to it, and then I'm going to allow. I'm sorry; I'm getting ahead of myself. Let's just stop right there. Adam, is this the motion you would like to make with regard to the wording that's up on the board right now?

MR. NOWALSKY: With a nod of great thanks to staff, yes it is. Would you like me to reread it at this point?

CHAIRMAN BALLOU: Please do.

MR. NOWALSKY: Move to substitute that "at the start of each fishing year and no later than January 31st, states may declare if they want to opt out of the fixed-minimum program. States may declare to opt out of the program and decline their fixed-minimum allocation, or maintain 10,000 pounds for bycatch purposes and decline the remainder of their quota.

If a jurisdiction declines its full allocation, it must specifically identify the amount they do not wish to receive. Any quota that is not received by a state is redistributed to the other jurisdictions; based on historic landings from the time period selected by the Board in this Amendment."

CHAIRMAN BALLOU: Is there a second to that motion? Dr. Duval seconds the motion; so the motion has been made and seconded, and Adam I'll go to you first to have you speak to it. Then I have some thoughts about some public input on this.

MR. NOWALSKY: First let me identify what is different about this with regards to what already exists in the draft amendment; the specific language with Option C. This includes more specificity in two areas. One, it provides the specificity of the date by which this declaration needs to occur; and two, it provides the specificity of what would happen to that quota that is not utilized by individual states. The draft amendment is silent on what occurs right now. This specifically lays that out through the last sentence.

This issue of fixed minimum is a bit of a difficult one; because essentially what we're doing is taking fish that states have had historical allocations of, historical use, and saying we're making a unilateral decision to hand it out, essentially. That is a tough pill. If it is the intent of the Board; as the original motion did, to force states to prove that they can use those fish.

Then I would say that that whole fixed-minimum approach is flawed, and that we as a Board should go back and reconsider it. But if that is in fact the decision that we're making that we're going to go down that road; then to go ahead and put the requirement on those states to say and oh by the way. Even though we decided to give it to you, if you can't show we're going to use it we're going to take it back; that is even more flawed, and I can't support that. That is my justification for this motion to substitute.

CHAIRMAN BALLOU: Because both this substitute motion and the main motion, which addressed the issue of we'll call it opt-in versus opt-out lend a lot of specificity with regard to the provision that was only set forth in the amendment in general terms. I'm going to allow some public input on this.

But it really needs to be specific to the issue before the Board right now on opt-in versus opt-out. Is there anyone from the public who would like to address the Board on either the main or substitute motion? I see two hands;

and I'll go first to the gentleman approaching the microphone. Thank you. Could you please introduce yourself?

MR. MONTY DEIHL: Thank you, Mr. Chairman, Monty Diehl from Omega Protein. If my math is correct, did it on my phone in the back. I just witnessed the Board vote for about an 8 percent increase in the overall TAC because of the health of the stock and how well it's doing; and in fact some argued that it could have been raised much more.

But based on this motion, again we could probably ask staff for clarification. It essentially means about an 8 to 10 percent reduction for Virginia; in Virginia's harvest from this year. For me that's laying off a lot of people from work. It even means now I have assets that I no longer need. Should I go to a state who I've heard around the table saying they want to grow an industry, they want to build an industry?

Do I now need to go and try to sell vessels, sell equipment, and even maybe barter labor to those states to grow something on the backs of people who have been doing this, like mine, for five generations? I can't even believe what I hear; I honestly can't. It also completely changes the mix, the supply and demand mix.

I'm not in the bait market. But it completely changes the supply and demand mix for bait; because you're now taking fish that had been used for reduction and not on the bait market, and you're moving millions and millions of pounds of those into the bait market, and you have industries, bait industries who have built again for many, many generations to build up a business. Now they're going to compete in a flooded bait market. I don't know if that's even being considered here. But I just wanted to point that out. From a Virginia standpoint, from a taxpayer in Virginia standpoint, and from a very large employer who represents an awful lot of people, this is not going in a very good direction. Thank you, Mr. Chairman.

CHAIRMAN BALLOU: Thank you, is there anyone else who would like to address the Board? Yes, sir.

MR. JEFF REICHLE: Thank you, Mr. Chairman, Jeff Reichle from Lunds Fisheries. Yes, I would like to echo a lot of what Monty just said; and just say that what I've seen happen today has totally destroyed what I understand fishery management to be. For the most part, fisheries have always been managed and allocated based on history and recency; and that was completely thrown out the window today.

You know there are a couple states that have history; recent history and history going way back. What you've basically done today is done a total reallocation to other states. If that stands, then I do not agree with this amendment. I think I agree with the original motion, so that we have the opportunity to get some of the quota that has been taken from us for no good reason back. Thank you.

CHAIRMAN BALLOU: Yes sir, in the back. If there is anyone else would like to speak, please come forward and be ready to take the microphone. I don't see any other hands up; but I just want to move on after this. Thank you.

MR. JIMMY KELLUM: Jimmy Kellum; from Virginia. My company is Kellum Maritime; we fish for bait and for reduction, and sell to Omega. I appreciate what Adam is trying to do here; but this doesn't fix the fact that we just transferred 301,000 bushels from reduction to bait. Do you have any idea what that is going to do to the bait industry?

The bait industry will collapse; based on what we've done in the last hour. This doesn't fix what we've done. We need to go backwards and say, we made a serious mistake here, because we have made a mistake. We have pillaged New Jersey and Virginia; on the theory that some other states may establish a bait business. I'm on the AP Committee, and they'll

tell you I was all in favor of the four states getting more quota, but not to this degree. We need to rethink this. Thank you.

CHAIRMAN BALLOU: Thank you very much for those comments; one last comment, thank you.

MR. A. J. ERSKINE: My name is A.J. Erskine; I'm with Mid-Atlantic Bait in Virginia. I agree with the previous comments. I disagree with this amendment. I think we did make a mistake with the fixed minimum. We are talking about economically changing the bait market drastically; so we're opposed.

CHAIRMAN BALLOU: Thank you, so now I would like to go back to the Board for comments on this motion to substitute. I had four names that were already in queue; and I'm just going to go right through those to see if they would like to speak on the substitute motion, starting with Cheri Patterson.

MS. PATTERSON: Ritchie covered what I was going to say, thank you.

CHAIRMAN BALLOU: Colleen Giannini.

MS. GIANNINI: I was looking for just some confirmation on Pat's original motion; that a state's decision to opt in and then subsequent declaration for the amount of quota it would like in that year, wouldn't be affected in subsequent years.

CHAIRMAN BALLOU: Pat Keliher.

MR. KELIHER: Correct, it would be an annual decision by the state.

MS. GIANNINI: Okay, and then just a quick follow up, I guess just a comment in this. I think that this motion here that Adam has up, I think it could be maybe a lot simpler, and I don't know if it would work better just to simply end that states may declare to opt out of the program and decline their fixed minimum

allocation, and not necessarily have to have a 10,000 pound for bycatch purpose in there.

CHAIRMAN BALLOU: Duly noted. Next I have Rob O'Reilly.

MR. O'REILLY: Certainly the speakers from the public, I certainly echo what they have to say from Virginia. I do think that there was a mistake earlier on; and you know it's too late in one way. The 220,000 metric tons would have solved some of these problems, and we could have gotten away from the fixed minimum that I've talked about a couple of times, as to what the ramifications and repercussions will be from that.

I don't really think that making a situation like this more palatable is something that we should avoid. I think we should try and do that. I've been hearing making certain states whole; although, and I don't take any offense at all. I did hear Ritchie White say, but maybe we don't have to make them whole.

But clearly, we need to be a little more careful about what we're doing. I see what's up on the board, and no disrespect to Pat or to Adam, I see it as a contrivance. I see it as an outfall of having not thought through some of the decisions that we made. I can't support it; and I regret that we didn't make some earlier decisions that maybe wouldn't get us in this place.

If I look across the table at New Jersey, I see their workforce diminishing; if I think of Virginia, our workforce diminishing. I mean how many things can we add on to our lives in the states that we have to monitor and keep sacred; when we don't need to start doing that and we shouldn't have started doing this on this situation. It was fixable earlier on.

CHAIRMAN BALLOU: Nichola Meserve.

MS. MESERVE: I prefer the initial motion to this substitute. The purpose of the reallocation

option that we selected was to meet the needs of more states for their commercial fisheries; and allocating 3.5 million pounds to a state without a fishery runs counter to that objective. For consistency purposes, I think we need to look at that objective when it comes to this motion as well. ASMFC does have a long-held practice; I guess I would call it, of allowing states to be more conservative than the requirements. But I don't think that that has normally come at the disadvantage to other states, and that is what the initial motion was trying to address in some part. I don't support the substitute.

CHAIRMAN BALLOU: Toni Kerns, did you have something you wanted to add?

MS. KERNS: Just for clarification. The first two sentences are sort of in opposition of each other here in the motion; because the first one says you can declare to opt out and decline all of your allocation or maintain just the 10,000 pounds. But then the second sentence says if a jurisdiction declines its full amount it must specify the amount that they don't wish to receive.

I think if a state wanted to keep part of the allocation, you could just say states may declare to opt out of the program and decline all or part of their fixed minimum, instead of restricting it to just being able to keep 10,000 pounds. Does that make sense, Adam? Do you see where I'm thinking the two sentences may go against each other?

CHAIRMAN BALLOU: I do believe I see your point. Adam, do you want to speak to that?

MR. NOWALSKY: Your suggestion would be to remove the "or maintain 10,000 pounds through the period?"

MS. KERNS: Yes, if that is the intention yes; but also say decline all or part of your fixed minimum, so it allows the state to determine what is being declined. If they want to keep

half, then they can still keep half. If that is what your intention was here.

MR. NOWALSKY: My intention is definitely to allow states to choose the portion they wish to decline; so I'll leave it up to the discretion of staff and the Chair whether having that information on the record is sufficient, or if they have word smithing they would like to offer.

CHAIRMAN BALLOU: I believe staff is undertaking word smithing. Let's see if we can get it to a point that would comport with your intent, Adam.

MR. NOWALSKY: I have no objection to how it's being modified pending the final result.

CHAIRMAN BALLOU: Let's read back into the record where this motion now stands as amended. Move to substitute that at the start of each fishing year and no later than January 31st; states may declare if they want to opt-out of the fixed minimum program. States may declare to opt-out of the program and decline all or part of their fixed minimum allocation.

If a jurisdiction declines part of their allocation it must specifically identify the amount they do not wish to receive. Any quota that is not received by a state is redistributed to the other jurisdictions based on historic landings from the time-period selected by the Board in this Amendment. Adam, does that meet with your intent?

MR. NOWALSKY: Yes, thank you.

CHAIRMAN BALLOU: Is there any objection from the Board to modifying the motion as now written? Seeing no objection that change has been accepted and the motion stands as it does; further discussion on the motion, Doug Brady.

MR. BRADY: I'm trying to get my arms around this motion versus the prior motion; and I guess I'll direct the question to maybe Robert Boyles

in the case of maybe South Carolina. The language in the prior motion dealing with the intent and the ability to demonstrate that you can harvest your quota that's allocated, if that one passed South Carolina has no, I mean there are states that have nothing in the regulations that allow them to do that. Obviously they could pass things.

Would by default South Carolina automatically give up their quota; because they don't have anything in place to show intent or ability to harvest? Under this motion, all the states can for whatever reasons just say we're not going to opt out; we're just not going to opt out, and therefore we'll keep out quota to do whatever we want to with it.

Under the prior motion, some states that don't have a fishery at the present, by default would not get their quota. Do you understand what I'm trying to? I think from what was said at the public comment, the concern may be that under this provision it's just so easy to take quota that is not going to be utilized, or negotiated in other ways.

But it penalizes potentially severely the states that are getting less of a quota by what we're doing by the 75 or the three-quarter percent. But Robert, I would just ask you that. Did you read the first motion to say by default that if that one passed that South Carolina would not get any quota? Do you follow my question?

CHAIRMAN BALLOU: Robert, it's your call as to whether you feel like you want to respond to that or not.

MR. BOYLES: I think what our particular situation is, to answer Doug's question, is the gear that would process menhaden is unlawful in South Carolina, outlawed by the Legislature years ago, nothing to say that a processor couldn't fish federal waters, if the fish were there. For instance, we don't have the processing capacity necessarily. Not to say that it couldn't develop. Doug, I'm not sure if that

answers your question; but that is kind of where we are in South Carolina.

CHAIRMAN BALLOU: Let's leave that one there for now and circle back if need be. Loren Lustig.

MR. LUSTIG: I will be brief. With my new found skills for word smithing, I would like to thank Ritchie White for reminding us of the benefits of compromise. If we dig in our heels there is going to be plenty of blood on the floor all around the table. I'm in favor of compromise. The gentleman who just spoke from Lund Fisheries reminded us of the importance of history. I was a history major in college. I understand history. If I was to choose a historic date to hearken back to, it would be the famous voyage of Captain John Smith in the Chesapeake. All right that is the date I would like to use as a baseline.

CHAIRMAN BALLOU: Senator Miner.

SENATOR MINER: The word "may" says to me that we may not need any of this language at all; either in the original motion, which would be 18 or 19. What this does in my view is changes an allocation from currency, which it is under the original what's been passed so far, 216,000 metric tons to a non-currency, because it automatically goes back to the Board for reallocation.

From a state's rights perspective, it seems to me that I would want Connecticut to have this allocation as a currency. It may very well be that we could choose to transfer it. But my read of this is that by making the declaration to opt out of the program, we devalue that currency. It automatically goes back into the pool.

I don't know what state would actually do that; and therefore that goes to my question of why do we even need either one of these? I understand the original intent of the original motion; which was try to set that base number as low as possible, and create a feeling that for

those states that were harmed in this redistribution process, there was some mechanism to get it back.

But I would suggest that the state of Connecticut could still enter into an agreement with the state of Virginia or the state of New Jersey to redistribute our allocation in the form of currency back to one of those states, should we choose to do it, without either of these motions. I'm probably inclined not to support either one of them.

CHAIRMAN BALLOU: I think it is a very good time to remind the Board that the amendment right now has a specific provision addressing this issue; which would be changed by either of these motions. Let's just say for the sake of discussion, neither of these motions passed. The default would be the following.

Should a jurisdiction desire to forego the fixed-minimum quota it has been allocated, it may on an annual basis choose to decline its quota completely, or maintain 10,000 pounds for bycatch purposes, and decline the remainder of the quota. Quota which is relinquished by the states will be redistributed to the other jurisdictions.

Should a state choose to relinquish its annual quota, the Commission must be notified through the Annual Compliance Report process. I just want to make it clear that that is what the amendment currently says with regard to the allocation method that's already been adopted. These motions seek to tweak that, change that, and modify it. Eric Reid.

MR. REID: I just want some clarification. Mr. Keliher's original motion had two other portions in it. Are those two other portions still in play in this?

CHAIRMAN BALLOU: I'm going to have Megan answer it.

MS. WARE: I don't believe so. But I would look to the maker of the motion to clarify that.

CHAIRMAN BALLOU: Pat Keliher.

MR. KELIHER: Because this is a motion to substitute, I don't believe that would be the case. I think this would completely replace my motion.

CHAIRMAN BALLOU: We have that now on the record. David Borden.

MR. BORDEN: I would just like to go back to the point that you made about the language in the document; and just remind everybody of what Ritchie White pointed out, and I thought it was a good example of how the mechanism would work. If the state of New Hampshire has a herring fishery that's taking place, and they need for the sake of argument 400,000 pounds of menhaden, in order to eliminate the bycatch and regulatory discards.

They would have the option of selecting 400,000 pounds. I don't think the state of New Hampshire wants to have a directed fishery. I don't think it may necessarily, and this is my read, but they would like the opportunity to select a number above 10,000 pounds so that they could eliminate bycatch. I just remind everybody of that. This system doesn't work very well when we promote regulatory discards. But I think there is a lot of merit in what Ritchie said before.

CHAIRMAN BALLOU: Any further discussion on the motion to substitute; David Bush and then Dr. Duval?

MR. BUSH: I'm glad you let me go first; because I can never follow her. She's a tough act, right? I'm still wading through this and there are a lot of different things that could happen from this. Now in my mind, and it may be different for some folks, but we've achieved our conservatory effect by the overall TAC that we put into place.

What the original motion in my mind would do, although the dates is something that I would question, would be to make states actively pursue their catch, and if they are not going to or can't demonstrate that they can, then that puts it back into play for everybody else. That doesn't mean that say North Carolina is going to come up the Potomac River and start fishing for menhaden.

But the overall quota itself has already accounted for the conservatory hopes that we want to achieve here. Again, I'm sort of trying to walk my way through this. In my mind I would think that maybe the first motion would be something to maybe take a little bit of the sting out of the initial cut that we already had. Again, I'm sure I'll learn more before we get done here.

CHAIRMAN BALLOU: Dr. Duval.

DR. DUVAL: I seconded the motion for purposes of discussion. I think it's been very robust; and I really appreciate the public comment, and I appreciate what Adam was trying to do, in terms of I guess providing some assurance to states. But I also hear that the previous motion would actually provide more assurance of making certain that the quota that is available is available to those areas that actually need it. I appreciate what Adam was going to try to do, but I think I'm actually not going to support the substitute motion based on the public comments.

CHAIRMAN BALLOU: I echo the comment just made that we've had a robust discussion; and I'm going to take that as a queue to call the question. With that 30 second caucus and then we'll vote on the motion to substitute. Okay, I'm going to call the question. All in favor of the motion to substitute please raise your hand.

Hands down, all opposed please raise your hand; thank you, any null votes, any abstention? There are two. The motion fails 2 to 14 with two abstentions. We're back to the

main motion and after Max catches up, we'll put that back up on the board. Is there any further discussion on this main motion? John Clark.

MR. CLARK: I'm sorry to keep coming back, but the intent of this is to put it on the states that this fixed minimum is much more than most states will use. A state would have to actually state early in the year that they are going to use what they get; and if not, it automatically goes back into the pool to be redistributed.

Obviously from the concerns that were brought up by the public, this would have to be done in a very timely manner. Do we need to have more details in this motion, or do we need to further specify how we are going to reallocate unused, fixed minimum quota from these states?

CHAIRMAN BALLOU: I think the motion is quite detailed and quite clear on that; but I'll look to other Board members to see if they feel a need for additional clarity. David Borden.

MR. BORDEN: To John's question. My read is slightly different here, and I think it's pretty explicit in the motion. If Delaware didn't need their full allocation, they could request any amount up to the full allocation. But that is up to the state of Delaware.

MR. CLARK: I get that Dave. I'm just saying, the fact is I could for whatever reason say I want the full 0.75 percent of the quota, and not get anywhere near that. Then it doesn't get reallocated; to me that is a real problem. Because we have enough quota that is being taken from Virginia and New Jersey; that if enough states did what I just said that reallocation wouldn't happen in a timely enough manner to help those fisheries catch. As with many states, we're dependent on those states to provide bait for our crab fishery and for other fisheries. This is a big question is how this is going to work.

CHAIRMAN BALLOU: Dr. Duval.

DR. DUVAL: I think to John's point. You know the motion that we passed previously included the transfer provision. I think I would look to that to ensure that quota is available to be used. I mean I know that North Carolina this past year was approached by several states earlier, actually pretty early in the year to see if we might be able to transfer some of our quota to them, to alleviate the issue of an abundance of menhaden that they were encountering off their waters. I would hope that that transfer provision would be utilized in that situation.

MR. CLARK: Well transfers are voluntary. All I'm saying is I'm just giving a worse-case scenario here is that a state could take the minimum, not transfer it, and we would have problems in the fishery. That is the only reason I wanted to see more specific language.

CHAIRMAN BALLOU: Good exchange; any further discussion on the motion? Seeing none; is the Board ready. Does the Board need time to caucus? David Borden, one minute caucus. Yes, one minute caucus and then we'll vote on this main motion. Okay, is the Board ready for the question? I see some caucusing still going on. Now it looks like it is ending.

Okay, all in favor of the motion please raise your hand; thank you. Those opposed please raise your hand; thank you, null votes, abstentions, two. Robert.

MR. BOYLES: Mr. Chairman, a motion to recess please.

CHAIRMAN BALLOU: First we need to clarify the vote; because I think we may have missed one, so I am going to ask for a recount, because I think our math came our wrong here, so let's make sure we get this right. **Those in favor of the motion please raise your hand and keep them up; thank you. Those opposed please raise your hand; thank you. The motion fails 7 to 9 with two abstentions.** The request to

recess could be coupled with a lunch break. Are we at that point, Robert, or were you looking for something shorter term?

MR. BOYLES: That was my intent, yes sir.

CHAIRMAN BALLOU: Let's break for lunch, and Toni, what time do we want to reconvene, or Bob?

MS. KERNS: Let's reconvene at 1:00 p.m. please.

CHAIRMAN BALLOU: We will reconvene at 1:00 p.m.; enjoy your lunch, thank you.

(Whereupon a recess was taken.)

PROCEEDINGS OF THE FIRST FEW MINUTES OF THE BOARD RECONVENING ARE UNAVAILABLE. IT IS CLEAR FROM THE MOTIONS THAT MR. BOYLES MADE THE FOLLOWING MOTION WHICH WAS SECONDED BY MR. MILLER.

Move to reconsider the allocation method.

MR. BORDEN: I would just ask Robert if he could provide us with a little bit of insight on where he wants to go with this.

CHAIRMAN BALLOU: Well, I think that's the second part. First is whether the Board feels comfortable bringing this motion back before the Board. Then I think Robert will have the opportunity to speak of how he may wish to subject it to reconsideration. I believe it's a two-part process, but I look to the Board for input on that. I see two hands. Adam Nowalsky.

MR. NOWALSKY: I believe because the original motion also included the two bullet points, and they were packaged together. I don't think we can just reconsider part of it. I understand that's the element we're looking to change. But I think we would be looking to reconsider that entirety of the motion.

Then once that's on the floor again, we would decide what else we were going to do. But I believe that's what we would be looking at; including the rollover and transfer provision we would be reconsidering as part of one reconsideration.

CHAIRMAN BALLOU: I totally concur with that. It would be the full motion back before the Board; which can then be addressed in however way the Board would like to. Is there any further discussion on the motion to reconsider? Emerson Hasbrouck.

MR. HASBROUCK: We had quite an extensive debate and discussion around that issue this morning; that went on for an extended period of time. I don't know why we need to revisit it; but maybe that will come out in the debate about, if it is brought back to the floor. I'm just concerned. We had a significant discussion this morning. I think we beat it to death pretty well.

CHAIRMAN BALLOU: Understood. Ray Kane.

MR. KANE: To reconsider, are we going to need two-thirds? No.

CHAIRMAN BALLOU: Majority vote. Is there any further discussion on the motion; Dennis Abbott?

MR. ABBOTT: Going along with what Emerson said. Surely we had plenty of discussion; and we reached some decisions. Like anything else, I think that when you do something and it advantages someone, there is probably someone else that is going to be disadvantaged. Apparently, not apparently that is what the feeling is with a number of people here.

Well at some point we have to make decisions and live by them. It just seems unseemly to have made a decision an hour and a half ago, and already we can't live with it. With due respect to Mr. Boyles, who I know is trying to do the right thing as Robert does a lot, he tries to make sure that everybody leaves the table

happy. Again, it's not going to happen. There is always displeasure with our decisions. We surely spent enough time this morning making a tough decision. I think that we should not reconsider and move along with our agenda.

CHAIRMAN BALLOU: Dave Bush.

MR. BUSH: Very briefly. I sat here while I watched quite a bit of folks skip lunch; folks that were on both the winning and losing sides working towards the middle, which I believe was the ultimate goal, not necessarily just the process for the sake of the process but an outcome we can all live with. I would certainly be in favor of hearing further discussion, if we can make this something that works for everyone.

CHAIRMAN BALLOU: Any further discussion on the motion to reconsider? Loren Lustig.

MR. LUSTIG: Just before you reconvened the meeting, I was speaking to my wife, Louise, and she said well when is the meeting supposed to be over? I said Louise, it's supposed to be over at 6:00 p.m. but it would not surprise me, since we're talking about the bottom line that I might be here until 9:00 or whenever. I agree with what I've heard around the table here. Sometimes long discussions sort of just overwhelm me. This is too important to sort of give it short shrift.

CHAIRMAN BALLOU: Any further discussion on the motion. Seeing none; is the Board ready for the question? Is there any need to caucus; a 30 second caucus? Okay, I'm going to call the question. **All in favor of the move to reconsider the allocation method please raise your hand, thank you. Those opposed please raise your hand, thank you. Are there any null votes, any abstentions? The motion passes 11 to 7; which means the motion is now back before the Board for consideration.** Robert Boyles.

MR. BOYLES: Thank you, good discussion and I agree; we'll try not to belabor this. My quote from Dr. Franklin, please, "For having lived long, I have experienced many instances of being obliged by better information or fuller consideration, to change opinions even on important subjects, which I once thought right but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others." Having said that Mr. Chairman, I'm reminded that being a guy from South Carolina; we know something about state's rights. We know something about public trust resource management; and it is very much my intention that we have a durable outcome as a result of our deliberations here today, and as we move forward with the implementation of the Amendment.

Let me be blunt. I think it's important that we all have something that we can live with; that we can go home with and say we've done our level best to be good stewards of our resources, good stewards of the trust that is given to us by our constituents, and in fact good stewards of the authority under which we are operating.

I'm concerned with my seatmate here Dr. Rhodes' comment referencing the Hippocratic Oath earlier that we might have jumped a little too quickly earlier today. Clearly there are allocations; very, very difficult issues associated with allocation. I have a new motion I would like to make that is up on the board.

If the Board will indulge me in it I will read it; and I think you will find that this is – fairness and equity are in the eye of the beholder – I think it's important that we do our level best to bring everyone along that we don't lose sight of the prize here. I think, Mr. Chairman, when I was sitting in your seat I suggested to the Board that this was a great big allocation amendment.

The first order question is how much do we leave in the water. I spoke to that issue yesterday. I won't revisit that in terms of

reference points. But I think it's important for the good of the cause. I think it's important for the commitment that the states made in 1942, when we were a little distracted with global events that there is more to be gained by cooperating and remaining committed to one another than by going it alone.

It is within that spirit that I offer this motion. **I would move to select Allocation Method Option C, a jurisdictional allocation with a fixed minimum with a 0.5 percent fixed minimum and the allocation timeframe 2009-2011. I would also move that we include incidental catch and small-scale fisheries Option B, modified to include purse seine smaller than 150 fathoms long by 8 fathom deep would be considered small scale gear, and episodic events Option A, with the 1 percent set aside. If I get a second, I'll explain further.**

CHAIRMAN BALLOU: Is there a second to the motion; seconded by Dave Bush? Moved and seconded to move this sort of three-part motion. Before I go to the Board for questions, Robert I would ask you. With regard to the motion that this is intended to replace, the motion that it would replace addressed transfers and rollovers, I believe. What is your intent with regard to those issues with this new motion?

MR. BOYLES: With the intent of transfers. My intent quite frankly, Mr. Chairman, as a state with no landings history, with no fishery that we would be prepared to contribute our share to be able to transfer that perhaps to the episodic events set aside, to bump up that number, to take into account the interest of those brethren along the northern coast. Also that would be available for transfer to other jurisdictions that may have overages.

CHAIRMAN BALLOU: If I might; just to make it clear. Is your intent to modify at all the prior decision made by the Board; with regard to allowing for transfers but not allowing for

rollover? I believe those were the two key aspects of the prior motion.

MR. BOYLES: Yes sir, Mr. Chairman. Thank you for clarifying that. That is my intent.

CHAIRMAN BALLOU: I guess we might want to think about whether we need to wrap those into this motion or not. I'll just sort of leave that hanging for a moment; to make sure that we've got the full mix before us. If this is to substitute in full, it looks like staff is already doing that as I speak, so how about that.

I think what Max has just done, if I'm not mistaken, I'm doing this on the fly here is added back in the two provisions from the original motion addressing transfers and rollovers. This sort of augments this motion now by incorporating those in. Robert is this consistent with your intent.

MR. BOYLES: Yes sir, Mr. Chairman. I would give a shout out to staff over lunch. They did provide a table that reflects what the current allocation is on the far right hand side of the page; and what is contemplated in this motion is in the far left hand column with the 2009-2011 TAC. I believe that has been distributed. I believe.

CHAIRMAN BALLOU: I believe you're right; and with that I will open the floor to questions or comments on the motion, starting with Adam Nowalsky.

MR. NOWALSKY: I appreciate the comment about a willingness to redistribute some of that unused quota. We had the conversation earlier this morning about the language that is currently in the Draft Amendment not being explicit in how that redistribution would occur. With this motion, how do you propose to move forward with that redistribution? How would it actually occur?

CHAIRMAN BALLOU: I think staff is prepared to address it; unless Robert, you want to jump in. All right, Megan.

MS. WARE: There are kind of two ways we could do that. We could do a separate motion to provide clarity on that; and maybe use some of the language from your motion before, if you would like to do that or if you would like to make an amendment or a friendly amendment, I would ask Robert Boyles to add in that sentence that said it is redistributed based on the timeframe selected by the Board. Then that's up to you guys.

CHAIRMAN BALLOU: As Adam mulls over that and other Board members as well, I'll go to Andy Shiels.

MR. SHIELS: This may surprise everybody, including myself in the room. But I support this motion. The reason I do is because I was under the understanding, mistakenly on my part that when we were talking about this earlier today. At the three-quarter percent fixed minimum that the states that did not have quota were getting quota, and Maryland and Virginia were unchanged. I was incorrect. When I found out that it was a half percent that's what I intended, sitting around the table.

I did not want to bring harm to Virginia or North Carolina, when the most important thing was a very modest increase of the total allowable catch.

Within that modest increase, the other states get an opportunity to fish. We argued back and forth whether Pennsylvania does or South Carolina will or will not prosecute that.

But I did not feel good about that as we left the room. I'm glad that somebody else brought it up. I do not prefer an alternative approach where we raise the TAC to provide this room. I think this is the right approach. I think Maryland and Virginia roughly stay the same. The other states get the benefit, a fishery that

they didn't have in the recent past, and so I support this motion.

CHAIRMAN BALLOU: Rob O'Reilly.

MR. O'REILLY: Thank you, Robert for bringing this forward, and I know several of you have been diligently trying to think of a little improvement. Sometimes when we do get involved in something that has so many layers, it is difficult to keep everything in mind. Andy, I think you're right. I think that it was quite a difference earlier with the way things were with the 0.75 fixed minimum compared to this, which is like about a 0.5 percent increase for Virginia.

I still don't know how all of this settles out. I mean you've heard this before, but the agency I work for really has very little to do with management of menhaden. It's the General Assembly that manages menhaden; and Senator Richard Stuart, who is a member of this Commission, and is also an attorney, sent a letter to the Commission and he really was somewhat critical, but on the fixed minimum especially.

He really questioned that if it was not illegal it certainly was inequitable and unjust, where there could possibly be horse trading of quotas. I think we've addressed that a lot before lunch; and wanting a method that that cannot happen. This is a big improvement. I do appreciate it; and so thank you for the time.

CHAIRMAN BALLOU: Dr. Duval.

DR. DUVAL: Yes, I am supportive of what Robert is trying to do and reconsider, and do no harm here, and try to find the most equitable approach for everyone sitting around the table. I guess the concern that I have is with the Section 4.3.5 Option B, the incidental catch and small scale fisheries. Those harvests would not be counted towards the TAC under that option. Is that the intent?

CHAIRMAN BALLOU: I was having a sidebar, I'm sorry. If you could restate the question or maybe if somebody is ready to answer it. I missed it, I'm sorry.

DR. DUVAL: The motion on the board under Section 4.3.5, Incidental Catch and Small Scale Fisheries, Option B; under that option incidental catch does not count towards the TAC. I just wanted it clarified if that was the intent, to not have that catch count against the TAC.

MS. WARE: It is correct that that option does not count incidental catch towards the TAC.

CHAIRMAN BALLOU: Thank you, and my apologies for not following along. Additional comments on the motion. Emerson Hasbrouck.

MR. HASBROUCK: I'm a little confused here; in terms of proceeding under episodic events. I thought I heard the maker of the motion say something about discussing episodic events under that separate category. Is that not true, or does this motion take care of whatever we need to do under episodic events?

CHAIRMAN BALLOU: Well, I'll certainly let the speaker address that issue; but my take is this is addressing episodic events. I see the maker nodding in the affirmative; so that is the intent of the motion, to address episodic events among other things, additional discussion, Russ Allen.

MR. ALLEN: I'm not totally enthralled with this motion; but I see that there is a lot of work behind it to get it to where it needs to be. I'm having a hard time supporting it; but I'm as Rob said, real pleased that we're all working together on this to try to make it work for everyone. We already made half our constituents ticked off when we were doing certain things on this; and this will probably tick off the rest of them. I think this may end up being a best way forward; because I don't have a solution after this.

CHAIRMAN BALLOU: Yes, John Clark.

MR. CLARK: I'm just a little concerned about the allocation method here again. Once again we're allocating a large amount of quota to states that have not fished it, will not fish it. It just seems very inefficient. I think there has got to be better ways; and I thought I heard some discussed earlier that we could use, rather than going with this fixed minimum.

CHAIRMAN BALLOU: Nichola Meserve.

MS. MESERVE: I have the same concern as Dr. Duval with the Option B for the incidental catch and small scale fisheries; and it not counting towards the TAC, and also including small purse seines in that category now. It was also my hope with our initial selection of the 0.75 percent fixed minimums that we would be able to do away with the episodic event program; and the bycatch, what many people have referred to as a loophole, over the years. We're moving away from that direction here; so I can't support this motion.

CHAIRMAN BALLOU: Just for the Board's edification. My understanding is Option B as proposed under incidental catch and small scale fisheries, would not only now include purse seines as characterized, but would also include trawls, which was an issue brought up by the Advisory Panel. I just want to make sure the Board is clear that those would be gear types that would be allowed to fish; and that those landings in total would not be counted against the TAC, just to make sure we're all on the same page on this. I have Robert Boyles next.

MR. BOYLES: Again, thank you to the Board for indulging the discussion. I think the number of you I've talked to over the previous several months. Let me blunt and honest. There are a lot of things in the motion I just made that I don't like. I just don't like it. I won't be specific. I've talked to a number of you. I think you know what those things are.

I'm going to go back and tell you again; as a guy with no commodity in this fight. My interest is in the integrity and this body and this process. This body and this process that was tested this summer; and this body and this process that I think we're on notice, will be tested as a result of the actions that we take today.

I'm asking the Board's indulgence. There are things in here I don't like; make no mistake. But I think in the spirit and the interest of moving us forward, and not losing sight of the big prize; in my mind ecosystem reference points. That I think it's worth some give and take. It's perhaps a little bit of Frankenstein; in terms of a motion.

But I think if you look at the table, most jurisdictions end up better off than they are under the current allocation. I think we have sent a strong message with setting the TAC at 216,000 metric tons, to those folks who were gravely disappointed with our actions yesterday, with respect to our commitment to ecosystem reference points.

I think this is something; I would hope that this is something that the Board, perhaps more importantly the member states of our Commission, could live with as we move forward the development of ecosystem reference points. I would urge your consideration and urge your passage.

CHAIRMAN BALLOU: Eric Reid.

MR. REID: I'm a little bit concerned about Option B not accounting for small-scale fisheries. I have a question about the size of the purse seines that are in this fishery. We don't have a lot of purse seining in Rhode Island; but I know you do in Maine, and there is in Massachusetts as well.

Would a purse seine of this size fall – how many purse seiners do you have that use a net smaller than 150 by 8? I'm also concerned about episodic event being only 1 percent; if we go to

a half a percent fixed minimum. I guess my real question is about how much purse seine gear would fit into this category of not being considered or accounted for? Maybe somebody else could answer that.

CHAIRMAN BALLOU: I was just going to say, who might be best able to address that and I see Pat Keliher's hand up. Pat.

MR. KELIHER: The purse seines that are used in our fisheries right now are vastly larger than what is here. This would put a cap on the upper end size of a purse seine that would be able to be used. The fishery, we had a lot of people who are harvesting 6,000 pounds a day with purse seines that are twice this size.

They were doing that without a lot of spillage that was going over dead. We only one incidence of mortality associated with our fishery; with much larger seines. But the intent of that was to try to get the overall size under control; with the understanding that this is the language within Option B, which isn't here. This is for the 6,000 pound daily allocation. There is about 20-ish, could be more, and could be as many as 30 that will participate.

CHAIRMAN BALLOU: Ritchie White.

MR. WHITE: Pat just answered my question; and that is that this would be limited to 6,000 pounds a day.

CHAIRMAN BALLOU: Yes that's correct. Jim Gilmore.

MR. GILMORE: I'm just going to throw in, echo what Robert was speaking about. There are a lot of things I don't like in this reconsideration. But I think what we all need to keep in mind is as we move forward; I mean allocations is going to be our challenge for several species as we move forward over the next couple years.

We're getting into maybe even I walked in the room this morning, and what I want versus what I need. In terms of the Commission and

our guiding principles, we really need to look at cooperating, in terms of what our needs are, so that we can be functional as we move forward. It's easy to dig your heels in and maybe try to get what you can get out of the pie. But right now we really need to keep in the back of our minds is that we need to stick with those principles of the Commission, and really find a solution that keeps everyone's fishery viable.

That's probably the best term I can use. Other species that I won't mention right now, which we'll be talking about in a few months. It's really to have viable fisheries for all the states; and to cooperate the best we can to make that happen. As Robert said and I agree, there are things in here I don't like, but I support the motion, because I think it is what moves us forward in a cooperative fashion.

CHAIRMAN BALLOU: Steve Train.

MR. TRAIN: Like many that spoke already. If I had to pick this apart individually, I could probably find each item I don't like individually. But the quota allotment is obviously not enough to keep the Maine fishermen happy; if that was what we were working on. But when you tie all of these together, I think we can live with it and I can support the motion. But if we pull things out of it, I can't.

CHAIRMAN BALLOU: Emerson Hasbrouck.

MR. HASBROUCK: I pass, Mr. Chairman.

CHAIRMAN BALLOU: Pat Keliher. Is there anyone else on the Board who would like to address the motion; David Borden?

MR. BORDEN: Although I appreciate Robert's attempt here; I have problems with any portion of the landings not counting towards the quota. I think that sends the wrong message. I would have no problems if that were characterized as the soft cap. But I think there has to be a cap. The other thing that I've been personally

struggling here; and I think the Board has been struggling with.

I mean if you look at just fishery performance, and you can pick almost any timeline here recently. We have a whole group of states that really haven't had any performance in their jurisdictions. This is one of the flaws with the state minimum. In other words, we're allocating fish to states that have not had any type of performance.

Now much to his credit, Robert has been talking about foregoing his share of the allocation, I don't know how we get there. But I think we need to have a dialogue with the states that don't have any performance, history of performance in the fishery. Somehow, if we can get more jurisdictions to do exactly what Robert offered up, I think that's kind of the way forward. That would free up allocation to fix some of these issues. As I said, I don't know how to do that. If we had more time to do it, we could have a focused discussion individually or collectively on how to get there. We've done that on other species; black sea bass a long time ago, we had that type of discussion, and it was a negotiation.

To the extent that states that have not landed a pound for the last couple years, they're going to be allocated 2 plus million pounds. If they could say oh, well we'll take 500,000 instead of 2 million. That would solve a lot of the problems we're trying to deal with. I don't know how to generate that dialogue; or whether we have the time to generate that dialogue. But that I think is the way out of this box.

CHAIRMAN BALLOU: Allison Colden.

DR. COLDEN: I'll pass Mr. Chair, thank you.

CHAIRMAN BALLOU: Tom Fote.

MR. FOTE: Since Dave brought up black sea bass and how we got around that is because New Jersey gave up 20 percent of its quota.

Now when Bruce Freeman got back to New Jersey, there were not a lot of happy people there, because it was an arbitrary decision he made at the time. But that made the deal work then.

I don't see anybody sitting around this table wanting to give up 20 percent of their quota to help out, and try to make everybody happy. But that's how we got the black sea bass; by New Jersey stepping up to the table and giving up 20 percent of its quota.

CHAIRMAN BALLOU: Spud Woodward.

MR. WOODWARD: Just to get it on the record; in response to what Dave Borden said. The state of Georgia has no interest in prosecuting fisheries on its share of whatever we end up getting through these deliberations. I think if it will help the deliberations, you can certainly consider that our 2.6 million pounds is going to go wherever it can do the most good to help this situation. Since I'm going to be retiring at the end of December, I can make those kinds of promises, Tom.

CHAIRMAN BALLOU: Before I go back to David, anyone else who has not yet spoken. Cheri Patterson.

MS. PATTERSON: I could support everything here with the exception of Section 4.3.5. I think at least from our constituency and how most of us, some of us feel I should say, is that a lot of these ancillary numbers should be included in the TAC.

CHAIRMAN BALLOU: Roy Miller.

MR. MILLER: I would like to first express my appreciation to Robert; and all of the folks who worked on this issue since our lunch break. I'm very appreciative of the effort. Do I like all the details of this? I could quibble, like many others with individual points. I agree with Cheri, all catch including incidental catch in small scale fisheries I feel should go towards the quota.

But in general, I'm in favor of this and am appreciative of the effort.

CHAIRMAN BALLOU: Marty Gary.

MR. GARY: I appreciate all the discussion and hard work that everybody put into coming to this motion on the table now. Just a quick comment about Section 4.3.5, I won't speak for Maryland, but they probably have similar sentiment. It's essential for PRFC. We have a small-scale fishery. We typically hit our quota late summer into early autumn; and we're very reliant on that bycatch to continue us through the season.

We worked really hard on our accountability. We have trip level daily reporting submitted weekly, not monthly. When we hit 70 percent we have a mandatory call in for our 20 pound netters, and then when we hit the 90 percent threshold, we then switch over to bycatch. We really put in a lot of hard work with our harvesters and our staff; and make sure the accountability is there. I just want to make sure that you all know that that is really, really important to us. We need that there.

CHAIRMAN BALLOU: David Borden.

MR. BORDEN: I would just like to go back again and complement Spud and Robert for their willingness to try to strike a bargain here by enhancing it. I guess my suggestion would be to kind of break the mold here, is to take like a two or three minute caucus, ask the states that basically do not have significant fisheries talk among themselves, and see whether or not there are other jurisdictions that would be willing to give up some portion of their allocation. My suggestion would be anything that's given up would either be redistributed or go into Section 4.3.6.

CHAIRMAN BALLOU: We'll take that into consideration after I get Dave Blazer; who's next up. Then we'll try to figure out where we want to go from here.

MR. BLAZER: Really, what Marty said about the incidental catch. That is extremely important to our fishermen in the state of Maryland. I do want to remind everybody that in the management plan there is language in there. I won't read it verbatim, but basically that it's tracked.

If it becomes too much of a problem, it's too impactful that either that gear or trip reductions or other management measures can be taken as we follow that and learn that. There is some safety built in to that incidental catch for the small-scale fisheries. By the way, I'm supportive of this motion, even though it's not perfect for our situation. But again, I applaud the folks that helped put this together, and I'll be supporting it.

CHAIRMAN BALLOU: Dave Blazer. It's getting late, Dave Bush.

MR. BUSH: Although Mr. Blazer probably would like the opportunity to go again I guess. I don't know if it would be appropriate or not. We offered the opportunity, or you did, Mr. Chairman earlier for the public, one or two to weigh in on it, the original motion. Now this is a whole new grab bag, and those are the folks that we're trying to take care of. I don't know if maybe at your discretion, maybe a comment or two to see if this might be more livable.

CHAIRMAN BALLOU: It's a tough call. But I do feel that by and large this motion reflects provisions that are in the Amendment; and have already been subject to public comment. I am reluctant to open the door to additional comment; because I don't see this as being significantly different from what the options were as set forth in the Amendment.

That said; there is clearly interest. I think Adam Nowalsky expressed it, certainly David Borden did, and this issue of what happens under the fixed minimum program, which certainly the first part of this motion would enact. What

happens when states relinquish their quota? It's to be redistributed, it says that.

But it does not say how it's to be redistributed. It's really up to the Board whether you want to try to work through that issue question now, or potentially after a vote on this and coming back to it, or whether you just want to let it lay. It is what it is. I'll just sort of say that I sense that we're getting close to a vote.

But I'm aware that there have been a couple of points made regarding the implementation of the fixed minimum approach, particularly with regard to states that opt not to utilize their quota. I think there are two ways we could go; one would be to try to add on to this motion, the other would be to vote on this motion and then potentially circle back to that as a supplemental issue. I guess I'll take thoughts on that sort of piece; as well any other general comments.

I do sense we are approaching voting time, so I see three hands up. Let me go to the three hands that I see up; Nichola, Colleen, well we have four hands up. It sounds like there will be more discussion; as well there should be. This really is going to kind of be a big wrap, depending on the vote goes. Let's take the time we need to; to make sure we get it right. Nichola Meserve.

MS. MESERVE: I have now heard a number of Board members have concerns with the incidental catch and small-scale fishery Option B. There is also Option D in the document; which does provide the same 6,000 pound trip limit per day, or 12,000 pounds for the two permitted individuals on a vessel for the small-scale gears and the non-directed gears.

But those landings count towards the TAC and there is the 2 percent set aside. My question is actually for the maker of the motion; as to why, if there was a rationale for selecting Option B over Option D for the incidental catch, which

would count the bycatch landings towards the TAC.

CHAIRMAN BALLOU: Robert.

MR. BOYLES: It was offered in the form of an effort to build consensus.

CHAIRMAN BALLOU: Colleen Giannini.

MS. GIANNINI: Hi, I'm generally in support of the motion. I have the same concerns about Section 4.3.5; and because the incidental catch in the small scale comes in after a jurisdiction's quota is met. I'm just trying to wrap my head around what that magnitude is, given the increase in allocations with a fixed 5 percent, minimum?

MS. WARE: I mean obviously we can't necessarily predict what those will be. But I can say that especially last year, as there have been increases in the TAC, the magnitude of those incidental catch landings does seem to be declining. I will say that. I'm not sure if that will apply for this year. But that was a trend that we've seen to date.

CHAIRMAN BALLOU: Rachel Dean.

MS. DEAN: I just wanted to say that 4.3.5 is where we get behind this motion. The timeframe, 2009 to 2011 makes us uncomfortable, makes me uncomfortable. I won't speak for everyone. The half percent fixed minimum does not by any means get us to where we need to be. I just want to echo what Mary Gary said about how essential this is. I understand that there is the concern that some states would be allocated something that they don't intend to use. But the incidental catch and small-scale fisheries would mitigate that and essentially give that back to the states that are intending to use it.

CHAIRMAN BALLOU: Pat Keliher.

MR. KELIHER: We started today with the setting of a quota, or the TAC, which I supported in the end, hoping we could find a way to cut up this pie. It's obviously proving very difficult. I did not think I would be in a position where my fixed minimum was going to be half of what I was hoping it was going to get.

That being said, I am a reluctant supporter of this motion; assuming 4.3.5 remains in place, and I would urge the Board per David Borden's suggestion to take a pause and see where that exercise might get us regarding what jurisdictions, what state's might be willing to give up may help give us a clearer picture.

CHAIRMAN BALLOU: Rob O'Reilly.

MR. O'REILLY: We in Virginia also have a pound net fishery with quite a history; and of the seven gears that are involved in a quota, away from anything else, pound net is the one that is the largest. But it closes sort of without a pattern. It has been closed a couple of times since 2013; it has remained open.

You know there is a problem when it closes. I think we know with a fixed gear like that that discards are really not what we're aiming to do. I support the 4.3.5 provision. I also wanted to just ask Megan quickly on that magnitude question. Was it somewhere around 6 million pounds or something like that in one of those years for the bycatch? Does that ring a bell?

MS. WARE: Yes. I mean it sounds about right for the highest year; I believe was around 6 million. Then I can look it up, but I think last year was between 3 and 4 million.

MR. O'REILLY: Thank you, and if I may Mr. Chairman, based on last year that would be about 1.3 percent. Of course it's added on so it would be a little bit less; since it's not counting toward the TAC or towards the quota.

CHAIRMAN BALLOU: Steve Train.

MR. TRAIN: I wonder sometimes if everyone around the room remembers we've been working under what essentially is 4.3.5 from the beginning of this recent realm of management of menhaden. We've seen the stock continue to build; and it hasn't seemed to be an issue. I don't know why it's a sticking point now. Almost every state I look at has used it. It kind of makes this work. Without it, Maine can't support this.

CHAIRMAN BALLOU: Let's do this; well first let me go to Adam, and then I have a suggestion for a pause. Adam.

MR. NOWALSKY: If I could wait until after that pause; I had an idea I was going to toss out. But I'll be happy to do it offline, and then decide whether it warrants online discussion.

CHAIRMAN BALLOU: Let's pause for the purpose of essentially caucusing on whether the Board is ready to vote when we return; or whether there is any interest in doing any further modifications to the motion. We'll be paused for five minutes; and I'll call the meeting back to order.

(Whereupon a recess was taken.)

CHAIRMAN BALLOU: Okay that was a long recess; but hopefully a productive one. There certainly was plenty of engagement around the table. I see a couple hands up. I know David Borden has something he would like to say; as well Dr. Duval. I'll go to Dr. Duval first.

DR. DUVAL: Again, this is in regards to Section 4.3.5, the incidental catch and small-scale fisheries. You know we support counting all catch against the TAC. I recognize that moving to Option D would give a lot of people discomfort due to the 2 percent that will come off the top, and the impacts that might have to different jurisdictions allocations. I did want to ask Megan.

You know we do have a table in the Draft Amendment that indicates that on average the incidental catch has come out to 4.7 million pounds. Now, I was hoping if Megan could clarify for us that when you take the incidental catch that has occurred under this existing provision, and then add it to the total landings under the TAC. Have we exceeded the TAC in recent years?

MS. WARE: I've been doing a little research. Last year when we combined the directed landings and bycatch, we did not exceed the TAC. For the 2015 fishing year we did exceed it by 2 million pounds.

DR. DUVAL: Follow up, Mr. Chairman?

CHAIRMAN BALLOU: Sure.

DR. DUVAL: In 2015 the TAC was what?

MS. WARE: Approximately 414 million pounds.

DR. DUVAL: Okay. Thank you, I might have one more question.

CHAIRMAN BALLOU: Let me go to David Borden next.

MR. BORDEN: I will make this quick; and I kind of circled the table quickly. I mean we're trying to deal with two different problems here. One is in Section 4.3.6 the 1 percent. I had people say to me that they thought that percent was too low; and then this issue of 4.3.5 with the quota not counting.

I go back and reiterate, I'm not going to ask or put anybody on the spot, but if there are jurisdictions that would voluntarily contribute some portion of their minimum to those two activities; I think we could probably fix at least some of the issues we're trying to deal with.

CHAIRMAN BALLOU: Okay, additional comments if any; or is the Board ready for the question? It looks like the Board is ready for

the question; and I'm going to take the long recess we just had as the caucus opportunity. Without further ado; I will call the question, and ask all in favor of this motion please raise your hand.

MR. NOWALSKY: Mr. Chairman.
CHAIRMAN BALLOU: Yes.

MR. NOWALSKY: I would like to request a roll call vote.

CHAIRMAN BALLOU: We shall do that; and I'll look to Megan, and we'll go south to north.

MS. WARE: U.S. Fish and Wildlife.

MR. MILLARD: Abstain.

MS. WARE: NOAA Fisheries.

MR. BURNS: Abstain.

MS. WARE: Florida.

MR. ESTES: Yes.

MS. WARE: Georgia.

MR. WOODWARD: Yes.

MS. WARE: South Carolina.

DR. RHODES: Yes.

MS. WARE: North Carolina.

DR. DUVAL: Yes.

MS. WARE: Virginia.

MR. O'REILLY: No.

MS. WARE: Potomac River Fisheries Commission.

MR. GARY: Yes.

MS. WARE: Maryland.

MR. BLAZER: Yes.

MS. WARE: Delaware.

MR. CLARK: Yes.
MS. WARE: Pennsylvania.

MR. SHIELS: Yes.

MS. WARE: New Jersey.

MR. ALLEN: No.

MS. WARE: New York.

MR. GILMORE: Yes.

MS. WARE: Connecticut.

MS. GIANNINI: Yes.

MS. WARE: Rhode Island.

MR. REID: No.

MS. WARE: Massachusetts.

MS. MESERVE: No.

MS. WARE: New Hampshire.

MR. WHITE: Yes.

MS. WARE: Maine.

MR. KELIHER: Yes.

CHAIRMAN BALLOU: **The motion passes 12 to 4 with 2 abstentions.** I believe we have perhaps just one issue left; Chesapeake Bay Reduction Cap if I'm not mistaken, because I believe this issue will essentially dispense with all of the other issues that were pending. Before I go to the Chesapeake Bay cap issue, I just want to make sure that the Board is comfortable with where we are.

I should just say I assume the Board is comfortable with where we are; because otherwise we could get back into it. Seeing no hands; I will now seek a motion on the issue of the Chesapeake Bay cap. Maybe to fill this awkward gap, I'll ask Megan to review the option. We'll see if that might help spur some interest.

MS. WARE: For the Chesapeake Bay cap there are three options. The Board can maintain the cap at the 87,216 metric tons, reduce the cap to 51,000 metric tons, or remove the cap, which means that there are no restrictions on the reduction fishery in the Chesapeake Bay. Then there are also sub-options which ask whether a portion of unused cap can be rolled over to the next year. Right now we do have a rollover provision; it's about 10,000 metric tons. I'll look that up for you guys; but right now we do allow a portion of that to roll over.

CHAIRMAN BALLOU: With that is there anyone on the Board who would like to make a motion? Rob O'Reilly.

MR. O'REILLY: I'll make the motion for status quo for the Chesapeake Bay reduction fishery cap to be maintained at 87,216 metric tons. I'll have some explanation if I get a second.

CHAIRMAN BALLOU: Is there a second to that motion; seconded by Adam Nowalsky? Moved and seconded, Rob the floor is yours.

MR. O'REILLY: I understand those who have talked to me over the last few weeks, and talked about support for lowering this cap to 51,000 metric tons. I'm not sure they have all the information; but there are a few pieces of pertinent information. The first is that everyone knows that the reduction fishery has not been achieving the cap by quite a bit over the last, I would say five years.

The other pertinent piece of information is while we lowered everything; in terms of the

fishery opportunities and quotas for 2013, starting in that season. We also lowered the cap from 109,000 plus metric tons are where it was starting in 2006. When there were increases, both in February of 2015 and also in 2017, almost a 10 percent and then a 6.4 percent increase in 2017.

The Bay cap remained unchanged. There were no calls to increase that Bay cap. I think probably we talked a lot about fair. I'm not going to say the equitable in this case; I'm just going to say fair. But a lot went into this cap. In 2006, it was set at the average of 2001 to 2005. I was at that meeting.

Every organization, whether NGO or not, was quite pleased that the cap of 109,000 plus metric tons was established. Given that type of information, I would not find it fair that we want to reduce; and some of the reasons behind wanting to reduce it really may serve as a bad situation for the idea that the reduction fishery has not been in the Bay, does not wish to be in the Bay when possible. But there is going to be a rainy day. When is the rainy day? Is the rainy day going to occur five years from now? It's sort of a penalty to lower this cap. Thank you for the time; and I hope for those who weren't involved back in 2006, and didn't watch the progression of this cap, because there was no progression after 2012 – it stayed the same – that they will appreciate my comments.

CHAIRMAN BALLOU: Just to clarify. You certainly implied this with your reference to status quo. Status quo would also involve Sub-option A under Option A; limited rollover of unused cap permitted up to 10,976 metric tons. Is that your intent?

MR. O'REILLY: That is correct; and again that was something that was worked out 11 years ago, and has worked very well. I think the main point here is that that is status quo.

CHAIRMAN BALLOU: Allison Colden.

21 DR. COLDEN: Obviously, as a person who lives in the Chesapeake Bay watershed and region, I think this is a very important discussion that warrants a lot more discussion. **I would like to offer as a substitute amendment to adopt Option B, Sub-option B to reduce the Bay cap to 51,000 metric tons with no rollover.** I would like to comment on that if I may.

CHAIRMAN BALLOU: Is there a second to that. There is a seconder, John McMurray seconds the motion to substitute so it's been moved and substituted, and Allison, the floor is yours.

DR. COLDEN: I think that many people around this table already know that the Chesapeake Bay is an extremely important nursery habitat; not only for Atlantic menhaden, but a number of the other species that these Boards manage, that this Commission manages. Even though there have been increased contributions of other places up and down the coast, in terms of menhaden recruitment. The Chesapeake Bay remains the largest contributor of menhaden to the coastwide stock.

It's because of this contribution, as well as the contribution of other organisms like particularly striped bass, from the Chesapeake Bay that this issue concerns not just the Bay states, but obviously every state that is sitting around this table. I would also like to point out that we haven't been seeing the same types of recovery that's been seen in New England.

That's not entirely shocking for anyone who has followed the work of Andre Buchheister and his colleagues, who noted that there are some climatic patterns that seem to correlate well with the recruitment of menhaden, and particularly that those patterns are negatively impact Chesapeake Bay, when they positively impact New England.

As long as we're continuing to see menhaden growing in New England that would imply that we would continue to see this low level of recruitment and low levels of menhaden within

Chesapeake Bay. I would encourage this body at this point in time to really err on the side of the ecosystem; as we all said that we are committed to. Remember all of the other species coming out of the Bay, and that the Chesapeake Bay menhaden populations are supporting, when we are considering this issue.

CHAIRMAN BALLOU: Thank you. John McMurray.

MR. McMURRAY: Setting a cap at 51,000 metric tons is essentially the status quo; as that's what they're catching now. Industry has consistently underperformed the cap. I would also note that if the entire cap were landed where it's set now that is about 100 million additional pounds, taken out of what I consider to be a very small area. That would most certainly have an impact on menhaden in that region and certainly the predators that eat them.

CHAIRMAN BALLOU: Ritchie White.

MR. WHITE: I have a question for Rob. I've heard that a lot of the concern on not lowering the cap is that the new owners of Omega have other uses for menhaden than are presently being used; which might prompt the harvesting of smaller fish. Can you comment on this? Can you, if you know, is there any commitment that the company will continue to harvest the fish size that they have been harvesting? My understanding is that that is why they're not catching their cap; because that size fish is not available in the Bay.

CHAIRMAN BALLOU: Rob.

MR. O'REILLY: Thank you for the question, Ritchie. No, I really can't comment; because I do not know the aspects of the future plans there at all. But I think the one thing is that the smaller fish are not desirable. I think I can say that; as much so for oil, which is a pretty good product from Omega.

The other thing, while I have the ability to say something, is that it's not really fair to say that because someone has harvested a certain amount by volition for the last five years that they should be held to that. That's sort of making a decision on a fishery that the fishery should make a decision on.

Clearly, if there was 109,000 metric ton cap in 2006 and that was the average of 2001 to 2005. It tells you that at times when the stock was available, but not as robust as it is today, there was more harvest then. Now the stock is healthier, and for business reasons is all that I could say. You know the reduction fishery has not taken place to the same extent in the Bay. But I don't think that is a signal to anyone to decide that's where you're going to stay, that's your line.

CHAIRMAN BALLOU: Dennis Abbott.

MR. ABBOTT: Rob just; clarify something for me, Rob. In this instance you don't want to go by history. In the last five years you haven't come near your quota, and you're saying you can't go by the fact that we didn't catch it. But yet when we were dealing with all the other matters, then history seems to mean everything. There is in my mind a bit of contradiction.

But as a comment, on the one hand I could believe that it doesn't matter whether the quota is at 87,216 or 51,000, because you're not catching it. What that number is really doesn't need to be changed on the one hand, because you're not getting up to the 51,000 anyways. I don't know, but I think it sends the wrong message of catching too many fish out of the Chesapeake. I know the recreational people don't want that. I could go either way, but I think that lowering that number probably does no harm to anyone.

CHAIRMAN BALLOU: Additional comments on the motion, before I go back to Allison who has

spoken already, I would like to get others in. Nichola Meserve.

MS. MESERVE: Just very quickly, I support the substitute and the comments from Allison and John. It seems like one example, one place where we could follow the overwhelming public comment on this issue, and not have an economic harm imposed by it.

CHAIRMAN BALLOU: Dr. Duval.

DR. DUVAL: I think just this cap is based on average harvest over a number of years; and I know that there was previously a research program that was focused on trying to determine whether or not localized depletion was occurring. You know that research was inconclusive. I guess I would just put out there that I would hope that in the future that this might be something that the Board would revisit, should there be conclusive science that indicates one way or another how a cap should be set.

CHAIRMAN BALLOU: Back to, who I now realize should be addressed as Dr. Colden, my apologies. I now see that I've been off for only the past ten hours, on improperly addressing you, so Dr. Colden, back to you.

DR. COLDEN: That's no problem. I just wanted to make one comment in response to Rob's comment about fairness and equity. At the current, under status quo, there is the possibility; there is the capacity to harvest 97,000 metric tons from Chesapeake Bay, almost half of the entire coastwide TAC that we've been discussing all afternoon.

I don't know whether the recreational anglers of Virginia and Maryland would consider that equitable; but I think I know the answer to that question. In terms of a business decision, it's obvious that if the business decision has been made to harvest at a specific level within the Bay over the past five years. That this is not a business decision that is negatively impacting

the bottom line; or else that decision would not have been made.

You know I think this reflects the past five-year's landings from the Bay. It's simply updating the window; the way that the cap was originally put in place. We're simply updating to the last five years; and making it similar to the way the cap was first implemented when it was first put in place. I hope folks will consider those comments when they are considering this.

CHAIRMAN BALLOU: Any additional comments on the motion? Rob O'Reilly.

MR. O'REILLY: Very briefly. I think the main issue is that this is a coastwide stock; and there is no scientific basis to indicate that the Chesapeake Bay has suffered from any localized depletion. I certainly understand those who hold to that concept; only because they think of the Chesapeake Bay as differently than the coastal area, but it's not.

It's a unit stock, a coastwide stock. Science has not shown anything else. I think that is important, and I think for that reason there was an option here to remove the cap as well, which hasn't been talked about. I think that is where maybe some would get some comfort by knowing a cap is there; but once you have that comfort, I don't think you need to go any further.

CHAIRMAN BALLOU: Any further comments on the motion to substitute? Seeing none; is the Board ready for the question? Is so does the Board need time to caucus? I'll assume there might be at least some time needed, so let's make it a 30 second caucus. There has been a request for a roll call; so I'll have Megan call the roll moving north to south.

MS. WARE: Maine.

MR. KELIHER: Yes.

MS. WARE: New Hampshire.

MS. PATTERSON: Yes.

MS. WARE: Massachusetts.

MS. MESERVE: Yes.

MS. WARE: Rhode Island.

MR. REID: Yes.

MS. WARE: Connecticut.

MS. GIANNINI: Yes.

MS. WARE: New York.

MR. GILMORE: Yes.

MS. WARE: New Jersey.

MR. ALLEN: No.

MS. WARE: Pennsylvania.

MR. SHIELS: Yes.

MS. WARE: Delaware.

MR. CLARK: Yes.

MS. WARE: Maryland.

MR. BLAZER: Yes.

MS. WARE: Potomac River.

MR. GARY: Yes.

MS. WARE: Virginia.

MR. O'REILLY: No.

MS. WARE: North Carolina.

MR. BRADY: Yes.

MS. WARE: South Carolina.

MS. GIANNINI: Yes.

DR. RHODES: Yes.

MS. WARE: New York.

MS. WARE: Georgia.

MR. GILMORE: Yes.

MR. WOODWARD: Yes.

MS. WARE: New Jersey.

MS. WARE: Florida.

MR. ALLEN: No.

MR. ESTES: Yes.

MS. WARE: Pennsylvania.

MS. WARE: NOAA Fisheries.

MR. SHIELS: Yes.

MR. BURNS: Abstain.

MS. WARE: Delaware.

MS. WARE: Fish and Wildlife.

MR. CLARK: Yes.

MR. MILLARD: Abstain.

MS. WARE: Maryland.

CHAIRMAN BALLOU: **The motion passes 14 to 2 with 2 abstentions.** It now becomes the main motion; is there any further discussion on the main motion? Is there any further discussion on the main motion? Seeing none; is the Board ready to vote? If so do we need a roll call vote? Hearing no request, all in favor, yes there is a roll call vote on this now as the main motion. We'll call the vote again; same order.

MR. BLAZER: Yes.

MS. WARE: Potomac River.

MR. GARY: Yes.

MS. WARE: Virginia.

MR. O'REILLY: No.

MS. WARE: Maine.

MS. WARE: North Carolina.

MR. KELIHER: Yes.

MR. BRADY: Yes.

MS. WARE: New Hampshire.

MS. WARE: South Carolina.

MR. ABBOTT: Yes.

MR. BOYLES: Yes.

MS. WARE: Massachusetts.

MS. WARE: Georgia.

MS. MESERVE: Yes.

MR. WOODWARD: Yes.

MS. WARE: Rhode Island.

MS. WARE: Florida.

MR. REID: Yes.

MR. ESTES: Yes.

MS. WARE: Connecticut.

MS. WARE: NOAA Fisheries.

MR. BURNS: Abstain.

MS. WARE: Fish and Wildlife.

MR. MILLARD: Abstain.

CHAIRMAN BALLOU: **The motion passes 14 to 2 with 2 abstentions.** We're almost at the end, and I am not a glutton for punishment. But I have been advised by staff that left hanging is the issue of what will happen in terms of the administration of any quota allocated to a state under our fixed minimum program that a state opts not to utilize.

It's left vague in the document; and there are I think two ways to handle this. One is to get into it right now; and decide how best to administer that reallocation of unused quota, the other is to push it to an addendum process. What is the will of the Board? Does anyone not get the point; or understand why we're bringing this up? I think I'm bringing it up because staff has advised; but Bob.

EXECUTIVE DIRECTOR BEAL: I guess some concern about timing with the addendum process or potential addendum process. You know, the states are going to have to decide very soon if they're going to harvest some or all their quota in 2018. The earlier we know that the earlier the receiving states, if you want to call it that, can make their plans.

The assumption is Virginia may be one of the receiving states. Keep in mind that menhaden is managed through the Virginia State Legislature; rather than through VMRC, and legislative session begins at the beginning of the calendar year. The more Virginia knows, I think at the beginning of the year, the more information they have to work with going into the legislative sessions.

If there is an easy way to do it right now it would be a lot better. Easy and now is probably an oxymoron. But I think anything we can do to help staff understand how we're supposed to

divvy up the relinquished fish would help a lot of folks out, I think.

CHAIRMAN BALLOU: Thank you for that advice. With that advice, are there any suggestions from the Board? Pat Keliher.

MR. KELIHER: I move we have a caffeine break. No, Mr. Chairman I think we need some language. Do you have some language there, Megan? **Mr. Chairman, I would move that states must declare any relinquished quota by December 31st of the previous year. Any quota that is foregone by a state is redistributed to the other jurisdictions based on historic landings from the time period selected by the Board in this Amendment.**

CHAIRMAN BALLOU: Is there a second to that motion? Seconded by David Borden, Pat Keliher, do you want to speak more to it?

MR. KELIHER: I don't think this is perfect; by any stretch of the imagination. I think there were other comments during the last deliberation; in regards to have it going to very specific areas, whether it be the small-scale fishery or whether it be episodic. I don't think that is precluded from this motion. But it may need to be more specific. But I think the intent is to ensure that we have a clear understanding up front, and that clear understanding would be prior to December 31st.

CHAIRMAN BALLOU: Thank you. David Borden.

MR. BORDEN: I seconded it for discussion purposes. But I guess my question to Bob is, is December 31st adequate; in order to do what you want to do here, or should we back it up to like November 1st, or some date in November?

EXECUTIVE DIRECTOR BEAL: Mr. Chairman.

CHAIRMAN BALLOU: Please, I'm sorry.

EXECUTIVE DIRECTOR BEAL: It might be a better question for Rob O'Reilly. I don't know exactly when they have to have their legislative packages squared away to go into their

legislative process. The end of the year may be really tight for them; you're right, David. I don't know if mid-December is right or what it may be. But Rob may have a better sense of their legislative timing.

CHAIRMAN BALLOU: Rob, did you want to, yes I'm sorry.

MR. O'REILLY: I think December 1 would be better. I think that's a good suggestion. I think December 1 would be. It's going to be a little bit difficult the first time around to go through this. I understand that. But that would give time for the General Assembly Session in Virginia.

CHAIRMAN BALLOU: This is two weeks from today, more or less. Pat Keliher.

MR. KELIHER: I would accept that as a friendly if my seconder would.

CHAIRMAN BALLOU: **Is there any objection to amending the motion to change December 31 to December 1? Seeing none; the motion is amended,** and we're continuing our discussion on it. Dr. Rhodes.

DR. RHODES: Well, I had one other friendly amendment; because I've been hearing concerns about the 1 percent episodic event set aside. Would it be appropriate to put in here, any quota that is foregone by a state covers the 1 percent episodic event set aside, and the remainder is redistributed. That way no one has to worry about losing any of their 100 percent quotas.

CHAIRMAN BALLOU: My take is those are two very different approaches. One goes right down the list of allocations, allocation percentages for the 2009-2011 period, and redistributes accordingly. The other would do something different. Your approach would do something different; I don't see how that could be a friendly. It would have to be in the form of a substitute. Adam Nowalsky.

MR. NOWALSKY: Would there be any merit to specifying that the receiving states be states that did not relinquish quota; because I don't think it would make sense to donate back to states that are already giving something up. I might suggest consideration here that any quota that is foregone by a state is redistributed to the other jurisdictions that are not relinquishing quota. I'll put that out there for consideration.

CHAIRMAN BALLOU: That could be in the form of a friendly, I think. But first Bob Beal has a point.

EXECUTIVE DIRECTOR BEAL: I guess the way I was reading it, Adam, the notion that any foregone quota will be redistributed to other jurisdictions meant exactly what you said, which is jurisdictions other than the ones that relinquish quota. That is the way I was reading it; but maybe I was assuming too much.

CHAIRMAN BALLOU: Let me just ask Pat Keliher as the maker of the motion. Is that your intent?

MR. KELIHER: Our Executive Director did not assume too much, for once.

CHAIRMAN BALLOU: We have that clear on the record now that that is the intent. Nichola Meserve.

MS. MESERVE: Question to the maker of the motion whether this was intended to provide the flexibility to states to relinquish any amount of the fixed amount; as opposed to what the document currently says about 10,000 pounds for bycatch, or forego entirely.

MR. KELIHER: That's a great question. The intent would be to relinquish quota; with the understanding the document allows for that bycatch allocation.

CHAIRMAN BALLOU: Nichola, does that address your question?

MS. MESERVE: I think it's been answered. I guess I would have hoped that the states had more flexibility to give up any amount that they wanted to, as was part of the earlier motion today.

MR. KELIHER: I'm not opposed to that. It meets the intent of my original motion earlier in the day.

CHAIRMAN BALLOU: Again that is on the record as the intent. States have the flexibility to relinquish all or part of their quota. John Clark.

MR. CLARK: Just kind of a follow up. There could be a situation where, I'm just thinking of in our state. We would relinquish some of our quota; but it might turn out that in the fishing year of 2018, as we get to the end there would be more quota we could relinquish under this. It's only for the previous year. Would there be a way to relinquish quota during the fishing year also?

CHAIRMAN BALLOU: I think the answer to that is via transfer, yes, further discussion on the motion, Spud Woodward.

MR. WOODWARD: Just a question. If this motion were to pass, foregone means anything that is not transferred or used, is that correct?

CHAIRMAN BALLOU: I'm sorry, there is typing going on. I'm trying to follow, but let me see if Megan has a response.

MS. WARE: I'll just use a hypothetical. If Georgia wanted to forego half of their fixed minimum, half of your marbles would go through this process, and the other half you would still have. If you want to transfer those, you can do that.

MR. WOODWARD: Or I could transfer the entire quota to someone by declaring to do that on December 1st, which would leave nothing foregone. Is that correct?

MS. WARE: Correct. You would not opt out of the fixed minimum, so you would have all your marbles and you can do with them what you would like.

MR. WOODWARD: Well I would sure like to have all my marbles; it would be the first time in my life. I think I understand this, all right thank you.

CHAIRMAN BALLOU: As we were just having that good exchange, the motion has been perfected and it now reads: ***Move that states must declare any relinquished quota by December 1st of the previous year. States have the ability to declare how much of their quota to relinquish. Any quota that is foregone by a state is redistributed to the other jurisdictions based on historic landings from the time period selected by the Board in this Amendment. Is there any objection to that perfected language?*** I see no objection from the Board. Toni Kerns.

MS. KERNS: Just a perfection, perhaps instead of saying foregone, we should be consistent and say relinquished, quota that is relinquished by a state, just to be consistent.

CHAIRMAN BALLOU: That makes very good sense to me. ***Is there any objection to substituting the word foregone with the word relinquished? Seeing none; we have an even more perfected motion.*** Is there any more perfection that needs to be done, or any more discussion that needs to take place on this motion?

Seeing none; is the Board ready to vote on it? If so; do you need time to caucus? Let's just do a 15 second caucus. All right, I'm going to call the question. **All in favor of the motion please raise your hand, thank you. Those opposed please raise your hand. Are there any null votes, I see none. Are there any abstentions, and there are two. The motion passes 16 to 0 with 2 abstentions.** I now believe, if I'm not

mistaken but I may be, because I just see a hand go up. Robert Boyles.

MR. BOYLES: Mr. Chairman, I was going to offer a motion to approve the Amendment and they're not, okay, sorry.

CHAIRMAN BALLOU: We have one issue before that motion; which is moments away, I believe, and that is an implementation date. We do need an implementation date. Megan, if you could just speak to the options if you will that the Board has for an implementation date.

MS. WARE: It's really at the discretion of the Board; if there are certain timeframe constraints, states should probably come up with those now. My sense from the Board is that the intent is to have this implemented for the 2018 fishery.

CHAIRMAN BALLOU: We do need a motion on this. Would anyone like to make a motion regarding the implementation date for this Amendment? Tom Fote.

MR. FOTE: I make an implementation date of 2018.

CHAIRMAN BALLOU: Tom, would you want to make that January 1, 2018?

MR. FOTE: Yes.

CHAIRMAN BALLOU: Is there a second to that motion; seconded by Loren Lustig? The motion is to move that states implement the provisions of Amendment 3 by January 1, 2018; discussion on the motion. John Clark.

MR. CLARK: As far as the Amendment won't be implemented until January 1, but Rob needs quota transfer to him by December 1. Do we have the quota as of the end of this meeting or as of January 1?

MS. WARE: I mean I can certainly work to get out the numbers as soon as I can as to what

your guys quota will be with the different set asides. Then you guys can make decisions as to whether you would like to relinquish quota or not; if that helps.

MR. CLARK: Right, I just wanted to make sure. Okay, so all the factors are going into effect as of today. We'll be transferring before the plan actually goes into effect.

MS. WARE: I think that's, I guess the intent of what the Board is deciding.

CHAIRMAN BALLOU: Just to clarify. We just agreed on some provisions that really are Amendment provisions that will actually kick in prior to January 1, 2018. John, to your point, I think it's a very fair point. But I think the record will reflect that those preliminary steps will be undertaken prior to implementation. You could argue they are part of implementation; but I think we're probably splitting hairs at this point, unless there is a feeling that we need to be more clear. Rob O'Reilly.

MR. O'REILLY: The Commissioner reminds me that the startup date is a little after January 1 for the General Assembly. But clearly that would be the implementation authority. It's not going to help the situation with the December 1 declarations. But January 1 might be a little bit too early to say that's the implementation.

I'm a little surprised. I think there probably are some other states that are going to need a little bit of time to do this as well. I remember in the past we've had to adopt even a May 1, which we don't want to do here. But I guess I'm asking the other states about this January 1 date. Maybe it might be better to put it into February.

CHAIRMAN BALLOU: Are there any thoughts by other Board members on whether January 1, 2018 is a date that they're comfortable with, or whether they wish to adjust? Cheri Patterson.

MS. PATTERSON: Question please. Megan, what is the harvest in the month of January?

MS. WARE: I don't know off the top of my head; but low.

CHAIRMAN BALLOU: Robert Boyles.

MR. BOYLES: Mr. Chairman, I would, I'm sorry you've got a motion. I'm sorry, never mind.

CHAIRMAN BALLOU: Any further discussion on the motion? Nichola Meserve.

MS. MESERVE: Just to clarify. Our state implementation plan is also due January 1, 2008, because Page 82 of the document has the option for two different dates for implementation plans being due, and then programs implemented.

CHAIRMAN BALLOU: Megan.

MS. WARE: Yes that's a good point. One option, taking into consideration what Rob O'Reilly said is we could do implementation plans due January 1, and then implementation date January 15, or February 1, whatever works. But that's just one suggestion.

CHAIRMAN BALLOU: There has been a suggestion. Is there an interest in modifying this motion? Robert Boyles.

MR. BOYLES: Move to amend.

CHAIRMAN BALLOU: Thank goodness, because we need this kind of excitement. Go ahead.

MR. BOYLES: I would move to amend that states submit implantation plans for Amendment 3 by January 1, 2018, and implement by January 15, 2018.

CHAIRMAN BALLOU: Is there a second to that motion; seconded by Jim Gilmore? Discussion on the motion to amend, is there any objection to the motion to amend? Seeing none; I'm sorry, Roy Miller.

MR. MILLER: Mr. Chairman, do we have to vote on those implementation plans?

MS. WARE: There is no voting. What has happened before is the Plan Review Team will review those; to make sure everyone has kind of checked the boxes on the various parts of the plan that the Board has voted on today. If there are any concerns then the PRT will notify the Board; potentially electronically or at the February meeting. We'll figure out the timing there. But that's how we have done it in the past.

CHAIRMAN BALLOU: I'll ask again, is there any objection to the motion to amend? Roy Miller.

MR. MILLER: I'm sorry, Mr. Chairman, I hate to be a nitpicker. But if the Board will be reading over these implementation plans, why not push back the actual implementation until the February meeting?

CHAIRMAN BALLOU: Toni Kerns.

MS. KERNS: Oftentimes we have a more complicated plan that will need information from the states. The states will have a lot more things to change. In this document for the most part, the only thing that you're going to be implementing is a quota. If a state can't implement the quota by January 15, then that is what we would need to know right now. Otherwise, I'm not sure there is going to be a lot of Plan Review Team review of the state implementation plans, because you're just going to come back and tell us yes, we're implementing our quota. I'll leave that with the Board to discuss.

CHAIRMAN BALLOU: Rob O'Reilly.

MR. O'REILLY: I know Robert Boyles has been trying to help me out here. I guess the situation is this isn't anticipated to be an emergency action at the General Assembly. The General Assembly goes into March, I think this year. I'm

looking to the back of the room and getting a head nod.

At the least, it would not be voted on and finalized through the House and the Senate, and be in the Governor's packet for him to either veto or sign, until March. I'm looking to the back of the room, or early April. Again, I'm a little surprised. First of all please know that this is a rare occasion; because usually VMRC is able to promulgate regulations fairly quickly, you know within a two month period.

It does put us in a bind that way, in that we really wouldn't have the quota ratified until early April. I don't know what to say other than that. I suppose we could be fishing not with reduction or with the snapper rig fisheries up until May, starting in May. But there is a bycatch situation, and the pound nets may start in late February some years. It depends. You know it's sort of a mess, I guess. But I think we can work around this better if it's not January 15, and again I know this is sort of a unique situation, just looking for some guidance.

CHAIRMAN BALLOU: Bob Beal.

EXECUTIVE DIRECTOR BEAL: A number of instances at the Commission, the Boards have set implementation dates, knowing that certain states or Commonwealths may take longer to implement. The compliance and other things have been really evaluated, based on whether a state is or is not moving toward implementation.

January 15 may not be the right date, but if it's March 1, or whatever it may be. The Commission is aware that states are working through their rule making or legislative processes to implement this Amendment. I think that is the most important thing. The other important thing is all states are working up the same sheet of music that know that the quotas that are approved through this Amendment and the spec setting process, are fully applicable to 2018.

We're not starting the year with a different quota, and then on the implementation date we're switching gears to a new quota. The Board today has approved the 2018 quotas that the states are going to be evaluated by. I think the implementation date may not be that critical. It's the state's working toward implementation of this that is the most important.

With that you guys can consider pushing back January 15 a little bit. But I don't know if we need to set the implementation date at sort of the least common denominator of the slowest legislative process; because some of the other states may need a shorter timeframe to sort of motivate them to implement the provisions earlier.

CHAIRMAN BALLOU: Eric Reid, did you have a comment?

MR. REID: I have a question. I think maybe Bob answered it; but I just want to be clear. What happens on January 1, as far as going fishing? What are we working off of? Are we working off of no quota? Are we working off of some quota? Do we have a bycatch? What do we have to work with?

CHAIRMAN BALLOU: Bob Beal

EXECUTIVE DIRECTOR BEAL: My understanding is you'll start with the allocations that are included in Amendment 3; based on the 216,000 metric ton quota that was approved earlier.

CHAIRMAN BALLOU: Yes, Andy Shiels.

MR. SHIELS: Would it make more sense to substitute the word implement and say no later than and pick a date; based on what Bob Beal said that you don't want to go for the fastest or the slowest state, but if it's no later than then everybody can work up to that date?

CHAIRMAN BALLOU: It's a suggestion. The Board can take that to heart, or we can just vote as proposed. I see two hands. Dr. Rhodes.

DR. RHODES: This harkens back to an issue that we often have before the Board when we change rules or limits; because South Carolina, all processes are done by the legislature, so Robert frequently is telling the Board that we will get this done as quickly as we can. However, it goes through the legislature. Virginia is in the same boat as us. We've never asked to change implementation dates, and I think the Board recognizes that if you're handcuffed by the legislature in certain areas you are, but you're working towards that goal.

This would be fine if other states require a little fire to get everything implemented by an earlier date, we would do that. We just stay aware of the fact that Virginia is moving as rapidly as their legislature allows. We've been in that boat 100 times, and you all have all forborne us during those times.

CHAIRMAN BALLOU: Robert Boyles.

MR. BOYLES: Mr. Chairman, I'm sorry. I meant to say April 15 for implementation date.

CHAIRMAN BALLOU: Is that serious?

MR. BOYLES: Yes sir, I did. I'm tired, I'm sorry, distracted.

CHAIRMAN BALLOU: *That's okay. Now we have a modified motion to amend that states submit implementation plans for Amendment 3 by January 1, 2018, and implement by April 15, 2018. Is there any objection to that modification to the amended motion? Seeing none; the motion stands amended, but we still haven't voted on it yet.*

Is the Board ready to vote? **Are there any further questions or discussions on this issue? Seeing none; is there any objection to adopting the motion to amend? Seeing no objections;**

the motion to amend is adopted by consent, and it becomes the main motion. Is there any further discussion on this now as the main motion? Seeing non hands; is there any objection to adopting this now as the final motion on implementation? Seeing no objections; the motion stands approved by consent, and now Robert, I do believe we're ready for one final motion. Right, yes we are.

MR. BOYLES: I would recommend to the Commission the approval of Amendment 3 to the Menhaden Interstate Fishery Management Plan as amended today.

CHAIRMAN BALLOU: Is there a second? Seconded by Jim Estes, moved by Robert Boyles and seconded by Jim Estes, is there discussion on this motion? This will be a final action by the Board; the final action on Amendment 3. It will be a roll call vote by necessity, and it will end the process of considering Amendment 3. Loren Lustig.

MR. LUSTIG: I certainly appreciate what we've had today; which has certainly been a very insightful discussion. I apologize to those of you might wish that I had forgotten, but I did not forget Rachel, my pal over here in Maryland using the word "unless." Here's my response. The Lorax said, "Unless someone like you cares a whole awful lot, it's not going to get better, it's not." I think what we proved to our critics and our supporters are that the people in this room care a whole awful lot. Thank you.

CHAIRMAN BALLOU: Any further discussion on this motion? Seeing none; I'll have Megan call the roll. We'll go north to south.

MS. WARE: Maine.

MR. KELIHER: Yes.

MS. WARE: New Hampshire.

MS. PATTERSON: Yes.

MS. WARE: Massachusetts.

MS. WARE: Georgia.

MS. MESERVE: Yes.

MR. WOODWARD: Yes.

MS. WARE: Rhode Island.

MS. WARE: Florida.

MR. REID: Yes.

MR. ESTES: Yes.

MS. WARE: Connecticut.

MS. WARE: NOAA Fisheries.

MS. GIANNINI: Yes.

MR. BURNS: Yes.

MS. WARE: New York.

MS. WARE: U.S. Fish and Wildlife.

MR. GILMORE: Yes.

MR. MILLARD: Yes.

MS. WARE: New Jersey.

CHAIRMAN BALLOU: **The motion passes 17 to 1 and the Amendment stands adopted.** Thank you, and before we move on to what I believe is our last agenda item, and it's a brief one, relatively brief. Indulge me for one minute, just one minute for some closing remarks. I would appreciate your time.

MR. ALLEN: Yes.

MS. WARE: Pennsylvania.

MR. SHIELS: Yes.

I really feel like I've learned two things through this process. One is that I was advised early on that amendments are a big deal; and I found that to be true. Then I've really learned that amendments pertaining to menhaden are really big deals. It has been quite a journey; but the second lesson that I've learned is that the journey is made possible thanks to the team effort of so many people.

MS. WARE: Delaware.

MR. CLARK: Yes.

MS. WARE: Maryland.

MR. BLAZER: Yes.

MS. WARE: Potomac River.

MR. GARY: Yes.

I'm sure I'm missing some key folks here, or key entities. But I think back to the Allocation Workgroup Process that Robert Boyles began prior to my Chairmanship, while he was still Chair, which really carried forward and was very much a part of the provisions that ended up in this Amendment.

MS. WARE: Virginia.

MR. O'REILLY: No.

MS. WARE: North Carolina.

DR. DUVAL: Yes.

I think of the Plan Development Team and listening into their many hours of meetings, and working through these issues. I think of the Technical Committee and the BERP Working Group, and of course the Advisory Panel; for all

MS. WARE: South Carolina.

MR. BOYLES: Yes.

of their hard work over the course of really, the past two years. This has been a long process.

Of course I recognize prior, and recognize again the enormous amount of public input that was provided for this process; and how well received and appreciated it was. Of course there is this Board, and I've never been so privileged to work with such a fine group of people. It has been an honor and really a great experience to work with you through this process and get to where we've gotten.

Last but not least this person to my right, Megan Ware, our FMP Coordinator (Applause), what a champion and what a dear friend and colleague. Thank you so much, Megan for all of your work. Boy, I'm sure it's going to feel good tomorrow to know that this is actually behind you. I believe Max might be stepping in, if I've got that right, so welcome, Max.

It's a cake walk, I assure you. Before we do turn to our last item, I just have to note how skilled and talented Russ Allen is, agreeing to serve as Vice Chair, and then also leaving us just at the point where he would have assumed the Chairmanship. Well played, Russ. But in all seriousness, thank you.

I know we acknowledged and thank you for your contributions to this Commission at the last meeting. But certainly, let's take this opportunity to thank Russ for all of his contributions to the Menhaden Board. Thank you. (Applause) With that we turn to our last agenda item, which is, I'm sorry, Dennis Abbott.

MR. ABBOTT: Excuse me, Mr. Chairman. You thanked an awful lot of people; but you didn't thank yourself, which is not appropriate to do. But on behalf of the Board, I would like to thank you for the work that you've put into this, and also like to thank you for the way that you have conducted all the meetings with the utmost consideration to every person in the room. I think you ought to be congratulated; and we

surely appreciate the work that you've done over the past two years. Thank you! (Applause)

CHAIRMAN BALLOU: Thank you very much and you're going to want to stand again; because I was just reminded that this is Spud Woodward's last meeting. Let's please stand and give a round of applause to our colleague, Spud Woodward. (Applause)

ELECTION OF VICE-CHAIR

CHAIRMAN BALLOU: With that we are indeed onto our last item of business; which is the election of a Vice-Chair. Does anyone have any recommendations or motions to make? Robert Boyles.

MR. BOYLES: **I would move that we nominate, select, and elect, and sentence Nichola Meserve as Vice-Chair of the Atlantic Menhaden Board, and if I could just to expedite things and the nominations be closed.**

CHAIRMAN BALLOU: I guess we need a second. Loren Lustig seconds that. Nominations are therefore closed. There is no chance Nichola that you're getting out of this one. **Is there any objection to the motion? Seeing none;** congratulations, Nichola and we look forward to your leadership as a follow to all that's been done by all of the prior Board Chairs and welcome and congrats.

MS. MESERVE: Big shoes to fill, but I expect nothing but smooth sailing for the next two years.

ADJOURNMENT

CHAIRMAN BALLOU: With that I believe the next order of business would be to adjourn; and then there might be a reconvening of the Business Section. Do I have that correct? Jim will be doing that; and Jim is already poised and ready to go, so this is going to be a quick transition. I will hereby adjourn this meeting of the Menhaden Board and turn it over to Jim Gilmore for the Business Section.

(Whereupon the meeting was adjourned
around 3:00 o'clock p.m. on November 14,
2017)



Atlantic States Marine Fisheries Commission

1050 N. Highland Street • Suite 200A-N • Arlington, VA 22201
703.842.0740 • 703.842.0741 (fax) • www.asmf.org

MEMORANDUM

April 16, 2018

To: Atlantic Menhaden Management Board

From: Atlantic Menhaden Technical Committee (TC) and Ecological Reference Point (ERP) Work Group

RE: Draft Terms of Reference (TORs) for the 2019 Atlantic Menhaden Single-Species and Ecosystem-Based Benchmark Stock Assessments and Peer-Reviews

The following terms of reference were drafted in preparation for the Atlantic Menhaden Single-Species and Ecosystem-Based Benchmark Stock Assessment Data Workshops, scheduled for April 23-27, 2018, in Arlington, Virginia. As such, the TORs should be considered preliminary and may change slightly following TC and ERP Work Group Review.

M18-034

TERMS OF REFERENCE

For the 2019 ASMFC Atlantic Menhaden Single-Species Benchmark Stock Assessment

Terms of Reference for the Single-Species Atlantic Menhaden Assessment

1. Define population structure based on available data. If alternative population structures are used in the models (e.g., coast-wide or regional), justify use of each population structure.
2. Characterize precision and accuracy of fishery-dependent and fishery-independent data used in the assessment, including the following but not limited to:
 - a. Provide descriptions of each data source (e.g., geographic location, sampling methodology, potential explanation for outlying or anomalous data)
 - b. Describe calculation and potential standardization of abundance indices.
 - c. Discuss trends and associated estimates of uncertainty (e.g., standard errors)
 - d. Justify inclusion or elimination of available data sources.
 - e. Discuss the effects of data strengths and weaknesses (e.g., temporal and spatial scale, gear selectivities, ageing accuracy, sample size) on model inputs and outputs.
3. Develop models used to estimate population parameters (e.g., F, biomass, abundance) and biological reference points, and analyze model performance.
 - a. Briefly describe history of model usage, its theory and framework, and document associated peer-reviewed literature. If using a new model, test using simulated data.
 - b. Clearly and thoroughly explain model strengths and limitations.
 - c. Justify choice of CVs, effective sample sizes, or likelihood weighting schemes.
 - d. Describe stability of model (e.g., ability to find a stable solution, invert Hessian)
 - e. Perform sensitivity analyses for starting parameter values, priors, etc. and conduct other model diagnostics as necessary.
 - f. Clearly and thoroughly explain model strengths and limitations.
 - g. If multiple models were considered, justify the choice of preferred model and the explanation of any differences in results among models.

Draft Terms of Reference for the Atlantic Menhaden Single-Species and Ecosystem-Based Benchmark
Stock Assessments and Peer Reviews

4. State assumptions made for all models and explain the likely effects of assumption violations on synthesis of input data and model outputs. Examples of assumptions may include (but are not limited to):
 - a. Choice of stock-recruitment function.
 - b. No error in the catch-at-age or catch-at-length matrix.
 - c. Calculation of M . Choice to use (or estimate) constant or time-varying M and catchability.
 - d. Choice of equilibrium reference points or proxies for MSY -based reference points.
 - e. Choice of a plus group for age-structured species.
 - f. Constant ecosystem (abiotic and trophic) conditions.
5. Characterize uncertainty of model estimates and biological or empirical reference points.
6. Perform retrospective analyses, assess magnitude and direction of retrospective patterns detected, and discuss implications of any observed retrospective pattern for uncertainty in population parameters (e.g., F , SSB), reference points, and/or management measures.
7. Recommend stock status as related to reference points (if available). For example:
 - a. Is the stock below the biomass threshold?
 - b. Is F above the threshold?
8. Other potential scientific issues:
 - a. Compare trends in population parameters and reference points with current and proposed modeling approaches, including the results of the ecological-based benchmark stock assessment. If outcomes differ, discuss potential causes of observed discrepancies.
 - b. Compare reference points derived in this assessment with what is known about the general life history of the exploited stock. Explain any inconsistencies.
9. If a minority report has been filed, explain majority reasoning against adopting approach suggested in that report. The minority report should explain reasoning against adopting approach suggested by the majority.

10. Develop detailed short and long-term prioritized lists of recommendations for future research, data collection, and assessment methodology. Highlight improvements to be made by next benchmark review.
11. Recommend timing of next benchmark assessment and intermediate updates, if necessary relative to biology and current management of the species.

Terms of Reference for the Atlantic Menhaden Single-Species Assessment External Peer Review

1. Evaluate the thoroughness of data collection and the presentation and treatment of fishery-dependent and fishery-independent data in the assessment, including the following but not limited to:
 - a. Presentation of data source variance (e.g., standard errors).
 - b. Justification for inclusion or elimination of available data sources,
 - c. Consideration of data strengths and weaknesses (e.g., temporal and spatial scale, gear selectivities, aging accuracy, sample size),
 - d. Calculation and/or standardization of abundance indices.
2. Evaluate the methods and models used to estimate population parameters (e.g., F, biomass, abundance) and biological reference points, including but not limited to:
 - a. Evaluate the choice and justification of the preferred model(s). Was the most appropriate model (or model averaging approach) chosen given available data and life history of the species?
 - b. If multiple models were considered, evaluate the analysts' explanation of any differences in results.
 - c. Evaluate model parameterization and specification (e.g., choice of CVs, effective sample sizes, likelihood weighting schemes, calculation/specification of M, stock-recruitment relationship, choice of time-varying parameters, plus group treatment).
3. Evaluate the diagnostic analyses performed, including but not limited to:
 - a. Sensitivity analyses to determine model stability and potential consequences of major model assumptions
 - b. Retrospective analysis
4. Evaluate the methods used to characterize uncertainty in estimated parameters. Ensure that the implications of uncertainty in technical conclusions are clearly stated.

Draft Terms of Reference for the Atlantic Menhaden Single-Species and Ecosystem-Based Benchmark
Stock Assessments and Peer Reviews

5. If a minority report has been filed, review minority opinion and any associated analyses. If possible, make recommendation on current or future use of alternative assessment approach presented in minority report.
6. Recommend best estimates of stock biomass, abundance, and exploitation from the assessment for use in management, if possible, or specify alternative estimation methods.
7. Evaluate the choice of reference points and the methods used to estimate them. Recommend stock status determination from the assessment, or, if appropriate, specify alternative methods/measures.
8. Review the research, data collection, and assessment methodology recommendations provided by the TC and make any additional recommendations warranted. Clearly prioritize the activities needed to inform and maintain the current assessment, and provide recommendations to improve the reliability of future assessments.
9. Recommend timing of the next benchmark assessment and updates, if necessary, relative to the life history and current management of the species.
10. Prepare a peer review panel terms of reference and advisory report summarizing the panel's evaluation of the stock assessment and addressing each peer review term of reference. Develop a list of tasks to be completed following the workshop. Complete and submit the report within 4 weeks of workshop conclusion.

TERMS OF REFERENCE

For the 2019 ASMFC Atlantic Menhaden Ecosystem-Based Benchmark Stock Assessment

Terms of Reference for the Atlantic Menhaden Ecosystem-Based Assessment

1. Review and evaluate the fishery-dependent and fishery-independent data used in the Atlantic menhaden single-species assessment, and justify inclusion, elimination, or modification of those data sets.
2. Characterize precision and accuracy of additional fishery-dependent and fishery-independent data sets, including diet data, used in the ecological reference point models,
 - a. Provide descriptions of each data source (e.g., geographic location, sampling methodology, potential explanation for outlying or anomalous data)
 - b. Describe calculation and potential standardization of abundance indices.
 - c. Discuss trends and associated estimates of uncertainty (e.g., standard errors)
 - d. Justify inclusion or elimination of available data sources.
 - e. Discuss the effects of data strengths and weaknesses (e.g., temporal and spatial scale, gear selectivities, ageing accuracy, sample size) on model inputs and outputs.
3. Develop models used to estimate population parameters (e.g., F, biomass, abundance) of Atlantic menhaden that take into account ecosystem drivers of Atlantic menhaden population dynamics and analyze model performance.
 - a. Briefly describe history of model usage, its theory and framework, and document associated peer-reviewed literature. If using a new model, test using simulated data.
 - b. Justify choice of ecosystem drivers included (e.g., predator species, environmental effects)
 - c. Describe stability of model (e.g., ability to find a stable solution, invert Hessian)
 - d. Justify choice of CVs, effective sample sizes, or likelihood weighting schemes.
 - e. Perform sensitivity analyses for starting parameter values, priors, etc. and conduct other model diagnostics as necessary.
 - f. Perform retrospective analyses, assess magnitude and direction of retrospective patterns detected, and discuss implications of any observed retrospective pattern for uncertainty in population parameters (e.g., F, SSB), reference points, and/or management measures.
 - g. Clearly and thoroughly explain model strengths and limitations.
 - h. If multiple models were considered, justify the choice of preferred model and the explanation of any differences in results among models.
4. Develop reference points and methods to determine total allowable catch for Atlantic menhaden that account for Atlantic menhaden's role as a forage fish.
5. State assumptions made for all population and reference point models and explain the likely effects of assumption violations on synthesis of input data and model outputs.
6. Characterize uncertainty of model estimates and reference points.

Draft Terms of Reference for the Atlantic Menhaden Single-Species and Ecosystem-Based Benchmark
Stock Assessments and Peer Reviews

7. Recommend stock status as related to reference points (if available). For example:
 - a. Is the stock below the biomass threshold?
 - b. Is F above the threshold?
8. Other potential scientific issues:
 - a. Compare trends in population parameters and reference points with current and proposed modeling approaches, including the results of the single-species benchmark assessment. If outcomes differ, discuss potential causes of observed discrepancies.
 - b. Compare reference points derived in this assessment with what is known about the general life history of the exploited stock. Explain any inconsistencies.
9. If a minority report has been filed, explain majority reasoning against adopting approach suggested in that report. The minority report should explain reasoning against adopting approach suggested by the majority.
10. Develop detailed short and long-term prioritized lists of recommendations for future research, data collection, and assessment methodology. Highlight improvements to be made by next benchmark review.
11. Recommend timing of next benchmark assessment and intermediate updates, if necessary relative to biology and current management of the species.

Terms of Reference for the Atlantic Menhaden Ecosystem-Based Assessment External Peer Review

1. Evaluate the justification for the inclusion, elimination, or modification of data from the Atlantic menhaden single-species benchmark assessment.
2. Evaluate the thoroughness of data collection and the presentation and treatment of additional fishery-dependent and fishery-independent data sets in the assessment, including but not limited to:
 - a. Presentation of data source variance (e.g., standard errors).
 - b. Justification for inclusion or elimination of available data sources,
 - c. Consideration of data strengths and weaknesses (e.g., temporal and spatial scale, gear selectivities, aging accuracy, sample size),
 - d. Calculation and/or standardization of abundance indices.
3. Evaluate the methods and models used to estimate Atlantic menhaden population parameters (e.g., F, biomass, abundance), including but not limited to:
 - a. Evaluate the choice and justification of the preferred model(s). Was the most appropriate model (or model averaging approach) chosen given available data and life history of the species?
 - b. If multiple models were considered, evaluate the analysts' explanation of any differences in results.
 - c. Evaluate model parameterization and specification (e.g., choice of CVs, effective sample

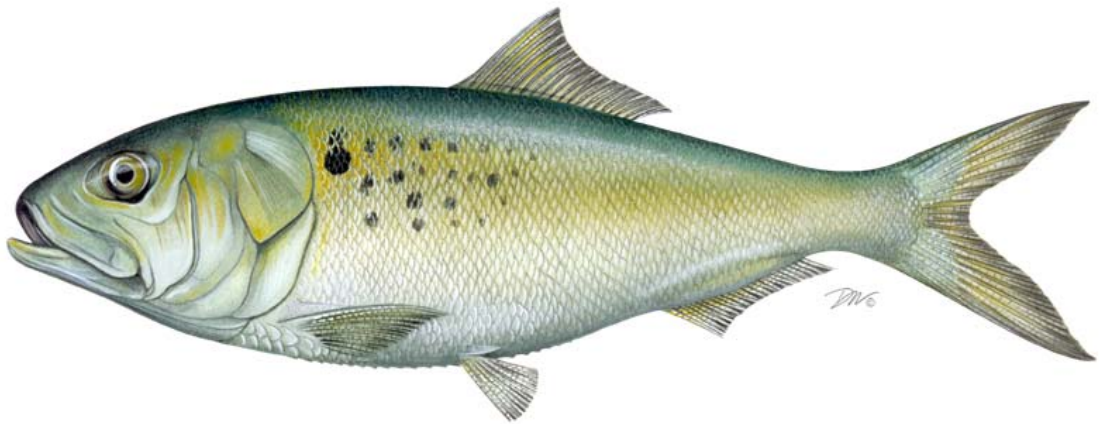
Draft Terms of Reference for the Atlantic Menhaden Single-Species and Ecosystem-Based Benchmark
Stock Assessments and Peer Reviews

sizes, likelihood weighting schemes, calculation/specification of M , stock-recruitment relationship, choice of time-varying parameters, choice of ecosystem drivers).

4. Evaluate the choice of reference points and the methods used to estimate them. Evaluate the methods to estimate total allowable catch.
5. Evaluate the diagnostic analyses performed, including but not limited to:
 - a. Sensitivity analyses to determine model stability and potential consequences of major model assumptions
 - b. Retrospective analysis
6. Evaluate the methods used to characterize uncertainty in estimated parameters. Ensure that the implications of uncertainty in technical conclusions are clearly stated.
7. If a minority report has been filed, review minority opinion and any associated analyses. If possible, make recommendation on current or future use of alternative assessment approach presented in minority report.
8. Recommend best estimates of stock biomass, abundance, exploitation, and stock status of Atlantic menhaden from the assessment for use in management, if possible, or specify alternative estimation methods.
9. Review the research, data collection, and assessment methodology recommendations provided by the TC and make any additional recommendations warranted. Clearly prioritize the activities needed to inform and maintain the current assessment, and provide recommendations to improve the reliability of future assessments.
10. Recommend timing of the next benchmark assessment and updates, if necessary, relative to the life history and current management of the species.
11. Prepare a peer review panel terms of reference and advisory report summarizing the panel's evaluation of the stock assessment and addressing each peer review term of reference. Develop a list of tasks to be completed following the workshop. Complete and submit the report within 4 weeks of workshop conclusion.

**2018 REVIEW OF THE
ATLANTIC STATES MARINE FISHERIES COMMISSION
FISHERY MANAGEMENT PLAN AND STATE COMPLIANCE
FOR
ATLANTIC MENHADEN (*Brevoortia tyrannus*)**

2017 Fishery



Prepared by:

The Atlantic Menhaden Plan Review Team

Max Appelman, Chair, Atlantic States Marine Fisheries Commission
Alex Aspinwall, Virginia Marine Resources Commission
Michael Bailey, United States Fish and Wildlife Service
Joey Ballenger, South Carolina Department of Natural Resources
Matt Cieri, Maine Department of Marine Resources
Ellen Cosby, Potomac River Fisheries Commission
Nicole Lengyel, Rhode Island Department of Environmental Management
Harry Rickabaugh, Maryland Department of Natural Resources
Andrew Scheld, Virginia Institute of Marine Science
Tara Scott, National Oceanic and Atmospheric Administration

Draft April 2018

**REVIEW OF THE ASMFC FISHERY MANAGEMENT PLAN AND STATE COMPLIANCE FOR
ATLANTIC MENHADEN (*Brevoortia tyrannus*) FOR THE 2017 FISHERY**

Management Summary

<u>Date of FMP:</u>	Original FMP: August 1981
<u>Amendments:</u>	Plan Revision: September 1992 Amendment 1: July 2001 Amendment 2: December 2012 Amendment 3: November 2017
<u>Management Unit:</u>	The range of Atlantic menhaden within U.S. waters of the Northwest Atlantic Ocean, from the estuaries eastward to the offshore boundary of the Exclusive Economic Zone (EEZ).
<u>States With Declared Interest:</u>	Maine – Florida, including Pennsylvania
<u>Additional Jurisdictions:</u>	Potomac River Fisheries Commission, National Marine Fisheries Service, United States Fish and Wildlife Service
<u>Active Boards/Committees:</u>	Atlantic Menhaden Management Board, Advisory Panel, Technical Committee, Stock Assessment Subcommittee, Plan Review Team, Plan Development Team, Biological Ecological Reference Point Work Group
<u>Stock Status:</u>	Not overfished, and overfishing is not occurring (2017 stock assessment update)

I. Status of the Fishery Management Plan

Atlantic menhaden management authority is vested in the states because the vast majority of landings come from state waters. All Atlantic coast states and jurisdictions, with the exception of the District of Columbia, have declared an interest in the Atlantic menhaden management program.

The first coastwide fishery management plan (FMP) for Atlantic menhaden was passed in 1981 (ASMFC 1981). The 1981 FMP did not recommend or require specific management actions, but provided a suite of options should they be needed. In 1992, the plan was revised to include a suite of objectives intended to improve data collection and promote awareness of the fishery and its research needs (ASMFC 1992).

Amendment 1, passed in 2001, provided specific biological, ecological and socioeconomic management objectives for Atlantic menhaden. No recreational or commercial management measures were implemented as a result of Amendment 1; however, subsequent addenda instituted a harvest cap on the reduction fishery in the Chesapeake Bay, based on average landings from 2001-2005. Two addenda (Addendum I and V) revised the biological reference points for menhaden and specified that stock assessments are to occur every three years.

Amendment 2, approved in December 2012, established a 170,800 metric ton (metric tons) total allowable catch (TAC) for the commercial fishery beginning in 2013. This TAC represented a 20% reduction from average landings between 2009 and 2011. The 2009-2011 time period was also used to allocate the TAC among the jurisdictions. In addition, the Amendment established requirements for timely reporting of commercial landings and required states to be accountable for their respective quotas by paying back any overages the following year. Amendment 2 also included provisions that allowed for the transfer of quota between jurisdictions and a bycatch allowance of 6,000 pounds per day for non-directed fisheries that operate after a jurisdiction's quota has been landed. Further, it reduced the Chesapeake Bay reduction fishery harvest cap by 20% to 87,216 metric tons.

In May 2013, the Board approved Technical Addendum I which established an episodic events set aside program. This program set aside 1% of the coastwide TAC for the New England states (Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut) to harvest Atlantic menhaden when they occur in higher abundance than normal. In order to participate in the program, a state must reach its individual quota prior to September 1, implement daily trip level harvester reporting, restrict harvest to state waters, and implement a daily trip limit no greater than 120,000 pounds/vessel. At its October 2013 meeting, the Board extended the episodic event set aside program through 2015, adding a provision that re-allocated unused set aside as of October 31 to the coastwide states based on the same allocation percentages included in Amendment 2. At its May 2016 meeting, the Board again extended the episodic events program until final action on Amendment 3 and added New York as an eligible state to harvest under the program.

At its May 2015 meeting, the Board established a TAC of 187,880 metric tons for the 2015 and 2016 fishing years. This represented a 10% increase from the 2013 and 2014 TAC. In October 2016, the Board approved a TAC of 200,000 metric tons for the 2017 fishing year, representing a 6.45% increase from the 2015 and 2016 TAC.

In August 2016, the Board approved Addendum I which added flexibility to the bycatch provision by allowing two licensed individuals to harvest up to 12,000 pounds of menhaden bycatch when working together from the same vessel using stationary multi-species gear. The intent of this Addendum was to accommodate cooperative fishing practices that traditionally take place in the Chesapeake Bay.

At its February 2014 meeting, the Board passed a motion to manage cast net fisheries for Atlantic menhaden under the bycatch allowance for 2014 and 2015, with the states bearing responsibility for reporting. At its November 2015 meeting, the Board approved a motion to continue the management of cast net fisheries under the bycatch allowance for 2016. In February 2017, the Board extended management of the cast net fishery under the bycatch provision until implementation of Amendment 3.

Amendment 3 to the Atlantic Menhaden Fishery Management Plan:

The Board approved Amendment 3 in November 2017. First, Amendment 3 maintains the management program's current single-species biological reference points until the review and adoption of menhaden-specific ERPs as part of the 2019 benchmark stock assessment process. In doing so, the Board placed the development of menhaden-specific ERPs as its highest priority and supports the efforts of the Ecological Reference Point Work Group (ERP WG) to reach that goal (see *Section III*). The intent of menhaden-specific ERPs is to provide a method to assess the status of menhaden not only in regard to their own sustainability, but also in regard to their interactions with predators and the status of other prey species. The benefit of this approach is that it allows fishery managers to consider the harvest of menhaden within a broad ecosystem context, which includes other fish, birds, mammals, and humans who utilize and depend on marine resources.

Amendment 3 also changes commercial quota allocations in order to strike an improved balance between gear types and jurisdictions, and to facilitate future growth opportunities. The Amendment allocates a baseline quota of 0.5% to each jurisdiction, and then allocates the rest of the TAC based on historic landings between 2009 and 2011. This measure provides fishing opportunities to states which had little quota under Amendment 2, while still recognizing historic landings in the fishery. Furthermore, states have the option to relinquish all or part of their quota by December 1st of the preceding fishing year. Any relinquished quota is then redistributed to the other jurisdictions based on the historic landings period (2009-2011). The Amendment also prohibits the rollover of unused quota; maintains the quota transfer process; maintains the 6,000 pound trip limit for non-directed and small-scale gears following the closure of a directed fishery; and sets aside 1% of the TAC for episodic events in the states of Maine through New York.

Finally, the Amendment reduces the Chesapeake Bay cap, which was first implemented in 2006 to limit the amount of reduction harvest within the Bay, to 51,000 metric tons. This recognizes the importance of the Chesapeake Bay as nursery grounds for many species by capping recent reduction landings from the Bay to current levels.

In addition to its Amendment 3 deliberations, the Board set the TAC for the 2018 and 2019 fishing seasons at 216,000 metric tons. This represents an 8% increase from the 2016 and 2017 TAC.

II. Status of the Stock

Threshold reference points are the basis for determining stock status. When the fishing mortality rate (F) exceeds the F -threshold, overfishing is occurring. When the reproductive output measure, in this case population fecundity (FEC), falls below its threshold, then the stock is overfished, meaning there is insufficient egg production to replenish the stock.

Amendment 2 (2013) implemented maximum spawning potential (MSP) based reference points that relate current stock conditions as a percent of unfished conditions. Considering the modeling and data input changes that occurred in the 2015 Benchmark Stock Assessment, the TC and Peer Review Panel recommended new MSP based reference points that are applicable to the results of the assessment (SEDAR 2015). These new reference points were accepted by the Board in 2015 and continue to be used under Amendment 3 (2017).

As recommended by the Peer Review Panel, and accepted by the TC, the values of the threshold and target fishing mortality reference points are calculated as the maximum and median geometric mean fishing mortality rate for ages-2 to -4 during the reference period of 1960-2012. These ages represent the fully selected fishing mortality rates depending upon the year and fishery (i.e., bait and reduction). The fecundity (FEC) reference points match the F reference points meaning they are equal to the fecundity estimated when F reaches equilibrium at its target and threshold MSP levels, respectively.

According to the 2017 stock assessment update (ASMFC 2017), the fishing mortality reference points are F -target ($F_{36\%MSP}$) = 0.80 and F -threshold ($F_{21\%MSP}$) = 1.85. Associated reference points for population fecundity are FEC -target ($FEC_{36\%MSP}$) = 99,467 (billions of eggs), and FEC -threshold ($FEC_{21\%MSP}$) = 57,295 (billions of eggs). Based on the 2017 stock assessment, overfishing is not occurring because fishing mortality for the terminal year (2016) is estimated to be $F = 0.51$ ($F_{48\%MSP}$), below both the target and the threshold. Additionally, the stock is not overfished because fecundity for 2016 is estimated to be $FEC = 83,486$ billion eggs, above the threshold but below the target.

A benchmark assessment is expected to be completed and peer-reviewed at the end of 2019.

III. Progress of the Ecological Reference Point Work Group

The Ecological Reference Point Work Group (ERP Work Group; formerly known as the BERP Work Group) has been tasked with developing menhaden-specific ecosystem reference points that account for the abundance of menhaden and the species role as a forage fish. In 2017, the ERP Work Group held three workshops to review candidate ERP models. The candidate models include a Bayesian surplus production model with a time-varying population growth rate, a Steele-Henderson model which permits non-fisheries effects (predation and environment) to be quantified and incorporated into the single species stock assessments, and a multispecies statistical catch-at-age model in which single species models are linked to provide a predator-prey feedback between the population models. An Ecopath with Ecosim model is also being evaluated for strategic planning purposes and exploring tradeoffs.

The ERP Work Group decided to continue to pursue the development of each modeling approach until available data has been full vetted. A Data Workshop is scheduled for April 2018. It is expected that a peer-review of the menhaden-specific ERP model(s) will coincide with the peer-review of the singles-species benchmark assessment at the end of 2019.

V. Status of the Fishery

Recreational

Menhaden are important bait in many recreational fisheries; some recreational fishermen employ cast nets to capture menhaden or snag them with hook and line for use as bait, both dead and live. Recreational harvest is not well captured by the Marine Recreational Information Program (MRIP) because there is not a known identified direct harvest for menhaden, other than for bait. MRIP intercepts typically capture the landed fish from recreational trips as fishermen come to the dock or on the beach. However, since menhaden caught by recreational fishermen are used as bait during their trip, they are typically not a part of the catch that is seen by the surveyor completing the intercept.

The preliminary MRIP estimate of Atlantic menhaden harvest in 2017 is 1,067,309 pounds. This is a 36% decrease from the 2016 recreational harvest estimate (1,674,912 pounds), but only 5% below the previous 5-year average (1,118,214 pounds).

Commercial

Total commercial Atlantic menhaden landings in 2017, including reduction, bait, bycatch, and episodic event set aside (EESA) landings, was 380.85 million pounds. The bycatch landings¹ of 2.60 million pounds do not count toward the coastwide commercial TAC of 440.9 million pounds. The non-bycatch landings² total was 378.12 million pounds, representing a 14% underage of the coastwide TAC in 2017, and a 4.7% decrease from the 396.8 million pounds landed in 2016³.

Reduction Fishery

The 2017 harvest for reduction purposes was 284.2 million pounds. This represents a 6.2% decrease from 2016 reduction landings, and is 8% below the previous 5-year average of 310.2 million pounds (Figure 1). Omega Protein's plant in Reedville, Virginia, is the only active Atlantic menhaden reduction factory on the Atlantic coast.

Bait Fishery

The preliminary estimate of the coastwide bait harvest for 2017, including directed, bycatch and EESA landings, is 96.62 million pounds; this is a 1.8% increase from the 2016 bait harvest, and is 5.2% less than the previous 5-year average of 101.9 million pounds (Figure 1). New Jersey

¹ Landed under the 6,000 pound bycatch allowance

² Directed landings and episodic events set aside landings, combined

³ Based on 2018 state compliance reports

(49%), Virginia (33%), Maine (4.2%), Massachusetts (3.8%), and Maryland (3.0%) landed the five largest shares.

Bycatch Landings

In 2017, the states of Maine, New Hampshire, Rhode Island, Connecticut, New York, Delaware, PRFC and Florida reported bycatch landings (Table 1). Preliminary bycatch landings in 2017 totaled 2.73 million pounds, which represents a 6% increase from 2016 bycatch landings⁴. The 2017 bycatch landings accounted for approximately 0.72% of the coastwide landings, but do not count towards the coastwide TAC. Although bycatch increased in 2017, this may not be an issue considering the large increase in state-specific quotas in 2018. It should also be noted that due to unusual computer programming errors, PRFC closed its 2017 directed fishery earlier than is typical. As a result, PRFC's combined directed landings and bycatch landings in 2017 were less than its 2017 quota.

A total of 3,387 trips landed bycatch of Atlantic menhaden in 2017, which is a 78% increase relative to 2016 (1,908 trips) but 6% below average from 2013-2017. A majority of the bycatch trips (73%) landed less than 1,000 pounds in 2017 (70% on average from 2013 through 2017; Table 2). The predominant gears used from 2013-2017 include pound nets (56%) and anchored/staked gill nets (24%). Refer to Table 3 for average landings under the bycatch allowance from 2013-2017 by gear type and jurisdiction.

Episodic Events Set Aside Program

One percent of the TAC is set aside for episodic events. Episodic events are defined as any instance when a qualified state has reached its individual state quota prior to September 1, and has information indicating the presence of unusually large amounts of menhaden in its state waters. In 2017, Maine, Rhode Island, and New York⁵ declared participation in the set aside. In total, 4.69 million pounds were harvested under the set aside which represents a 6% overage of the 4.41 million pound set aside quota and a 23% increase from 2016. The overage (285,398 pounds) will be deducted from the 2018 set aside quota. The resulting quota for 2018 is 4.48 million pounds.

VI. Status of Research and Monitoring

Commercial fisheries monitoring

Reduction fishery - The NMFS Southeast Fisheries Science Center Beaufort Laboratory in Beaufort, North Carolina, continues to monitor and process landings and biological sample data collected from the Atlantic menhaden purse-seine reduction fishery. The Beaufort Laboratory processes and ages all reduction samples collected on the East Coast. In addition, the purse-seine reduction fishery continues to provide Captains Daily Fishing Reports (CDFRs) to the

⁴ Based on the 2018 state compliance reports, estimated bycatch landings for 2016 totaled 2,581,534 pounds

⁵ While not a New England state, New York was approved by the Board in May 2016 to harvest under the set aside program. This exemption is codified in Amendment 3.

Beaufort Laboratory where NMFS personnel enter data into a database for storage and analysis.

Bait fishery - Per Amendment 2 (and Amendment 3), states are required to implement a timely quota monitoring system in order to maintain menhaden harvest within the TAC and minimize the potential for overages. The SAFIS daily electronic dealer reporting system allows near real time data acquisition for federally permitted bait dealers in the Mid-Atlantic and Northeast. Landings by Virginia's purse-seine for-bait vessels (snapper rigs) in Chesapeake Bay are tabulated (at season's end) using CDFRs maintained on each vessel during the fishing season. A bait-fishery sampling program for size and age composition has been conducted since 1994. The Beaufort Laboratory, and some states, age the bait samples collected. See *Section VII: Implementation for FMP Compliance Requirements for 2017* for further information on age and length sampling requirements.

Atlantic menhaden research

The following studies relevant to menhaden assessment and management have been published within the last year:

- Whitehead, J.C., and Harrison, J. 2017. Socioeconomic Analysis of the Atlantic Menhaden Commercial Bait and Reduction Fishery. A report to the Atlantic States Marine Fisheries Commission:
http://www.asmfc.org/files/Atlantic%20Menhaden/ASMFC_MenhadenSocioeconomicReport_June2017.pdf
- Able, K.W., Valenti J.L., and Grothues, T.M. 2017. Fish Larval Supply to and within a Lagoonal Estuary: Multiple Sources for Barnegat Bay, New Jersey." *Environmental Biology of Fishes* 100.6: 663-83
- Aguilar et al. 2017. Gutsy Genetics: Identification of Digested Piscine Prey Items in the Stomach Contents of Sympatric Native and Introduced Warmwater Catfishes Via DNA Barcoding. *Environmental Biology of Fishes* 100.4: 325-36
- Allen, D.M., Virginia, O.M., and Kenny, P.D. 2017. Nekton use of Flooded Salt Marsh and an Assessment of Intertidal Creek Pools as Low-Tide Refuges." *Estuaries and Coasts* 40.5: 1450-63
- Anstead, K.A., Schaffler, J.J., and Jones, C.M. 2017. Contribution of Nursery Areas to the Adult Population of Atlantic Menhaden. *Transactions of the American Fisheries Society* 146.1 (2017): 36-46
- Güt, J.A., and Curran, M.C. 2017. Assessment of Fish Assemblages before Dredging of the Shipping Channel Near the Mouth of the Savannah River in Coastal Georgia. *Estuaries and Coasts* 40.1: 251-67
- Kornis et al. 2017. Linking the Abundance of Estuarine Fish and Crustaceans in Nearshore Waters to Shoreline Hardening and Land Cover." *Estuaries and Coasts* 40.5: 1464-86

- Korsman, B.M., Kimball M.E., and Hernandez, F.J. 2017. Spatial and Temporal Variability in Ichthyoplankton Communities Ingressing through Two Adjacent Inlets Along the Southeastern US Atlantic Coast. *Hydrobiologia* 795.1: 219-37
- Schueller, A.M., and Williams, E.H. 2017. Density-Dependent Growth in Atlantic Menhaden: Impacts on Current Management. *North American Journal of Fisheries Management* 37.2: 294-301
- Valenti, J.L., Grothues, T.M., and Able, K.W. 2017. Estuarine Fish Communities Along a Spatial Urbanization Gradient. *Journal of Coastal Research* SI.78: 254-68
- Vasslides, J.M., and Jensen, O.P. 2017. Quantitative Vs. Semiquantitative Ecosystem Models: Comparing Alternate Representations of an Estuarine Ecosystem. *Journal of Coastal Research* SI.78: 287-96
- Vasslides, J.M., et al. 2017. Modeling the Effects of a Power Plant Decommissioning on an Estuarine Food Web. *Estuaries and Coasts* 40.2: 604-16

Theses and Dissertations of Potential Interest:

- Liljestrand, Emily Morgan. 2017. Mortality and Movement of Adult Atlantic Menhaden during 1966-1969. Order No. 10618597 University of Maryland, College Park
- Siple, Margaret Clark. 2017. Implications of Demographic Diversity for Forage Fish, their Fisheries, and Ecosystems. Order No. 10680836 University of Washington

VII. Implementation of FMP Compliance Requirements for 2017

All states are required to submit annual compliance reports by April 1.

Quota Monitoring and Results

Menhaden purse seine and bait seine vessels (or snapper rigs) are required to submit Captain's Daily Fishing Reports (CDFRs). Maine, New York and Virginia fulfilled this requirement in 2017. New Jersey did not require purse seine vessels to fill out the specific CDFR but did require monthly trip level reporting on state forms that include complementary data elements to the CDFR. Rhode Island purse seine vessels must call in daily reports to RI DFW and fill out daily trip level logbooks. Massachusetts requires trip level reporting for all commercial fishermen.

Through Amendment 2, the Board approved timely quota monitoring programs for each state that were intended to minimize the potential for quota overages. Table 5 contains a summary of each state's approved quota monitoring system.

Table 4 contains state specific quotas and harvest that occurred in 2017. Table 5 displays the breakdown in directed versus bycatch landings by jurisdiction. The final state quotas for 2017 include an adjustment from two inter-state quota transfers; North Carolina transferred 195,180 pounds to Maine, and 300,000 pounds to New York. These quota transfers were pursued to ameliorate overages. Quota overages resulted from the fact that there was a high and/or variable volume of landings over a short period of time relative to the size of the quota.

At their November 2017 meeting, the Board set the 2018 TAC at 216,000 metric tons (476.2 million pounds), an 8% increase from the 2017 TAC. State-specific quotas for the 2018 fishing year are displayed in Table 4. The 2018 quota for Massachusetts, Rhode Island, and Delaware will be reduced by the amount of their overage in 2017. Furthermore, Massachusetts indicated that its quota overage was due to a single transaction being inadvertently categorized as “Research Set-Aside” and thus omitted from totals during quota monitoring. Rhode Island indicated that it went from being under its quota to over its quota in one day. However, this should not be a problem considering both states quotas increased significantly under the Amendment 3 allocations.

Biological Monitoring Requirements

Amendment 2 implemented monitoring requirements for non *de minimis* states as follows:

- One 10-fish sample (age and length) per 300 metric tons landed for bait purposes for ME, NH, MA, RI, CT, NY, NJ, and DE; and
- One 10-fish sample (age and length) per 200 metric tons landed for bait purposes for MD, PRFC, VA, and NC.

Table 6 provides the number of 10-fish samples required for 2017. These are based on the best available 2017 total bait landings data (including bycatch and episodic events) provided to the Commission by the states. Table 6 also provides the number of ages and lengths collected by the states in 2016, and an indication of the gear type sampled during collections. All states met the biological monitoring requirements of Amendment 2 in 2017. Connecticut continued to collect age and length samples from fishery-independent sources to fulfill this requirement. Although Maine collected five of six required samples, the PRT determined that Maine made a strong effort to fulfill the sampling requirement, and likely would have succeeded if the fishery were open another week (Maine DMR collects samples from the menhaden bait fishery once per week while the directed fishery is open, and Maine’s directed fisheries were only open for 5-weeks in 2017).

The PRT discussed whether a sufficient number of samples are being collected from different gear types and regions, and whether additional sampling should be conducted from bycatch fisheries. The 2019 benchmark provides an opportunity for the Technical Committee to evaluate age and length data from commercial bait fishery catches and respond to the PRT’s comments.

Adult CPUE Index Requirement

Amendment 2 required that, at a minimum, each state with a pound net fishery must collect catch and effort data elements for Atlantic menhaden as follows; total pounds landed per day, number of pound nets fished per day. These are harvester trip level ACCSP data requirements. In May of 2013, the Board approved North Carolina’s request to omit this information on the basis that it does not have the current reporting structure to require a quantity of gear field by

harvesters or dealers⁶. All other states with a pound net fishery met this requirement. New Jersey did note, however, that there appeared to be some confusion in the reporting of effort. New Jersey Staff is working with industry to clarify the reporting requirement.

Chesapeake Bay Reduction Fishery Cap

In 2017, and under the provisions of Amendment 2, the Chesapeake Bay Cap for the reduction fishery was set at 98,192 metric tons (87,216 metric tons plus an eligible rollover of 10,976 metric tons from the 2016 fishing year). Reported reduction landings from the Chesapeake Bay for 2017 was about 20,000 metric tons, which is below the Cap.

Amendment 3 implemented a change to the Chesapeake Bay Harvest Cap for the reduction fishery, starting in 2018. The Cap is set at 51,000 metric tons which is roughly the average harvest from the Chesapeake Bay reduction fishery over the 5-year time period from 2012-2016. Harvest for reduction purposes shall be prohibited within the Chesapeake Bay when 100% of the cap is harvested from the Chesapeake Bay. Harvest above the Cap in any given year will be deducted from the next year's allowable harvest. Transfer of quota to the Cap to reduce an overage is not permitted. Furthermore, any amount of un-landed fish under the cap cannot be rolled over into the subsequent year. As a result, the cap in a given year cannot exceed 51,000 metric tons.

De Minimis Status

To be eligible for *de minimis* status, a state's bait landings must be less than 1% of the total coastwide bait landings for the most recent two years. State(s) with a reduction fishery are not eligible for *de minimis* consideration. If granted *de minimis* status by the Board, states are exempt from implementing biological sampling as well as pound net catch and effort data reporting. The Board also approved a *de minimis* exemption for New Hampshire, South Carolina and Georgia from implementation of timely reporting

The states of New Hampshire, Pennsylvania, South Carolina, Georgia, and Florida requested and qualify for *de minimis* status for the 2017 fishing season. As a result, the Plan Review Team (PRT) recommends that New Hampshire, Pennsylvania, South Carolina, Georgia, and Florida be granted *de minimis* status.

VIII. State Implementation of Amendment 3

2018 is the first year of Amendment 3 implementation. State implementation plans were due January 1 with regulations to be implemented by April 15. Implementation plans were to include proposed, or already implemented regulatory language which fulfils each of the requirements of Amendment 3. Following review, the PRT determined that each state has fulfilled the requirements of Amendment 3, with one exception; Virginia's 2018 harvest cap for the reduction fishery in the Chesapeake Bay is higher than that permitted under Amendment 3

⁶ North Carolina indicated that it may be able to provide a proxy for this information on an annual basis from existing information collected on permits. The state will consider this for the 2018 compliance report.

(Virginia's 2018 quota is more conservative than that permitted under Amendment 3). South Carolina's and Georgia's implementation plan indicated that if a directed fishery develops in its jurisdiction, it would submit an updated implementation plan outlining all mechanisms to fulfill the requirements of Amendment 3 for Board review and approval.

IX. Plan Review Team Recommendations

Management Recommendations

- That the Board approve the *de minimis* requests from New Hampshire, Pennsylvania, South Carolina, Georgia, and Florida.

IX. Literature Cited

- Atlantic States Marine Fisheries Commission (ASMFC). 1981. Fishery Management Plan for Atlantic Menhaden. 146 pp.
- ASMFC. 1992. Fishery Management Plan for Atlantic Menhaden 1992 Revision. 170 pp.
- ASMFC. 2001. Amendment 1 to the Interstate Fishery Management Plan for Atlantic Menhaden. 146 pp.
- ASMFC. 2004. Addendum I to Amendment 1 to the Interstate Fishery Management Plan for Atlantic Menhaden. 52 pp.
- ASMFC. 2011. Addendum V to Amendment 1 to the Interstate Fishery Management Plan for Atlantic Menhaden. 17 pp.
- ASMFC. 2012. Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden. 114 pp.
- ASMFC. 2013. Technical Addendum I to Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden. 4 pp.
- ASMFC. 2016. Addendum I to Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden. 12 pp.
- ASMFC. 2017. Atlantic Menhaden Stock Assessment Update. Prepared by the ASMFC Atlantic Menhaden Stock Assessment Subcommittee. 180 pp.
- Southeast Data, Assessment, and Review (SEDAR). 2015. SEDAR 40 – Atlantic Menhaden Stock Assessment Report. SEDAR, North Charleston SC. 643 pp.

Table 1. Directed, bycatch, and episodic landings (pounds) for 2017 by jurisdiction.
 NA = not applicable.

	Directed	Bycatch	Episodic
ME	344,130	699,874	C
NH	-	C	-
MA	3,697,744	-	-
RI	153,408	135,748	C
CT	76,152	123,666	-
NY	509,430	807,392	C
NJ	46,881,174	-	NA
DE	58,174	26,625	NA
MD	2,912,256	-	NA
PRFC	1,444,316	670,447	NA
VA	316,592,852	-	NA
NC	755,136	-	NA
SC	-	-	NA
GA	-	-	NA
FL	4,475	263,643	NA

Table 2. Total number of bycatch trips by year from 2013-2017 separated into 1,000 pound landings bins.

Bins (LBS)	2013 Trips	2014 Trips	2015 Trips	2016 Trips	2017 Trips	Total Trips	% of Total Trips 2013-2017
1-1000	1,875	3,673	3,146	1,450	2,458	12,602	70%
1001-2000	252	517	584	148	399	1,900	11%
2001-3000	148	318	316	73	135	990	5%
3001-4000	110	190	139	48	82	569	3%
4001-5000	131	206	132	48	94	611	3%
5001-6000	158	265	196	108	197	924	5%
6000+	130	109	140	33	22	434	2%
Total	2,804	5,278	4,653	1,908	3,387	18,030	

Table 3. Average landings under the bycatch allowance from 2013–2017 by gear type (stationary and mobile) and jurisdiction. Highlighted cells represent the gear type with the highest landings within a jurisdiction. (C) = confidential landings, and (-) = no landings. Total confidential landings are 121,906 pounds (i.e., the sum of all C's in the table below). Note that 'sum of pounds' and 'percent of total' columns do not include confidential data.

State/Jurisdiction	ME	NH	RI	CT	NY	NJ	DE	MD	PRFC	VA	FL	Sum lbs (NonConf)	% of Total
Stationary Gears While Fishing													
Pound net	-	-	64,545	-	183,813	C	-	1,579,981	682,950	90,087	-	2,601,376	56.37%
Anchored/stake gill net	39,860	-	C	C	25,100	79,850	30,622	15,777	3,213	892,409	C	1,086,831	23.55%
Pots	-	-	-	-	3,425	-	C	C	-	-	C	3,425	0.07%
Fyke nets	-	-	-	-	-	C	-	C	52	62	-	114	0.00%
Mobile Gears While Fishing													
Cast Net	-	-	C	563	183,813	C	-	C	-	-	173,150	357,526	7.75%
Drift Gill net	-	-	-	-	-	66,958	35,988	-	-	-	-	102,946	2.23%
Purse Seine	201,344	-	-	-	-	-	-	-	-	-	-	201,344	4.36%
Seines Haul/Beach	-	-	-	-	250,433	-	-	C	28	3,072	-	253,533	5.49%
Trawl	-	C	C	C	7,836	C	-	-	-	-	-	7,836	0.17%
Hook & Line	-	-	C	C	-	-	-	C	-	-	C	-	0.00%
Sum lbs (NonConf)	241,204	0	64,545	563	654,420	146,807	66,610	1,595,758	686,243	985,630	173,150	4,614,930	
% of Total	5.23%	0.00%	1.40%	0.01%	14.18%	3.18%	1.44%	34.58%	14.87%	21.36%	3.75%		

Table 4: State quota reporting timeframes in 2017. The **bold** text indicates which reporting program (dealer or harvesters) the states use to monitor its quotas.

State	Dealer Reporting	Harvester Reporting	Notes
ME	monthly	monthly/daily	Harvesters landing greater than 6,000 lbs must report daily during episodic event
NH	weekly	monthly	Exempt from timely reporting. Implemented weekly, trip level reporting for state dealers.
MA	weekly	monthly/daily	Harvesters landing greater than 6,000 lbs must report daily
RI	twice weekly	quarterly/daily	Harvesters using purse seines must report daily
CT	weekly/monthly	monthly	No directed fisheries for Atlantic menhaden
NY	Weekly	monthly	Capability to require weekly harvester reporting if needed
NJ	weekly	monthly	All menhaden sold or bartered must be done through a licensed dealer
DE	—	monthly/daily	Harvesters landing menhaden report daily using IVR
MD	monthly	monthly/daily	PN harvest is reported daily, while other harvest is reported monthly.
PRFC	—	weekly	Trip level harvester reports submitted weekly. When 70% of quota is estimated to be reached, then pound netters must call in weekly report of daily catch.
VA	—	monthly/weekly/daily	Purse seines submit weekly reports until 97% of quota, then daily reports. Monthly for all other gears until 90% of quota, then reporting every 10 days.
NC	monthly (combined reports)		Single trip ticket with dealer and harvester information submitted monthly. Larger dealers (>50,000 lbs of landings annually) can report electronically, updated daily.
SC	monthly (combined reports)		Exempt from timely reporting. Single trip ticket with dealer and harvester information.
GA	monthly (combined reports)		Exempt from timely reporting. Single trip ticket with dealer and harvester information.
FL	monthly/weekly (combined reports)		Monthly until 50% fill of quota triggers implementation of weekly.

Table 5. Results of 2017 quota accounting in pounds. The 2017 landings do not include bycatch landings because they do not count towards the TAC. The episodic events set aside quota was exceeded by 285,398 pounds in 2017. The 2018 quotas account for overages which occurred in the 2017 fishery and the redistribution of 6,704,365 pounds of quota relinquished by Delaware (2 million pounds), South Carolina (2,347,183 pounds) and Georgia (2,357,183 pounds).

State	2017 quota	Returned Set Aside	Transfers	Total 2017 Quota	2017 Landings	Overage	2018 Quota (Amendment 3)	
ME	171,882	Set Aside Exceeded by 285,398 pounds	195,180	367,062	344,130	-	2,439,114	
NH	131			131	-	-	2,357,315	
MA	3,660,454				3,660,454	3,697,744	37,290	6,027,724
RI	78,195				78,195	153,408	75,213	2,366,618
CT	76,152				76,152	76,152	-	2,432,640
NY	242,032			300,000	542,032	509,430	-	3,270,675
NJ	48,853,880				48,853,880	46,881,174	-	52,013,736
PA	-				-	-	-	2,357,183
DE	57,646				57,646	58,174	528	415,939
MD	5,991,662				5,991,662	2,912,256	-	9,002,733
PRFC	2,709,809				2,709,809	1,444,316	-	5,102,086
VA	372,443,990				372,443,990	316,592,852	-	376,543,327
NC	2,150,995			(495,180)	1,655,815	755,136	-	4,540,560
SC	-				-	-	-	10,000
GA	-				-	-	-	-
FL	74,279				74,279	4,475	-	2,443,819
TOTAL	436,511,109				436,511,109	373,429,247	113,031	471,323,470

Table 6. Biological monitoring results in 2017. Note that total bait landings include bycatch landings.

State	Total Bait Landings (pounds)	#10-fish samples required	#10-fish samples collected	Age samples collected	Length samples collected	Gear/Comments
ME	4,015,309	6	5 ¹	50	50	purse seine
MA	3,697,744	5.6	5	50	50	purse seine (4), midwater trawl (1)
RI	1,752,756	3	9	107	107	floating fish trap ²
CT ³	199,818	1	0	0	0	gill nets
NY	1,576,560	2	6	60	60	gill net, seine
NJ	46,881,174	71	140	1400	1400	purse seine (135), and other gears (5)
DE	84,799	1	1	225	225	drift gill net
MD	2,912,256	7	21	300	1058	pound net
PRFC	2,114,763	5	13	130	130	pound net
VA	32,360,092	74	92	920	920	pound net (35), gill net (44), haul seine (13)
NC	755,136	2	10	138	138	gillnet, pound net
Total	96,350,407	177	302	3380	4138	

¹ Sample schedule was once weekly for the duration of the directed and episodic fisheries; these fisheries were open for only 5 weeks and therefore the last required sample was not collected. However, the PRT determined that Maine made a strong effort to fulfill the biological monitoring requirement, and would have succeeded if the fishery were open another week.

² Thirteen lengths and ages were collected in addition to the table

³ Ages (228) and lengths (239) collected from menhaden encountered during the Long Island Sound Trawl Survey

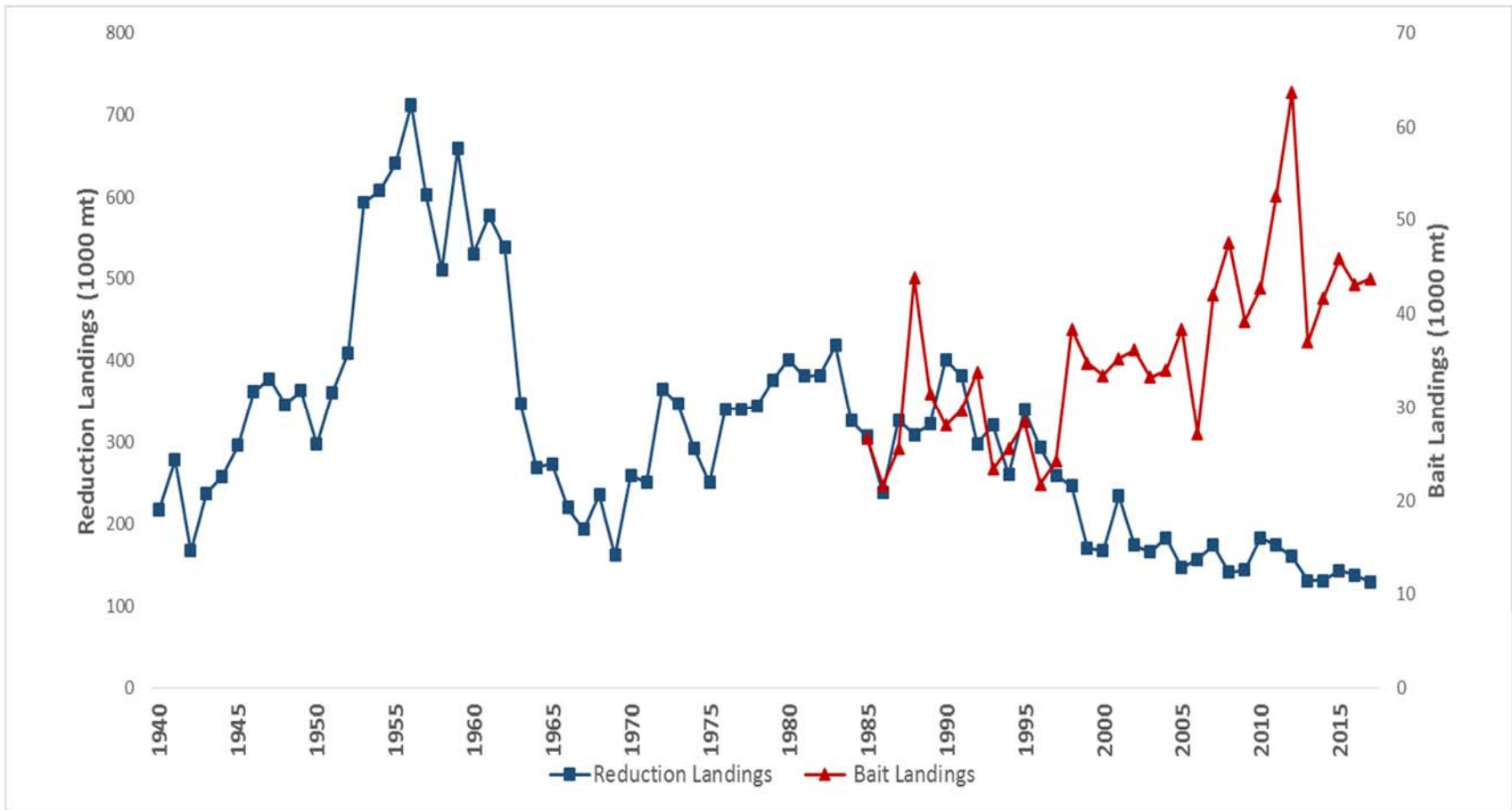


Figure 1. Landings from the reduction purse seine fishery (1940–2017) and bait fishery (1985–2017) for Atlantic menhaden. Note: there are two different scales on the y-axes.



Atlantic States Marine Fisheries Commission

1050 N. Highland Street • Suite 200A-N • Arlington, VA 22201
703.842.0740 • 703.842.0741 (fax) • www.asmfmc.org

MEMORANDUM

TO: Atlantic Menhaden Management Board
FROM: Max Appelman, FMP Coordinator
DATE: December 6, 2017
SUBJECT: Amendment 3 Implementation Plan Template

At the November meeting, the Atlantic Menhaden Management Board (Board) took final action on Amendment 3 to the Interstate Fishery Management Plan for Atlantic Menhaden. Based on Board action, implementation plans for the Amendment are due January 1, 2018, and jurisdictions must implement regulations by April 15, 2018.

Below is a template that jurisdictions can use when crafting Amendment 3 implementation plans. The implementation plans should include proposed, or already implemented, regulatory language which fulfills each of the requirements below. Given many of the requirements are similar to those in Amendment 2, jurisdictions can attach current regulatory language to this template and note in the spaces below that the regulation is already in place. Underlined regulations note where there is change from Amendment 2 to 3.

Amendment 3 Implementation Template

1. Commercial Fishery Management Measures

- a) A mechanism to close the directed commercial fisheries in your state once your jurisdiction's percentage of the TAC has been reached. If your jurisdiction includes its yearly menhaden quota in its regulations, please include that language below.
- b) A mechanism to adjust a jurisdiction's yearly quota as required by ASMFC.
- c) A mechanism to enable the transfer of unused quota between states, if warranted, and the ability to adjust a jurisdiction's quota as it relates to the transfer of quota.
- d) A mechanism pound-for-pound pay back to reduce the subsequent year's quota to account for any overharvest of your jurisdiction's quota.
- e) A mechanism for an incidental catch and small-scale fishery provision following the harvest of your jurisdiction's quota and closure of the directed fisheries.
 - I. 6,000 pounds trip limit per day for non-directed and small-scale gears. Under Amendment 3, small-scale gears include: cast nets, traps (excluding floating fish traps), pots, haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines,

trammel nets, bait nets, and purse seines which are smaller than 150 fathom long and 8 fathom deep. Non-directed gears include: pound nets, anchored/stake gillnets, drift gill net, trawls, fishing weirs, fyke nets, and floating fish traps.

- II. Two authorized individuals, working from the same vessel fishing stationary multi-species gears, are permitted to work together and land up to 12,000 pounds from a single vessel, limited to one vessel trip per day. Stationary multi-species gears are defined as pound nets, anchored/stake gill nets, fishing weirs, floating fish traps, and fyke nets.
- III. Prohibit a vessel from making multiple trips in one day.
- IV. Prohibit the use of multiple carrier vessels to offload catch exceeding 6,000 pounds.

f) For Maine through New York, a mechanism to adjust a state's quota and effort controls if opting into the episodic events set aside program. As a reminder, to be eligible to participate in the episodic events set aside, a state must implement three provisions:

- i. Daily trip level harvester reporting
- ii. Episodic events harvest and landings be restricted to state waters of the jurisdiction
- iii. Maximum daily trip limit no greater than 120,000 pounds per vessel.

g) For Virginia, a Chesapeake Bay Reduction Fishery Harvest Cap with the following provisions:

- i. Prohibit harvest for reduction purposes within the Chesapeake Bay when 100% of the 51,000 metric tons is harvested from the Bay.
- ii. A repayment mechanism to reduce the subsequent year's harvest cap to account for an over-harvest of the cap on a pound-for-pound basis.
- iii. No rollover of unused cap into the subsequent year.

2. Monitoring Requirements

a) A catch reporting system to enable timely monitoring of a jurisdiction's quota. As a reminder, purse seine vessels and snapper rigs are required to submit trip level reports. The states of New Hampshire, Pennsylvania, South Carolina, and Georgia are exempt from timely quota monitoring, but still must report annually via annual compliance reporting process.

b) A mechanism to require timely reporting of bycatch allowance landings by non-directed fisheries through a reporting system approved by the Board in Section 2a of this template.

c) A mandatory biological sampling program to collect age and length data from the commercial bait sector. De minimis states are not required to conduct fishery-dependent biological sampling in the menhaden fishery. States are required to collect the following:

- i. One 10-fish sample (age and length) per 300 metric tons landed for bait purposes for Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Delaware.
- ii. One 10-fish sample (age and length) per 200 metric tons landed for bait purposes for Maryland, Potomac River Fisheries Commission, Virginia and North Carolina

d) A mandatory monitoring/sampling program that requires all states with a pound net fishery collect catch and effort data elements. Mandatory data elements include:

- i. total pounds (lbs) landed per day
- ii. number of pound nets fished per day

Amendment 3 Atlantic Menhaden Interstate Fisheries Management Plan

Implementation Plan for Atlantic Menhaden Fishery per State of Maine's Regulatory Process

1. Coastal Fishery Management Measures

- a. See attached for language on closing mechanism [41.30(2)(A)]
- b. State of Maine does not specify quota allocation in regulation.
- c. The mechanism to enable the transfer of unused quota is done so at the administration level, not at the regulatory level. A letter from the Commissioner initiates this action.
- d. The mechanism to rectify quota overages is done so at the administration level, not at the regulatory level. A letter from the Commissioner initiates this action.
- e. See attached language on regulatory specifications on the incidental catch and small-scale fishery [41.30(4)(A)]
- f. See attached language on regulatory specifications for the episodic events program fishery [41.30(3)(A)]
 - i. Maine DMR may seek a conservation equivalency to better execute the episodic events program in such a way that reduces the risk of discards.
- g. N/A

2. Monitoring Requirements

- a. See attached language on reporting specifications specific to the fishery programs (41.30(2)(B) & (3)(C))
 - i. State of Maine has monthly harvester and dealer reporting currently in place, but will implement daily reporting through regulation for the state allocated and episodic events fisheries.
- b. Reporting during the incidental and small-scale fishery will be required monthly per Chapter 8; 8.20(Q)
 - o Pelagic and Anadromous Fishing Harvest

Any person who holds a Commercial Pelagic and Anadromous Fishing License issued under 12 M.R.S. §6502-A must report trip level fishing activity on forms supplied by the Department. The following data elements must be reported to the DMR on approved paper forms or through approved electronic reporting mechanisms:

1. Harvester name (as it appears on the harvesting license) and landings number
2. Boat name and state vessel registration number or Coast Guard number (if a boat was used)
3. Designate negative report period if no harvesting activity occurred
4. Date fished & landed
5. Number of crew (including captain)
6. Gear type and quantity
7. Number of sets/tows
8. Set time (the average time your gear fished)
9. Average depth
10. Latitude and longitude
11. Sea time (including travel)
12. Pounds by species of all species caught (including discards)
13. Landings number of dealer sold to, or if not sold to a licensed dealer, disposition of catch and whether catch was carried
14. Port landed
15. Signature written or electronic

- c. Maine will be required to capture three 10-fish samples for their contribution towards the fishery-dependent biological sampling. This will occur during the state allocated fishery by science staff at known landing stations.
 - i. In the past two years, Maine has acquired 10-12 complete samples of 10 ct. We do not anticipate any issues with maintaining that level of participation.
- d. Also following under reporting as mentioned above in section b.

Notice of Agency Rule-making Proposal

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 41 Menhaden

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

BRIEF SUMMARY: Atlantic menhaden fishery in territorial waters may be executed in three distinct fishery programs: state allocated fishery, episodic events fishery and an incidental catch/small scale fishery. The state allocated fishery will operate under the quota assigned to Maine by the Atlantic Menhaden Management Board of the Atlantic States Marine Fisheries Commission (ASMFC) until such time that the quota is near to or is consumed. Notification will be then given that this fishery program is closed. An episodic events fishery may be executed provided there is sufficient evidence of substantial resource remaining in territorial waters. Daily reporting of Atlantic menhaden landings will be required for both the state allocated and the episodic events fishery programs. An incidental catch and small scale fishery will commence after the closure the state allocated fishery, or a subsequent episodic events fishery, with a daily landings limit of 6,000 lbs under gear restrictions.

Date, time and location of PUBLIC HEARING (*if any*): January 31, 2018 at 1:00 p.m.: DMR Conference Room, Marquardt Building, 32 Blossom Lane, Augusta.

COMMENT DEADLINE: February 14, 2018

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, e-mail*):

NAME: Amanda Ellis

MAILING ADDRESS: 21 State House Station, Augusta, Maine 04333-0021

E-MAIL: dmr.rulemaking@maine.gov

TELEPHONE: 207-624-6573

FAX: 207-624-6024

TTY: 207-624-6500 (Deaf/Hard of Hearing)

Hearing facilities: If you require accommodations due to disability, please contact Meredith Mendelson at 207-624-6553.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): Same

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): None

STATUTORY AUTHORITY FOR THIS RULE: 12 M.R.S. § 6171

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*): Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: dmr.rulemaking@maine.gov

* *Check one of the following two boxes.*

X The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State’s website. Title 5 §8053, sub-§3, ¶D & sub-§6.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT _____ DATE: _____

(authorized signature)

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
010	13A	1120	10	4946				

DEPARTMENT OF MARINE RESOURCES

Chapter 41 Menhaden Regulations

41.05 Territorial Waters Trawl Prohibition

It shall be unlawful to fish for or take Atlantic menhaden by vessels rigged with a mid-water, otter or beam trawl net in Maine's territorial waters.

41.30 Menhaden Fishery Management Program

2-1. Definitions

A. ~~“Daily catch limit or Daily limit” For purposes of this section (Chapter 41.30) means a maximum of 120,000 lbs of menhaden possessed or loaded aboard from areas A and B between 00:01 AM to 11:59 PM. There is no daily catch limit or daily limit in Area C for harvester vessels.~~

- ~~B. "Carrier vessel 120,000 lbs capacity" For purposes of measuring 120,000 lbs or capacity in a vessel hold the volumetric measure (in hogshead) of 120,000 lbs of menhaden is equivalent to ~98 hogshead. One hogshead equals 17.5 lb bushels. For consistency with 12 M.R.S. §6543 and §6544(3), multiplying 70 pounds (lb) per bushel by 17.5 bushels per hogshead equals 1225 lb. Therefore 120,000 lb divided by 1225 lb (or 17.5 hogshead) equals ~98 hogshead, which is within the 5 hogshead tolerance used in §6544(3).~~
- A. "Hogshead": one hogshead equals 17.5 lb bushels.
- B. "Bushel": one bushel equals 70 lbs of menhaden.
- C. "Barrel": one barrel equals 5 bushel of menhaden.
- D. "Truck": one truck equals 40,000 lbs of menhaden.

2. State Allocation Fishery

A. Notice

Commercial Pelagic and Anadromous license holders shall be informed by public notice in a newspaper circulated in the area affected of any closing dates for the state allocation fishery.

B. Reporting

All harvesters must report landings daily to the Department via email to menhaden.dmr@maine.gov with the information no later than noon the day after landing:

- Name of harvester
- Name/Vessel ID
- Permit ID
- Landings number of license holder
- Total catch retained (including all catch transferred to any vessel who will not report it as their own catch)
- Name/Permit ID of Carrier, if transfer at-sea occurs
- Total amount of menhaden on board
- Date, time and location (dealer, city, state) of offload
- Estimated catch transferred, by weight, to each dealer (by dealer name and landings number)
- VTR number

3. Episodic Event Fishery

An episodic event fishery may be opened following the full utilization of the state allocation of menhaden.

A. Notice

Commercial Pelagic and Anadromous license holders shall be informed by public notice in a newspaper circulated in the area affected of any openings or closing dates for an episodic event fishery.

B. Effort restrictions

Following the opening of an episodic event fishery, and prior to the closure of the episodic event fishery, all vessels shall fish for, take, possess, or land menhaden from territorial waters only. Daily landing limit shall not exceed 120,000 lbs per vessel.

C. Reporting

Any harvester landing menhaden during an episodic event fishery must declare into the fishery by notifying the Department of their intent to harvest menhaden during the episodic event fishery prior to landing any menhaden. All harvesters must report landings daily to the Department via email to menhaden.dmr@maine.gov with the information no later than noon the day after landing:

- Name of harvester
- Name/Vessel ID
- Permit ID
- Landings number of license holder
- Total catch retained (including all catch transferred to any vessel who will not report it as their own catch)
- Name/Permit ID of Carrier, if transfer at-sea occurs
- Total amount of menhaden on board
- Date, time and location (dealer, city, state) of offload
- Estimated catch to be received, by weight, to each dealer (by dealer name and landings number)
- VTR number

4. Incidental Catches and Small Scale Fishery

An incidental catch and small scale fishery for menhaden may occur following the full utilization of the state allocation of menhaden or following the full utilization of both the state allocation and an episodic event fishery.

A. Notice

Commercial Pelagic and Anadromous license holders shall be informed by public notice in a newspaper circulated in the area affected of any openings or closing dates for an episodic event fishery.

B. Effort restrictions

Following the opening of an incidental catch and small scale fishery, all vessels shall fish for, take, possess, or land menhaden from territorial waters only. Daily landing limit shall not exceed 6,000 lbs per vessel. All vessels landing menhaden in any Maine port are limited to one landing per 24 hour period (12 am to 12 pm).

C. Gear Restrictions

Only small scale gears may be utilized for the small scale fishery, including cast nets, traps, pots, haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines, trammel nets, bait nets and purse seines which are smaller than 150 fathom long and 8 fathom deep.

Incidental catch may occur in a non-directed fishery using the following gear types: pound nets, drift gill nets, trawls, fishing weirs, fyke nets and floating fish traps.

4-5. Areas

A. Bald Head Cliff to Cape Arundel

Shoreward and westerly of a straight line starting at the easternmost point of Bald Head Cliff, Ogunquit to the southernmost point of Cape Arundel, Kennebunkport.

B. Biddeford Pool to Cape Elizabeth

Shoreward and westerly of the territorial sea line, as identified on National Oceanic and Atmospheric Administration nautical chart 13286, starting at the easternmost point of Biddeford Pool, Biddeford following the territorial sea line to where the line intersects the southernmost point of land in Cape Elizabeth.

C. All Maine territorial waters outside the areas defined in Chapter 41.30(A) & (B)

Shoreward of the territorial sea line, as identified on National Oceanic and Atmospheric Administration nautical charts, except for those areas defined in Chapter 41.30(A) & (B).

3-6. Area Limitations

The areas in Chapter 41.30(1)(A, B & C) are restricted to the take, possession and transport of the Atlantic menhaden in accordance with the following regulations:

A. Limitations in Areas A & B

(1) Harvester and Carrier Vessel Daily Catch Limit - It shall be unlawful for harvester vessels and carrier vessels to catch and possess greater than 120,000 lbs of menhaden per day.

B. Limitations in Area C

(1) Carrier Vessel Daily Limit - It shall be unlawful for carrier vessels to possess greater than 120,000 pounds (lbs) of menhaden per day.

For purposes of this section (Chapter 55.90) "daily catch" means a maximum of 120,000 lbs of menhaden possessed or loaded aboard from these areas between 00:01 AM to 11:59 PM.

C. Limitations in all Areas A, B & C

(1) It shall be unlawful for any harvester vessel that exceeds 50 feet in length overall to fish for, take or possess menhaden within these restricted areas.

- (2) It shall be unlawful for any carrier vessel to land more than 120,000 lbs of menhaden per day (00:01 AM to 11:59 PM) harvested from Maine Territorial waters, which includes Areas A, B & C.
- (3) A carrier vessel may transport and land menhaden once per day at a limit of 120,000 lbs capacity.

Exception: Any carrier vessel less than 70 feet length overall (LOA) is exempted from the number of landings per day limitation in Chapter 41.30(3)(C)(3).

- (4) It shall be unlawful for any carrier vessel greater than 90 feet LOA to transport menhaden harvested from Areas A, B & C. Any carrier vessel greater than 70 feet but not to exceed 90 feet LOA must be measured, plainly marked at a maximum 120,000 lbs capacity or equivalent volume; or marked at the maximum vessel capacity if under 120,000 lbs, and sealed* by the State Sealer of Weights and Measures.

*Sealed means receipt of the applicable Fish Carrier Calibration Report and sticker, seal or appropriate marking affixed by the State Sealer of Weights and Measures or their designee. This documentation must be obtained prior to transporting menhaden taken from these areas.

4-7. Suspension of rules

The Commissioner has the authority to suspend all regulations in Chapter 41.30 in the event of a potential fish kill upon consultation with industry and Marine Patrol. Notice of rule suspension and duration shall be provided via the internet on the Department's web site and by email to industry members or telephone.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: 13-188- Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6573; web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 41 Menhaden

STATUTORY AUTHORITY: 12 M.R.S. § 6171

DATE AND PLACE OF PUBLIC HEARING(S): January 31, 2018 at 1:00 p.m.: DMR Conference Room, Marquardt Building, 32 Blossom Lane, Augusta.

COMMENT DEADLINE: February 14, 2018

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)]

This rule is intended to align State of Maine regulations with those set forth in the Amendment 3 to the Atlantic Menhaden Interstate Fishery Management Plan. Amendment 3 was adopted by the ASFMC Atlantic Menhaden Management Board's on November 14, 2017.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___ YES ___ NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]

The adopted rule(s) seeks to expand opportunity in the Atlantic menhaden fishery in Maine territorial waters. The rule is intended to have a long-term positive impact on both the Atlantic Menhaden and Lobster fisheries.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

New compliance measures as specified by Amendment 3 of the Interstate Fishery Management Plan for Atlantic Menhaden as determined by ASMFC's Atlantic Menhaden Management Board define three fishery programs that pertain to Maine territorial waters with respect to the harvest of the Atlantic menhaden resource.

ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)]

Enforcement of these proposed amendments will not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.

FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

[see §8057-A(2)(A)]

*INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED
AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]*

BENEFITS OF THE RULE: [see §8057-A(2)(C)]

Note: If necessary, additional pages may be used



New Hampshire Fish and Game Department

HEADQUARTERS: 11 Hazen Drive, Concord, NH 03301-6500
(603) 271-3421
FAX (603) 271-1438

www.WildNH.com
e-mail: info@wildlife.nh.gov
TDD Access: Relay NH 1-800-735-2964

December 28, 2017

Max Appelman
Menhaden FMP Coordinator
Atlantic States Marine Fisheries Commission
1050 N. Highland Street
Suite 200A-N
Arlington, VA 22201

Reference: New Hampshire's Atlantic Menhaden Amendment 3 Implementation Plan

Dear Max,

New Hampshire Fish and Game is in the process of proposing rules that will bring New Hampshire into compliance with Amendment 3 to the Interstate Fishery Management Plan for Atlantic Menhaden. Appendix A shows changes to NH's current Atlantic Menhaden rules being proposed. NH will be addressing the items outlined in the ASMFC's Amendment 3 Implementation Plan template as shown below.

1. Commercial Fishery Management Measures

- a) A mechanism to close the directed commercial fisheries in your state once your jurisdiction's percentage of the TAC has been reached. If your jurisdiction includes its yearly menhaden quota in its regulations, please include that language below.
 - See proposed Fis 603.21 (d) and (e) in Appendix A.
- b) A mechanism to adjust a jurisdiction's yearly quota as required by ASMFC.
 - See proposed Fis 603.21 (d) in Appendix A.
- c) A mechanism to enable the transfer of unused quota between states, if warranted, and the ability to adjust a jurisdiction's quota as it relates to the transfer of quota.
 - As with other species quota transfers NH has conducted, we will supply a letter of authority to ASMFC to transfer quota if warranted. ASMFC will determine the revised quota for NH based on the quota taken and transfers that occurred.
- d) A mechanism pound-for-pound pay back to reduce the subsequent year's quota to account for any overharvest of your jurisdiction's quota.
 - See proposed Fis 603.21 (d) in Appendix A.
- e) A mechanism for an incidental catch and small-scale fishery provision following the harvest of your jurisdiction's quota and closure of the directed fisheries.
 1. 6,000 pounds trip limit per day for non-directed and small-scale gears. Under Amendment 3, small-scale gears include: cast nets, traps (excluding floating fish traps), pots, haul seines,

REGION 1

629B Main Street
Lancaster, NH 03584-3612
(603) 788-3164
FAX (603) 788-4823
email: reg1@wildlife.nh.gov

REGION 2

PO Box 417
New Hampton, NH 03256
(603) 744-5470
FAX (603) 744-6302
email: reg2@wildlife.nh.gov

REGION 3

225 Main Street
Durham, NH 03824-4732
(603) 868-1095
FAX (603) 868-3305
email: reg3@wildlife.nh.gov

REGION 4

15 Ash Brook Court
Keene, NH 03431
(603) 352-9669
FAX (603) 352-8798
email: reg4@wildlife.nh.gov

fyke nets, hook and line, bag nets, hoop nets, hand lines, trammel nets, bait nets, and purse seines which are smaller than 150 fathom long and 8 fathom deep. Non-directed gears include: pound nets, anchored/stake gillnets, drift gill net, trawls, fishing weirs, fyke nets, and floating fish traps.

- See proposed Fis 603.21 (b), (c), (d) in Appendix A.

II. Two authorized individuals, working from the same vessel fishing stationary multi-species gears, are permitted to work together and land up to 12,000 pounds from a single vessel, limited to one vessel trip per day. Stationary multi-species gears are defined as pound nets, anchored/stake gill nets, fishing weirs, floating fish traps, and fyke nets.

- NH will maintain a more conservative approach and will not be implementing this management measure.

III. Prohibit a vessel from making multiple trips in one day.

- See proposed Fis 603.21 (e) in Appendix A.

IV. Prohibit the use of multiple carrier vessels to offload catch exceeding 6,000 pounds.

- See proposed Fis 603.21 (f) in Appendix A.

f) For Maine through New York, a mechanism to adjust a state's quota and effort controls if opting into the episodic events set aside program. As a reminder, to be eligible to participate in the episodic events set aside, a state must implement three provisions:

- NH will not be opting to participate in the Episodic Events Set Aside Program at this time.

i. Daily trip level harvester reporting

ii. Episodic events harvest and landings be restricted to state waters of the jurisdiction

iii. Maximum daily trip limit no greater than 120,000 pounds per vessel.

g) For Virginia, a Chesapeake Bay Reduction Fishery Harvest Cap with the following provisions:

- Not applicable to NH

i. Prohibit harvest for reduction purposes within the Chesapeake Bay when 100% of the 51,000 metric tons is harvested from the Bay.

ii. A repayment mechanism to reduce the subsequent year's harvest cap to account for an over-harvest of the cap on a pound-for-pound basis.

iii. No rollover of unused cap into the subsequent year.

2. Monitoring Requirements

a) A catch reporting system to enable timely monitoring of a jurisdiction's quota. As a reminder, purse seine vessels and snapper rigs are required to submit trip level reports. The states of New Hampshire, Pennsylvania, South Carolina, and Georgia are exempt from timely quota monitoring, but still must report annually via annual compliance reporting process.

- While NH is exempt from this management measure see proposed Fis 603.21 (1) and Fis 608.02 and 609.01. NH will be proposing daily electronic dealer reporting through SAFIS to assure timely monitoring of menhaden quota through landings data instead of through

harvester estimated harvest. However, current rules require all harvesters to report trip level harvest on a monthly basis either to NH or to NOAA Fisheries depending on where they are fishing and who is the designated reporting compliance agency.

b) A mechanism to require timely reporting of bycatch allowance landings by non-directed fisheries through a reporting system approved by the Board in Section 2a of this template.

- See proposed Fis 603.21 (j) and 608.02 in Appendix A.

c) A mandatory biological sampling program to collect age and length data from the commercial bait sector. De minimis states are not required to conduct fishery-dependent biological sampling in the menhaden fishery. States are required to collect the following:

- NH currently is approved as a de minimis state which exempts NH from this management measure.

i. One 10-fish sample (age and length) per 300 metric tons landed for bait purposes for Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Delaware.

ii. One 10-fish sample (age and length) per 200 metric tons landed for bait purposes for Maryland, Potomac River Fisheries Commission, Virginia and North Carolina.

d) mandatory monitoring/sampling program that requires all states with a pound net fishery collect catch and effort data elements. Mandatory data elements include:

- Not applicable, NH does not have any pound net fisheries occurring in its coastal/estuarine waters. If a pound net fishery develops they would be required to be permitted which requires reporting of catch and effort (Fis 608.02 in Appendix A).

i. total pounds (lbs) landed per day.

ii. number of pound nets fished per day.

If you have further questions on NH's approach to addressing Amendment 3's Atlantic menhaden management measures don't hesitate to contact me.

Sincerely,



Cheri Patterson
Supervisor of Marine Programs

cc: Glenn Normandeau, Director
Doug Grout, Chief

Appendix A: New Hampshire's current and proposed rules implementing Amendment 3 of the Menhaden Fisheries Management Plan.

PART Fis 603 RULES FOR CERTAIN FIN FISH SPECIES

Fis 603.21 Atlantic Menhaden

(a) For purposes of this section, "land" means to transfer or attempt to transfer the catch of fish from any vessel to any other vessel or onto any land, pier, wharf, dock or other artificial structure.

(b) For the purpose of this section, "non-directed gears" includes pound nets, anchored/stake gillnets, drift gill net, trawls, fishing weirs, fyke nets, and floating fish traps.

(c) For the purpose of this section, "small-scale gears" includes cast nets, traps (excluding floating fish traps), pots, haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines, trammel nets, and bait nets.

(ad) No person shall take, land, or possess Atlantic menhaden (*Brevortia tyrannus*) while on or leaving the waters under the jurisdiction of the state whenever the executive director has projected that 98 percent of the annual state quota established by the Atlantic States Marine Fisheries Commission (ASMFC) is projected to be taken; except that a person may land and possess up to a maximum of 6,000 pounds per day of incidentally caught Atlantic menhaden by non-directed or small-scale gears during a closure period. ~~No person shall take, land, or possess more than of 6,000 pounds of Atlantic menhaden (*Brevortia tyrannus*) per calendar day while on or leaving the waters under the jurisdiction of the state.~~

(be) No vessel shall land menhaden more than once per calendar day.

(f) A vessel that is taking menhaden may not transfer menhaden at sea.

(g) Nothing in these provisions shall prohibit a person from possessing menhaden for use as bait while in the normal conduct of tending lobster and crab pots or any menhaden used as bait for angling purposes.

(h) Closure Procedure. A closure date shall be announced via notice by the executive director at least 2-days prior to the closure being enacted.

(i) Any individual engaged in the taking or landing of menhaden for the purpose of sale, trade, or barter shall sell the menhaden to a dealer issued a wholesale marine species license pursuant to RSA 211:49-aa or 211:49-c.

~~— (e) For purposes of this section, "land" means to transfer or attempt to transfer the catch of fish from any vessel to any other vessel or onto any land, pier, wharf, dock or other artificial structure.~~

(dj) Any person who is not a permitted federal dealer shall **electronically** report all menhaden landing transactions daily with each month the following information consistent with the minimum data requirements of **through** the Standard Atlantic Fisheries Information System (SAFIS):

- (1) Name of ~~processor~~, primary dealer, or properly licensed person;
 - (2) The dealer's ~~or processor's~~ wholesale marine species or commercial saltwater license number;
 - (3) Week of reporting period;
 - (4) Commercial harvester's trip start date;
 - (5) Vessel name;
 - (6) State of vessel registration and number or coast guard number;
 - (7) Commercial harvester's first name, last name, date of birth, and license number;
 - (8) Number of trips for commercial harvester per day;
 - (9) Species purchased;
 - (10) Number or pounds of species purchased;
 - (11) Disposition of species purchased;
 - (12) Ex-vessel value or price of purchased species;
 - (13) Port, county and state where species were landed;
 - (14) Date species unloaded from commercial harvester's vessel;
 - (15) Grade and market size of purchased species;
 - (16) Gear used to harvest species; and
 - (17) Dated signature of dealer ~~or processor~~, signed subject to the penalties for unsworn false statements under RSA 641:3.

~~—— (e) The reporting week shall be Sunday through Saturday.~~

~~—— (f) Reports shall be received by the 10th of the following month.~~

[Source](#), #10375, EXEMPT, **eff 7-17-13**

PART Fis 608 REQUIRED REPORTS

Fis 608.02 Harvest Reports.

(a) Any person who possesses a permit in accordance with Fis 603.07, Fis 603.11, Fis 607.05 or Fis 609.01 shall submit the following information to the executive director by the 10th of each month for the month previous, whether or not fishing occurred:

(1) On a monthly basis:

- a. Name;
- b. Signature of permittee subject to the penalties for unsworn false statements under RSA 641:3;
- c. Coastal harvest permit number;
- d. Month and year; and
- e. Whether fishing occurred that month.

(2) On a trip basis:

- a. Trip date;
- b. Dealer(s) name or license number(s) harvest was sold to;
- c. Trip number;
- d. Species harvested;
- e. Quantity or weight of species harvested;
- f. Disposition of harvested species;
- g. Type and quantity of gear;
- h. Hours gear fished or harvest time;
- i. Size of gear;
- j. Area of fishing activity;
- k. Number of gear fished;
- l. Port, county, state landed, if harvest sold;
- m. Vessel name;

n. State vessel registration number, USCG documentation number, or National Marine Fisheries permit number; and

o. Unloading date, if harvest sold.

(b) Any permittee failing to report pursuant to Fis 608.02(a) and (b) shall not be issued a permit until such time that the required information is submitted. Before a permit is issued the information shall be reviewed by the department for completeness and information validated.

Source. #1878, eff 12-4-81; ss by #2839, eff 8-31-84; ss by #4868, eff 7-20-90; ss by #4868, eff 7-20-90; ss by #5789, eff 2-18-94; amd by #6176, eff 1-27-96; ss by #7215, eff 3-16-00; ss by #8302, eff 4-1-05; ss by #8819, EXEMPT, eff 2-1-07

PART Fis 609 REQUIRED PERMITS

Fis 609.01 Harvest Permit.

(a) No person shall take finfish by the use of a seine, net, weir, pot or trap, American eels as specified in Fis 603.11, or horseshoe crabs as specified in Fis 607.05, or any species for commercial purposes from coastal and estuarine waters without first obtaining a permit from the executive director, except those persons taking finfish in accordance with RSA 211:48, or RSA 211:49-a or 211:49-b and are reporting catch under another license or to NOAA Fisheries Service via vessel trip reports.

(b) The applicant shall provide:

(1) The applicant's:

a. Name and maiden name if applicable;

b. Street and mailing address;

c. Date of birth;

d. Telephone number;

e. Height and weight; and

f. Hair and eye color; and

g. Signature of permittee subject to the penalties for unsworn false statements under RSA 641:3.

(2) The type, size, and number of gear fished or used to harvest;

(3) The specific location(s) where fishing activity or harvesting will occur;

(4) Species sought;

- (5) Specific months the permittee intends to fish or harvest;
- (6) If the applicant is not the vessel owner, the following vessel owner information:
 - a. Name and address; and
 - b. Home telephone number.
- (7) The following vessel information:
 - a. Vessel name;
 - b. State of registration;
 - c. State registration or coast guard number;
 - d. National Marine Fisheries Service federal permit number;
 - e. Principal port;
 - f. Hull ID number;
 - g. Hull construction material;
 - h. Vessel length;
 - i. Year built;
 - j. Gross and net tons, if federally documented vessel;
 - k. Horsepower, if federally documented vessel;
 - l. Hold capacity in tons, if federally documented vessel; and
 - m. Crew size.

(c) A helper may assist the permittee as long as the permittee is present.

(d) Any person possessing a permit shall file with the director the report as required in Fis 608.02.

Source. #1878, eff 12-4-81; ss by #2839, eff 8-31-84; ss by #4868, eff 7-20-90; ss by #5789, eff 2-18-94,
EXPIRED: 2-18-00

New. #7215, eff 3-16-00; amd by #7371, eff 10-7-00; ss by #8819, EXEMPT, eff 2-1-07; ss by #10478, eff 1-1-14

New Hampshire's Revised Statutes Annotated (RSA's)

Section 211:49

RSA 211:49-a Nonresident Commercial Salt Water License. –

I. Any person who does not qualify as a resident under RSA 207:1, who takes, possesses, lands, or transports by any method, from or on the waters of this state, regardless of where the catch was taken, any marine species by any method for the purpose of selling the same, shall first procure a valid license from the executive director to do so. This license shall not include the taking, possession, landing, or transport of northern shrimp (*Pandalus borealis*) which requires a license under RSA 211:49-e, or the taking of lobsters and crabs, which requires a license under RSA 211:18. A nonresident shall not take sea urchins, clam worms, river herring, or scallops unless the state in which such person is a resident provides a reciprocal licensing privilege for residents of this state.

II. The fee for an annual license shall be set by the executive director pursuant to RSA 206:10, I. The license shall be for the operator of the boat, vessel, flotation device, or gear, and helpers; provided, however, that helpers shall not be allowed for the taking of sea urchins or scallops by diving.

III. Licensees shall be responsible for conducting their fishing activities in compliance with rules adopted by the executive director under RSA 541-A.

IV. Any person so licensed shall furnish to the executive director such information concerning marine species and fishing activities as the executive director may require by rules adopted under RSA 541-A.

V. Any person convicted of violating any provision of this section shall be guilty of a violation if a natural person or guilty of a misdemeanor if any other person. In addition, the defendant's catch shall be confiscated and sold according to rules adopted by the executive director pursuant to RSA 541-A, the proceeds of such sale to become the property of the New Hampshire fish and game department.

Source. 1973, 348:2. 1983, 81:1. 1994, 150:1, 2. 1997, 10:6. 2004, 166:4. 2009, 10:4, eff. June 16, 2009; 83:1, eff. July 1, 2009. 2013, 129:2, eff. Jan. 1, 2014. 2015, 186:14, eff. July 1, 2015.

RSA 211:49-aa Nonresident Wholesaler License. –

I. Any person, firm, or corporation who does not qualify as a resident under RSA 207:1 or RSA 211:43 and who is engaged in a wholesale trade in any marine species shall first procure a valid license from the executive director to do so in this state. The license shall entitle the licensee to buy, sell, process, and transport any marine species in wholesale trade within the state and to ship any marine species within and outside the state. A separate extra facility license shall be required for each market, store, vehicle, or facility where such marine species are bought or sold at wholesale. A nonresident wholesale license shall not be required by a person properly licensed pursuant to RSA 211:49-a. The fees for an annual license and for each extra facility license shall be set by the executive director pursuant to RSA 206:10, I. A copy of the license shall be carried in each vehicle and displayed at all facilities.

II. No person, firm, or corporation, whose ship, vessel, or similar craft is within the territorial waters of this state shall engage in the processing or wholesale trade of any marine species, excluding northern shrimp, lobster, and crabs, without first procuring a license under this section.

III. The license under this section shall not entitle a person, firm, or corporation to transport on state waters lobsters and crabs or northern shrimp taken outside the jurisdiction of the state via ship, vessel, or similar craft for the purposes of landing the lobsters and crabs in the state as permitted under RSA 211:49-d and the northern shrimp in this state under RSA 211:49-e.

Source. 1988, 99:1. 1990, 32:1. 1997, 10:7. 2009, 83:2, eff. July 1, 2009. 2013, 129:3, eff. Jan. 1, 2014. 2015, 186:15, eff. July 1, 2015.

RSA 211:49-b Resident Commercial Salt Water License. –

I. Any resident of this state who takes, possesses, lands, or transports on the waters of this state any marine species by any method for the purpose of sale, regardless of where the catch was taken, shall first procure a valid license from the executive director to do so. This license shall not include the taking, possession, landing, or transport of northern shrimp (*Pandalus borealis*) which requires a license under RSA 211:49-e, or the taking of lobsters and crabs, which requires a license under RSA 211:18.

II. The fee for such annual license shall be set by the executive director pursuant to RSA 206:10, I. The license shall be for the operator of the boat, vessel, flotation device, or gear, and helpers; provided, however, that helpers shall not be allowed for the taking of sea urchins or scallops by diving.

III. Any person so licensed shall furnish to the executive director such information concerning the marine species or fishing activities as the executive director may require by rule.

IV. Licensees shall be responsible for conducting their fishing activities in compliance with the rules adopted by the executive director under RSA 541-A.

V. Any person convicted of violating any provision of this section shall be guilty of a violation if a natural person and a misdemeanor if any other person. In addition, the defendant's catch shall be confiscated and sold according to rules adopted by the executive director pursuant to RSA 541-A and the proceeds of such sale shall become the property of the New Hampshire fish and game department.

Source. 1983, 254:1. 1986, 9:2. 1991, 229:3. 1994, 150:3. 1997, 10:8. 2004, 166:5, eff. May 24, 2004. 2013, 129:4, eff. Jan. 1, 2014. 2015, 186:16, eff. July 1, 2015.

Section 211:49-c

RSA 211:49-c Resident Wholesaler License. –

I. Any person, firm, or corporation engaged in a wholesale trade in any marine species shall first procure from the executive director a license to do so. Said license shall entitle the licensee to buy, sell, process, and transport any marine species in wholesale trade within the state and to ship any marine species within and outside the state. A separate extra facility license shall be required for each market, store, vehicle, or facility where such marine species are bought or sold at wholesale. A resident wholesaler license shall not be required by a person properly licensed pursuant to RSA 211:49-b. The fees for an annual license and for each extra facility license shall be set by the executive director pursuant to RSA 206:10, I. A copy of the license shall be carried in each vehicle and displayed at all facilities.

II. Any person, firm, or corporation, whose ship, vessel, or similar craft is within the territorial waters of this state and engaged in the processing or wholesale trade of any marine species, excluding northern shrimp, lobster, and crabs, shall first procure a license as required under this section.

Source. 1988, 99:2. 1990, 32:2. 1997, 10:9, eff. Jan. 1, 1998. 2013, 129:5, eff. Jan. 1, 2014. 2015, 186:17, eff. July 1, 2015.



David E. Pierce, Ph.D.
Director

Commonwealth of Massachusetts

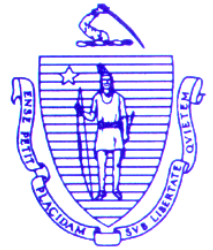
Division of Marine Fisheries

251 Causeway Street, Suite 400

Boston, Massachusetts 02114

(617)626-1520

fax (617)626-1509



Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Ronald Amidon
Commissioner

Mary-Lee King
Deputy Commissioner

MEMORANDUM

TO: Max Appelman, ASMFC FMP Coordinator

FROM: Nichola Meserve, MA DMF Policy Analyst

THRU: David Pierce, MA DMF Director

DATE: December 29, 2017

SUBJECT: Atlantic Menhaden Amendment 3 Implementation Plan

Overview

Massachusetts' implementation plan for Amendment 3 to the Interstate Fishery Management Plan for Atlantic Menhaden is below (per the ASMFC-provided template). The Division of Marine Fisheries (DMF) anticipates one rule change being required, to exclude vessels deploying large purse seines from MA's bycatch tolerance. This minor revision will be taken to public hearing during the winter of 2018 as part of a slate of other issues scheduled for public comment, with an intended effective date of the April 15 deadline.

Implementation Plan

The referenced regulations at 322 CMR are enclosed.

1. Commercial Fishery Management Measures

- a. A mechanism to close the directed commercial fisheries in your state once your jurisdiction's percentage of the TAC has been reached. If your jurisdiction includes its yearly menhaden quota in its regulations, please include the language below.**

Massachusetts' allocation of the TAC under Amendment 3 is 1.27%. Per 322 CMR 6.43(4)(c), the directed commercial menhaden fishery is closed once the Director has declared that 100% of the quota has been harvested. The process to close the fishery for quota managed species in Massachusetts, including menhaden, is established at 322 CMR 6.41(2)(c). Massachusetts' annual commercial Atlantic menhaden "quota" is defined at 322 CMR 6.43(1) as the amount adopted by the ASMFC; the actual weight of the quota is not specified in the regulations.

- b. A mechanism to adjust a jurisdiction's yearly quota as required by ASMFC.**

Menhaden quota is defined at 322 CMR 6.43(1) as "the Commonwealth of Massachusetts' annual commercial Atlantic menhaden quota adopted by the Atlantic States Marine Fisheries Commission and amended by required paybacks and authorized quota transfers and rollovers."

- c. A mechanism to enable the transfer of unused quota between states, if warranted, and the ability to adjust a jurisdiction's quota as it relates to the transfer of quota.**

Menhaden quota is defined at 322 CMR 6.43(1) as "the Commonwealth of Massachusetts' annual commercial Atlantic menhaden quota adopted by the Atlantic States Marine Fisheries Commission and amended by required paybacks and authorized quota transfers and rollovers."

d. A mechanism for pound-for-pound payback to reduce the subsequent year's quota to account for any overharvest of your jurisdiction's quota.

Menhaden quota is defined at 322 CMR 6.43(1) as "the Commonwealth of Massachusetts' annual commercial Atlantic menhaden quota adopted by the Atlantic States Marine Fisheries Commission and amended by required paybacks and authorized quota transfers and rollovers."

e. A mechanism for an incidental catch and small-scale fishery provision following the harvest of your jurisdiction's quota and closure of the directed fisheries.

Per 322 CMR 6.43(4)(d), Massachusetts regulations allow a bycatch tolerance of up to 1,000 pounds menhaden per trip or per 24-hour day, whichever is longer, when the commercial quota has been harvested and the commercial fishery closed. The weight of the menhaden bycatch shall not exceed 5% of the weight of the entire catch being landed.

i. 6,000 pound trip limit per day for non-directed and small-scale gears. Under Amendment 3, small-scale gears include: cast nets, traps, (except floating fish traps), pots, haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines, trammel nets, bait nets, and purse seines which are smaller than 150 fathom long and 8 fathom deep. Non-directed gears include: pound nets, anchored/stakes gillnets, drift gill nets, fishing weirs, fyke nets, and floating fish traps.

Massachusetts' bycatch tolerance is more restrictive than Amendment 3's incidental catch limit by weight (1,000 pounds versus 6,000 pounds). "Bycatch" is defined as "non-targeted commercial catch and possession;" and harvest under the bycatch tolerance is restricted to non-targeted fishing by way of a percent catch restriction (5% the total weight being landed).

Currently, this applies to any and all gears. While it's highly unlikely that a vessel deploying purse seine larger than 150 fathom long and 8 fathom deep would utilize the bycatch tolerance, DMF plans to amend 322 CMR 6.43(4)(d) to exclude this gear.

ii. Two authorized individuals, working from the same vessel fishing stationary multi-species gears, are permitted to work together and land up to 12,000 pounds from a single vessel, limited to one vessel trip per day. Stationary multi-species gears are defined as pound nets, anchored/staked gill gillnets, fishing weirs, floating fish traps, and fyke nets.

Per 322 CMR 6.41(2)(b), trip limits for menhaden are applied to the vessel per calendar day, regardless of the number of commercial fishing permits carried on board the vessel.

iii. Prohibit a vessel from making multiple trips in one day.

Massachusetts' menhaden bycatch tolerance is per trip or per 24-hour day, whichever is longer, per 322 CMR 6.43(4)(d).

iv. Prohibit the use of carrier vessels to offload catch exceeding 6,000 pounds.

Massachusetts' bycatch tolerance restricts commercial fishermen from landing more than 1,000 pounds. The definition of "land" includes transferring fish onto another vessel (322 CMR 6.43(1)), thus prohibiting the use of carrier vessels to offload catch in excess of the bycatch tolerance.

f. For Maine through New York, a mechanism to adjust a state's quota and effort controls if opting into the episodic events set aside program. To be eligible to participate in the episodic events set-aside, a state must implement three provisions: daily trip level harvester reporting; episodic event harvest and landings be restricted to states waters of the jurisdiction; and maximum daily trip limit no greater than 120,000 pounds per vessel.

DMF has structured its management of the commercial menhaden fishery in Massachusetts such that participation in the episodic events set aside program is unlikely. Our system of declining trip

limits tied to available quota has thus far prevented a quota closure of the fishery, a prerequisite for participation. Should this change, the DMF Director has authority via declaration to adjust the manner, times, and quantity of menhaden harvest to ensure available quota is taken (322 CMR 6.41(2)(d)). In addition, the Director may condition permits as needed (322 CMR 7.01(7)). DMF could implement the three provisions above through these means.

2. Monitoring Requirements

a) A catch reporting system to enable timely monitoring of a jurisdiction's quota. Purse seine vessels and snapper rigs are required to submit trip level reports.

Dealer reported data are used to monitor Massachusetts' menhaden quota. Transaction level records are due from dealers on a weekly basis. All limited entry menhaden harvesters—those authorized to fish at higher trip limits and consequently responsible for the vast majority of Massachusetts menhaden landings—are also required to hold a bait dealer permit and report daily. All Massachusetts commercial harvesters, regardless of permit-type or gear-type, are required to submit trip level reports on a monthly basis.

b) A mechanism to require timely reporting of bycatch allowance landings by non-directed fisheries through a reporting system approved by the Board in Section 2a of this template.

Any bycatch allowance landings would also be reported by dealers, at least weekly. Note that Massachusetts has avoided a quota closure in all years due to its trip limit management system and thus has had zero bycatch landings since the implementation of quotas.

c) A mandatory biological sampling program to collect age and length data from the commercial bait sector. Massachusetts is required to collect one 10-fish sample (age and length) per 300 metric tons landed for bait purposes.

DMF will continue its biological sampling of the commercial bait sector. In past years, effort has been focused on dock-side sampling the local purse seine and cast net fisheries. When unable to collect the necessary sample number from the fishery (due to difficulty intercepting the harvesters), DMF samplers have resorted to using the same small scale gear (cast nets) to capture their own sample directly.

Massachusetts' preliminary quota for 2018 (per ASMFC's December 6 memo) is 2,751 metric tons, which would require ten 10-fish samples if landed in full. We expect to fulfill this sampling requirement.

d) A mandatory monitoring/sampling program that requires all states with a pound net fishery collect catch and effort data elements.

Massachusetts commercial fishermen using pound nets are required to report the total pounds landed per day, as well as the number of pound nets fished per day.

Enc.

322 CMR 6.41: The Further Regulation of Possession and Size Limits

(1) Definitions. For the purpose of 322 CMR 6.41, the following terms and words shall have the following meanings:

Quota Managed Species means any species for which the Division of Marine Fisheries manages commercial fisheries by an annual quota that corresponds to Massachusetts' annual share quota for that species as established by federal or interstate fishery management plans. Examples of quota managed species include, but are not limited to, striped bass, bluefish, black sea bass, scup, fluke, menhaden and horseshoe crabs.

(2) Commercial Fishing

(b) Trip Limits for All Quota Managed Species. Except as otherwise specifically provided for in any provision of 322 CMR, all possession limits shall be applied to the vessel per calendar day, regardless of the number of commercial fishing permits or letters of authorization carried on board the vessel.

(c) Procedure to Close Quota and Quota Managed Fisheries. To prevent an overage of the annual Massachusetts quota or a period or seasonal quota allocation, when the Director projects that 100% of an annual Massachusetts quota or a period or seasonal allocation will be landed, based upon data compiled by the Division, the Director shall issue a Declaration of Closure to close the fishery. This Declaration of Closure shall set forth the closure date for the quota managed fishery. A written copy of the Declaration of Closure shall be:

1. Filed with the Secretary of the Commonwealth, for publication in the *Massachusetts Register*;
2. distributed via the Division's e-mail list-serve;
3. posted a written Declaration of Closure on the Division's Legal Notice webpage; and
4. distributed by fax or e-mail to all primary buyers of the quota managed species, permitted in accordance with 322 CMR 7.01(3): *Dealer Permits* and 7.07: *Dealers Acting as Primary Buyers*.

(d) Commercial Fishery Limit Adjustments for Quota Managed Species.

1. The Director may, by declaration, adjust the manner and times of taking fish, legal size limits, as well as the quantities of fish to be take to prevent overages of the annual Massachusetts quota or a period or seasonal allocation, to increase landings to ensure available quota is taken, and to address issues resulting from limits implemented by other states.
2. Declaration Process.
 - a. Adjustment has been approved by a majority of the Massachusetts Marine Fisheries Advisory Commission;
 - b. A Notice of Declaration is filed with the *Massachusetts Register*, published in at least one newspaper, emailed via the Division's email listserve and Declaration is posted on the Division's legal notice website; and
 - c. A two-week comment period is conducted. This comment period may be ongoing when a Declaration is issued. The Director may adjust the Declaration, subject to the Declaration Process, based on comment received during this comment period.

322 CMR 6.43: Atlantic Menhaden Management

(1) Purpose. The purpose of 322 CMR 6.43 is to comply with the Interstate Fishery Management Plan for Atlantic Menhaden to manage the Atlantic menhaden fishery in a manner that is biologically, economically, socially and ecologically sound, while protecting the resource and those who benefit from it.

(2) Definitions.

Atlantic Menhaden means that species known as *Brevoortia tyrannus* or commonly referred to as pogey or bunker.

Bait Dealer means any person issued a bait dealer permit in accordance with 322 CMR 7.01(3)(g): *Bait Dealer*.

Bycatch means the non-targeted commercial catch and possession of a species.

Commercial Fisherman means any person fishing under the authority of a permit issued in accordance with 322 CMR 7.01(2): *Commercial Fisherman Permits*.

Declare means to file an advisory notification with the *Massachusetts Register* and publish it via the Marine Fisheries electronic mailing list and website.

Director means the Director of the Division of Marine Fisheries.

Land means to transfer or attempt to transfer the catch of fish from any vessel to any other vessel or onto any land, pier, wharf, dock or other artificial structure, or for a fishing vessel with any fish on board to tie up to any dock, pier or other artificial structure.

Quota means the Commonwealth of Massachusetts' annual commercial Atlantic menhaden quota adopted by the Atlantic States Marine Fisheries Commission and amended by required paybacks and authorized quota transfers and rollovers.

Trip means the time period that begins when a vessel departs from any land, pier, wharf, dock or other artificial structure to carry out commercial fishing operations, including the at-sea transfer and transport of fish, and that terminates with a return to any land, pier, wharf, dock or other artificial structure.

(3) Regulated Fishery Permit Endorsement Requirement. It shall be unlawful for any fisherman or vessel to take, land, or possess Atlantic menhaden in excess of 6,000 pounds per trip or 24-hour day, whichever duration is longer, without a regulated commercial fishery permit endorsement for Atlantic menhaden issued by the Director, in accordance with 322 CMR 7.01(4)(a)4: *Renewals*.

(4) Commercial Fishing Limits.

(a) Regulated Fishery Trip Limits. Commercial fishermen who have been issued a regulated Atlantic menhaden fishery permit endorsement, in accordance with 322 CMR 6.43(3) and 7.01(4)(a)4.: *Renewals*, shall abide by the following trip limits:

1. Until the Director declares that 85% of the commercial menhaden quota has been landed, it shall be unlawful to possess or land more than 125,000 pounds of menhaden in the coastal waters of the Commonwealth per trip or calendar day, whichever duration is longer;
2. Once the Director has declared that 85% of the commercial menhaden quota has been landed, it shall be unlawful to possess or land more than 25,000 pounds of menhaden in the coastal waters of the Commonwealth per trip or calendar day, whichever duration is longer; and
3. Once the Director has declared that 95% of the commercial menhaden quota has been landed, it shall be unlawful to possess or land more than 6,000 pounds of menhaden in the coastal waters of the Commonwealth during per trip or calendar day, whichever duration is longer.

(b) Open Access Fishery Trip Limits. Commercial fishermen who have not been issued a regulated Atlantic menhaden fishery permit in accordance with 322 CMR 6.43(3) and 7.01(4)(a)4.: *Renewals* may possess and land up to 6,000 lbs of Atlantic menhaden per trip or 24-hour day, whichever duration is longer.

(c) Closure. It shall be unlawful to catch and retain or land Atlantic menhaden once the Director has declared that 100% of the quota has been harvested, except as provided at 322 CMR 6.43(4)(d).

(d) Bycatch Tolerance. When the commercial quota has been harvested and the commercial fishery is closed, commercial fishermen may possess or land up to 1,000 pounds of Atlantic menhaden bycatch per trip or per 24-hour day, whichever is longer. The weight of the Atlantic menhaden bycatch shall not exceed 5% of the weight of the entire catch being landed.

(5) Daily Catch Reporting. All regulated Atlantic menhaden fishery permit endorsement holders must obtain a bait dealers permit, as defined at 322 CMR 7.01(3)(g): *Bait Dealer*, and report to the Division of Marine Fisheries their directed commercial Atlantic menhaden landings in the Commonwealth on a daily basis on forms provided by the Director.

322 CMR 7.01: Form, Use and Content of Permits

(4) Special Permits

(a) Regulated Fishery Permit Endorsement. In accordance with M.G.L. c. 130, §§ 2 and 80, regulated fishery permit endorsements may be added to commercial fisherman permits, issued pursuant to 322 CMR 7.01(2), to authorize the named individual and/or commercial fishing vessel to harvest, possess or land fish or shellfish or use certain fishing gears in a fishery regulated pursuant to M.G.L. c. 130, §17A.

2. Limited Entry Regulated Fishery Permit Endorsements. Commercial fisherman permits, issued in accordance with 322 CMR 7.01(2), may be endorsed with the following regulated fishery permit endorsements. Pursuant to the authority at M.G.L. c. 130, § 2, the following regulated fishery permit endorsements are limited entry and may only be renewed and transferred subject to the provisions set forth at 322 CMR 7.06. These regulated fishery permit endorsements are required for the following:

h. Menhaden. For a named individual and/or vessel to commercially fish for menhaden within the waters under the jurisdiction of the Commonwealth, or to harvest, possess or land any menhaden for commercial purposes in the Commonwealth. A menhaden regulated fishery permit endorsement is not required to commercially fish for menhaden in the Commonwealth, provided no more than 6,000 pounds of menhaden are possessed at any one time or landed within a calendar day or fishing trip, whichever period is longer.

(7) Conditions. The Director may at any time, in his discretion, attach any written conditions or restrictions to the permit deemed necessary or appropriate for purposes of conservation and management or to protect the public health, welfare and safety.



Rhode Island

Department of Environmental Management

DIVISION OF MARINE FISHERIES

3 Fort Wetherill Rd

Jamestown, RI 02835

401 423-1920

FAX 401 423-1925

MEMORANDUM

To: Max Appelman
Atlantic States Marine Fisheries Commission

From: Jason McNamee
RI Division of Marine Fisheries

Date: January 8, 2018

SUBJECT: Implementation Plan Requirements for Amendment 3 to the Fishery Management Plan (FMP) for Atlantic Menhaden for the state of Rhode Island (RI).

The following information details the information template as was outlined in the ASMFC memorandum dated Dec 6, 2017. Each section is titled as requested in the memorandum and RI's plan or existing regulations are defined within each section. The numbers before regulatory language indicate the section of RI regulations in which the regulation exists, all regulations for marine fisheries for RI can be found at the following link: <http://www.dem.ri.gov/programs/fish-wildlife/marine-fisheries/rimftoc.php>

1. Commercial Fishery Management Measures

a) A mechanism to close the directed commercial fisheries in your state once your jurisdiction's percentage of the TAC has been reached. If your jurisdiction includes its yearly menhaden quota in its regulations, please include that language below.

The RI Department of Environmental Management (RIDEM) has the authority to close fisheries governed by a federal or ASMFC management plan. The following is the state's regulatory section and language specific to menhaden with regard to commercial measures for menhaden:

3.22.2.B.2

Once the quota has been reached, the fishery will close for directed fisheries, including but not limited to purse seine operations, and a bycatch limit will be in effect. The bycatch limit will be:

- a. Non-directed fisheries: 6,000 pounds per vessel per day.
- b. Pound nets, fish traps, anchored/staked gill nets, and fyke nets: If two commercially licensed individuals are harvesting from the same vessel, two (2) daily possession limits (12,000 pounds per vessel per day).

b) A mechanism to adjust a jurisdiction's yearly quota as required by ASMFC.

3.22.2.B

Landing of menhaden in RI under State Quota Program: An annual statewide quota for menhaden is established annually for the State by the ASMFC. The quota shall pertain solely to landings of menhaden in RI and shall not pertain to the possession of menhaden in RI waters prior to landing.

c) A mechanism to enable the transfer of unused quota between states, if warranted, and the ability to adjust a jurisdiction's quota as it relates to the transfer of quota.

The state of RI and the Director of RIDEM have broad authority to manage natural resources in a manner that is in the state's best interest and that complies with appropriate federal and ACFCMA rules. The following are state statutes related to this authority:

§ 20-1-2. Authority over fish and wildlife.

The general assembly hereby vests in the director of the department of environmental management authority and responsibility over the fish and wildlife of the state and over the fish, lobsters, shellfish, and other biological resources of marine waters of the state.

§ 20-1-17. Cooperation with other states.

The director may cooperate with the fish and wildlife commissioners or other similar bodies or agencies of other states in carrying out the purpose of this title.

§ 20-8-1. Entry into compact authorized – Text.

The governor of this state is hereby authorized and directed to execute a compact on behalf of the state of Rhode Island with any one or more of the states of Maine, New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida and with such other states as may enter into the compact, legally joining therein in the form substantially as follows:

The statute then cites the ASMFC compact language.

d) A mechanism pound-for-pound pay back to reduce the subsequent year's quota to account for any overharvest of your jurisdiction's quota.

Under the authorities cited above, the RIDEM can alter quotas as needed to account for overages or underages. The following is the general regulatory language defining this authority:

1.6.A.1.b.

Over-harvest:

- (1) Any over-harvest of a sub-period allocation will be deducted from the allocations of the remaining sub-periods in the same calendar year.
- (2) Annually, the DFW will charge any over-harvest from the previous year to the entire state allocation of the current year before redistributing according to the species specific management plan. For the Tautog fishery, if an over-harvest has occurred for the entire year, that over-harvest will be deducted from the Summer sub-period of the following calendar year.

e) A mechanism for an incidental catch and small-scale fishery provision following the harvest of your jurisdiction's quota and closure of the directed fisheries.

- I. **6,000 pounds trip limit per day for non-directed and small-scale gears. Under Amendment 3, small-scale gears include: cast nets, traps (excluding floating fish traps), pots, haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines, trammel nets, bait nets, and purse seines which are smaller than 150 fathom long and 8 fathom deep. Non-directed gears include: pound nets, anchored/stake gillnets, drift gill net, trawls, fishing weirs, fyke nets, and floating fish traps.**
- II. **Two authorized individuals, working from the same vessel fishing stationary multi-species gears, are permitted to work together and land up to 12,000 pounds from a single vessel, limited to one vessel trip per day. Stationary multi-species gears are defined as pound nets, anchored/stake gill nets, fishing weirs, floating fish traps, and fyke nets.**

III. Prohibit a vessel from making multiple trips in one day.

The state of RI will be going to hearing on February 19, 2018 with the following changes to meet the requirements of Amendment 3. Strikethrough represents existing language that will be removed, red bold font represents new language that will be added:

3.22.2.B.2

2. Once the quota has been reached, the fishery will close for directed fisheries, including but not limited to purse seine operations, and a ~~bycatch~~ **6,000 pound possession limit per day** will be in effect **for non-directed and small-scale gears**. ~~The bycatch limit will~~ **be Non-directed and small-scale gears will be defined as:**

- a. Non-directed ~~fisheries gears: 6,000 pounds per vessel per day~~ **Pound nets, anchored/stake gillnets, drift gill net, trawls, fishing weirs, fyke nets, and floating fish traps.**
- b. **Small-scale gears: Cast nets, traps (excluding floating fish traps), pots, haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines, trammel nets, bait nets, and purse seines which are smaller than 150 fathom long and 8 fathom deep.**
- c. ~~Pound nets, fish traps, anchored/staked gill nets, and fyke nets: If t~~Two commercially licensed individuals ~~are~~ harvesting from the same vessel, **fishing stationary multi-species gears, are authorized to take;** two (2) daily possession limits (12,000 pounds per vessel per day). **Stationary multi-species gears are defined as pound nets, anchored/stake gill nets, fishing weirs, floating fish traps, and fyke nets.**

IV. Prohibit the use of multiple carrier vessels to offload catch exceeding 6,000 pounds.

The following is our general regulation that prohibits this from occurring in state waters:

3.22.2.E. No person may transfer or attempt to transfer at sea, from one vessel to another, any finfish identified in these regulations.

f) For Maine through New York, a mechanism to adjust a state's quota and effort controls if opting into the episodic events set aside program. As a reminder, to be eligible to participate in the episodic events set aside, a state must implement three provisions:

i. Daily trip level harvester reporting

ii. Episodic events harvest and landings be restricted to state waters of the jurisdiction

iii. Maximum daily trip limit no greater than 120,000 pounds per vessel.

The following is our existing language defining the requirements of the episodic event program:

3.22.2.C.

Episodic Event Set Aside Program:

1. After the State's quota has been reached, if RI is approved to participate in the Episodic Event Set Aside Program for Menhaden, as established by the ASMFC, the landing limit for menhaden will be 120,000 pounds per vessel per day for vessels associated with directed fisheries for Menhaden, until the Set Aside quota has been exhausted, as determined by the ASMFC and/or the DEM, at which time the program will end and the directed fishery will close. Vessels that target and land menhaden in RI under this program must harvest only from RI waters and, if operating in the Management Area, must adhere to all of the provisions as specified in these regulations.
2. Reporting Requirements:

- a. Any person intending to engage in the commercial menhaden fishery under the Episodic Event Set Aside Program must notify the DLE at (401) 222-3070 prior to taking or possessing menhaden. At the time that a fisher advises the DLE of his/her intent to harvest menhaden, the DLE shall notify said fisher of any modification to the possession limit for menhaden that is applicable to operations conducted in the Management Area.
- b. Each person engaged in the commercial menhaden fishery shall contact the DFW at (401) 423-1940 at the end of each daily trip or within four hours thereof to report the amount of menhaden landed by the fisher in pounds. These menhaden-specific reporting requirements are in addition to all other existing commercial fishing reporting requirements as set forth in the RI Marine Fisheries regulations.

2. Monitoring Requirements

a) A catch reporting system to enable timely monitoring of a jurisdiction's quota. As a reminder, purse seine vessels and snapper rigs are required to submit trip level reports. The states of New Hampshire, Pennsylvania, South Carolina, and Georgia are exempt from timely quota monitoring, but still must report annually via annual compliance reporting process.

b) A mechanism to require timely reporting of bycatch allowance landings by non-directed fisheries through a reporting system approved by the Board in Section 2a of this template.

All RI commercial fishermen and seafood dealers are required to report all of their landings through SAFIS, therefore all of the required monitoring in Amendment 3 is already implemented in RI. Additionally, for purse seine operators in our management area, additional reporting is required. The following is the regulatory language pursuant to these requirements:

7.7.F. Reporting frequency and required trip level data elements:

1. Weekly reporting: Trip level data for all species landed shall be reported each week on Mondays and Thursdays, are due no more than five days after the date of purchase, and shall consist of the following:
 - a. The species common name including market level and grade;
 - b. The amount landed or purchased including the units the product was measured in (i.e. pounds);
 - c. The area where product was taken (only applicable to shellfish purchases);
 - d. The date the product was landed or purchased;
 - e. The R.I. commercial fishing license or landing permit number of the fisherman selling the product to the dealer;
 - f. The vessel identification number (Coast Guard documentation number and/or State of R.I. registration number);
 - g. The port or location where the catch was landed or purchased; and,

- h. When a seafood dealer is purchasing research set aside from a permitted and properly licensed fisherman, the poundage purchased will be designated in the catch source field as “RSA”.

3.22.2A

6. Reporting requirements:

a. Any fisher intending to engage in the commercial menhaden fishery in the Management Area shall notify the DLE at (401) 222-3070 prior to taking or possessing menhaden. At the time that a fisher advises the DLE of his/her intent to harvest menhaden, the DLE shall notify said fisher of any modification which may have been established in the possession limit for menhaden.

b. Each person engaging in the commercial menhaden fishery shall contact the DEM at (401) 423-1940 at the end of each day to report the area fished and the amount of menhaden in possession by the fisher in pounds.

c) A mandatory biological sampling program to collect age and length data from the commercial bait sector. De minimis states are not required to conduct fishery-dependent biological sampling in the menhaden fishery. States are required to collect the following:

i. One 10-fish sample (age and length) per 300 metric tons landed for bait purposes for Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Delaware.

ii. One 10-fish sample (age and length) per 200 metric tons landed for bait purposes for Maryland, Potomac River Fisheries Commission, Virginia and North Carolina

There is no regulatory construct to require sampling, but RI maintains a sampling program and we are routinely able to meet the required biological samples needed per the menhaden FMP. While there is no specific requirement for menhaden, the Director of DEM has broad authority to require fishermen to allow sampling when required.

d) A mandatory monitoring/sampling program that requires all states with a pound net fishery collect catch and effort data elements. Mandatory data elements include:

i. total pounds (lbs) landed per day

ii. number of pound nets fished per day

The state of RI requires all fishermen to submit reports on their fishing at the trip level. The data elements in i and ii are captured by this requirement:

6.6.1

- (a) The holder of any type of commercial fishing license, dealer license, or landing permit shall be deemed to have consented to providing such fishery-related information as the Department may require, including but not limited to, catch, effort, and areas fished.

- (b) Applicants for commercial fishing or dealer licenses or landing permits will be provided a list of applicable reporting requirements at the time of license issuance or renewal.
- (c) The Department may amend reporting requirements, no later than December 1 for the following calendar year.
- (d) The license or permit of any individual who fails to report required information in a timely fashion or who files a false report shall be subject to suspension or revocation. No application for a license renewal will be accepted from a person who has failed to submit reports in a timely fashion and who has been previously notified, via certified mail, regarding the deficiency and the inability to renew if the required reports are not filed by the license application deadline.

State of Connecticut

Atlantic Menhaden Amendment 3 Implementation Plan

December 29, 2017

Introduction

The Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 3 to the Interstate Fishery Management Plan for Atlantic Menhaden in November of 2017. The Amendment establishes a 216,000 MT total allowable catch (TAC) for 2018 and 2019 unless menhaden-specific ecological reference points become available for management use. It also establishes revised state quotas, measures related to catch and biological monitoring, quota transfers, quota rollovers, incidental catch and the episodic events set aside program. This report includes specific compliance criteria established under Amendment 3 for implementation in Connecticut.

1. Commercial Fishery Management Measures

a) A mechanism to close the directed commercial fisheries in your state once your jurisdiction's percentage of the TAC has been reached. If your jurisdiction includes its yearly menhaden quota in its regulations, please include that language below.

interim measures adopted by Commissioner Declaration authority (Declaration D18-01, Appendix 1) effective December 23, 2017, maintain regulations implemented by Connecticut under Amendment 2 that impose a maximum possession limit of 6,000 pounds in all fisheries. The interim measures also set a zero pound menhaden possession limit in all fisheries once 100% of the Connecticut quota is landed.

Connecticut presently has no directed fishery for menhaden. The use of purse seines, the principal gear used to target menhaden on the Atlantic and Gulf coasts, is prohibited in state waters by statute. Purse seine vessels could land in Connecticut if the operator has a Commercial Landing Vessel Operator's License and the vessel has a Commercial Fishing Vessel Permit. However, the current 6,000 pound possession limit makes this impractical. Pound nets are also used in some regions to target menhaden and are allowed in Connecticut, but none are currently authorized to be fished in state waters. Siting a pound net in Connecticut requires a structures and dredging permit from DEEP Land and Water Resources Division under the Coastal Management Act (CGS §22a-90 et seq.). Application fees for in-water structures, whether a pound net or a new marina are based on the total area impacted (a rectangle encompassing the outer points of any netting or anchors), making an application for a pound net prohibitively expensive. Connecticut plans to convene a public meeting in early 2018 to explore options for a modest directed fishery and/or larger scale landings.

Connecticut does not explicitly include its annual quotas in regulations (see b below).

b) A mechanism to adjust a jurisdiction's yearly quota as required by ASMFC.

Connecticut generally incorporates quotas into regulations by reference to the relevant ASMFC FMP, thus eliminating the need to change regulations every time the quota changes. The interim measures follow this practice and make reference to "Connecticut's Atlantic menhaden quota specified in the Atlantic Menhaden Fishery Management Plan of the Atlantic States Marine Fisheries Commission".

c) A mechanism to enable the transfer of unused quota between states, if warranted, and the ability to adjust a jurisdiction's quota as it relates to the transfer of quota.

Regulations of Connecticut State Agencies (RCSA) §26-159a-27. *Transfers of Quotas*. (see Appendix 2) provides the authority and mechanism to enable transfer of unused quota between states if warranted. Such transfers are handled administratively according to the requirements and standards of the underlying fishery management plan and ASFMC and/or NOAA policy (depending on the species). In addition, interim measures provide a mechanism for out-of-state vessels wishing to land large quantities of menhaden (>6,000 lb.) in Connecticut, provided a quota transfer from its home state is arranged in advance. This later provision may change, subject to public comment at the planned public meeting.

d) A mechanism for pound-for-pound pay back to reduce the subsequent year's quota to account for any overharvest of your jurisdiction's quota.

The present 6,000 lb. possession limit restricts fishing to small-scale gears and non-directed gears. In the unlikely event of an overage, overage paybacks are implicit in the interim measures' reference to "Connecticut's Atlantic menhaden quota specified in the Atlantic Menhaden Fishery Management Plan of the Atlantic States Marine Fisheries Commission".

e) A mechanism for an incidental catch and small-scale fishery provision following the harvest of your jurisdiction's quota and closure of the directed fisheries.

I. 6,000 pound trip limit per day for non-directed and small-scale gears. Under Amendment 3, small-scale gears include: cast nets, traps (excluding floating fish traps), pots, haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines, trammel nets, bait nets, and purse seines which are smaller than 150 fathom long and 8 fathom deep. Non-directed gears include: pound nets, anchored/stake gillnets, drift gill net, trawls, fishing weirs, fyke nets, and floating fish traps.

Interim measures, presently in effect, conservatively close small scale and non-directed gear fishery landings in the event 100% of the Connecticut quota is landed. By April 15, 2018, the department will implement measures to allow a 6,000 pound possession limit for incidental catch and small-scale gear fisheries following the harvest of the quota and closure of the directed fisheries.

II. Two authorized individuals, working from the same vessel fishing stationary multi-species gears, are permitted to work together and land up to 12,000 pounds from a single vessel, limited to one vessel trip per day. Stationary multi-species gears are defined as pound nets, anchored/stake gill nets, fishing weirs, floating fish traps, and fyke nets.

For simplicity, the interim measures do not contain a provision to implement this exception. Pound nets, fishing weirs, floating fish traps and large fyke nets are not presently used in Connecticut. However, a significant portion of Connecticut landings (about half in 2016) come from anchored gillnets. Should comment at the public meeting indicate an interest in this provision for such gears, the department may consider adding it to its regulations.

III. Prohibit a vessel from making multiple trips in one day.

The interim measures specify that "Possession limits shall apply per trip or per day, whichever is the longer period of time." This language is common to most of our regulations and effectively limits vessels to landing one possession limit per day, regardless of the number of trips made in a day. This language will be maintained in future management measures.

IV. Prohibit the use of multiple carrier vessels to offload catch exceeding 6,000 pounds.

Present regulations specify that "The transfer of more than 6,000 pounds per day of menhaden between vessels at sea is prohibited." This language will be maintained in future management measures.

f) For Maine through New York, a mechanism to adjust a state's quota and effort controls if opting into the episodic events set aside program. As a reminder, to be eligible to participate in the episodic events set aside, a state must implement three provisions:

i. Daily trip level harvester reporting

ii. Episodic events harvest and landings be restricted to state waters of the jurisdiction

iii. Maximum daily trip limit no greater than 120,000 pounds per vessel.

Connecticut does not intend to opt into the episodic event set aside program at this time.

g) For Virginia, a Chesapeake Bay Reduction Fishery Harvest Cap with the following provisions:

i. Prohibit harvest for reduction purposes within the Chesapeake Bay when 100% of the 51,000 metric tons is harvested from the Bay.

ii. A repayment mechanism to reduce the subsequent year's harvest cap to account for an over-harvest of the cap on a pound-for-pound basis.

iii. No rollover of unused cap into the subsequent year.

Not applicable.

2. Monitoring Requirements

a) A catch reporting system to enable timely monitoring of a jurisdiction's quota. As a reminder, purse seine vessels and snapper rigs are required to submit trip level reports. The states of New Hampshire, Pennsylvania, South Carolina, and Georgia are exempt from timely quota monitoring, but still must report annually via annual compliance reporting process.

Atlantic menhaden landings will be monitored via Commercial Fisheries Catch Logs and NMFS Fishing Vessel Trip Reports (VTR) on a monthly basis. These reports contain trip-level records of fishing activity that include the prescribed ACCSP data elements (see RCSA §26-157b-1 in Appendix 3). Marine Fisheries staff enter Catch Logs into the Standard Atlantic Fisheries Information System (SAFIS) as reports are received. VTR data is downloaded weekly.

Having no directed fisheries for menhaden and having a possession limit that is the same as the bycatch limit, Connecticut avoided the need under Amendment 2 for weekly monitoring commonly used to effectively manage landings in such large-scale fisheries. Should Connecticut implement a directed fishery, weekly or trip-level reporting, daily electronic reporting or call-in will be implemented.

b) A mechanism to require timely reporting of bycatch allowance landings by non-directed fisheries through a reporting system approved by the Board in Section 2a of this template.

Atlantic menhaden landings will be monitored via Commercial Fisheries Catch Logs and NMFS Fishing Vessel Trip Reports (VTR) on a monthly basis. These reports contain trip-level records of fishing activity that include the prescribed ACCSP data elements (see RCSA §26-157b-1 in Appendix 3). Marine Fisheries staff enter Catch Logs into the Standard Atlantic Fisheries Information System (SAFIS) as reports are received. VTR data is downloaded weekly.

Should total landings exceed the quota under the 6,000 pound limit, those excess landings will be reported to the Board as part of the annual FMP review.

c) A mandatory biological sampling program to collect age and length data from the commercial bait sector. De minimis states are not required to conduct fishery-dependent biological sampling in the menhaden fishery. States are required to collect the following:

i. One 10-fish sample (age and length) per 300 metric tons landed for bait purposes for Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Delaware.

Connecticut's 2018 quota is 2,432,640 lb. or 1,105.7 metric tons. This equates to 3.7 (or 4) 10-fish samples. Fish will either be sampled opportunistically on four occasions from cooperating fishermen, or collected in the course of the Department's Long Island Sound Trawl Survey (LISTS). Though the latter is a fishery-independent sampling effort, the 100-400 ageing structures collected per year well exceed the minimum, are from fish captured in a commercial gear type and are still representative of the sizes encountered in the commercial fishery. This intent is similar to the action being contemplated by the Weakfish Board to consider the use of fishery-independent samples in fulfilling biological sampling requirements. The fished will either be aged in-house or sent to the Beaufort Lab for ageing.

ii. One 10-fish sample (age and length) per 200 metric tons landed for bait purposes for Maryland, Potomac River Fisheries Commission, Virginia and North Carolina

Not applicable.

d) A mandatory monitoring/sampling program that requires all states with a pound net fishery collect catch and effort data elements. Mandatory data elements include:

i. total pounds (lbs) landed per day

ii. number of pound nets fished per day

Connecticut has no active pound nets. Should any become active, these data will be collected via Connecticut Commercial Fisheries Catch Logs or NMFS Fishing Vessel Trip Reports (VTR) on a monthly basis. These reports contain trip-level records of fishing activity that include the prescribed ACCSP data elements (see RCSA §26-157b-1 in Appendix 3). Marine Fisheries staff enter Catch Logs into the Standard Atlantic Fisheries Information System (SAFIS) as reports are received. VTR data is downloaded weekly.

Appendix 1

Current Connecticut Commercial Menhaden Regulations (Declaration D08-01)

Atlantic Menhaden (*Brevoortia tyrannus*)

(a) Commercial Fishery Possession Limits.

(1) Except as provided in subdivision (4) of this subsection, no person engaged in commercial fishing shall possess or land Atlantic menhaden in excess of the following possession limit that is based on Connecticut's Atlantic menhaden quota specified in the Atlantic Menhaden Fishery Management Plan of the Atlantic States Marine Fisheries Commission: 6,000 pounds.

(2) The possession and landing limits specified in subdivision (1) of this subsection shall apply to the vessel, regardless of how many persons are on board. Possession limits shall apply per trip or per day, whichever is the longer period of time. The transfer of more than 6,000 pounds per day of menhaden between vessels at sea is prohibited. In any instance when there is a violation of the possession limit on board a vessel carrying more than one person when the catch is commingled, the violation shall be deemed to have been committed by the owner of the vessel, or the operator of the vessel, if the owner is not on board.

(3) Any Atlantic menhaden taken contrary to this section shall, without avoidable injury, be returned immediately to the water from which taken.

(4) Landing in excess of 6,000 pounds shall be permitted provided:

(A) the Commissioner receives and accepts an offer of quota transfer from another state in an amount equal to or greater than the amount of fish to be landed, and;

(B) such quota transfer conforms with the requirements of the Atlantic Menhaden Fishery Management Plan of the Atlantic States Marine Fisheries Commission for quota transfers between states, and;

(C) such quota transfer is completed before fish are offloaded in this state.

(5) When 100% of Connecticut's annual menhaden quota is landed the possession limit shall be zero pounds.

Appendix 2

Regulations of Connecticut State Agencies 26-159a-27. Transfers of quotas

Upon the request of a member state of the Atlantic States Marine Fisheries Commission and subject to a determination by the Commissioner that Connecticut will not be able to utilize its commercial quota for a quota-managed species before the end of the state-specific quota period, the Commissioner may transfer a portion of the Connecticut quota to the state making the request.

Appendix 3

Regulations of Connecticut State Agencies 26-157b-1. Reports

Each holder of any commercial fishing license, landing license, pound net registration, or charter-party boat registration, each person licensed to take lobsters or fish for personal use only, and each person licensed to purchase marine species for resale shall, as provided in this section, report to the commissioner. These reports may include but are not limited to the number, weight and sex of finfish, squid, sea scallops, lobsters or crabs in the catch and landings by species and market size and grade; gear used and effort expended; area fished; port landed; disposition of catch; type and value of nets, boats and other equipment used; number of persons employed; number, weight, market size, grade and price of marine species purchased and distributed, including conch, and the number of anglers

fishing on board charter-party boats. These reports shall be made on forms provided by the commissioner or by other methods approved by the Commissioner. Said reports shall be completed in their entirety and submitted to the Marine Fisheries Division office of the department (P. O. Box 719, Old Lyme, CT 06371).

(a) Each licensed commercial shad fisherman shall submit a report of daily fishing activities no later than June 30 of the year covered by the report.

(b) Each person licensed to take blue crabs for commercial purposes shall submit a report of daily fishing activities no later than the tenth of the month following the month covered by the report.

(c) Each person or firm issued a registration for a pound net or similar device shall submit a report of daily fishing activities no later than the tenth of the month following the month covered by the report.

(d) Each person licensed to set, tend or assist in setting or tending gill nets, seines, trap nets, fish pots, fykes, scaps, scoops, weirs, eel pots or similar devices to take finfish, or licensed to take finfish for commercial purposes by hook and line or licensed to take horseshoe crabs by hand, shall complete a report of all fishing activities, daily or at the end of the fishing trip. Said reports shall be submitted no later than the tenth of the month following the month covered by the report. Such reports shall be available on board any vessel at any time for inspection by authorized agents of the commissioner.

(e) Each person licensed to set, tend, or assist in setting or tending seines, traps, scaps, scoops, weirs or similar devices to take bait species for commercial purposes shall submit a report of daily fishing activities no later than the tenth of the month following the month covered by the report.

(f) Each person licensed to take lobsters or fish for personal use only, by means of not more than ten lobster pots, by skin diving, scuba diving or by hand, and each person licensed to take menhaden for personal use, shall submit a report of daily fishing activities no later than January thirty-first of the year following the year covered by the report.

(g) Each person (resident or nonresident) licensed to take lobsters, squid, sea scallops, crabs (other than blue crabs) or finfish for personal use or for sale by means of more than ten lobster pots or similar devices, or by the use of otter trawls, balloon trawls, beam trawls or similar devices, and each person licensed to land lobsters, sea scallops, finfish, crabs, including blue crabs, or squid shall complete a report of all fishing activities, daily or at the end of the fishing trip. Said reports shall be submitted no later than the tenth of the 2month following the month covered by the report. Such reports shall be available on board any vessel at any time for inspection by authorized agents of the commissioner.

(h) Each person or firm licensed to buy lobsters, finfish, squid, crabs, or sea scallops for resale from commercial fishermen licensed by the commissioner shall complete a report of individual purchase transactions of such species, including conch, and this report shall be submitted no later than the tenth of the month following the month covered by the report.

(i) Each person or firm issued a charter boat or party boat registration shall submit a report of daily fishing activities no later than the tenth of the month following the month covered by the report.

(j) In addition to the provisions of subsections (a) through (i), inclusive, of this section for all species managed by quota, all holders of licenses or registrations issued under section 26-142a of the Connecticut General Statutes concerning the purchase for resale of finfish, lobsters, crabs, sea scallops or squid, or the taking of said resources, shall report weekly total landings in pounds and Connecticut port where landed. Weekly reports shall be submitted for the period

commencing on Sunday and concluding on the following Saturday, and shall be submitted by a method approved by the commissioner no later than 4:30pm on the following Tuesday or 24 hours after the end of any fishing trip commencing prior to a Saturday and concluding after the following Monday.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Marine Resources

205 North Belle Mead Road, Suite 1, East Setauket, NY 11733
P: (631) 444-0430 | F: (631) 444-0434 | FW.Marine@dec.ny.gov
www.dec.ny.gov

TO: ASMFC Atlantic Menhaden Management Board
FROM: John Maniscalco, NY Administrative Board Member (Proxy)
DATE: December 20, 2017
SUBJECT: Amendment 3 Implementation Plan

1. Commercial Fishery Management Measures

a) A mechanism to close the directed commercial fisheries in your state once your jurisdiction's percentage of the TAC has been reached. If your jurisdiction includes its yearly menhaden quota in its regulations, please include that language below.

b) A mechanism to adjust a jurisdiction's yearly quota as required by ASMFC.

c) A mechanism to enable the transfer of unused quota between states, if warranted, and the ability to adjust a jurisdiction's quota as it relates to the transfer of quota.

d) A mechanism pound-for-pound pay back to reduce the subsequent year's quota to account for any overharvest of your jurisdiction's quota.

e) A mechanism for an incidental catch and small-scale fishery provision following the harvest of your jurisdiction's quota and closure of the directed fisheries.

I. 6,000 pounds trip limit per day for non-directed and small-scale gears. Under Amendment 3, small-scale gears include: cast nets, traps (excluding floating fish traps), pots, haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines, trammel nets, bait nets, and purse seines which are smaller than 150 fathom long and 8 fathom deep. Non-directed gears include: pound nets, anchored/stake gillnets, drift gill net, trawls, fishing weirs, fyke nets, and floating fish traps.

II. Two authorized individuals, working from the same vessel fishing stationary multi-species gears, are permitted to work together and land up to 12,000 pounds from a single vessel, limited to one vessel trip per day. Stationary multi-species gears are defined as pound nets, anchored/stake gill nets, fishing weirs, floating fish traps, and fyke nets.

III. Prohibit a vessel from making multiple trips in one day.

IV. Prohibit the use of multiple carrier vessels to offload catch exceeding 6,000 pounds.

f) For Maine through New York, a mechanism to adjust a state's quota and effort controls if opting into the episodic events set aside program. As a reminder, to be eligible to participate in the episodic events set aside, a state must implement three provisions:

i. Daily trip level harvester reporting

ii. Episodic events harvest and landings be restricted to state waters of the jurisdiction

- iii. Maximum daily trip limit no greater than 120,000 pounds per vessel.

All aspects of commercial Atlantic menhaden fishery management, as mandated by the Atlantic States Marine Fisheries Commission FMP including changes made under Amendment 3, have already been implemented in New York State. The Director of the Division of Marine Resources has the authority to establish fishing limits and closures for the commercial Atlantic menhaden fishery. See attached regulations.

- g) For Virginia, a Chesapeake Bay Reduction Fishery Harvest Cap with the following provisions:

Not applicable to the New York State commercial Atlantic menhaden fishery.

2. Monitoring Requirements

- a) A catch reporting system to enable timely monitoring of a jurisdiction's quota. As a reminder, purse seine vessels and snapper rigs are required to submit trip level reports. The states of New Hampshire, Pennsylvania, South Carolina, and Georgia are exempt from timely quota monitoring, but still must report annually via annual compliance reporting process.

- b) A mechanism to require timely reporting of bycatch allowance landings by non-directed fisheries through a reporting system approved by the Board in Section 2a of this template.

New York State already requires all marine commercial food fish license, food fish landing license and marine bait permit holders to submit trip level reporting. See attached regulations.

- c) A mandatory biological sampling program to collect age and length data from the commercial bait sector. De minimis states are not required to conduct fishery-dependent biological sampling in the menhaden fishery. States are required to collect the following:

- i. One 10-fish sample (age and length) per 300 metric tons landed for bait purposes for Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Delaware.
- ii. One 10-fish sample (age and length) per 200 metric tons landed for bait purposes for Maryland, Potomac River Fisheries Commission, Virginia and North Carolina

New York State will continue to collect and age sufficient biological samples from the Atlantic menhaden commercial fishery (as per Amendment 2) and provide that data when requested.

- d) A mandatory monitoring/sampling program that requires all states with a pound net fishery collect catch and effort data elements. Mandatory data elements include:

- i. total pounds (lbs) landed per day
- ii. number of pound nets fished per day

New York State already requires all marine commercial food fish license holders to submit trip level reporting. Requested data elements are captured by New York State Vessel Trip Reports. See attached regulations.

Regulations 40.1

(a) Definitions.

For the purposes of this section, the following definitions apply:

(1) A *trip limit* means the maximum amount of fish that can be possessed on board or landed by a vessel during a period of time, not less than 24 hours, in which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port. A vessel or fisher shall not land more than a possession limit or trip limit per species in any one calendar day, except that, where a weekly limit or biweekly limit is specifically authorized by the department pursuant to subdivision (i) of this section, a fisher authorized to take the weekly or biweekly limit shall not possess or land more than the weekly limit or biweekly limit in one calendar day or; where one trip limit for each of two commercial license holders on board a single vessel is specifically authorized by the department pursuant to subdivision (i) of this section, a vessel with two or more commercial license holders on board shall not possess more than two trip limits of the authorized species in one calendar day.

(b) General provisions.

(1) It is unlawful for any person to take or possess on the waters of the marine and coastal district, as defined in Environmental Conservation Law (ECL) section 13-0103, or the shores thereof, or anywhere inland from such shores in the Counties of Suffolk, Nassau, Queens, Kings, Richmond, New York, Bronx, and those portions of Westchester County within the marine and coastal district bordering on Long Island Sound, fish of the species listed in Table A, B or C:

- (i) other than during the open season specified for the species;
- (ii) of a size less than that specified for such species or outside of any slot size limit specified for such species;
- (iii) in excess of the possession limit or trip limit specified for such species, except that where a weekly limit or biweekly limit is specifically authorized by the department pursuant to subdivision (i) of this section, such fish shall not be taken or possessed in excess of the weekly limit or biweekly limit specified for such species;
- (iv) contrary to the provisions of any special regulations for such species;
- (v) contrary to any directive issued by the department pursuant to the provisions of this section; or
- (vi) except in accordance with this Part. Nothing in this Part shall be construed as authorizing any person to possess fish described in this Part except as permitted by these regulations.

(c) Reporting requirements.

(1) Marine commercial food fishing license, food fish landing license and marine bait permit holders.

(i) Any person who is the holder of a marine commercial food fishing license, food fish landing license, or marine bait permit issued pursuant to section 13-0335 of the Environmental Conservation Law shall complete and submit an accurate fishing vessel trip report for each commercial fishing trip, detailing all fishing activities and all species landed, on a form prescribed by the department. If more than one commercial license holder on board a single vessel is authorized to possess and land the trip limit of a regulated species pursuant to paragraph (a)(1) of this section, then each authorized license holder shall complete and submit a separate, accurate fishing vessel trip report documenting the fishing activities and species landed under the authority of the license holder's permit. The license holder shall submit such fishing reports monthly to the department within 15 days after the end of each month or at a frequency specified by the department in writing. Fishing vessel trip reports shall be completed, signed, and submitted to the department for each month; if no fishing trips were made during a month, a report must be submitted stating no trips were made for that month. Incomplete fishing vessel trip reports or unsigned reports will not satisfy these reporting requirements. Any New York license holder who is also the holder of a Federal fishing permit issued by NOAA Fisheries Service must instead satisfy the reporting requirements specified by NOAA Fisheries Service. If requested in writing by the department, New York license holders who also hold Federal fishing permits shall submit to the department the State (blue) copy of the fishing vessel trip report (NOAA Form No. 88-30) for the month or months identified in the written notification.

(ii) The fishing vessel trip report must be completed with all required information, except for information not yet ascertainable, and signed before the vessel arrives at the dock or lands the catch. Information that may be considered unascertainable before arriving at the dock or landing includes dealer name, dealer number, and date sold.

(u) Authority to establish fishing limits and closures for quota-based fisheries.

The Chief of the Bureau of Marine Resources within the Department's Division of Fish, Wildlife and Marine Resources is authorized to:

(1) establish, by directive, quota periods, allocations for quota periods, directed fishery thresholds, trip limits and weekly or biweekly limits according to the schedules required under the applicable provisions of this Part and provide written notice to applicable license and/or permit holders of the appropriate limits for the time specified;

(2) prohibit the harvesting for commercial purposes and possession of any species for which an annual harvest quota is established pursuant to this Part, by all applicable license/permit holders, when the determination has been made by the Bureau of Marine Resources that the maximum allowable harvest of that species, in any specified time period is projected to have taken place or has taken place. The chief will provide written notice of a closure directive to appropriate permit and license holders, the Division of Law Enforcement and the National Marine Fisheries Service's Northeast Regional Administrator;

- (3) reopen any closed period as provided in this Part;
- (4) specify, by directive, the threshold amounts of regulated species which will trigger the manner of taking and the gear which is required to be used pursuant to this Part once any threshold amounts have been taken;
- (5) approve the export program of another state lawfully eligible to ship commercially taken marine fish species into New York during any closure periods or periods when possession in New York is restricted for a regulated species; and
- (6) under mutual agreement with another state and with the concurrence of the Regional Administrator of the Northeast Region, National Marine Fisheries Service, or the Atlantic States Marine Fisheries Commission, transfer quota to that State or combine the quota from that State with the New York quota.

(x) Atlantic menhaden commercial fishing - special regulations.

(1) Permits. It is unlawful for any person to take or land menhaden for commercial purposes without having in possession a valid commercial food fishing license, commercial food fish landing license, a menhaden vessel license, or marine bait permit issued by the State of New York. For purposes of this subdivision, a person is presumed to be taking menhaden for commercial purposes when that person possesses more than 100 menhaden, or more than the possession limit for menhaden listed in Table A of this section, whichever is less. A person who holds a lobster bait gill net permit may take or land more than 100 menhaden; menhaden taken using this permit are for the sole use of the permittee to pursue the permittee's lobster fishery and may not be sold. A person who holds a lobster bait gill net permit must abide by the special regulations of this subdivision.

(2) Quota harvest and trip limits.

(i) The total annual harvest of menhaden may not exceed that amount annually allocated to New York State by the Atlantic States Marine Fisheries Commission (ASMFC) for the period January 1st through December 31st. Annual harvest limits for menhaden are based on the Fishery Management Plan (FMP) for menhaden as adopted and approved by the ASMFC pursuant to the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C., section 5101, *et seq.*

(ii) Following consultation with industry, the department may establish quota periods, trip limits and directed fishery thresholds such that the harvest does not exceed the quota assigned to New York.

(iii) When the department determines, based on a projection of landings using daily fishing vessel trip reports, that trip limits are necessary as provided in Table B of subdivision (i) of this section, such trip limits will be required and enforceable upon 72 hours written notice to license holders referenced in paragraph (1) of this subdivision of the appropriate limit allowed per vessel for that time period. Such trip limits may be further reduced by written direction of the department if the projection of the landings indicates a closure will be required before the end of the period. In any time period, the trip limits may be increased if the projection of the landings indicates the total quota will not be caught.

(3) Fishery closures.

(i) If the department determines that the maximum allowable harvest of menhaden will take place before the end of any period, the directed harvesting of menhaden for commercial purposes will be prohibited, except that the department may allow a bycatch of menhaden in non-directed fisheries, not to exceed 6,000 pounds daily per vessel trip. Directed harvest may be prohibited for all license holders, or for users of specific gear types as directed by the department upon 72 hours written notice to all license holders referenced in paragraph (1) of this subdivision. If the department closes the period, but unanticipated events result in the quota not being landed by the projected date, then the department may reopen the period for a specified time and a specified trip limit upon 72 hours written notice to all license holders referenced in paragraph (1) of this subdivision.

(4) Possession, transport and sale.

(i) During periods of trip limits, all menhaden must be held together in a separate container or containers readily available for inspection and may not be mixed with other species while on board any vessel.

(ii) During closed periods, no possession of menhaden shall be permitted on the waters of the marine and coastal district except as bycatch aboard vessels participating in other fisheries.

(5) Reporting requirements.

Any person who is the holder of a marine commercial food fishing license, commercial food fish landing license, a menhaden vessel license, marine bait permit, or lobster bait gill net permit issued by the State of New York shall report all harvest of menhaden in accordance with the requirements established in paragraph (c)(1) of this section.



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

MEMORANDUM

December 26, 2017

TO: Max Appelman, Atlantic Menhaden Species Coordinator

FROM: Jeffrey Brust, Research Scientist, NJ Marine Fisheries Administration

SUBJECT: New Jersey's Atlantic menhaden implementation plan

Attached, please find legislation regarding New Jersey's management strategy for the Atlantic menhaden fishery implemented under Amendment 2 to the fishery management plan. This legislation explicitly outlines how New Jersey will be able to control effort, allocate harvest among gears, and track harvest for quota monitoring purposes under Amendment 3. The following bullets summarize the key points of the plan.

- All harvesters that wish to land menhaden in New Jersey must possess a menhaden landing license. Each gear type has specific eligibility criteria.
- Harvest of menhaden in state waters by purse seine will require a purse seine license by vessel type. The regulations outline approved uses of the different vessel types.
- All harvesters must submit monthly trip-level reports of catch and effort through eTrips or other approved electronic reporting system.
- All dealers who wish to purchase and/or sell menhaden in New Jersey must purchase a menhaden dealer's license. Harvesters may only sell menhaden to licensed dealers or must possess a dealer's license themselves.
- All dealers must submit weekly transaction-level reports of menhaden sales and purchases through eDR or other approved electronic reporting system.
- Harvest will initially be allocated 95% to purse seine and 5% to all other gears, but these allocations may change in the future.
- All gears will have a season from January 1 through December 31 or until the quota is reached.
- The State can close the fishery with two days notice, distributed electronically, to all menhaden landing license and dealer license holders.
- If the fishery closes prior to the end of the year, harvesters will be allowed a 6,000 pound daily bycatch limit.

It should be noted that, due to time constraints under Amendment 2, management of menhaden in NJ was implemented through legislation, rather than through the normal regulatory process. A regulatory package is in development that will maintain management plan requirements, but allow additional freedom to NJ Marine Fisheries Administration adjusting regulations to maintain compliance with ASMFC mandates as the FMP evolves.

Thank you for your consideration in this matter. If you have any questions, please do not hesitate to contact me.

New Jersey Atlantic Menhaden Amendment 3 Implementation Plan

Introduction

The Atlantic States Marine Fisheries Commission passed Amendment 3 to the Atlantic Menhaden Fishery Management Plan in November 2017. Compliance elements include monitoring and management of a state's commercial harvest quota, and fishery dependent biological data collection. Due to time constraints during implementation of Amendment 2 in 2013, management of menhaden in New Jersey was enacted through legislation (Appendix 1; available online at <http://www.njleg.state.nj.us/2012/Bills/PL13/74 .HTM>), rather than the typical regulatory process. Responses to the majority of the following compliance requirements include a reference to specific sections of the attached legislation. New Jersey is in the process of passing regulatory language that parallels the legislation to maintain compliance with the FMP, but will give New Jersey additional freedom to adjust management measures as the FMP evolves. It has been agreed that the regulatory language will supersede the legislation once adopted.

1. Commercial Fishery Management Measures

a) A mechanism to close the directed commercial fisheries in your state once your jurisdiction's percentage of the TAC has been reached. If your jurisdiction includes its yearly menhaden quota in its regulations, please include that language below.

Appendix 1, section C.23:3-51.11 13 d.

b) A mechanism to adjust a jurisdiction's yearly quota as required by ASMFC.

Appendix 1, section C.23:3-51.11 13 a. Once a regulatory package is adopted, annual quotas may be adjusted through a Notice of Administrative change, which requires approval of the New Jersey Marine Fisheries Council and signature of the Commissioner of New Jersey DEP.

c) A mechanism to enable the transfer of unused quota between states, if warranted, and the ability to adjust a jurisdiction's quota as it relates to the transfer of quota.

Appendix 1, section C.23:3-51.11 13 a. Although this language explicitly states that NJ may receive a transfer of quota, it also implies that NJ may choose to donate unused quota under the same process.

d) A mechanism pound-for-pound pay back to reduce the subsequent year's quota to account for any overharvest of your jurisdiction's quota.

Appendix 1, section C.23:3-51.11 13 a(2).

e) A mechanism for an incidental catch and small-scale fishery provision following the harvest of your jurisdiction's quota and closure of the directed fisheries.

I. 6,000 pounds trip limit per day for non-directed and small-scale gears. Under Amendment 3, small-scale gears include: cast nets, traps (excluding floating fish traps), pots, haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines, trammel nets, bait nets, and purse seines which are smaller than 150 fathom long and 8 fathom deep. Non-directed gears include: pound nets, anchored/stake gillnets, drift gill net, trawls, fishing weirs, fyke nets, and floating fish traps.

Appendix 1, section C.23:3-51.11 13 e.

II. Two authorized individuals, working from the same vessel fishing stationary multi-species gears, are permitted to work together and land up to 12,000 pounds from a single vessel, limited to one vessel trip per day. Stationary multi-species gears are defined as pound nets, anchored/stake gill nets, fishing weirs, floating fish traps, and fyke nets.

Addendum 1 was passed in 2016 following adoption of NJ's menhaden legislation, and this provision is therefore not included in our management strategy. Language to this effect has been included in the draft regulatory package and will go into effect once approved.

III. Prohibit a vessel from making multiple trips in one day.

Appendix 1, section C.23:3-51.11 13 e. The language explicitly states the incidental limit is 6,000 lbs per day, and that permitted dealers may not receive more than 6,000 lbs per day from any given harvester.

IV. Prohibit the use of multiple carrier vessels to offload catch exceeding 6,000 pounds. Although this is not explicitly included in the legislation, NJ's purse seine fishermen have indicated that the 6,000 lb trip limit is insufficient to justify a trip and have never participated in the incidental fishery. Specific language to address this loophole is included in the draft regulations.

f) For Maine through New York, a mechanism to adjust a state's quota and effort controls if opting into the episodic events set aside program. As a reminder, to be eligible to participate in the episodic events set aside, a state must implement three provisions:

i. Daily trip level harvester reporting

ii. Episodic events harvest and landings be restricted to state waters of the jurisdiction

iii. Maximum daily trip limit no greater than 120,000 pounds per vessel.

These provisions are not applicable to New Jersey.

g) For Virginia, a Chesapeake Bay Reduction Fishery Harvest Cap with the following provisions:

i. Prohibit harvest for reduction purposes within the Chesapeake Bay when 100% of the 51,000 metric tons is harvested from the Bay.

ii. A repayment mechanism to reduce the subsequent year’s harvest cap to account for an over-harvest of the cap on a pound-for-pound basis.

iii. No rollover of unused cap into the subsequent year.

These provisions are not applicable to New Jersey.

2. Monitoring Requirements

a) A catch reporting system to enable timely monitoring of a jurisdiction’s quota. As a reminder, purse seine vessels and snapper rigs are required to submit trip level reports. The states of New Hampshire, Pennsylvania, South Carolina, and Georgia are exempt from timely quota monitoring, but still must report annually via annual compliance reporting process.

Harvester reports are discussed in Appendix 1, section C.23:3-51.3 and section C.23:3-51.6. Dealer reports are discussed in Appendix 1, section C.23:3-51.7 and section C.23:3-51.8.

b) A mechanism to require timely reporting of bycatch allowance landings by non-directed fisheries through a reporting system approved by the Board in Section 2a of this template.

Reporting requirements described above apply to both the directed and incidental harvest.

c) A mandatory biological sampling program to collect age and length data from the commercial bait sector. De minimis states are not required to conduct fishery-dependent biological sampling in the menhaden fishery. States are required to collect the following:

i. One 10-fish sample (age and length) per 300 metric tons landed for bait purposes for Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Delaware.

New Jersey has collected biological samples from the bait fishery since 2006, primarily from the purse seine fishery. Beginning in 2013 with implementation of Amendment 2, sampling was expanded to achieve the required sampling intensity for all gears. The table below shows target and achieved sampling levels for the 2016 fishery. Samples from 2017 have not been tabulated, but are available upon request.

State	Total Bait Landings (pounds)	#10-fish samples required	#10-fish samples collected	Age samples collected	Length samples collected	Gear/Comments
NJ	43,714,698	66	100	1000	1000	Purse seine
NJ	2,111,775	4	13	130	130	“Other gear” grouped for confidentiality reasons; includes non-directed harvest

ii. One 10-fish sample (age and length) per 200 metric tons landed for bait purposes for Maryland, Potomac River Fisheries Commission, Virginia and North Carolina

These provisions are not applicable to New Jersey.

d) A mandatory monitoring/sampling program that requires all states with a pound net fishery collect catch and effort data elements. Mandatory data elements include:

- i. total pounds (lbs) landed per day

- ii. number of pound nets fished per day

Harvester reports are discussed in Appendix 1, section C.23:3-51.3 and section C.23:3-51.6. Data elements include catch and effort data, as shown on the New Jersey commercial reporting form provided in Appendix 2.

Appendix 1
New Jersey Atlantic Menhaden Legislation

CHAPTER 74

AN ACT concerning the taking of menhaden for bait and human food, amending P.L.1979, c.199, R.S.23:3-51, and R.S.23:3-52, and supplementing Title 23 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 73 of P.L.1979, c.199 (C.23:2B-14) is amended to read as follows:

C.23:2B-14 "Act" defined, penalties; enforcement.

73. For purposes of this section, the "act" means and includes all the new sections and amended sections contained herein, all the remaining sections of Title 50 of the Revised Statutes, sections 23:3-41, 23:3-46, 23:3-47, 23:3-48, 23:3-51, 23:3-52, 23:5-9, 23:5-16, 23:9-114, 23:9-115 and 23:9-120 of Title 23 of the Revised Statutes, sections 1, 2, and 3 of P.L.1941, c.211 (C.23:5-24.1 to 23:5-24.3), and sections 4 through 17 of P.L.2013, c.74 (C.23:3-51.2 through C.23:3-51.15).

The commissioner may utilize any or all of the following remedies for any violation of this act:

a. (1) A person who violates the provisions of this act or of any rule, regulation, license or permit adopted or issued pursuant to this act shall be liable to a penalty of not less than \$300 or more than \$3,000 for the first offense and not less than \$500 or more than \$5,000 for any subsequent offense, unless the commissioner has established an alternate penalty for a specific offense pursuant to paragraph (2) of this subsection.

(2) The Commissioner of Environmental Protection, with the approval of the Marine Fisheries Council, may, by regulation, establish a penalty schedule for any specific violation of this act or of any rule or regulation adopted pursuant to this act. No such penalty may be less than \$30 or more than \$100 for the first offense or less than \$50 or more than \$200 for any subsequent offense. Any penalty provided for by this act or by the fee schedule adopted by the commissioner shall be collected in a civil action by a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court or any municipal court shall have jurisdiction to enforce the "Penalty Enforcement Law of 1999." If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense.

b. (1) A person who violates the provisions of this act or any rule or regulation or any license or permit adopted or issued pursuant to this act shall be liable to the revocation or suspension of any license or permit held by the violator pursuant to this act for such period of time as the court may choose, except when the rule or regulation violated includes a mandatory revocation or suspension schedule in which case that schedule shall determine the period of time of the revocation or suspension.

(2) In the case of a person who knowingly violates the provisions of R.S.50:2-11, R.S.50:3-13, R.S.50:4-2 or R.S.50:4-3, or any rule or regulation or any license or permit adopted or issued pursuant thereto, the violator shall be subject to a mandatory revocation or suspension of the license or permit or privilege for the taking of oysters, clams or other shellfish held by

the violator, or in the case of a violator without the necessary license or permit the loss of the privilege to take oysters, clams or other shellfish, for a period of three years for a first offense, five years for a second offense, and 10 years for the third and any subsequent offense. For purposes of this paragraph, a knowing violator shall include, but need not be limited to: (a) a person who is the holder of a commercial shellfish license or permit; (b) a person who is the holder of a recreational shellfish license or permit who is in possession of more than the daily recreational shellfish limit; (c) a person without any shellfish license or permit who is in possession of more than the daily recreational shellfish limit; (d) a person who is the holder of a recreational shellfish license or permit who is engaging in shellfish activities with the holder of a commercial shellfish license or permit; or (e) a person without the necessary shellfish license or permit who is engaging in shellfish activities with the holder of a commercial shellfish license or permit.

c. If a person violates any of the provisions of this act, or any rule or regulation or any license or permit adopted or issued pursuant to this act, the department may institute a civil action in a court of competent jurisdiction for injunctive relief to prohibit and prevent the violation or violations and the court may proceed in the action in a summary manner.

The department is hereby authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the department as may appear appropriate and equitable under all of the circumstances.

d. In addition to the penalties prescribed by this section, a person who violates the provisions of R.S.50:2-11, R.S.50:3-13, R.S.50:4-2 or R.S.50:4-3, or any rule or regulation or any license or permit adopted or issued pursuant thereto, shall be subject to the forfeiture of any vessel, vehicle, or equipment used in the commission of the violation. A designated conservation officer of the Department of Environmental Protection, a member of the State Police, or any other law enforcement officer may seize and secure any vessel, vehicle, or equipment used in the commission of such a violation. Upon the seizure of the vessel, vehicle, or equipment, the conservation officer, member of the State Police, or other law enforcement officer shall immediately thereafter institute a civil action to determine if the forfeiture is warranted in the court in which the penalty action was filed pursuant to this section, which court shall have jurisdiction to adjudicate the forfeiture action. The owner or any person having a security interest in the vessel, vehicle, or equipment may secure its release by depositing with the clerk of the court in which the action is pending a bond with good and sufficient sureties in an amount to be fixed by the court, conditioned upon the return of the vessel, vehicle, or equipment to the Department of Environmental Protection upon demand after completion of the court proceeding. The court may proceed in a summary manner and may direct the confiscation of the vessel, vehicle, or equipment by the department for its use or for disposal by sale or public auction. Moneys collected by the department through the sale or public auction of the vessel, vehicle, or equipment shall be used by the Division of Fish and Wildlife for the enforcement of the provisions of this act.

2. R.S.23:3-51 is amended to read as follows:

License to take menhaden, prohibited takings.

23:3-51. a. Any person who intends to take menhaden with a purse seine or shirred net from any State waters, including the waters of the Atlantic ocean within three nautical miles of the State coast line, shall apply to the commissioner for a Menhaden Purse Seine Fishing Vessel

License or a Menhaden Purse Seine Fishing Vessel Operator's License, as appropriate, in accordance with the provisions of this section. Upon receipt of the application and payment of the fee required pursuant to R.S.23:3-52, the commissioner may, in the commissioner's discretion and as prescribed pursuant to sections 2 and 3 of P.L.2010, c.72, issue to the applicant a Menhaden Purse Seine Fishing Vessel License or a Menhaden Purse Seine Fishing Vessel Operator's License, as appropriate, except as prohibited by subsection b. of this section. A license issued pursuant to this section shall be valid only for the calendar year for which it is issued, and shall be renewed on an annual basis.

b. Notwithstanding the provisions of subsection a. of this section, the provisions of P.L.2013, c.74 (C.23:3-51.2 et al.), or the provisions of any other law, or any rule or regulation adopted pursuant thereto, to the contrary, the commissioner shall not issue a license for the taking of menhaden, and no person shall take menhaden, from State coastal waters, including the Delaware, Great, Raritan, and Sandy Hook bays, for the purpose of reduction, including the conversion of menhaden to fish meal, oil, or other components.

This subsection shall not be understood to prohibit the taking of menhaden in State coastal waters for the use as bait for commercial or recreational purposes or in whole frozen form for use as human food.

c. (1) The following types of vessels, and their owners or operators, are subject to licensure pursuant to this section:

(a) Any purse seine catch vessel that takes menhaden from State waters on an individual trip basis; and

(b) Any purse seine carry vessel that works in conjunction with the purse seine catch vessel identified in subparagraph (a) of this paragraph.

(2) A menhaden set vessel that participates only in the setting of a purse seine or shirred net in conjunction with a purse seine catch vessel is exempt from licensure pursuant to this section.

(3) A license issued pursuant to this section shall remain on board the licensed vessel at all times.

(4) The holder of a license issued pursuant to this section shall not use, have on board the licensed vessel, or work in conjunction with any other vessel that uses any type of fishing gear other than a purse seine or shirred net.

d. A Menhaden Purse Seine Fishing Vessel License shall be issued in the name of the vessel and the vessel's owner or owner/operator. If the vessel owner is not the operator of the vessel, a Menhaden Purse Seine Fishing Vessel License shall be issued to the vessel owner, as provided in this paragraph, and a separate Menhaden Purse Seine Fishing Vessel Operator's License shall be issued to, and in the name of, the vessel operator, in accordance with the provisions of this section and subsection c. of R.S.23:3-52.

e. (1) No vessel licensed pursuant to this section shall be greater than 90 feet in overall length.

(2) Whenever a Menhaden Purse Seine Fishing Vessel License is issued for a menhaden purse seine catch vessel pursuant to this section, the licensee shall provide the commissioner with certified baseline data indicating the overall length and horsepower of the vessel. Any upgrade or replacement of a licensed purse seine catch vessel shall be limited to a 10 percent increase in overall vessel length, and a 20 percent increase in horsepower.

f. The possession of any fish other than menhaden on a vessel licensed under this section is limited to no more than 500 pounds. The simultaneous possession aboard a vessel of a purse

seine or shirred net, menhaden, and any other fish in an amount greater than 500 pounds shall be prima facie evidence of a violation of this subsection.

g. (1) Before commencing menhaden fishing activities on any given day, a person licensed under this section shall notify the department, by phone or, if applicable and offered by the department, by electronic means, of the intention to fish under this section, and the vessel's intended fishing location. The licensee shall also notify the department, by phone or, if applicable and offered by the department, by electronic means, of any anticipated change in the vessel's fishing location. After a licensee has provided notice to the department of their intention to fish for menhaden pursuant to this section on any particular day, the licensee shall be limited, on that day, to the use of a purse seine or shirred net.

(2) Fishing for menhaden pursuant to this section shall be restricted to those areas in the Raritan, Sandy Hook, and Delaware Bays, and in the Atlantic Ocean, which are located at a distance of 0.6 nautical miles or more from the New Jersey coastline and the jetties and fishing piers extending therefrom.

(3) Fishing for menhaden in the Delaware Bay shall be further restricted to those areas of the Bay that lie south and east of LORAN C line 42850, or to any other area of the Bay, as may be designated by the commissioner.

(4) It shall be incumbent upon the vessel operator to determine whether a purse seine or shirred net is likely to drift, during fishing, beyond the fishing boundaries established by this subsection. The drifting of a purse seine or shirred net into any restricted area along the shore or around a jetty or pier while fishing shall constitute a violation of this subsection.

h. No person engaged in the act of fishing pursuant to this section shall disturb any: (a) channel designating stakes, markers, or buoys; (b) crab pots, lobster pots, fish pots, or traps; or (c) staked and leased shellfish grounds.

3. R.S.23:3-52 is amended to read as follows:

Fee.

23:3-52. a. Except as provided by subsection b. of this section, the fees for a Menhaden Purse Seine Fishing Vessel License, issued pursuant to R.S.23:3-51, shall be as follows:

- (1) For vessels owned by a resident of New Jersey:
 - (a) \$125 for each vessel not less than 30 nor more than 100 tons in gross tonnage;
 - (b) \$250 for each vessel not less than 100 nor more than 150 tons in gross tonnage;
 - (c) \$400 for each vessel not less than 150 nor more than 175 tons in gross tonnage;
 - (d) \$550 for each vessel not less than 175 nor more than 200 tons in gross tonnage;
 - (e) \$900 for each vessel more than 200 tons in gross tonnage; and
 - (f) \$20 for each vessel up to 30 tons in gross tonnage, which is used to take menhaden for bait purposes only;
- (2) For vessels owned by non-residents of New Jersey:
 - (a) \$450 for each vessel not less than 30 nor more than 100 tons in gross tonnage;
 - (b) \$700 for each vessel not less than 100 nor more than 150 tons in gross tonnage;
 - (c) \$1,000 for each vessel not less than 150 nor more than 175 tons in gross tonnage;
 - (d) \$1,150 for each vessel not less than 175 nor more than 200 tons in gross tonnage; and
 - (e) \$1,500 for each vessel more than 200 tons in gross tonnage.

b. Notwithstanding the provisions of subsection a. of this section to the contrary, if a resident of New Jersey leases a vessel from out of State, the vessel licensing fee shall be the

same as the fee that is applicable to a vessel owned or leased by a nonresident, as provided by paragraph (2) of subsection a. of this section.

c. The fee for a Menhaden Purse Seine Fishing Vessel Operator's License, issued pursuant to R.S.23:3-51, shall be \$50 for a resident of New Jersey and \$75 for a non-resident of New Jersey.

d. Gross tonnage determinations under this section shall be made using Custom House measurements.

e. Any license fees collected pursuant to this section shall be deposited in the "Marine Fisheries Management Account," established pursuant to section 14 of P.L.2013, c.74 (C.23:3-51.12).

C.23:3-51.2 Definitions relative to taking of menhaden.

4. As used in R.S.23:3-51, section 3 of P.L.2010, c.72 (C.23:3-51.1) and sections 4 through 17 of P.L.2013, c.74(C.23:3-51.2 through C.23:3-51.15):

"Bait net" means a net, including but not limited to a bait seine, cast net, dip net, lift or umbrella net, or kill pot, deployed for the purpose of taking menhaden to be landed or sold in the State.

"Commissioner" means the Commissioner of Environmental Protection.

"Dealer" means a person who is authorized, by a license issued pursuant to section 9 of P.L.2013, c.74 (C.23:3-51.7), to purchase or barter for menhaden landed in the State, and who is considered a primary buyer of menhaden.

"Fishing" means the taking of menhaden from State or federal waters.

"Gill net vessel" means a vessel that is used in the deployment of a gill net for the purpose of taking menhaden to be landed or sold in the State.

"Menhaden" means a marine fish of the herring family (*Brevoortia tyrannus*).

"Menhaden set vessel" means the smaller of two vessels, often employed in conjunction with a purse seine catch vessel, and used as a replacement for the weight of a purse seine to assist in setting the net.

"Pound net vessel" means a vessel that is used in the deployment of a pound net for the purpose of taking menhaden to be landed or sold in the State.

"Purse seine catch vessel" means a vessel that is used in the deployment of a purse seine or shirred net for the purpose of taking menhaden to be landed or sold in the State, and which may work in conjunction with a purse seine carry vessel or menhaden set vessel in the taking of menhaden by purse seine or shirred net.

"Purse seine carry vessel" means a vessel that is used to carry and land or sell menhaden that has been taken from State or federal waters, and which works in conjunction with a purse seine catch vessel or menhaden set vessel in the taking of menhaden by purse seine.

"Trawl vessel" means a vessel that is used in the deployment of a trawl for the purpose of taking menhaden to be landed or sold in the State.

C.23:3-51.3 Menhaden Landing License.

5. a. No person shall land for the purposes of sale or barter, or otherwise sell or barter, 100 pounds or more of menhaden at any time in the State, unless the person is in possession of a Menhaden Landing License which authorizes the person to participate in the directed bait and whole frozen human food fishery for menhaden.

b. (1) Any person who intends to land for the purposes of sale or barter, or otherwise sell or barter, 100 pounds or more of menhaden at any time shall submit to the commissioner an application for a Menhaden Landing License. Any license application for a Menhaden Landing License shall be filed with the commissioner prior to the annual deadline established thereby for application submission, and any application received by the commissioner after this deadline shall be denied.

(2) A Menhaden Landing License issued pursuant to this subsection shall be valid only for the calendar year for which it is issued, and shall be renewed on an annual basis. The failure of a licensee to annually renew a Menhaden Landing License in accordance with established deadlines shall result in forfeiture of the right to obtain a Menhaden Landing License in future years, except as provided by section 6 of P.L.2013, c.74 (C.23:3-51.4).

c. (1) The following types of vessels, and their owners or operators, are subject to licensure pursuant to this section:

(a) a gill net vessel that is used or is intended to be used to land 100 pounds or more of menhaden on an individual trip basis, for the purposes of sale or barter;

(b) a pound net vessel that is used or is intended to be used to land 100 pounds or more of menhaden on an individual trip basis, for the purposes of sale or barter;

(c) a trawl vessel that is used or is intended to be used to land 100 pounds or more of menhaden on an individual trip basis, for the purposes of sale or barter;

(d) a vessel that is used or is intended to be used to land, on an individual trip basis, and for the purposes of sale or barter, 100 pounds or more of menhaden taken by bait net;

(e) a purse seine carry vessel that is used or is intended to be used to land, on an individual trip basis, and for the purposes of sale or barter, 100 pounds or more of menhaden taken from State or federal waters; and

(f) a purse seine catch vessel that functions as a purse seine carry vessel and satisfies the requirements of subparagraph (e) of this paragraph.

(2) A purse seine catch vessel that does not function as a purse seine carry vessel is exempt from licensure pursuant to this section. However, the owner or operator of a purse seine carry vessel that works in conjunction with a purse seine catch vessel shall identify the purse seine catch vessel on the landing report prepared thereby.

(3) (a) No purse seine carry vessel or purse seine catch vessel functioning as a purse seine carry vessel shall be licensed pursuant to this subsection to land menhaden taken from State waters, unless the vessel is 90 feet or less in overall length.

(b) Nothing in subparagraph (a) of this paragraph shall prohibit the licensure of a purse seine carry vessel or purse seine catch vessel that is greater than 90 feet in overall length, so long as the vessel lands menhaden taken only from federal waters.

(4) A Menhaden Landing License shall be issued by the commissioner in the name of: (a) the vessel and the vessel's owner or operator; or (b) if no vessel will be used in the landing or sale of menhaden, the person applying for the license. If a purse seine carry vessel or a purse seine catch vessel functioning as a purse seine carry vessel is operated by a person who is not the owner of the vessel, the vessel operator shall be licensed separately and apart from the vessel owner.

(5) Any license issued pursuant to this section shall specify the types of gear that may be used by the licensee in the taking of menhaden to be landed thereby.

d. The holder of a Menhaden Landing License shall not use, have on board the licensed vessel, or work in conjunction with any other vessel that uses any type of fishing gear other than the type of gear specifically identified in the license.

e. A Menhaden Landing License issued pursuant to this section shall remain on board the licensed vessel, or, if no vessel is used, in the possession of the licensee, at all times.

f. A person applying for a Menhaden Landing License shall meet the following criteria:

(1) In order to obtain a license to land menhaden taken by purse seine, the vessel shall have landed in the State at least 500,000 pounds of menhaden during one year between 2009 and 2012, inclusive;

(2) In order to obtain a license to land menhaden taken by pound net, the vessel shall have landed in the State at least 100,000 pounds of menhaden during one year between 2009 and 2012, inclusive;

(3) In order to obtain a license to land menhaden taken by gill net, the vessel shall have landed in the State at least 10,000 pounds of menhaden during one year between 2009 and 2012, inclusive;

(4) In order to obtain a license to land menhaden taken by trawl, the vessel shall have landed in the State at least 200 pounds of menhaden during one year between 2009 and 2012, inclusive; and

(5) In order to obtain a license to land menhaden taken by bait net, the person shall have possessed a New Jersey Bait Net License during one year between 2009 and 2012, inclusive. If a person's application for a license to land menhaden taken by bait net is submitted in the year 2014 or thereafter, the commissioner may require the applicant to prove landings and sale of menhaden during the respective years commencing in 2013.

g. (1) A resident of the State who is licensed under this section to land menhaden taken by purse seine shall be required to pay an annual fee of \$150. A resident of the State who is licensed under this section to land menhaden taken using any other type of gear shall be required to pay an annual fee of \$50.

(2) A non-resident of the State who is licensed under this section to land menhaden taken by purse seine shall be required to pay an annual fee of \$750, or an amount equal to the non-resident fee charged for the landing of menhaden in the non-resident's state, whichever is greater. A non-resident of the State who is licensed under this section to land menhaden taken with any other type of gear shall be required to pay an annual fee of \$250, or an amount equal to the non-resident fee charged for the landing of menhaden in the non-resident's state, whichever is greater.

(3) Any license fees collected pursuant to this subsection shall be deposited in the Marine Fisheries Management Account, established pursuant to section 14 of P.L.2013, c.74 (C.23:3-51.12), and shall be dedicated for the purposes of menhaden quota management, menhaden biological monitoring, and menhaden fisheries law enforcement.

h. Nothing in this section, in R.S.23:3-51, or in any other law, or rule or regulation adopted pursuant thereto, shall prohibit a person who does not possess a Menhaden Landing License from landing 100 pounds or less of menhaden, at any time, and on any trip or day, provided that the amount of landed menhaden does not exceed 10 percent, by weight, of the total weight of all species landed, sold, or bartered.

C.23:3-51.4 Extension of time to renew Menhaden Landing License.

6. a. A licensee who is eligible for renewal of their Menhaden Landing License may request an extension of time to renew their license in accordance with this section.

b. A licensee seeking a license renewal extension shall submit a written application therefor to the commissioner, on a form developed by the commissioner. The application shall include, at a minimum:

- (1) the name of the licensee and licensed vessel, if any;
- (2) the licensee's Menhaden Landing License number;
- (3) a detailed explanation as to why the extension is needed, including a statement specifying the type and degree of hardship that prevented the timely renewal of the license, and the hardship that will result to the licensee if the license is not renewed; and
- (4) any other appropriate documentation as may be necessary to support the application.

c. An application for license renewal extension shall be approved if the commissioner determines that:

- (1) by reason of extraordinary hardship or exceptional situation or condition, the licensee was precluded from complying with the renewal requirements;
- (2) strict compliance with the renewal requirements provided by law would result in exceptional and undue hardship to the licensee;
- (3) the circumstances supporting the conclusions made in paragraphs (1) and (2) of this subsection were not created by the licensee or persons under the licensee's control; and
- (4) approval of the extension will not unreasonably interfere with the orderly administration of the directed bait or whole frozen human food fishery for menhaden.

d. Within 30 days after receipt of an application for license renewal extension, the commissioner shall approve or deny the application, and shall provide written notice of this determination to the licensee. A licensee whose application for extension is denied may appeal the decision in accordance with the procedure for contested cases under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.23:3-51.5 Transfer of license.

7. a. Upon application to, and approval by, the department, the holder of a Menhaden Purse Seine Fishing Vessel License, issued pursuant to R.S.23:3-51, or the holder of a Menhaden Landing License, issued pursuant to section 5 of P.L.2013, c.74 (C.23:3-51.3), may transfer their license as follows:

- (1) To a replacement vessel when the vessel named in the license is replaced by the licensee; or
- (2) To a new owner of the vessel named in the license when the vessel is sold or otherwise transferred to another person.

b. The following limitations shall apply to any license transfer undertaken pursuant to paragraph (1) of subsection a. of this section:

- (1) a license shall only be transferrable to a replacement vessel that employs the same type of fishing gear identified in the original license;
- (2) a license that is applicable to a purse seine catch vessel shall only be transferrable to a replacement purse seine catch vessel, and a license that is applicable to a purse seine carry vessel shall only be transferrable to a replacement purse seine carry vessel;
- (3) a license that is applicable to a purse seine catch vessel or a purse seine carry vessel shall be transferrable to a replacement vessel only if the replacement vessel is not more than 10 percent larger in overall length than the originally licensed purse seine catch vessel or 10

percent larger in the hold capacity of the originally licensed purse seine carry vessel, as measured in cubic feet, and not more than 20 percent more powerful in terms of horsepower, than either originally licensed vessel.

c. A person who transfers a license pursuant to paragraph (2) of subsection a. of this section shall no longer be eligible to obtain a Menhaden Landing License based upon the landing history of the vessel being sold.

d. An applicant for a license transfer shall submit an application to the commissioner, on a form developed by the commissioner, and no license shall be transferred pursuant to this section without the prior approval of the commissioner.

e. A person shall not be eligible for transfer of their license pursuant to this section if: (1) their license is pending suspension or has been suspended pursuant to section 15 of P.L.2013, c.74 (C.23:3-51.13); or (2) the licensee is subject to court action for a violation of R.S.23:3-51 or P.L.2013, c.74 (C.23:3-51.2 et al.).

C.23:3-51.6 Monthly report by licensee to commissioner.

8. a. The holder of a Menhaden Landing License shall submit a monthly report to the commissioner, on a form developed by the commissioner. The licensee shall attest to the validity of the information contained in the monthly report, and shall electronically submit the report to the department using a method approved by the commissioner. If no landing, sale, or barter of menhaden occurred during the month, the licensee shall submit a report to that effect.

b. The monthly report shall include, at a minimum, the following information, which shall be reported on an individual trip basis:

- (1) the name of the licensee and licensed vessel, if any;
- (2) the licensee's Menhaden Landing License number;
- (3) the name of the purse seine catch vessel, if any, which was used in conjunction with the licensed vessel;
- (4) the total amount, in pounds, of menhaden landed by the licensee or licensed vessel;
- (5) the total amount, in pounds, of menhaden discarded by the licensee or licensed vessel;
- (6) the location of harvest;
- (7) the type of gear used for harvest;
- (8) the ports used for the landing of menhaden;
- (9) the date on which, and the dealer to whom, any landed menhaden was sold or bartered by the licensee; and
- (10) any other information required by the department.

c. (1) In addition to any other penalties provided by section 73 of P.L.1979, c.199 (C.23:2B-14), by P.L.2013, c.74 (C.23:3-51.2 et al.), or by any other law, any licensee who fails to submit a monthly report on or before the 10th day of the month following the month of record shall be subject to a fine of \$50 for a first offense, \$100 for a second offense, and \$200 for any subsequent offense.

(2) Any fines collected pursuant to this subsection shall be deposited in the Marine Fisheries Management Account, established pursuant to section 14 of P.L.2013, c.74 (C.23:3-51.12), and shall be dedicated for the purposes of menhaden quota management, menhaden biological monitoring, and menhaden fisheries law enforcement.

C.23:3-51.7 Menhaden Dealer License.

9. a. No person shall purchase or barter for menhaden landed in the State, as the first point of sale, unless the person is in possession of a Menhaden Dealer License. No menhaden landed in the State shall be sold or traded to any person who is not licensed under this section.

b. (1) Any person who intends to purchase or barter for menhaden landed in the State shall submit to the commissioner an application for a Menhaden Dealer License.

(2) A Menhaden Dealer License issued pursuant to this subsection shall be valid only for the calendar year for which it is issued, and shall be renewed on an annual basis.

c. No person shall act as the point of sale for menhaden landed in the State unless the person is in possession of both a Menhaden Landing License, issued pursuant to section 5 of this act, and a Menhaden Dealer License, issued pursuant to this section. Any person in possession of a Menhaden Landing License and not selling menhaden to a licensed Menhaden dealer shall also possess a Menhaden Dealer License, and shall report any sales on a weekly basis, in accordance with the provisions of section 10 of this act.

d. The holder of a Menhaden Dealer License, issued pursuant to this section, shall not accept 100 pounds or more of menhaden per day from any person unless that person is in possession of a Menhaden Landing License issued pursuant to section 5 of P.L.2013, c.74 (C.23:3-51.3).

e. (1) A State resident who is licensed as a menhaden dealer pursuant to this section shall be required to pay an annual fee of \$100.

(2) A non-resident of the State who is licensed as a menhaden dealer pursuant to this section shall be required to pay an annual fee of \$500, or an amount equal to the non-resident fee charged to a menhaden dealer in the non-resident's state, whichever is greater.

(3) Any license fees collected pursuant to this subsection shall be deposited in the Marine Fisheries Management Account, established pursuant to section 14 of P.L.2013, c.74 (C.23:3-51.12), and shall be dedicated for the purposes of menhaden quota management, menhaden biological monitoring, and menhaden fisheries law enforcement.

C.23:3-51.8 Weekly report by holders of Menhaden Dealer License.

10. a. The holder of a Menhaden Dealer License shall submit a weekly report to the commissioner, on forms developed by the commissioner. The licensee shall attest to the validity of the information contained in the weekly report, and shall electronically submit the report to the department. If no purchase or trade of menhaden occurred during the week, the licensee shall submit a report to that effect. For the purposes of this section, a week shall begin on Sunday and end on Saturday.

b. The weekly report shall include, at a minimum, the following information:

- (1) the name of the licensee;
- (2) the licensee's Menhaden Dealer License number;
- (3) the Menhaden Landing License number of each person selling or trading menhaden to the dealer during the preceding week;
- (4) the total amount, in pounds, of menhaden purchased or traded during the preceding week;
- (5) the location of harvest for menhaden purchased or traded during the preceding week;
- (6) the type of gear used for the harvest of menhaden purchased or traded during the preceding week;
- (7) the date of purchase or trade; and
- (8) any other information required by the department.

c. (1) In addition to any other penalties provided by section 73 of P.L.1979, c.199 (C.23:2B-14), by P.L.2013, c.74 (C.23:3-51.2 et al.), or by any other law, if a licensed menhaden dealer fails to submit a weekly report, as required by this section, either on or before 12:00 p.m. on the Tuesday following the week of record, the licensee shall be subject to a fine of \$50 for a first offense, \$100 for a second offense, and \$200 for any subsequent offense.

(2) Any fines collected pursuant to this subsection shall be deposited in the Marine Fisheries Management Account, established pursuant to section 14 of P.L.2013, c.74 (C.23:3-51.12), and shall be dedicated for the purposes of menhaden quota management, menhaden biological monitoring, and menhaden fisheries law enforcement.

C.23:3-51.9 Permitted removal of fish harvested.

11. Removal, from a purse seine, of fish harvested from the waters of the State shall be by brailing or dip net only. No fish pump shall be on board any vessel operating under a license, for the purpose of taking menhaden for bait or human food purposes, unless the pump is completely covered and securely fastened with a brightly colored tarp or other material, and the pump intake or hose is disconnected from the pump and is securely stowed away from the pump so that it is not readily available for use when the vessel is fishing in State waters.

C.23:3-51.10 Requirements for licensees relative to littering, cleanup.

12. a. The holder of a Menhaden Purse Seine Fishing Vessel License or a Menhaden Purse Seine Fishing Vessel Operator's License, issued pursuant to R.S.23:3-51, and the holder of a Menhaden Landing License, issued pursuant to section 5 of P.L.2013, c.74 (C.23:3-51.3) shall not throw overboard, or otherwise release from a vessel or its nets into the waters of the State: (1) any quantity of dead fish, except during the course of normal fishing operations; or (2) any refuse, litter, or garbage of any kind.

b. Whenever any fish, fish parts, refuse, litter, or garbage of any kind is released during, or as a result of, a menhaden fishing or landing operation, in violation of the provisions of subsection a. of this section, the holder of a Menhaden Purse Seine License or a Menhaden Landing License, as the case may be, shall report the release to the department as soon as possible and initiate a cleanup of the release within 24 hours thereof, at the licensee's expense, if the release is likely to impact the shoreline.

c. In the event that a licensee fails to initiate a cleanup, in accordance with the provisions of subsection b. of this section, within 24 hours after a release begins, the department may conduct or arrange for the cleanup of the release. However, the licensee shall be liable to pay all costs associated with the cleanup, including any administrative costs incurred by the department. Costs imposed pursuant to this subsection may include the costs associated with damages to, or the cleanup of, marine and estuarine waters of the State, or the State's beaches, shorelines, and marshes.

C.23:3-51.11 Annual State menhaden catch quota.

13. a. (1) The annual State menhaden catch quota shall be established by the Atlantic States Marine Fisheries Commission. The commissioner may request a quota transfer from other states or regions, in accordance with the administrative procedure outlined by the Atlantic States Marine Fisheries Commission.

(2) The commissioner shall divide and allocate the annual State menhaden catch quota as provided in this paragraph. The annual New Jersey menhaden bait quota shall be divided

among the various gear types, with the purse seine fishery being allocated 95 percent of the quota, and pound nets, gill nets, trawls, and bait nets being allocated the remaining five percent, combined. If the quota for any gear type is exceeded, the overharvested amount shall be deducted from the following year's quota.

b. The season for fishing and landing menhaden in the State shall be:

(1) January 1 to December 31 for licensees taking menhaden, or landing menhaden taken, by purse seine;

(2) January 1 to December 31 for licensees taking menhaden, or landing menhaden taken, by gill net;

(3) January 1 to December 31 for licensees taking menhaden, or landing menhaden taken, by pound net;

(4) January 1 to December 31 for licensees taking menhaden, or landing menhaden taken, by trawl; and

(5) January 1 to December 31 for licensees taking menhaden, or landing menhaden taken, by bait net.

c. No person who intends to take menhaden with a purse seine or shirred net shall fish for menhaden in the State:

(1) on a Saturday or Sunday;

(2) on the days on which a public holiday is officially observed by the State, as declared pursuant to R.S.36:1-1; or

(3) at any time, except during the hours from sunrise to sunset.

d. (1) The commissioner shall close the menhaden season in the State, for each respective gear type, by giving not less than two days' notice of the projected date that the year's quota for that gear type will be landed.

(2) If the menhaden season is closed prematurely, the commissioner may reopen the season for a specified period of time, upon no less than two days' notice.

(3) Any notice required pursuant to this subsection shall be made available for public viewing on the department's Internet website, and shall be issued electronically, via e-mail, to all the holders of a Menhaden Purse Seine Fishing Vessel License, a Menhaden Purse Seine Fishing Vessel Operator's License, a Menhaden Landing License, and a Menhaden Dealer License. Each such licensee shall be required, at the time of licensure, to provide the commissioner with their e-mail address, in order to facilitate the provision of notice pursuant to this section.

e. If the season for a particular gear type is closed because the quota amount allocated to that gear type has been harvested and landed: (1) the holder of a Menhaden Landing License for that gear type may continue to land an incidental catch of up to 6,000 pounds of menhaden per day; and (2) the holder of a Menhaden Dealer License may continue to accept from a Menhaden Landing License holder an incidental catch of not more than 6,000 pounds of menhaden per day. The incidental catch allowance authorized by this subsection shall not be applied to the annual menhaden catch quota established by the Atlantic States Marine Fisheries Commission.

C.23:3-51.12 "Marine Fisheries Management Account."

14. There is established within the General Fund, a separate, dedicated, and non-lapsing account to be known as the "Marine Fisheries Management Account." This account shall be credited with all revenues received from the issuance of Menhaden Purse Seine Fishing Vessel

Licenses and Menhaden Purse Seine Fishing Vessel Operator's Licenses pursuant to R.S.23:3-51 and R.S.23:3-52, and all revenues received from the issuance of Menhaden Landing Licenses and Menhaden Dealer Licenses pursuant to sections 5 and 9 of P.L.2013, c.74 (C.23:3-51.3 and C.23:3-51.7). The moneys in the Marine Fisheries Management Account shall be allocated to the Division of Fish and Wildlife, Marine Fisheries Administration within the Department of Environmental Protection, and shall be dedicated for quota management, biological monitoring, and fisheries law enforcement in connection with marine fisheries.

C.23:3-51.13 Violations, penalties.

15. a. A person who violates any provision of R.S.23:3-51, R.S.23:3-52, or P.L.2013, c.74 (C.23:3-51.2 et al.) shall be subject to the penalties prescribed in section 73 of P.L.1979, c.199 (C.23:2B-14). In addition to those penalties, if a licensee: (1) falsifies or misrepresents any information contained in a report submitted pursuant to section 8 of P.L.2013, c.74 (C.23:3-51.6) or section 10 of P.L.2013, c.74 (C.23:3-51.8); (2) fails to report a release as required by section 12 of P.L.2013, c.74 (C.23:3-51.10); or (3) fishes in, or allows a purse seine or shirred net to drift into, any restricted fishing area, as prohibited by subsection g. of R.S.23:3-51, the licensee shall be subject to the following periods of license suspension:

- (1) a 30-day suspension of their license for a first offense;
- (2) a 60-day suspension of their license for a second offense; and
- (3) a 180-day suspension of their license for a third or subsequent offense.

b. (1) If a license is suspended pursuant to subsection a. of this section, and, for three years thereafter, the licensee does not commit another offense warranting suspension of their license, the initial offense warranting license suspension shall be removed from consideration in determining an applicable term of license suspension for any offense committed by the licensee after that three-year period.

(2) The forgiveness of prior offenses provided for by this subsection shall apply only to those determinations that pertain to the calculation of applicable license suspension periods. All prior offenses shall be taken into account in the calculation of any monetary penalties provided for by P.L.2013, c.74 (C.23:3-51.2 et al.).

c. A license suspension imposed pursuant to this section shall be applicable to both the licensee and the licensed vessel, if any, and shall be carried out during the normal season of fishing operations, which extends from May 15 through October 15 of each year. If the duration of a license suspension period is not completed during the current year's normal season of fishing operations, the balance of the license suspension shall be made up during the following year's normal season of fishing operations.

C.23:3-51.14 Compliance with instructions, signals of law enforcement officer.

16. In order to facilitate enforcement of R.S.23:3-51 and P.L.2013, c.74 (C.23:3-51.2 et al.) the operator of, or any other person on board, a vessel that is subject to the provisions of R.S.23:3-51 or P.L.2013, c.74 (C.23:3-51.2 et al.), shall immediately comply with the instructions and signals of a law enforcement officer, and shall facilitate the officer's safe boarding, and the inspection by such officer of the vessel, its gear, equipment, catch, and any area where fish may be stored.

C.23:3-51.15 Modifications of requirements by commissioner.

17. The commissioner may, with the approval of the New Jersey Marine Fisheries Council, modify the requirements of R.S.23:3-51, R.S.23:3-52, and P.L.2013, c.74 (C.23:3-51.2 et al.) if such modifications are determined to be necessary either to provide for the optimal utilization of any quotas established for menhaden fishing, or to maintain consistency or State compliance with any menhaden fisheries management plan that has been approved by the Atlantic States Marine Fisheries Commission or any federal fishery management council and adopted by the National Marine Fisheries Service. In particular, upon authorization of the New Jersey Marine Fisheries Council, and in accordance with the provisions of this section, the commissioner may modify the following provisions of law:

a. the qualifications for licensure under R.S.23:3-51, or under section 5 or 9 of P.L.2013, c.74 (C.23:3-51.3 or C.23:3-51.7), including any fee amounts required for licensure under those sections;

b. the qualifications for the transfer of a license under section 7 of P.L.2013, c.74 (C.23:3-51.5);

c. the license suspension schedule established by section 15 of P.L.2013, c.74 (C.23:3-51.13);

d. the specifications applicable to vessel upgrades and replacements, as provided by R.S.23:3-51 or section 7 of P.L.2013, c.74 (C.23:3-51.5);

e. the reporting requirements established by section 8 or section 10 of P.L.2013, c.74 (C.23:3-51.6 or C.23:3-51.8);

f. the quota allocation formula established by subsection a. of section 13 of P.L.2013, c.74 (C.23:3-51.11);

g. the season for menhaden fishing established by subsection b. of section 13 of P.L.2013, c.74 (C.23:3-51.11); or

h. the incidental catch allowance provided by subsection e. of section 13 of P.L.2013, c.74 (C.23:3-51.11), or the allocation of that incidental catch allowance to the State's annual quota.

18. This act shall take effect immediately.

Approved June 27, 2013.

Atlantic Menhaden

Amendment #3 Implementation Plan for Calendar Year 2018

Commonwealth of Pennsylvania

Pennsylvania Fish and Boat Commission

1. Commercial Fishery Management Measures

- a. No commercial fishery for Atlantic Menhaden exists in Pennsylvania nor may Atlantic Menhaden be taken from the wild in Pennsylvania and sold, traded, exported, or otherwise offered for sale or barter whether dead or live. Menhaden only occur in the Delaware River Estuary with Pennsylvania.

2. Monitoring Requirements

- a. As no commercial fishery exists in Pennsylvania no monitoring is required.
- b. There are no other commercial fisheries in the Pennsylvania portion of the Delaware River Estuary so there is no opportunity for Atlantic menhaden to become bycatch.

3. Recreational Fishery

- a. Season: Open all year.
- b. No minimum length.
- c. Possession limit: 50 per day. Fish bait and baitfish dealers are authorized to have more than 50 Atlantic Menhaden in possession providing dealers have a "paper trail" documenting the receipt of Menhaden transported into the Commonwealth.
- d. Gear restrictions: Dip net or minnow seine not over four feet square or in diameter. Snagging hooks may not be used or possessed while in the act of fishing.
- e. Estimate of recreational harvest by season: Not available.



State of Delaware Atlantic Menhaden Amendment 3 Compliance Plan

December 10, 2017

1. Commercial Fishery Management Measures

- a) Delaware's Total Allowable Catch (TAC) of Atlantic menhaden for 2018 is 0.51% of the total TAC or 2,423,520 lbs. Delaware has regulations (below) that give the Division of Fish and Wildlife (the Division) authority to close Atlantic menhaden fisheries once the TAC has been reached. Delaware has sent dated closure notices to the Atlantic States Marine Fisheries Commission (ASMFC) when Delaware's TAC was reached in previous years under Amendment 2 provisions. However, Delaware's Amendment 3 TAC is so much greater than its landings in any previous year that Delaware is unlikely to close its menhaden fisheries under Amendment 3.
- b) Delaware has menhaden regulations that allow its TAC to be changed whenever required under Amendment 3.
- c) Delaware anticipates having unused TAC. The 2018 TAC is approximately 1,500% of 2017 landings. Delaware relinquished 2,000,000 lbs. of its 2018 TAC, but may still have unused TAC. Delaware has transferred quota in other fisheries and does not anticipate having any difficulty in transferring Atlantic menhaden TAC in 2018 should Delaware be able to fulfill such a request for unused TAC.
- d) Delaware will not have a TAC overage in 2018.
- e) The only fisheries in Delaware that regularly catch Atlantic menhaden are the gill net fisheries. The gill net fisheries in Delaware do not target Atlantic menhaden. None of Delaware's gill net permit holders have the holding capacity on their boats to exceed the 6,000 lb. daily bycatch limit.
- f) Delaware will not opt in to the episodic event fishery.

2. Monitoring Requirements

- a) Delaware has an Interactive Voice Response (IVR) system for landings reports. Harvesters are required to call in their Atlantic menhaden landings of menhaden within 24 hours of weigh out of their landings. Harvesters are required to submit monthly landings of all fish on a trip level basis and the reports include the following:
 - 1. Date
 - 2. Vessel Registration Number
 - 3. Fisherman ID
 - 4. Trip ID
 - 5. Species
 - 6. Pounds landed
 - 7. Disposition
 - 8. Landing Port
 - 9. Gear
 - 10. Amount of gear
 - 11. Number of sets
 - 12. Area fished
- b) The IVR system for landings reports will be used for bycatch reporting, should there be any bycatch.
- c) Delaware will collect the required biological samples. Delaware will be required to collect one 10-fish sample based on 2016 landings.
- d) Delaware does not have a pound net fishery.

DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Fish and Wildlife

3500 Tidal Finfish

Atlantic Menhaden

3588 Atlantic Menhaden

1.0 Atlantic Menhaden Quota

1.1 The annual quota for Atlantic menhaden shall be determined in accordance with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Menhaden and its subsequent amendments and addenda.

1.2 Any person who has been issued a valid commercial food fishing license may take and reduce to possession Atlantic menhaden during the period beginning at 12:01 AM January 1 and ending when the Department has determined that the annual Atlantic menhaden quota has been landed. The Department shall establish, based on recent fishery performance and landings, a date and time to order the directed fishery closed.

2.0 Atlantic Menhaden Bycatch Allowance

2.1 It is unlawful for any person who has been issued a valid commercial food fishing license to take and reduce to possession more than 6,000 pounds of Atlantic menhaden during any one day once the Department has determined that the Atlantic menhaden fishery is closed.

2.2 It shall be unlawful for any person who has been issued a valid commercial food fishing license or any vessel, regardless of the number of licensed commercial fisherman onboard that vessel, to possess or land more than 6,000 pounds of Atlantic menhaden in any one (1) day once the Department has determined the annual Atlantic menhaden fishery is closed.

3.0 Atlantic Menhaden Reporting Requirements

3.1 It is unlawful for any person who has been issued a valid commercial food fishing license to not accurately and completely report their Atlantic menhaden landings to the Department, via the interactive voice phone reporting system, within 24 hours of landing.

3.2 In addition to the requirement to phone in daily landing reports, it is unlawful for any person who has been issued a valid commercial food fishing license to not accurately and completely compile and file monthly log sheets detailing their daily landings of Atlantic menhaden on forms supplied by the Department. These forms must be submitted by the 10th of the month next ensuing. Failure to submit these monthly reports on a timely basis may be cause for revocation or non-renewal of their commercial food fishing license.

4.0 Atlantic Menhaden Landing Restrictions

It is unlawful for any person who has been issued a valid commercial food fishing license to offload Atlantic menhaden to any other vessel or means of conveyance prior to landing.

17 DE Reg. 648 (12/01/13)

Maryland's Implementation Plan for Amendment 3 to the Interstate Fishery Management Plan for Atlantic Menhaden

December 13, 2017

1. Commercial Fishery Management Measures

- a) A mechanism to close the directed commercial fisheries in Maryland is already in place, and can be found in section C(2) of the current regulation (see below).
- b) A mechanism to adjust Maryland's yearly quota as required by ASMFC is already in place, and can be found in section A (1) of the current regulation (see below).
- c) A mechanism to enable the transfer of unused quota between states, if warranted, and the ability to adjust Maryland's quota as it relates to the transfer of quota is in place through section A (1) of the current regulation (see below).
- d) A mechanism allowing pound-for-pound pay back to reduce the subsequent year's quota to account for any overharvest of Maryland's current year quota is already in place, and can be found in section A(2) of the current regulation (see below).
- e) A mechanism for an incidental catch and small-scale fishery provision following the harvest of Maryland's quota and closure of the directed fisheries are already in place. The closure and bycatch limits would be announced through a public notice as established in sections B and F of the attached regulation (see below). The landing limits by gear in i. through iv. below will be established via public notice if Maryland's quota is met.

i. Maryland will allow pound net fishermen to apply for a Menhaden Bycatch Landing Permit, which will allow the harvest of up to 6,000 pounds per day. Details of requirements and limitations of the permit are set forth in section D of current regulation (see below). All other gear, and non-permitted pound net fishermen, will be restricted to a 1,500 pound per day limit after the open season closes. All gear currently being used for menhaden in Maryland are in either the small scale or non-directed category (purse seining is not legal in Maryland).

ii. Only multiple fishermen with a Menhaden Bycatch Landing permit harvesting from one vessel will be allowed to utilize the 12,000 pound limit provision, and only pound net fishermen may apply for the permit.

iii. During the bycatch period harvesters will be limited to landing menhaden once per day or trip, whichever is longer.

v. The use of multiple carrier vessels to land more than the established limits by one harvester will not be permitted.

- f) Maryland is not eligible to participate in the episodic events set aside program, which sets aside 1% of the coast wide TAC for the New England states (Maine - New York) because they have sporadic availability of menhaden in their waters. This allows access to the fish in years when fish are present.
- g) The Chesapeake Bay reduction fishery harvest cap only applies to Virginia, since Maryland does not have a reduction fishery.

2. Monitoring Requirements

- a) Maryland currently has a timely reporting system for monitoring the quota in place through section E within the current regulation (see below).
- b) Maryland currently has a timely reporting system for monitoring the bycatch fishery in place through section E within the current regulation (see below).
- c) Maryland will continue to collect age and length samples through the existing Maryland Onboard Pound Net Survey, and supplement this sampling with fish dealer sampling when necessary to meet the one 10 fish sample per 200 metric tons of menhaden landed requirement.
- d) Maryland will continue to require pound net fishermen to report the number of nets fished and the pounds of menhaden landed per day

Maryland's current Atlantic Menhaden Regulation

08.02.05.07.07 Atlantic Menhaden.

A. Quota.

(1) The annual total allowable landings of Atlantic menhaden for the commercial fishery is set by the Atlantic States Marine Fisheries Commission and shall be published through a public notice issued in accordance with §F of this regulation.

(2) Any annual overages of the quota will be deducted from the subsequent year's quota.

B. Seasons. A public notice shall be issued in accordance with §F of this regulation when the quota and season are approved by the Atlantic State Marine Fisheries Commission.

C. Commercial Catch Limits.

(1) Prior to the State quota in §A of this regulation being met or exceeded, there is no catch limit for Atlantic menhaden.

(2) Upon the State quota being met or exceeded, the catch limit for Atlantic menhaden and the harvest rate at which an Atlantic menhaden bycatch allowance landing permit is required shall be established and may be modified through a public notice issued in accordance with §F of this regulation.

D. Atlantic Menhaden Bycatch Allowance Landing Permits.

(1) An individual may apply for an Atlantic menhaden bycatch allowance landing permit if, as of February 18, 2013, the individual had a pound net site registered with the Department.

(2) An individual may be issued only one Atlantic menhaden bycatch allowance landing permit.

(3) A permittee shall have in possession the Atlantic menhaden bycatch allowance landing permit when engaged in permitted activities.

(4) Operators.

- (a) An operator means an individual who is not a permittee and acts as an agent of a permittee.
- (b) The only person a permittee may use as the operator of their Atlantic menhaden bycatch allowance landing permit is the individual the permittee has designated as the authorized user of the permittee's commercial fishing license in accordance with Natural Resources Article, §4-701(k)(7), Annotated Code of Maryland.
- (c) An operator may only fish the pound nets that the permittee has:
 - (i) Registered in the permittee's name; and
 - (ii) Notified the Department as being active in accordance with Regulation .01C of this chapter.
- (d) When engaged in permitted activities, an operator shall be:
 - (i) In possession of the permittee's tidal fish license and Atlantic menhaden bycatch allowance landing permit; and
 - (ii) On the vessel named on the permittee's tidal fish license.
- (5) Atlantic menhaden bycatch allowance landing permits may not be transferred and are valid only for the named individual on the permit card or their operator as described in §D(4) of this regulation.
- (6) A permittee or a permittee's operator shall be on board any boat harvesting Atlantic menhaden under an Atlantic menhaden bycatch allowance landing permit.

E. Reporting.

- (1) Reporting Requirements. In addition to the requirements of Natural Resources Article, §4-206, Annotated Code of Maryland:
 - (a) Any Atlantic menhaden harvested from a pound net must be reported on the day of harvest in the manner specified by the Department; and
 - (b) An Atlantic menhaden bycatch allowance landing permittee shall report in the manner specified by the Department.
- (2) Reporting Penalties.
 - (a) The Department may suspend the holder of an Atlantic menhaden bycatch allowance landing permit from participation in the menhaden fishery for up to 90 days per violation for failing to comply with §E(1)(b) of this regulation.
 - (b) In addition to any other penalty, the Department may deny an application for an Atlantic menhaden bycatch allowance landing permit for failing to comply with §E(1) of this regulation during the previous season.
 - (c) Prior to suspending a permit under this regulation or denying an application for a permit, the Department shall give the licensee notice of its intended action and an opportunity to appear at a hearing conducted in accordance with the contested case procedures set forth in State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 08.01.14.

F. General.

- (1) When the menhaden quota, established by the Atlantic States Marine Fisheries Commission, has been met, the Secretary may issue a public notice on the Fisheries Service website to modify the season and catch limits in compliance with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan.
- (2) The Secretary shall make a reasonable effort to disseminate a public notice issued under this section through various other media so that an affected individual has a reasonable opportunity to be informed.
- (3) A violation of the restrictions set by the Secretary in accordance with section is a violation of this regulation.



MARYLAND - VIRGINIA
"Potomac River Compact of 1958"

Potomac River Fisheries Commission

222 Taylor Street
P.O. BOX 9

Colonial Beach, Virginia 22443

TELEPHONE: (804) 224-7148 · (800) 266-3904 · FAX: (804) 224-2712

www.prfc.us prfc@verizon.net



Atlantic Menhaden Implementation Plan

January 2018

The Potomac River Fisheries Commission's (PRFC) Atlantic menhaden allocation for 2018 was determined by the ASMFC to be 1.07 percent of the coastwide TAC (2,709,809 lbs.).

1. Commercial Fishery Management Measures

a) The PRFC will maintain the daily harvester reporting on a weekly basis. We will be closely tracking the menhaden commercial harvest from the Potomac River in 2018. Since the pound net fishery accounts for 99 percent of the menhaden harvest, pound net fishermen will be required to call-in their weekly total menhaden harvest when 70 percent of the catch limit is projected to be landed. All pound net fishermen and significant buyers will be notified by phone when 90 percent of the catch limit is reached and when the fishery shall be closed. A closure notice will be mailed to all PRFC licensed fishermen.

b) The PRFC adopted Order #2017-08 which declared and ordered the catch limit of menhaden for 2018 for the Potomac River. In the event that the ASMFC needs to adjust the allocation for the Potomac, the PRFC can revise this Order and it will become effective ten days after its adoption.

c) TAC transfers, if any, will be on a case by case basis as needed. The ASMFC will be notified as to the date, amount, the transferor and the transferee of any such transactions.

d) Any overage of the 2018 PRFC allocation of the TAC will be subtracted from the 2019 PRFC allocation of the TAC.

e) The PRFC adopted Order #2017-08 which declared and ordered when the PRFC Atlantic menhaden catch limit is reached, all commercial fisheries shall be closed to all gear types.

i, ii, iii, and iv) PRFC Order #2017-08 declared and ordered when the commercial fisheries for Atlantic menhaden are closed, subject to the provisions of the ASMFC Amendment 2 and Addendum I to the IFMP for Atlantic Menhaden, PRFC commercial fishermen using stationary multi-species gear are permitted to possess and/or land no more than 6,000 pounds of Atlantic menhaden for a single vessel per day, which must be harvested by the licensee from his licensed net(s). In this case, stationary multi-species gears are defined as pound nets, anchored/staked gill nets, and fyke nets. Exception – a single vessel may land/possess no more than 12,000 pounds of Atlantic menhaden per day when there are two PRFC pound net

licensees physically on board who each have at least one of their pound nets set and fishing and prior to the fishery being closed and the bycatch provisions being implemented, no more than 6,000 pounds of Atlantic menhaden are harvested from either of the licensees nets. Notwithstanding the provisions of Order #2017-08, the PRFC reserves the right to modify Order #2017-08 to be equivalent to any other state's ASMFC approved by-catch provision.

iv) PRFC Regulation II, Section 5 requires that every person licensed by the Commission to harvest seafood must keep accurate and complete daily account of their catch and submit these reports to the PRFC on a weekly basis. These reports include the required data elements.

f) N/A

g) N/A

2. Monitoring Requirements

a) (i) For the Potomac River, harvesters are required to submit daily harvest reports on a weekly basis.

ii) The PRFC requires trip level reporting by the harvester for each gear type, and the harvest report includes the data reporting elements as required by the ACCSP.

iii) N/A – No purse nets and/or snapper rigs are allowed to fish in the Potomac River.

iv) For the Potomac River, harvesters are required to submit daily harvest reports on a weekly basis.

b) During the closed season, only pound net, gill net and fyke net licensees will be permitted to land the by-catch allowance of up to 6,000 pounds of menhaden for a single vessel per day. These fishermen will be required to continue to submit daily harvest reports on a weekly basis. All menhaden reported by pound nets, gill nets and fyke nets after the season is closed to harvest will be tabulated and reported as by-catch.

c) The PRFC has been participating in a menhaden biological sampling program since 2010 by collecting 10-fish samples from pound net fishermen on a monthly basis. The PRFC will continue this biological sampling program in 2018.

d) The PRFC compiles catch and effort data from the mandatory daily harvest reports for the pound net fishery, including total pounds landed per day and number of pound nets fished per day. For sampling, see 2(c) above.

3. *De minimis* – N/A

POTOMAC RIVER FISHERIES COMMISSION

ORDER #2013-08

COMMERCIAL ATLANTIC MENHADEN CATCH LIMITS AND RESTRICTIONS

THE POTOMAC RIVER FISHERIES COMMISSION, having found it necessary to comply with certain provisions of the Atlantic States Marine Fisheries Commission (ASMFC) Amendment 2 and Addendum I to the Interstate Fishery Management Plan (IFMP) for Atlantic Menhaden and the provisions of Regulation I, Section 7(a)(2):

HEREBY DECLARES AND ORDERS: the catch limit for Atlantic menhaden provided for in Regulation III, Section 10(a) shall be 2,709,809 pounds. A weekly menhaden harvest call-in program will be imposed when 70 percent of the catch limit is projected to be landed. When the PRFC Atlantic menhaden catch limit is reached, all commercial fisheries shall be closed to all gear types.

BE IT FURTHER DECLARED AND ORDERED: When the commercial fisheries for Atlantic menhaden are closed, subject to the provisions of the ASMFC Amendment 2 and Addendum I to the IFMP for Atlantic Menhaden, PRFC commercial fishermen using stationary multi-species gear are permitted to possess and/or land no more than 6,000 pounds of Atlantic menhaden for a single vessel per day, which must be harvested by the licensee from his licensed net(s). In this case, stationary multi-species gears are defined as pound nets, anchored/staked gill nets, and fyke nets. Exception – a single vessel may land/possess no more than 12,000 pounds of Atlantic menhaden per day when there are two PRFC pound net licensees physically on board who each have at least one of their pound nets set and fishing and prior to the fishery being closed and the by-catch provisions being implemented, no more than 6,000 pounds of Atlantic menhaden are harvested from either of the licensees nets.

AND IT IS FURTHER DECLARED AND ORDERED: this Order #2017-08 shall become effective June 10, 2017 shall supersede and repeal 2016-10 “Revised”, and remain in effect until June 1, 2018.

This Order was duly adopted by the Potomac River Fisheries Commission on June 1, 2017.

Note: the Potomac River Fisheries Commission will meet at their next quarterly meeting on March 2, 2018. At this meeting, an Order will be adopted that will bring the PRFC into compliance with Amendment 3 to the IFMP for Atlantic Menhaden.



COMMONWEALTH of VIRGINIA

*Marine Resources Commission
2600 Washington Avenue
Third Floor
Newport News, Virginia 23607*

Molly Joseph Ward
Secretary of Natural Resources

John M.R. Bull
Commissioner

December 28, 2017

Max Appleman
FMP Coordinator
Atlantic States Marine Fisheries Commission
1050 North Highland Street
Suite 200 A-N
Arlington, VA 22201

Dear Mr. Appleman,

Enclosed is the Commonwealth of Virginia's Implementation Plan to comply with Amendment 3 to the Interstate Fishery Management Plan for Atlantic Menhaden.

If you or your staff have any questions, please contact Robert L. O'Reilly, Chief of the Fisheries Management Division, or Joe Cimino, Deputy Chief of the Fisheries Management Division.

Sincerely,

A handwritten signature in black ink, appearing to read "John M.R. Bull", with a long horizontal line extending to the right.

cc: Robert L. O'Reilly
Joe Cimino

An Agency of the Natural Resources Secretariat

www.mrc.virginia.gov

Telephone (757) 247-2200 (757) 247-2292 V/TDD Information and Emergency Hotline 1-800-541-4646 V/TDD

Atlantic Menhaden Implementation Plan for Virginia
A Report to the Atlantic States Marine Resources Commission

December 28, 2017

1. Commercial Fishery Management Measures

a) A mechanism to close the directed commercial fisheries in your state once your jurisdiction's percentage of the TAC has been reached. If your jurisdiction includes its yearly menhaden quota in its regulations, please include that language below.

- Virginia's menhaden commercial fishery management measures, including the annual quota is set by legislation in the Code of Virginia. It is also established by regulation. The language for both are included below.

§ 28.2-400.4. Administration of the menhaden management program.

A. Closure of the menhaden fishery shall occur when the Commissioner projects and announces that 100 percent of the total allowable landings have been taken. The Commissioner shall monitor the mandatory daily landings reports required to be submitted under § 28.2-400.5 by the:

1. Purse seine menhaden reduction sector and promptly announce the date of closure when the portion of the total allowable landings allocated to the purse seine menhaden reduction sector under § 28.2-400.3 are projected to be taken. The Commissioner shall also notify the operators of any qualified menhaden processing factory of the date of closure by the most convenient and expeditious means available;
2. Purse seine menhaden bait sector and promptly announce the date of closure when the portion of total allowable landings allocated to the purse seine fishery for bait under § 28.2-400.3 is projected to be taken. The Commissioner shall also notify the purse seine menhaden bait sector of the date of closure by the most convenient and expeditious means available; and
3. Non-purse seine menhaden bait sector and promptly announce the date of closure when the portion of total allowable landings allocated to the non-purse seine fishery for bait under § 28.2-400.3 is projected to be taken. The Commissioner shall also notify the operators of the non-purse seine bait fishery of the date of closure by the most convenient and expeditious means available. Once this closure is announced, any person licensed in the non-purse seine menhaden bait sector may possess and land up to 6,000 pounds of menhaden per day, provided that such person is fishing in accordance with all laws and regulations.

b) A mechanism to adjust a jurisdiction's yearly quota as required by ASMFC.

- A bill will need to be passed by the General Assembly to set the annual quota. Bills are typically ratified by the Governor in March and made effective July 1.

c) A mechanism to enable the transfer of unused quota between states, if warranted, and the ability to adjust a jurisdiction's quota as it relates to the transfer of quota.

§ 28.2-400.2. Total allowable landings for menhaden.

C. The Commissioner may request a transfer of menhaden landings from any other state that is a member of the Atlantic States Marine Fisheries Commission. If the Commonwealth receives a transfer of menhaden in any year from another state, the total allowable landings for only that year shall increase by the amount of transferred landings. The Commissioner may transfer menhaden to another state only if there are unused landings after December 15.

d) A mechanism pound-for-pound pay back to reduce the subsequent year's quota to account for any overharvest of your jurisdiction's quota.

4 VAC 20-1270-30. Total allowable landings for menhaden; allocation, accountability, and overages.

B. If the total allowable landings specified in subsection A of this section are exceeded in any year, the total allowable landings for the subsequent year will be reduced by the amount of the overage. Such overage shall be deducted from the sector of the menhaden fishery that exceeded the allocation specified in subsection A of this section

e) A mechanism for an incidental catch and small-scale fishery provision following the harvest of your jurisdiction's quota and closure of the directed fisheries.

i. 6,000 pounds trip limit per day for non-directed and small-scale gears. Under Amendment 3, small-scale gears include: cast nets, traps (excluding floating fish traps), pots, haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines, 2 trammel nets, bait nets, and purse seines which are smaller than 150 fathom long and 8 fathom deep. Non-directed gears include: pound nets, anchored/stake gillnets, drift gill net, trawls, fishing weirs, fyke nets, and floating fish traps.

VAC 20-1270-50. Nonpurse seine menhaden bait sector quota; allocation and bycatch provisions.

B. Pursuant to § 28.2-400.4 of the Code of Virginia, once the Commissioner announces the date of closure for the nonpurse seine bait fishery, any person licensed in the nonpurse seine menhaden bait sector may possess and land up to 6,000 pounds of menhaden per day.

ii. Two authorized individuals, working from the same vessel fishing stationary multi-species gears, are permitted to work together and land up to 12,000 pounds from a single vessel, limited to one vessel trip per day. Stationary multi-species gears are defined as pound nets, anchored/stake gill nets, fishing weirs, floating fish traps, and fyke nets.

Since 2013, the daily bycatch allowance (6,000 pounds) has restricted harvest beyond the bycatch allowance for the non-purse seine menhaden bait sector. Any harvest that has exceeded the bycatch allowance typically occurs within a few days after the closure has been announced. Virginia regulations do not allow two authorized individuals to work together and land up to 12,000 pounds from a single vessel.

iii. Prohibit a vessel from making multiple trips in one day.

All regulations prohibit the individual commercial fisherman licensee (authorized individuals) from making multiple trips in one day. All authorized individuals are held to 6,000 pounds of menhaden per day which is monitored through daily mandatory reporting.

4 VAC 20-1270-60. Reporting requirements by menhaden fishery sector.

B. The nonpurse seine menhaden commercial bait sector shall submit daily reports according to the schedule and reporting requirements established by 4 VAC 20-610-10, "Pertaining to Commercial Fishing and Mandatory Harvest Reporting".

iv. Prohibit the use of multiple carrier vessels to offload catch exceeding 6,000 pounds.

All regulations prohibit the individual commercial fisherman licensee from offloading catch exceeding 6,000 pounds.

f) For Maine through New York, a mechanism to adjust a state's quota and effort controls if opting into the episodic events set aside program. As a reminder, to be eligible to participate in the episodic events set aside, a state must implement three provisions:

i. Daily trip level harvester reporting

ii. Episodic events harvest and landings be restricted to state waters of the jurisdiction

iii. Maximum daily trip limit no greater than 120,000 pounds per vessel.

g) For Virginia, a Chesapeake Bay Reduction Fishery Harvest Cap with the following provisions:

i. Prohibit harvest for reduction purposes within the Chesapeake Bay when 100% of the 51,000 metric tons is harvested from the Bay.

§ 28.2-1000.2. Annual closure of the Chesapeake Bay purse seine fishery for Atlantic menhaden.

B. Upon a determination that the purse seine fishery for Atlantic menhaden meets the annual menhaden harvest cap in the Chesapeake Bay, the Commissioner shall promptly publish a notice in the Virginia Register announcing the date of closure. The Commissioner shall also notify the operators of the purse seine fishery for Atlantic menhaden by the most convenient and expeditious means available. The date of closure shall be based on mandatory daily landings reports required to be submitted under § 28.2-400.5 by the purse seine fishery for Atlantic menhaden.

ii. A repayment mechanism to reduce the subsequent year's harvest cap to account for an over-harvest of the cap on a pound-for-pound basis.

§ 28.2-1000.2. Annual closure of the Chesapeake Bay purse seine fishery for Atlantic menhaden.

D. If the harvest of the purse seine fishery for Atlantic menhaden does not exceed 87,216 metric tons in any year to which the harvest cap applies, then the difference between the actual harvest and the harvest cap shall be applied as a credit applicable to the allowable harvest for the purse seine fishery for Atlantic menhaden for the following year. The credit may be used only for the subsequent annual harvest and shall not be spread over multiple years. Any annual harvest in excess of the harvest cap shall be deducted from the harvest cap, as modified pursuant to this subsection and subsection C for the subsequent annual harvest.

iii. No rollover of unused cap into the subsequent year.

A bill will need to be passed by the General Assembly to set the Chesapeake Bay Cap at 51,000 metric tons with no annual roll over. To date, no rollovers have occurred.

2. Monitoring Requirements

a) A catch reporting system to enable timely monitoring of a jurisdiction's quota. As a reminder, purse seine vessels and snapper rigs are required to submit trip level reports. The states of New Hampshire, Pennsylvania, South Carolina, and Georgia are exempt from timely quota monitoring, but still must report annually via annual compliance reporting process.

4 VAC 20-1270-60. Reporting requirements by menhaden fishery sector.

A. Each licensee of any purse seine vessel that harvests menhaden must submit a Captain's Daily Fishing Report to the Commission on each nonweekend or nonholiday day that either purse seine sector is open for harvest. The Captain's Daily Fishing report is produced by the National Marine Fisheries Service and provides preliminary estimates

of harvest. Pursuant to § 28.2-204 of the Code of Virginia, those same licensees must submit to the Commission actual weekly harvest reports that include vessel name and exact weight of menhaden landed, in pounds, by Wednesday of the following week. Once ninety-seven percent of either purse seine sector's quota is projected and announced to have been met, each licensee of that purse seine sector must provide daily harvest totals to the Commission's Interactive Voice Recording System.

B. The nonpurse seine menhaden commercial bait sector shall submit daily reports according to the schedule and reporting requirements established by 4 VAC 20-610-10, "Pertaining to Commercial Fishing and Mandatory Harvest Reporting".

C. When the Commissioner announces that 90 percent of the nonpurse seine menhaden bait quota has been reached, each harvester of this sector is required to report his previous 10 days of landings to the Commission's Interactive Voice Recording System and must continue to report his additional landings every 10 days until it is announced that the nonpurse seine bait quota has been attained. More frequent reporting is permissible. The Commission may also implement other harvest conservation measures such as trip limits.

b) A mechanism to require timely reporting of bycatch allowance landings by non-directed fisheries through a reporting system approved by the Board in Section 2a of this template.

- See regulation 4 VAC 20-1270-60 above

c) A mandatory biological sampling program to collect age and length data from the commercial bait sector. De minimis states are not required to conduct fishery-dependent biological sampling in the menhaden fishery. States are required to collect the following:

i. One 10-fish sample (age and length) per 300 metric tons landed for bait purposes for Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Delaware.

ii. One 10-fish sample (age and length) per 200 metric tons landed for bait purposes for Maryland, Potomac River Fisheries Commission, Virginia and North Carolina

4VAC20-610-60. Mandatory harvest reporting.

J. Registered commercial fishermen, seafood landing licensees and licensed seafood buyers shall allow those authorized by the commission to sample harvest and seafood products to obtain biological information for scientific and management purposes only. Such sampling shall be conducted in a manner that does not hinder normal business operations.

§ 28.2-400.6. Biological sampling program and adult abundance index.

A. The Commission shall:

1. Establish a biological sampling program to collect one 10-fish sample per 200 landed metric tons for length and weight-at-age data from the commercial menhaden harvest; and
2. Initiate a program to add Atlantic menhaden to the Virginia Marine Resources Commission's finfish biological sampling program in order to develop an adult menhaden survey index from Virginia pound nets.

B. By no later than December 1, 2013, the Commission shall submit a report to the General Assembly and the Governor that (i) describes progress in establishing the biological sampling program and development of the adult menhaden survey index called for by this section, (ii) discusses any difficulties in implementing the requirements of this section, including a lack of resources to properly implement the program, and (iii) provides a list of resources the Commission believes are necessary to properly implement the sampling program and index, with detailed justification, including an estimate of the cost of each item requested.

d.) A mandatory monitoring/sampling program that requires all states with a pound net fishery collect catch and effort data elements. Mandatory data elements include:

- i.) total pounds (lbs) landed a day
- ii.) number of pound nets fished a day

4VAC20-610-60. Mandatory harvest reporting.

F. The monthly harvest report requirements shall be as follows:

1. Registered commercial fishermen shall be responsible for providing monthly harvest report and daily harvest records that include the name and signature of the registered commercial fisherman and his commercial fisherman's registration license number; the name and license registration number of any agent, if used; the license registration number of no more than five helpers who were not serving as agents; any buyer or private sale information; the date of any harvest; the city or county of landing that harvest; the water body fished, gear type, and amount of gear used for that harvest; the number of hours any gear was fished and the number of hours the registered commercial fisherman fished; the number of crew on board, including captain; species harvested; market category; live weight or processed weight of species harvested; and vessel identification (Coast Guard documentation number, Virginia license number, or hull/VIN number). Any information on the price paid for the harvest may be provided voluntarily.

NORTH CAROLINA REPORT FOR THE IMPLEMENTATION OF AMENDMENT 3 TO THE INTERSTATE FISHERY MANAGEMENT PLAN FOR ATLANTIC MENHADEN

January 1, 2018

Introduction

This report details the implementation plan for North Carolina to meet the Atlantic States Marine Fisheries Commission (ASMFC) requirements of Amendment 3 to the Interstate Fishery Management Plan for Atlantic Menhaden. Amendment 3 required each state to submit implementation plans by January 1, 2018 and are required to implement the provisions of Amendment 3 by April 15, 2018. At a minimum, states are required to maintain their timely quota monitoring system implemented under Amendment 2 in order to cap menhaden directed harvest within the total allowable catch (TAC) and minimize the potential for overages. Amendment 3 will be fully implemented on April 15, 2018 however all menhaden landings for the 2018 calendar year will count toward the quota allocation beginning January 1, 2018. The TAC will be managed on a state basis. The quota allocation for North Carolina is 2,044.49 mt (4,507,320 lb) and makes up 0.96 percent of the total coastwide TAC of 216,000 mt.

1. Commercial Fishery Management Measures

a) The mechanism to close the directed commercial bait fishery is through the rule 15A NCAC 03M .0512 which will be used to close (via proclamation) once 90% of the quota allocation is reached. A notice of closure will be submitted to the ASMFC at the time of closure and will be a part of the North Carolina annual compliance report.

15A NCAC 03M .0512 COMPLIANCE WITH FISHERY MANAGEMENT PLANS

(a) In order to comply with management requirements incorporated in Federal Fishery Management Council Management Plans or Atlantic States Marine Fisheries Commission Management Plans or to implement state management measures, the Fisheries Director may, by proclamation, take any or all of the following actions for species listed in the Interjurisdictional Fisheries Management Plan:

- (1) Specify size;
- (2) Specify seasons;
- (3) Specify areas;
- (4) Specify quantity;
- (5) Specify means and methods; and
- (6) Require submission of statistical and biological data.

(b) Proclamations issued under this Rule shall be subject to approval, cancellation, or modification by the Marine Fisheries Commission at its next regularly scheduled meeting or an emergency meeting held pursuant to G.S. 113-221.1.

*History Note: Authority G.S. 113-134; 113-182; 113-221; 113-221.1; 143B-289.52;
Eff. March 1, 1996;*

Amended Eff. October 1, 2008.

b) The mechanism to adjust North Carolina's quota allocation as required by the ASMFC will be to issue a proclamation through rule 15A NCAC 03M .0512 (above) at the beginning of the fishing year noting any changes in the annual quota.

c) The mechanism to enable transfer of unused quota allocation between North Carolina and another member state, if warranted, will be through a letter confirming the transfer to

or from the state transferring and to the ASMFC. The quota allocation will then be adjusted to reflect that transfer. ASMFC will be notified of any transfer activity by North Carolina.

d) The mechanism to repay any over-harvest of quota will be through a letter confirming the over-harvest poundage and new adjusted quota allocation for that year. ASMFC will be notified by North Carolina of any overage. Adjustments will be through rule 15A NCAC 03M.0512 at the beginning of the fishing year noting any changes due to overages.

e) The mechanism to manage for a 6,000 lb limit per calendar day for non-directed and small-scale fisheries following the harvest of the state's quota allocation and closure of directed fisheries will be through proclamation authority from 15A NCAC 03M .0512 that will allow the director to set a trip limit per fishing operation per day including authorization of two individuals, working stationary multispecies gear from the same vessel, to work together and land a 12,000 lb limit per calendar day. It will be made clear in this proclamation that the vessel is part of the operation and it is unlawful to make multiple trips in one calendar day. Multiple carrier vessels with purse seines are unlawful in North Carolina coastal waters. The 6,000 lb trip limit will also be applied through 15A NCAC 03M .0512 for operations of the haul seine fishery that does employ carrier vessels.

f) Not applicable

g) Not applicable

2. Monitoring Requirements

a) Catch Reporting Plan

Catch reporting will be through the North Carolina Trip Ticket Program. This program is a dealer based program where trip level landings are reported monthly to the division. North Carolina does not have the authority through the North Carolina Trip Ticket Program to implement the collection of weekly data at this time. State statute requires monthly dealer reporting; more frequent reporting requires implementation of a dealer permit for a particular species. The current number of dealer permits for other quota-managed species, the large number of dealers purchasing menhaden, and existing staffing limitations prohibit implementation of a menhaden dealer permit at this time. Therefore, North Carolina proposes to monitor the state quota allocation on a monthly basis. Based on 2014-2016 data there are 68-80 dealers reporting menhaden with 66-85 percent reported by e-dealers. The majority of landings during this timeframe were from anchored gill nets. The remainder of the landings are by pound nets, cast net, etc. Data elements include trip start date, trip end date, vessel identifier, individual fisherman identifier, dealer identification, species and quantity, units of measurement, water body fished, gear, and number of crew. Purse seines operated with mother ships and carrier vessels are not allowed in North Carolina coastal fishing waters, therefore there will be no Captain Daily Fishing Reports submitted. Should a purse seine be used without a mother ship or carrier vessel, the landings will be reported through the trip ticket program.

b) The mechanism for timely reporting of bycatch allowance landings from non-directed fisheries will be the same as in 2a.

c) Biological sampling to collect age and length data from the commercial bait harvest was implemented in 2013. Age and length data from the sciaenid pound net fishery, the estuarine and ocean gill net fisheries, and the winter trawl fisheries will be collected in one 10-fish sample per trip sampled.

d) Catch data from the pound net fishery will be monitored monthly through the North Carolina Trip Ticket Program. Data elements will be the same as stated in 2a. Number of pound nets fished per day or per trip are not collected through the trip ticket program, but a proxy may be able to be provided from existing required pound net set permits on an annual basis. This proxy may include data variables (such as location of pound net sets, number of pound nets, etc.) collected on these permits held by participants in the pound net fishery who show landings of menhaden in the trip ticket program. As noted in 2c, 10-fish samples will be collected from pound net trips.

From: [Mel Bell](#)
To: [Max Appelman](#)
Cc: [Robert H. Boyles JR](#); [Wally Jenkins](#)
Subject: South Carolina Menhaden ISFMP Amendment 3 Implementation Plan
Date: Tuesday, December 19, 2017 3:37:38 PM

Good afternoon Max,

Just following up on your email below regarding the Implementation Plans for Amendment 3 to the Atlantic Menhaden ISFMP.

Since South Carolina does not have an actual commercial fishery for menhaden and has no real likelihood of seeing one established in the near future, I have provided our input regarding implementation of Amendment 3 in a very simplified version of your template. Please let me know if this meets your requirements for the January 1, 2018 due date.

Thanks, and have a great Christmas and New Year.

mb

//

South Carolina Implementation Plan for Atlantic Menhaden ISFMP Amendment 3

1. Commercial Fishery Management Measures

South Carolina has no directed commercial fishery for Atlantic Menhaden, other than occasional landings reported as bait. South Carolina would be classified as a De Minimis state regarding this fishery.

Commercial landings for any reason would require appropriate licensing for participating individuals through the SCDNR's Marine Licensing and Permitting Office.

2. Monitoring Measures

South Carolina has the ability to track any commercial landings of Atlantic menhaden through one of two existing reporting mechanisms. The last commercial landings reported through our Wholesale Dealer Reporting System were in 1997. In 2015, 281 pounds of menhaden captured for bait were reported through our Wholesale Bait Dealer Reporting System, with none in 2016 or 2017. The SCDNR will continue to closely monitor and annually report any landings of Atlantic menhaden occurring in state waters, or any harvest from federal waters where fish are landed in South Carolina.

Mel Bell
Director,
Office of Fisheries Management
SCDNR, Marine Resources Division

P.O. Box 12559
Charleston, SC 29422-2559
Office: (843) 953-9007
Fax: (843) 953-9386

bellm@dnr.sc.gov

//

From: Max Appelman <mappelman@asmfc.org>
Date: Monday, December 18, 2017 at 10:20 AM
To: ATLANTIC MENHADEN BOARD <atlmn_bd@asmfc.org>
Subject: RE: Menhaden - Revised Preliminary 2018 Quota Allocations and Amendment 3 Implementation Plan Template

Hello Atlantic Menhaden Board,

This is a reminder that the deadline to submit state implementation plans for Amendment 3 is **Monday, January 1**. An implementation plan template is attached. Also, Amendment 3 is now posted to the ASMFC Website on the [Atlantic Menhaden species webpage](#) under "Management Plans & FMP Reviews."

Please let me know if you have any questions.

Best,
Max

Max H. Appelman
Fishery Management Plan Coordinator
Atlantic States Marine Fisheries Commission
1050 N. Highland Street, Suite 200A-N
Arlington, VA 22201
mappelman@asmfc.org
phone: (703) 842-0740



MARK WILLIAMS
COMMISSIONER

DOUG HAYMANS
DIRECTOR

December 30, 2017

Formatted: Indent: Left: 4", First line: 0.5"

Max Appelman
Fishery Management Plan Coordinator
Atlantic States Marine Fisheries Commission
1050 N. Highland Street, Suite 200A-N
Arlington, VA 22201

Max:

The State of Georgia is submitting this letter in recognition of the Atlantic Menhaden Amendment 3 Implementation Plan. During the 2018 fishing year Georgia has elected to relinquish its state specific allocation back to the general ~~redistribute all of the jurisdictions coastwide~~ allocations. Future allocations may be considered for redistribution, so long as a fishery is not established in the state of Georgia.

Currently in the State of Georgia there are no directed commercial fisheries, no reduction processing capabilities, and no commercial landings of Atlantic menhaden. We are presently in *de minimus* status. Under Amendment 3 mechanisms and management are required to participate in the menhaden fishery. In the future, if a fishery arises in Georgia an updated implementation plan outlining all mechanisms and management will be submitted to the Atlantic Menhaden Board for consideration.

Coastal Resources Division, will continue monitoring commercially harvested species through the ACCSP standardized trip ticket reporting system. If commercial landings of Atlantic menhaden do occur, Georgia will report them through this system. Georgia's current reporting structure is a single trip ticket with dealer and harvester information reported monthly.

Please contact me if you or the Management Board require further information.

Sincerely,

Lindsey Aubart
Marine Biologist

cc: Doug Haymans
Pat Geer
Carolyn Belcher

Georgia's Atlantic Menhaden Amendment 3 Implementation Plan

1. Commercial Fishery Management Measures

- a) *A mechanism to close the directed commercial fisheries in your state once your jurisdiction's percentage of the TAC has been reached.*

Georgia, currently, does not have a commercial fishery and has chosen to redistribute its allocation for the 2018 fishing year. However, should a commercial fishery become established in the future, Georgia will create an appropriate mechanism to close the fishery upon reaching Georgia's percentage of the TAC.

- b) *A mechanism to adjust a jurisdiction's yearly quota as required by ASMFC.*

Georgia will continue to adjust its yearly quota as required by ASMFC.

- c) *A mechanism to enable the transfer of unused quota between states, if warranted, and the ability to adjust a jurisdiction's quota as it relates to the transfer of quota.*

Georgia will enact a transfer of unused quota to other states when it deems appropriate for the state's portion of the allocation.

- d) *A mechanism pound-for-pound pay back to reduce the subsequent years quota to account for any overharvest of your jurisdiction's quota.*

Georgia will establish a pound-for-pound pay back if a menhaden fishery is ever ~~upon the~~ establishment in the state in the future. ~~a menhaden fishery~~

- e) *A mechanism for an incidental catch and small-scale fishery provision following the harvest of your jurisdiction's quota and closure of the directed fisheries.*

I. 6,000 pounds trip limit per day for non-directed and small-scale gears. Under Amendment 3, small-scale gears include: cast nets, traps (excluding floating fish traps), pots, haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines, trammel nets, bait nets, and purse seines which are smaller than 150 fathom long and 8 fathom deep. Non-directed gears include: pound nets, anchored/stake gillnets, drift gill net, trawls, fishing weirs, fyke nets, and floating fish traps.

II. Two authorized individuals, working from the same vessel fishing stationary multi-species gears, are permitted to work together and land up to 12,000 pounds from a single vessel, limited to one vessel trip per day.

Stationary multi-species gears are defined as pound nets, anchored/stake gill nets, fishing weirs, floating fish traps, and fyke nets.

III. Prohibit a vessel from making multiple trips in one day.

IV. Prohibit the use of multiple carrier vessels to offload catch exceeding 6,000 pounds.

Georgia will incorporate the above regulations as a mechanism for managing incidental catch and small-scale fishery provisions following the harvest of Georgia's quota and the closure of the directed fisheries if one develops in the future.

2. Monitoring Requirements

a) A catch reporting system to enable timely monitoring of a jurisdiction's quota. As a reminder, purse seine vessels and snapper rigs are required to submit trip level reports. The states of New Hampshire, Pennsylvania, South Carolina, and Georgia are exempt from timely quota monitoring, but still must report annually via annual compliance reporting process.

Georgia is exempt from timely quota monitoring but will continue to report annual landing via the annual compliance report.

b) A mechanism to require timely reporting of bycatch allowance landings by non-directed fisheries through a reporting system approved by the Board in Section 2a of this template.

Georgia currently does not have any non-directed fisheries for menhaden, however any possible landings are reported through the monthly trip ticket reports.

c) A mandatory biological sampling program to collect age and length data from the commercial bait sector. De minimis states are not required to conduct fishery-dependent biological sampling in the menhaden fishery. States are required to collect the following:

i. One 10-fish sample (age and length) per 300 metric tons landed for bait purposes for Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Delaware.

ii. One 10-fish sample (age and length) per 200 metric tons landed for bait purposes for Maryland, Potomac River Fisheries Commission, Virginia and North Carolina

Georgia is a de minimis state and therefore not required to conduct fishery-dependent biological sampling.

d) A mandatory monitoring/sampling program that requires all states with a pound net fishery collect catch and effort data elements. Mandatory data elements include:

- i. total pounds (lbs) landed per day
- ii. number of pound nets fished per day

Georgia does not have a pound net fishery.

MEMORANDUM

To: Max Appleman
From: Jim Estes
Date: 1/11/2018
Re: Florida Implementation Plan for Amendment 3 of the Interstate Fishery Management Plan for Atlantic Menhaden

a) **Commercial Fishery Management Measures**

- a) *Mechanism to close directed commercial fishery once state's percentage of TAC is met-*
In Florida, fisheries are opened and closed by executive order for emergency measures and by the Florida Administrative Code (FAC) as a matter of rule. The Florida Fish and Wildlife Conservation Commission, acting under the authority of Article IV, Section 9 of the Florida Constitution delegates authority to its Executive Director to manage or regulate fish and wildlife in exigent circumstances.

The menhaden commercial fishery will be closed by executive order when the commercial harvest is projected to reach the annual quota (2,442,500 lbs, currently), considering any quota transfers. A copy of the Executive order closing the fishery, should it be necessary to be closed will be submitted as part of Florida's compliance report.

- b) *Adjustment of a state's TAC-*
Florida can adjust its TAC by referring to the Atlantic States Marine Fisheries Commission (ASMFC) annual TAC and Florida's percentage of the coastwide TAC.
- c) *Transfer of unused TAC-*
Transfers of menhaden TAC will be done pursuant to a letter signed by the Florida Director of Marine Fisheries Management and sent to the appropriate ASMFC staff.
- d) *Quota Payback-*
Repayment will be considered when monitoring against annual TAC.
- e) *Bycatch Allowance-*
When quota is met and fishery is closed, there will not be any bycatch allowed.
- f) *Episodic event set aside-*
Florida does not intend to opt into the episodic event set aside. Therefore, no plans are being made to account for changes in TAC due to these set asides.
- g) *Chesapeake Bay Reduction Fishery Harvest Cap-*
N/A

2. Monitoring Requirements

- a) *Catch Reporting System-*
The current reporting requirements for Florida's commercial fisheries are found in Florida Statute 379.362 (see Appendix 1) and FAC (Appendix 2). Florida Statute only

requires reporting of the sale of saltwater products on a monthly basis, but 65-E FAC allows for instant electronic. Florida's plan for timely monitoring of menhaden landings will be a two step process. Currently, Florida requires dealers to submit trip level information monthly. Reports are either supplied on paper trip tickets or through electronic reporting. Additional time is required to input the data provided via paper copy. Because of the potential delay in availability of the data, the quota could be overshoot if this was the only method to monitor the landings. Therefore, when landings are within 75%, weekly monitoring by telephoning dealers who have been reporting menhaden landings will be made until 90% of the quota is reached. The fishery will then be closed by executive order when 90% of the quota is reached.

b) *Bycatch Monitoring-*

Bycatch of menhaden after season closes will not be allowed.

c) *Biological Sampling Reporting-*

- b) Approval of Florida's request for *de minimis* status will exempt Florida from biological sampling requirements.

Appendix 1

Florida Constitution Article IV, Section 9

SECTION 9. Fish and wildlife conservation commission.—There shall be a fish and wildlife conservation commission, composed of seven members appointed by the governor, subject to confirmation by the senate for staggered terms of five years. The commission shall exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life, and shall also exercise regulatory and executive powers of the state with respect to marine life, except that all license fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission shall be prescribed by general law. The commission shall establish procedures to ensure adequate due process in the exercise of its regulatory and executive functions. The legislature may enact laws in aid of the commission, not inconsistent with this section, except that there shall be no special law or general law of local application pertaining to hunting or fishing. The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing shall be as provided by law. Revenue derived from license fees for the taking of wild animal life and fresh water aquatic life shall be appropriated to the commission by the legislature for the purposes of management, protection, and conservation of wild animal life and fresh water aquatic life. Revenue derived from license fees relating to marine life shall be appropriated by the legislature for the purposes of management, protection, and conservation of marine life as provided by law. The commission shall not be a unit of any other state agency and shall have its own staff, which includes management, research, and enforcement. Unless provided by general law, the commission shall have no authority to regulate matters relating to air and water pollution.

Appendix 2

The 2012 Florida Statutes

120.81(5): (5) Hunting and Fishing Regulation.

Agency action which has the effect of altering established hunting or fishing seasons, or altering established annual harvest limits for saltwater fishing if the procedure for altering such harvest limits is set out by rule of the Fish and Wildlife Conservation Commission, is not a rule as defined by this chapter, provided such action is adequately noticed in the area affected through publishing in a newspaper of general circulation or through notice by broadcasting by electronic media.

379.362 (6) RECORDS TO BE KEPT ON SALTWATER PRODUCTS.—

Wholesale dealers shall be required by the commission to make and preserve a record of the names and addresses of persons from whom or to whom saltwater products are purchased or sold, the quantity so purchased or sold from or to each vendor or purchaser, and the date of each such transaction. Retail dealers shall be required to make and preserve a record from whom all saltwater products are purchased. Such record shall be open to inspection at all times by the commission. A report covering the sale of saltwater products shall be made monthly or as often as required by rule to the commission by each wholesale dealer. All reports required under this subsection are confidential and shall be exempt from the provisions of s. 119.07(1) except that, pursuant to authority related to interstate fishery compacts as provided by ss. 379.2253(3) and 379.2254(3), reports may be shared with another state if that state is a member of an interstate fisheries compact, and if that state has signed a Memorandum of Agreement or a similar instrument agreeing to preserve confidentiality as established by Florida law.

Appendix 3

Florida Administrative Code

68E-5.001 Introduction, Scope, and Definitions.

(1) The Fish and Wildlife Conservation Commission is charged with the promulgation of rules to conserve and manage the marine fishery resources of Florida. These rules must be consistent with certain standards as prescribed by law to include: concern for the continued health and abundance of the resource; measures based upon the best information available, including biological, sociological, economic, and other information deemed relevant; reasonable means and quantities for annual harvest, consistent with maximum practical sustainable stock abundance on a continuing basis; management of stocks of fish as a biological unit as possible and practical; proper quality control of marine resources that enter commerce; management decisions that are fair and equitable to all the people of the state. The Fish and Wildlife Conservation Commission, through its Divisions of Marine Fisheries and Law Enforcement must maintain a marine fisheries information system that can provide the data necessary to apply the above standards to management decisions. As part of these responsibilities, the Commission requires that licensed wholesale dealers maintain records of each purchase of saltwater fish, saltwater products, bait, or marine life from a producer in such detail as required by implementation and administration of this chapter. This chapter sets out the requirements for record keeping, the detail of such records, forms to be used, submission of records to the Commission, penalties for noncompliance, and other requirements.

(2) For the purpose of this chapter, the definitions contained in Sections 379.101, 379.362, F.S., and the following definitions apply:

- (a) “Marine Life” – any saltwater fish, saltwater products, or shellfish collected for the purpose of supplying live specimens for public, educational, or hobby aquaria or preserved specimens for scientific or educational institutions.
- (b) “Bait” – any saltwater fish, saltwater products, or shellfish used as a lure, attractant, or enticement for the purpose of catching other fish or shellfish.
- (c) “Person” – includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.
- (d) “Producer” – any person who catches and lands saltwater fish, saltwater products, bait, or marine life from any waters of the State of Florida, contiguous saltwaters of the Exclusive Economic Zone, or international waters.
- (e) “Production” – catching or otherwise obtaining saltwater fish, saltwater products, bait, or marine life from the waters of the State of Florida, contiguous waters of the Exclusive Economic Zone, or international waters, for the purpose of sale, barter, exchange or distribution.
- (f) “Marine Fisheries Trip Ticket” – The multiple-part form (FWC 33-610, which is hereby incorporated by reference) provided by the Commission to wholesale dealers and others who are required to report the purchase or production of saltwater fish, saltwater products, bait, or marine life pursuant to Section 379.362, F.S., and this chapter.

Specific Authority Article IV, Section 9, Fla. Const. Law Implemented 379.361, 379.362 FS. History—New 10-17-84, Formerly 16B-45.01, 16B-45.001, 16R-13.001, Amended 12-31-89, Formerly 16R-5.001, 62R-5.001.

68E-5.002 Reporting Requirements.

(1) Fisheries statistical information on the production of saltwater fish, saltwater products, bait, and marine life shall be reported to the Commission whenever the product is sold, exchanged, bartered, distributed, or landed for the first time. Records of subsequent sales between wholesale dealers or brokers are not required by this rule.

(2) The following persons shall report fisheries statistical information as described in Section 68E-5.003, F.A.C.

(a) Wholesale dealers who purchase or receive saltwater fish, saltwater products, bait, or marine life from a producer shall report.

(b) Wholesale or retail dealers who own, rent or lease vessel(s) intended for the production of saltwater fish, saltwater products, bait, or marine life shall report, except when the product is sold directly to another wholesale dealer. In such cases the purchasing wholesale dealer shall report.

(c) Producers who catch and land saltwater fish, saltwater products, bait, or marine life for sale direct to the consumer or interstate shipment shall report.

(d) Each producer who sells or otherwise provides saltwater fish, saltwater products, bait, or marine life to a wholesale dealer shall provide to the dealer, at the time of sale, accurate information about such production as required by this chapter.

(3) Fisheries statistical information shall be recorded on marine fisheries trip tickets supplied by the Commission or on approved alternate forms.

(4) Trip tickets, or approved alternate forms, must be maintained by the producer, wholesale dealer or retail dealer for a period not less than three (3) years from the date of the recorded transaction.

(5) An alternate form designed by wholesale dealers for their own use requires approval by the Commission and may be substituted for the marine fisheries trip ticket provided the following procedures are met and complied with:

(a) All requests for approval of an alternate form must be submitted to the Commission's Marine Research Institute, Fisheries Statistics Section, in writing prior to use. A copy of the proposed alternate form must be attached to or included with the request.

(b) The alternate form must provide identical information, follow the same format, be sequentially numbered and provide the same number of copies as the Commission's marine fisheries trip ticket to facilitate data processing and compliance with reporting distribution requirements, as listed in paragraph (7) below and in Section 379.361, F.S.

(c) Upon receipt of a request for approval of an alternate form, the Commission will review the form for the required information, verify species information and assign a unique prefix to be placed before the dealer's invoice number (e.g., TS0000001) within five (5) work days of receipt of the request.

(d) The dealer must provide the final "proof" of the alternate trip ticket form, obtained from the printer, to the Commission for final review and approval prior to printing.

(e) The Commission will review and approve (if in compliance) and return the proof within five (5) work days to the dealer for printing.

(f) The dealer must continue to provide the Commission with the required trip ticket information on the Commission's form (FWC Form #33-610) during the review and approval process as required in paragraph (7) below.

(g) All persons that use an approved alternate form shall be responsible for all costs associated with the printing and use of such forms.

(6) Dealers may elect to submit and/or report trip ticket data on diskette via a computer program, provided that the output is compatible with the Commission's trip ticket system. A printed copy of the reported trip ticket information must be made available to the fisherman by the dealer and a printed copy must be kept on file by the dealer for inspection by the Commission pursuant to Section 379.362(6), F.S. Any computer-generated output to be used by a dealer must be reviewed for format and compatibility and approved by the Commission prior to use following the same procedures outlined in paragraph (5) above.

(7) Two copies of each marine fisheries trip ticket or approved alternate form must be received by the Commission as specified below:

(a) Wholesale dealers, who purchase or produce annually 5,000 pounds or more of species for which seasonal harvest limits or quotas have been set, or for which season closures linked to regional federal limits or quotas have been set, by rule of Fish and Wildlife Commission, or by statute must submit all marine fisheries trip tickets or approved alternate forms weekly. Dealers may choose the day of the week to begin. Marine fisheries trip tickets or approved alternate forms must be received by the Commission not later than five (5) work days after the end of that week. These wholesale dealers shall also be required to notify the Commission, prior to the harvest season, of intent to purchase or produce the quantities specified above and to provide summary landings totals on a weekly or daily basis by phone when catch totals for those time periods are likely to exceed the remaining harvest under the quota.

(b) Wholesale dealers who do not handle quantities of species as specified in paragraph (7)(a), above must submit all marine fisheries trip tickets or approved alternate forms at least monthly and not later than ten (10) work days after the end of the month for which the reports are due.

(c) Self addressed mailing envelopes shall be provided upon request to those who must report.

(d) The mailing address for all correspondence, requests for forms, envelopes, county codes, species codes, area codes, gear codes, or information, and for submission of marine fisheries trip tickets or approved alternate forms is:

Fish and Wildlife Research Institute

Florida Marine Research Institute

Fisheries Statistics Section

100 Eighth Avenue, S. E.

St. Petersburg, FL 33701-5095

Specific Authority Article IV, Section 9, Fla. Const. Law Implemented 379.361, 379.362
FS. History—New 10-17-84, Formerly 16B-45.02, 16B-45.002, 16R-13.002, Amended
12-31-89, Formerly 16R-5.002, Amended 1-5-95, 6-11-95, Formerly 62R-5.002.

68E-5.003 Record Content and Description.

(1) Information required on each marine fisheries trip ticket or approved alternate form shall be recorded by persons set forth in subsection 68E-5.002(2), F.A.C. and shall include the following:

(a) Saltwater Products License Number – record the seller's saltwater products license number.

(b) Wholesale Dealer License Number – record the wholesale dealer's license number.

(c) Date – record the date that the saltwater products were sold, exchanged, bartered, distributed, or landed.

(d) Time Fished – record the total amount of time (duration) of the fishing trip. Time is recorded as the time away from the dock either in hours or days. If recorded in days, put the letter D before or after the number of days. Example: 10D or D10 equals 10 days.

(e) County Landed – record the county code in which the saltwater fish, saltwater products, bait, or marine life was landed. Codes are provided to each new dealer, and as requested by mail; the address is provided in paragraph 68E-5.002(7)(d), F.A.C.

(f) Species Code – record the species code from the list of species names and their code numbers. Codes are provided to each new dealer, on the back of marine fisheries trip ticket, and as requested by mail; the address is provided in paragraph 68E-5.002(7)(d), F.A.C.

(g) Amount of Catch – record the amount of saltwater fish, saltwater products, bait, or marine life received using the appropriate species code to identify the unit of measure.

(h) Gear – indicate the gear used to catch the saltwater fish, saltwater products, bait, or marine life listed on the ticket, by checking the appropriate box or recording the gear code. Codes are provided to each new dealer, and as requested by mail; the address is provided in paragraph 68E-5.002(7)(d), F.A.C.

(i) Number of Sets – for net and longline fisheries – record the number of times fishing gear (trawls, long-lines, gill nets, purse seines) was used.

(j) Traps Pulled and Soak Time – for trap fisheries – record the number of traps pulled and the number of days since traps were last pulled.

(k) Area Fished – record the area, as defined by the Department, where the saltwater fish, saltwater products, bait, or marine life was caught. If the product was caught over more than one area, record the area where most of the product was caught. The areas and their respective codes are provided to each new dealer. They are also available upon request to the address as provided in paragraph 68E-5.002(7)(d), F.A.C.

(l) Depth – record the approximate depth where the saltwater fish, saltwater products, bait, or marine life was caught, in either feet or tens of fathoms. If recorded in tens of fathoms put the letter F before or after the number of fathoms. Example: 40F or F40 equals 400 fathoms.

(m) Price per pound – record the price paid either per pound or per unit of measure used on the dealer and Commission copies of the trip ticket.

Specific Authority Article IV, Section 9, Fla. Const. Law Implemented 379.361, 379.362 FS. History–New 10-17-84, Formerly 16B-45.03, 16B-45.003, Amended 3-30-87, Formerly 16R-13.003, Amended 12-31-89, Formerly 16R-5.003, Amended 1-5-95, Formerly 62R-5.003.

68E-5.004 Data Management.

- (1) All data received by the Commission pursuant to the requirements of Chapter 68E-5, F.A.C., shall be edited by Commission staff for accuracy and stored in the marine fisheries information system.
- (2) Due to the editorial and computerization process, accurate trip ticket data will not be available for access or inquiries for at least 60 days following the month for which it is reported.
- (3) Trip ticket data shall be summarized for publication as monthly and annual fishery landings bulletins. Bulletins will be available upon request to all interested parties.
- (4) All requests for other than fishery landings bulletins must be submitted in writing to the Executive Director of the Commission or his designee for approval.
- (5) Dealers are subject to being audited by the Commission pursuant to Section 379.362(6), F.S., for compliance with the landing reporting requirements.

68E-5.005 Penalties.

- (1) The Commission may revoke, suspend or deny the renewal of the license of any wholesale or retail dealer for failure to make required reports, for failure or refusal to permit the examination of required records, or for falsifying any such record pursuant to Section 379.362, F.S.
- (2) Any person violating or otherwise failing to comply with Chapter 68E-5, F.A.C., or its sections shall be guilty of a misdemeanor of the second degree, punishable as provided in Section 775.082, 775.083, or 775.084, F.S.

Specific Authority Article IV, Section 9 Fla. Const., 379.407, 379.414 FS. Law Implemented 379.407, 379.414 FS. History—New 10-17-84, Formerly 16B-45.05, 16B-45.005, 16R-13.005, Amended 12-31-89, Formerly 16R-5.005, 62R-5.005.