Atlantic States Marine Fisheries Commission

Atlantic Herring Section

October 27, 2014
8:00 – 9:30 a.m.
Mystic, Connecticut

Draft 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 (*T. Stockwell)*	8:00 a.m.
2.	Board Consent • Approval of Agenda • Approval of Proceedings from August 2014	8:00 a.m.
3.	Public Comment	8:05 a.m.
4.	Update on Development of Draft Amendment 3 for Public Comment (*M. Yuen*)	8:15 a.m.
5.	Review and Set Atlantic Herring Specifications for 2015 (*M. Yuen*) **Action**	9:10 a.m.
6.	Update on Atlantic Herring Offshore Spawning Study (*M. Yuen*)	9:20 a.m.
7.	Review and Populate Advisory Panel Membership (*M. Yuen*) **Action**	9:25 a.m.
8.	Other Business/Adjourn	9:30 a.m.

The meeting will be held at:
The Mystic Hilton, 20 Coogan Boulevard, Mystic, Connecticut 06355 (860) 572.0731

MEETING OVERVIEW

Atlantic Herring Section
October 27, 2014
8:00 - 9:30 a.m.
Mystic, Connecticut

Chair: Terry Stockwell (ME) *Assumed Chairmanship 10/13*	Technical Committee Chair: Renee Zobel	Law Enforcement Committee Michael Eastman
Vice Chair: Ritchie White (NH)	Advisory Panel Chair: Jeff Kaelin	Previous Board Meeting: August 5, 2014
Voting Members: ME, NH, MA, RI, CT, NY, NJ (7 votes)		

2. Board Consent

- Approval of Agenda
- Approval of Proceedings from August 5, 2014

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 Section 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 Section Chair may allow limited opportunity for comment. The Section Chair has the discretion to limit the number of speakers and/or the length of each comment.

4. Update on Development of Draft Amendment 3 (8:15 – 8:50 a.m.)

Background

- The Atlantic Herring Section tasked the Plan Development Team to develop the draft amendment with additional analysis on socioeconomic impact and management options for the three issues: spawning area efficacy, fixed gear set-aside rollover provision, and empty fish hold provision. The PDT requests additional time to conduct thorough spawning analysis and clarification of management goals and objectives from the Section (**Memo in Briefing Materials; Draft Amendment 3 in Supplemental Materials**).

Presentations

- Development of Draft of Amendment 3 (M. Yuen)

5. Review and Set Atlantic Herring Specifications for 2015 (9:10 – 9:20 a.m.) Action

Background

- Each year, the Section sets specifications for Area 1A in the 2015 fishing season.

Board Action for Consideration

- Set seasonal splitting for Area 1A.

6. Update on Offshore Spawning Study (9:20 - 9:25 a.m.)

Background

- Staff and TC members communicated with Northeast Fisheries Science Center staff to clarify the intent of an offshore spawning study and seek opportunities for offshore sampling or funding.

7. Review and Populate Advisory Panel Membership (9:25 - 9:30 a.m.) Action
Background • Consider nomination for new member to the Atlantic Herring AP (**Briefing Materials**).
Board Action for Consideration • Approve new member to the Atlantic Herring AP.

8. Other Business/Adjourn

DRAFT PROCEEDINGS OF THE

ATLANTIC STATES MARINE FISHERIES COMMISSION

ATLANTIC HERRING SECTION

Crowne Plaza - Old Town
Alexandria, Virginia
August 5, 2014

For Board Approval

These minutes are draft and subject to approval by the Atlantic Herring Section
The Section will review the minutes during its next meeting

TABLE OF CONTENTS

INDEX OF MOTIONS

ATTENDANCE

Board Members

Terry Stockwell, ME, proxy for P. Keliher (AA)
Steve Train, ME (GA)
Doug Grout, NH (AA)
G. Ritchie White, NH (GA)
Sen. David Watters, NH (LA)
Dennis Abbott, NH, Legislative proxy
Jocelyn Cary, MA, proxy for Rep. Peake (LA)
David Pierce, MA, proxy for P. Diodati (AA)
Bill Adler, MA (GA)
Mark Gibson, RI, proxy for R. Ballou (AA)
Rick Bellavance, RI, proxy for Sen. Sosnowski (LA)
Rep. Craig Miner, CT (LA)
James Gilmore, NY (AA)
Emerson Hasbrouck, NY (GA)
Adam Nowalsky, NJ, proxy for Asm. Sgt. R. Andrzejczak (LA)
Tom Baum, NJ, proxy for D. Chanda (AA)
Tom Fote, NJ (GA)

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

Ex-Officio Members

Jeff Kaelin, Advisory Panel Chair

Staff

Robert Beal
Toni Kerns
Kirby Rootes-Murdy
Melissa Yuen

Guests

Wilson Laney, USFWS
Topher Holmes, NOAA
Sandy Aylesworth, NOAA
Craig Woolcott, NOAA Leg. Affairs
Joe Fessenden, ME DMR
Jon Cornish, ME DMR
Raymond Kane, CHOIR
Patrick Paquette, MCBA
Mike Jorden, USCG
Donald Lajavic, USCG
Janice Plante, Commercial Fisheries News
Aaron Kornbluth, Pew

The American Herring Section of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, August 5, 2014, and was called to order at 8:00 o'clock a.m. by Chairman Terry Stockwell.

CALL TO ORDER

CHAIRMAN TERRY STOCKWELL: We're going to call the Atlantic Herring Section Meeting to order. The first order of business is the approval of the agenda. Are there any changes, additions or deletions? David.

DR. DAVID PIERCE: I guess under other business or if it fits in someplace else in the agenda, I would like an update regarding the request we made back in May as to the ability of the National Marine Fisheries Service to do sampling of Georges Bank/Nantucket Shoals spawning fish. I would like that on the agenda; if nothing else, then an update as to where we stand with that.

CHAIRMAN STOCKWELL: That was going to be an issue I was going to raise with the Section; and that will be under other business. Are there any other issues? Without objection, the agenda is approved.

APPROVAL OF PROCEEDINGS

CHAIRMAN STOCKWELL: I'm looking to approve the proceedings from May 2014. Are there any changes or additions? Seeing none, consider the proceedings approved.

PUBLIC COMMENT

Are there any comments from the public on issues that are not on today's agenda? Seeing none; I'm going to turn it over to Melissa for a review of the public comment summary on Draft Amendment 3.

REVIEW OF THE PUBLIC COMMENT SUMMARY TO DRAFT AMENDMENT 3

MS. MELISSA YUEN: Now I will go over the summary of comments to the Public Information Document for Draft Amendment 3. As a quick review for the four issues presented in the PID, first is the spawning area efficacy; so a review of the boundaries and default closure dates. The second issue is fixed gear set-aside provision. This is the rollover for unused set-aside after November 1.

The third issue is gear declaration; a requirement to declare gear before each season starts. The fourth issue is the empty fish hold provision; the requirement to empty fish holds of fish before departing on a trip. This is the timeline for the development of the amendment. The public information document was available for public comment from May through July.

Currently the Section is to review the comments and consider development of Draft Amendment 3. The staff had three public hearings in June in the states of Maine, New Hampshire and Massachusetts. The hearings were in open-question format to allow stakeholders to comment on each issue and management question.

A total of 23 individuals, not including staff, participated at these meetings. The table and the comment summary provides a breakdown of the attendees, which included fishermen, federal and state staff, non-profit representatives and section members. In addition to comments provided at public hearings, we also received four letters, all of which are from groups. Three of these letters are from associations representing the interests of the fishing industry and bait providers. One letter is from a non-profit environmental organization.

The first issue is spawning area efficacy. There are the management questions in the draft public information document. The plan development team has reviewed the boundary and sampling programs for Massachusetts and New Hampshire spawning area. They found that the current spawning area boundary is adequate; and further, subareas are not warranted at this time.

It also recommended extending the spawning closure by at least two weeks for a total of six weeks in this one particular area. The rationale for this extension is for gear bias during

sampling. Again, you can look in the PID for other explanations for this. These were the comments that were received on the spawning area issue.

Participants in Massachusetts and New Hampshire expressed that the regulations are sufficient for protecting spawning herring at this time. Some representatives did comment that there should be no default closure if there is no spawning fish detected with adequate sampling. The non-profit organization, through the letter, was strongly opposed to removing default spawning closures.

In Maine participants wanted to divide up the Massachusetts/New Hampshire area because they have anecdotal evidence of fish spawning at different times from the northern and southern portions of this area. They would like to see a scientific assessment of mixing in this particular area.

Other comments on this issue is if there are any adjustments to boundaries, they should be supported by science. The participants from Massachusetts, New Hampshire and Maine, which were all three public hearings, the fishing industry members do not support a six-week closure for the Massachusetts/New Hampshire area. The reason for this is that it would severely limit fishing opportunities.

The NGO group, however, supported the six-week closure in Massachusetts/New Hampshire as a precautionary measure. The PDT's response to this is they wanted to emphasize that this was a biological reason for extending this closure; because the sampling protocol after the initial closure to trigger the two-week additional closure is based on the 25 percent of the fish that have yet to spawn and not the gonadosomatic index, which is based on the body index. This protocol is more susceptible to the gear bias.

Additional comments on spawning area, Massachusetts participants expressed that the spawning closure should be effective sooner than the seven days after the threshold is detected. The PDT response to this was that the seven days was built in to consider the administrative process for states to publish closure announcements and also consideration of the rate at which the female fish ripen. Having closure seven days after spawning is detected, the commercials are expressing the FMP will protect the fish during peak spawning activity.

Additional comments on spawning area include the commission should advance spawning protection in Georges Bank/Nantucket Shoals; and a suggestion was to submit a request to the New England Fisheries Management Council and NOAA Fisheries via the Draft Omnibus Habitat Amendment 2. The second issue is the fixed gear set-aside. We asked the public whether the unused portion after November 1 should be rolled into the remaining area of 1A sub-quota. In the PID the PDT noted at this time there that there is no biological basis for adjusting the fixed gear issue. Again, there were no landings in the past ten years after November 1; and in the event that the fixed gear fishery does need to catch fish, they can access the Area 1A sub-quota.

Comments from Massachusetts and New Hampshire as well as written comments agree with the PDT's recommendation to maintain status quo. Participants in Maine, however, wish to adjust the current position. They suggested having a set-aside available in Trimester 1 before the rest of the fishery has access to the fish. They also want to be exempt from spawning closures, but they're still prohibited from possession of spawning fish.

The third issue is gear declaration, which considers a requirement for vessel owners to declare their intended fishing gear prior to the beginning of the season. The PDT had not recommended moving this issue forward because a system would need to be set up for each state to collect information; and there is also a compliance issue. There would be a system to enforce compliance.

There would need to be considerations for fishermen who may wish to fish with different and in more than one area. Furthermore, the PDT does not believe that this information would be necessary to make the projections for

harvest control measures. Comments we received on this issue; the fishermen were strongly against a gear declaration requirement because they need the flexibility to change gears in response to market and also in case of equipment failures.

The participants in Maine, however, offered additional comments on this issue. They voiced that it was more important to know the capacity of vessels rather than the gear types; so as a suggestion they recommended a cap on the carrying capacity of vessels. For example, they suggested 200 to 250 metric tons.

The last issue is the empty fish hold provision, which was a requirement for vessel owners to empty the hold of fish prior to departure for a trip. As a reminder, the New England Fishery Management Council had a previous requirement in its draft framework adjustment for fish holds to be empty before leaving a dock.

The council also adopted Alternative 2.1.1, Option 2, Option C; a waiver may be issued for instances when there are fish in the hold after inspection by an appropriate law enforcement officer. This alternative would only apply to Category A and B boats. Their intent is for waivers to be issued for refrigeration failure and non-marketable reported fish.

The PDT recognized that fishermen might have surplus catch that they cannot dispose of and there is a challenge to get rid of. The proposed requirement to empty the holds of fish would be an incentive to curb wasteful fishing practices. The comments we received on this is that all comments were in support of an empty fish hold provision. Many people had suggested a limit of two waivers.

The PDT offered some additional comments on this. They noted that the provision may not be necessary for an Interstate FMP if the federal plan implements the measure. They do not recommend a limit on waivers; because they believe that if people had a legitimate reason and it verified by a law enforcement officer that there shouldn't be a limit on proper disposal of this fish.

Other comments that were received is that the commission should advance spawning protections in Georges Bank/Nantucket Shoals; again submitting a letter to the New England Fishery Management Council and NOAA Fisheries. Another comment was to keep in mind that the status of fishery is not overfished and not experiencing overfishing.

Just as a brief recap on Issue 1, spawning area efficacy, in general comments were to maintain the area boundaries, maintain the four-week closure in the Massachusetts/New Hampshire area, remove default closure dates and work with federal agencies on offshore spawning protections. The second issue, fixed gear set-aside, most comments did not support addressing the measure except participants in Maine. The third issue, gear declaration, there were no supporting comments other than to focus on capacity. Issue 4, empty fish hold, all comments were in favor of this issue. Thank you; and if there are any questions, I'll take those right now.

CHAIRMAN STOCKWELL: Thank you, Melissa, for your presentation and your recap. Before I go to other section members, a question for you is did the PDT address the issue of default closures if no spawning fish is detected with adequate spawning?

MS. YUEN: No, at this time they have not addressed that issue.

CHAIRMAN STOCKWELL: Other questions on the presentation? David.

DR. PIERCE: In line with what you just asked Melissa, Terry, has the plan development team had an opportunity to reflect once again on the initial recommendation that spurred our desire to get public comment on the two-week extension of the New Hampshire/Massachusetts? Has that been revisited by the plan development team in light of the public comment or does that recommendation still stand?

MS. YUEN: We had a conversation with PDT members from Maine and New Hampshire and also MITC Grant. On this issue they still

maintain the recommendation to extend the Massachusetts/New Hampshire area to six weeks. That is mainly because of the gear bias for the second round of sampling after the four-week closure. Again, the protocols set are different from the initial. It is not based on GSI but on the percentage of fish that have yet to spawn.

CHAIRMAN STOCKWELL: Other questions from the section? Any questions from the audience? Melissa is going to put the recap back up on the screen; and I would like to go out to the section to provide guidance back to the PDT for drafting the management options for the draft amendment. If we do it section by section, that would probably be easier. The first section here is spawning area efficacy. What is the section's pleasure? Doug.

MR. DOUGLAS E. GROUT: Despite public comment, I heard what the PDT and the technical committee are saying about the potential of having a two-week extension. I've also had comments from fishermen in my state that have indicated that he has experienced spawning fish after the spawning closure. **I think I'd like to make a motion to include a section on spawning area efficacy that would include an option that would extend the Maine/New Hampshire spawning closure by two weeks at least for public comment**.

CHAIRMAN STOCKWELL: Would that be in addition to the measures that are on the board?

MR. GROUT: That are already in the plan, you mean?

CHAIRMAN STOCKWELL: Yes.

MR. GROUT: Yes, obviously.

CHAIRMAN STOCKWELL: Is there a second to Doug's motion; seconded by David Pierce. Is there section discussion? Toni just raised an issue we can do it without objection or if there is a difference of opinion we will bring this to a vote. David.

DR. PIERCE: I just wanted to point out the interesting situation we create for ourselves when we go out with a PID with issues like this because we're going to go out with the amendment, assuming we decide to have that amendment, with these elements and we're going to get the same comments from the public that we got during the review of these concepts in the PID. I think we pretty much understand and know beforehand what the public is going to say; so it is almost like a redo. That's okay; it's the way we do business.

This is a difficult one and I would be inclined not to support it if it was not for the fact that the plan development team and those involved, the hard work of the GSI of determining whether or not these fish are spawning. If they had said they oppose this; but they're on board; they have said that this is needed.

I certainly understand the industry's objections to this. Certainly, the midwater trawlers that have commented with the two-week extension, it could prevent them from actually going into the area and fishing at all. That's obviously a concern. Nonetheless, it is a spawning closure. We've had this spawning closure in place for a long time.

It is integral to the way in which we manage sea herring in the Gulf of Maine. As a consequence of that and in light of the plan development team's perspective and continue the insistence that this is merited, I'd like to put it in the amendment and indeed run it out to public hearing for further comments; so I would support the motion.

CHAIRMAN STOCKWELL: Other comments to the motion on the board? Are there any comments from the audience? Emerson.

MR. EMERSON C. HASBROUCK, JR.: I'm just wondering how this is consistent with the federal plan. I'm unfamiliar with the federal plan so I'm wondering what the consistency is.

CHAIRMAN STOCKWELL: There isn't any. The spawning areas are an ASMFC management

measure. They're not included in the federal plan. Bill.

MR. WILLIAM A. ADLER: So in other words in the draft amendment there will be the options still in or is it just going to be this is it, six weeks, or is it going to be comments on both?

CHAIRMAN STOCKWELL: I'm going to defer to Melissa for how she is going to construct the document.

MS. YUEN: We'll always have an option for status quo and then an additional option. The new one would be to extend it.

CHAIRMAN STOCKWELL: Are there any other comments? Seeing none, the motion is to include a section on spawning area efficacy, extending the spawning closure in Maine through New Hampshire by two weeks. Motion made by Doug Grout and seconded by Dr. Pierce. Is there an objection to the motion on the board? **Seeing none, the motion carries**. David.

DR. PIERCE: I would make a request that when the amendment is put together there needs to be more discussion and description of the likely impacts of this particular spawning closure extension on the fishery itself, to the quotas we have by period and what the likely consequences will to the mobile gear fishery, the purse seine fishery, the midwater trawl fishery.

Will this particular extension result in an end of the midwater trawl fishery in that particular area? In other words, the quota will not be accessed – the first part of the quota will not be accessed by the midwater trawl. There needs a good description, a far better description of the impacts of this particular closure on the participants in the fishery, especially those who wait for an opportunity to get access to the Massachusetts/New Hampshire spawning closure when it opens up.

The document did its best – the PID did its best to introduce the concern and likely consequences, but this is a big deal. This is a very big deal for the sea herring fishery out of the Gloucester area in particular. We owe it to those individuals, to the industry and to the fishermen in the process just to be as detailed as we can possibly be with our estimation of the likely impacts.

CHAIRMAN STOCKWELL: Okay, before we move on, is there any further guidance from the section on number one, the spawning area efficacy component? Okay, seeing none, we're on to the fixed gear set-aside provision. Most comments do not support adjusting except for the participants in Maine. I'm a little bit in a tough position right here; so are there any comments on Section Number 2? David.

DR. PIERCE: I'd appreciate a recap. Most comments did not support adjusting except participants in the state of Maine; if Melissa would, I would appreciate your going back over the reasons why the participants in Maine do not support the adjustment or do support the adjustment.

MS. YUEN: Some participants in Maine expressed that they had anecdotal evidence of fish that are occurring after November 1; and they just wanted more access to the fish, from what I've heard.

CHAIRMAN STOCKWELL: And I'm going to step out of my chair seat and turn it over to Ritchie.

MR. G. RITCHIE WHITE: Go ahead, Terry.

CHAIRMAN STOCKWELL: To your question, David, as the PDT very clearly pointed out, historically the fish migrated out of the Gulf of Maine by November; but as we all know there have been changing environmental conditions lately. For the last several years we've heard – you know, DMR has heard from several or more than several fixed gear fishermen that there are adult fish on the shore in November that they do not have access to after the quota has been taken.

It would be our state's interest in having access for these few small boats at a time of the year when it's just a handful of fish that might help

these folks out. The comments that came from the Maine public hearing addressed a couple of other issues; and perhaps if this section moves forward with consideration of the fixed gear provision, those could be taken out for public comment as well.

MR. WHITE: I yield the chair back to you, Terry.

CHAIRMAN STOCKWELL: Thank you, sir. Jeff.

MR. JEFF KAELIN: I just have a question. If a change is made to the commission plan; would we have to go back and make an adjustment to the federal plan or could we do that in the specifications in the federal plan? Then the issue was raised by someone as to whether or not we could architect or you could architect a fixed gear quota rollover or not? My second question is can the commission create that by itself in the Gulf of Maine under this plan or if you were interested in making a change like that; would we have to take that issue also back to the federal plan and make a change? Those are my questions and how this might operate. Thank you.

CHAIRMAN STOCKWELL: Commissioner Adler has been advocating for years to preempt the council process and this action would do that. I would point out that the Chair of the Herring Committee sits on this section as well; and there will more than likely be at least one action prioritized by the council for herring in 2015. I don't know the answers to some of your questions; but if it does become an issue where we have to do complementary rulemaking; that possibility could well be in the works.

MR. KAELIN: I'm on that committee, too, and I haven't read Doug's list yet. I just got it the other day so we will do that. Thanks.

REPRESENTATIVE CRAIG A. MINER: When you were describing your understanding of why the difference of the opinion existed, it was because there is quota still left that they would like to be able to use or it was after the quota had already been met and they'd still like to fish?

CHAIRMAN STOCKWELL: The latter; the Area 1A quota would have been totally caught and they would then not have access to a quota until the next fishing year.

REPRESENTATIVE MINER: And so the extension of the time period then would allow them to fish on what quota or am I missing something?

CHAIRMAN STOCKWELL: A set-aside. Steve.

MR. STEPHEN R. TRAIN: So if I understand this right, if they don't catch it, it goes back into the Area 1A total allowable catch, anyway; so if we extend it two weeks or a month and they don't catch it, it goes back into the Area 1A set-aside or allowable. If it doesn't get caught, then it supposedly would enhance the biomass of the entire species and be part of the total allowable catch the next year. I don't see the downside to allowing them to have a little more time.

DR. PIERCE: It is to clarification, Terry. You said in your comments that they were requesting that the fixed gear quota not roll over and that we extend that particular opportunity for them so that they can continue to catch adult herring? We're not talking about juvenile fish; we're talking about adult herring?

CHAIRMAN STOCKWELL: Correct.

DR. PIERCE: And by adult we're talking age three and older? It is my hangover from 1970's and 1980's.

CHAIRMAN STOCKWELL: Those were the comments that we received, David. I think should this be approved to go out for public comment, we certainly could elicit that response from the public in the process. Bill.

MR. ADLER: So I see no reason not to extend it; but I was just saying, okay, if Area 1A closes and there is still a set-aside and then the set-aside doesn't get taken by, I don't know when,

late in the fall, do you reopen Area 1A; is that how it works?

CHAIRMAN STOCKWELL: It's a very small amount of fish; and should this measure move forward, it would be up to this section to determine whether or not it was rolled over into the following year or set into a conservation measure. Dennis.

MR. DENNIS ABBOTT: I think the number is, what, 500 tons?

MS. YUEN: It's 500 metric tons. For 2013 and 2015 it was specified at 295 metric tons.

MR. ABBOTT: Yes, 295. If we close after we've reached the quota and we add the 295 or whatever is remaining and it brings us back under that trigger point; wouldn't it require us to open up 1A again to complete the quota?

CHAIRMAN STOCKWELL: I'm in a tough spot sitting here to debate you; so I'm going to turn to Doug.

MR. GROUT: Because this is part of the Sub-ACL and there already is a rollover provision of the Sub-ACL, if they don't catch it, it gets rolled over a year plus, not the immediate following year but one year after. As long as the overall quota does not go over by 295 metric tons – let's just assume we closed right at the appropriate quota minus the 295, then that would be rolled over under the current provisions of the federal plan and I believe our plan, too.

MR. KAELIN: I think, like Dr. Pierce suggested for the earlier discussion, an analysis of what impact this would have on the fleet I think would be important because of the fact that the midwater trawl fleet doesn't get up there until October 1 and now it could be even much later if the western closure closes. Those folks have to wait for that.

It would be interesting to see how many times this 295 was actually turned back to the fishery because if it's turned back late in the fishery, the midwater trawl fleet would get most of that fish the way that is shared. I think an analysis of the impact, as I said, and again how often it has been used or how often it has come back to the industry would be helpful because I don't think any of us really know. I don't even know that it has ever been released back to the quota, frankly. I don't remember that it has been.

DR. PIERCE: I was at a council committee, ecosystem-based fisheries management, last week and there was a great deal of discussion about changes in the environment within the Gulf of Maine, rather stock changes, the surprising changes that the scientists at the Northeast Fisheries Science Center continue to say are occurring and having some effect on the important fisheries resources within the Gulf of Maine and more and more about that all the time.

I'm going to assume that indeed what is described in the PID is happening in light of the changes within the Gulf of Maine temperature-wise and otherwise, and that the fish are not moving away from shore the way they have been in the past – and that's why we have that specific time period for that set-aside. The assumption is the fish move away from shore and no longer available to fixed gear; therefore, let's do what we did.

I'm going to assume they are staying close to shore longer and therefore they are still there to be caught by fixed gear fishermen. Consequently, it makes sense for us to include in this amendment with the analysis that Jeff has suggested that which were brought to those public hearings; and that is – and I can make it as a motion, I suppose; move that the amendment include a provision that the unused fixed gear set-aside would not be rolled into the Area 1A Sub-quota on November 1. That would be the motion.

The objective would be as stated in the statement of the problem in the PID; and that is to maintain access to a dedicated quota for the fixed gear fishery and that maintained access would be necessary because of the fish changing behavior; they're staying close to shore more so now, apparently, than they have in the past. That's my motion, Mr. Chairman.

CHAIRMAN STOCKWELL: We don't need a motion unless we're going to remove it; but the guidance you and many of the other section members have provided has been noted by Melissa and then be incorporated into the document. Are there any further comments on this Section Number 2? Steve.

MR. TRAIN: Mr. Chair, do we need a motion to eliminate the November 1st time or not?

CHAIRMAN STOCKWELL: I'm going to defer to Melissa, but my sense is that if this provision stays in the document; that what you've read in the draft amendment will be perfected by the comments and guidance that have just been provided by the section, which we will then review to approve for public comment at our fall meeting. Okay, we're on to number three, the gear declaration. There are pretty clear comments from the industry. What does the section think?

MR. GROUT: I would suggest that we remove this section.

CHAIRMAN STOCKWELL: Is that in the form of a motion?

MR. GROUT: So moved.

CHAIRMAN STOCKWELL: Seconded by Steve. Comments on the motion to remove gear declaration from the draft amendment. Any comments from the audience? I'll read it into the record: **move to remove the section on gear declaration from the draft amendment**. **Motion made by Mr. Grout and seconded by Mr. Train. Is there an objection to the motion on the board? Seeing none, the motion carries.** We're on to Item Number 4, which is the empty fish hold. Comments from the section? Doug.

MR. GROUT: The council moved forward on this because the ASMFC had indicated an interest in this; and since they have moved forward and have approved a document with this included, I think it is appropriate that this commission continue to move forward with this provision in the document.

CHAIRMAN STOCKWELL: Other comments? Any comments from the audience? Ray.

MR. RAYMOND KANE: Raymond Kane, commercial fisherman. As far as this commission is concerned and the council, I have a concern on this empty fish hold provision. They're talking on the council level about giving them permission if they have failures; so I would like to see a number put on the failures like the RSWs, refrigerated seawater failures; like how many times can a vessel have an RSW failure and how many times will they be able to dump because of this failure.

It was never addressed on the council level; and I would like both the council and this commission to address that by what is a fair number; like look at their history, how many RSW failures do they have annually and come up with a legitimate number and move forward as opposed to just giving them open declarations to report an RSW every time they want to dump fish. Thank you.

CHAIRMAN STOCKWELL: Any other comments from the audience? Back to the section, Bill.

MR. ADLER: All right, in line with what Mr. Kane had said there; in the document is it going to be – are there going to be options for, okay, unlimited, two, four; are there going to be options like that that we can therefore pick after that?

MS. YUEN: Yes; we should discuss the number of waivers and maybe provide some options right now. Comments have been a recommendation of two waivers or no limit.

MR. GROUT: I think it would be worthwhile at least exploring that as a possibility; and as far as numbers, it might be more appropriate for the PDT to contact companies like the company that Jeff represents to see how often they have raw seawater failures that result in unmarketable fish, which was the exemption at the council, to get an idea around how many times those might occur.

Then you could come up with some options that would be what is the maximum number. I'm sure, Terry, you might be able to put them in touch with the O'Hara Company just to get an idea of what we're talking about for typical refrigeration failures here in a year. Then maybe you could draft some options around that number somehow.

MR. ADLER: I think that is what I was getting at is I don't want to put something in that is too loose and then all of a sudden we decide – or let's say if we just had unlimited and we decide on two; well, I don't know that you can get more restrictive in the end. You can always relax usually the way public things go. That is why I was suggesting that you put a range in there. Although if you go from two to unlimited, I think you've got it covered because you can always stay unlimited or you can go six, eight, nine to whatever. As long as we leave the door open there that we can make a decision; that is what I was getting at. Thank you.

CHAIRMAN STOCKWELL: Well, we'll have another bite at this apple in the fall once it's a final document ready for public comment. Other section comments on Issue Number 4? Seeing none, I see no objections retaining this issue in the document. The last is are there any other issues that the section would like to have included in the draft addendum? We did hear in the public comments one suggestion of a carrying cap. I see no other issues from the section; are there any issues from the public? Patrick.

MR. PATRICK PAQUETTE: Patrick Paquette, recreational advocate from the state of Massachusetts and also partial owner of a company called Got Stryper Baits. We own two charterboats that off the back side of Cape Cod. I understand it's not necessarily in this particular document yet; but you're closing at 92 percent Area 1B failed.

You went significantly over the back side; and our fish can't come to shore because we have no forage along our shore. We right now can't catch fish because two weeks before the fish normally move into our waters, we got wiped out by, whatever it was, 38 percent overage of Area 1B. This is a problem and it's a problem that's not going away. We've heard lots of language but no action.

You've got a document getting ready to move and I believe that this could be corrected by addendum. The closing at 92 percent failed. I don't know why we don't have this issue being addressed now because on the back side of the Cape recreational anglers and commercial anglers are paying for the lack of sea herring.

It is going to stay on your mind because we're not going to keep quiet because it killed our season; killed it. As a matter of fact, you're going to hear during the striped bass – for those who believe that we have a body of fish at sea that aren't coming ashore, you're going to hear about what is happening to the Massachusetts commercial quota. Our aggregation of fish is still there.

It just happens to be way offshore; and you will know that when you hear about our enforcement numbers about over fifty boats being fined as being in the EEZ because our bait got wiped out and the fish won't come to shore; and it is because of this fishery. This issue needs to be addressed at what happened in Area 1B. Thank you.

CHAIRMAN STOCKWELL: Are there any other comments from the audience? Back to the section; Jeff.

MR. KAELIN: I just got a text from one of the advisors who has excellent participation concerned about the six-week closure in the western area and asked if that area could be split to minimize the impact of a six-week closure. I'm trying to figure out what the person is asking about. I don't know if it's to have that be two areas down there or when the spawning is taking place to somehow limit a six-week closure or some kind of a split in this document.

I don't know beyond what I've just said what the person is really getting at. I don't know if it's a geographical split to make two areas down there or what; but clearly that's a big hit, the six

weeks, so I just wanted to register that we're already getting comments in opposition again to the extension of that area and someone made the suggestion it be split. If we could at least take that under advisement and figure out what the person is talking about when we draft the document between now and the fall, it would be helpful. Thank you.

CHAIRMAN STOCKWELL: I will note that was a recommendation that had been made in the past and the PDT has commented against it. Melissa, can you provide some more details, please.

MS. YUEN: We did receive comments on a suggestion to split the Massachusetts/New Hampshire area. Again, the PDT wants to stress that they don't have the information right now to inform the correct boundary split at this time. Also, I did ask the question with the mixing of the fish in the area or whether this would apply to like a northern/southern region; and the PDT believes that the fix clearly applied to the entire area because it would benefit the spawning behavior throughout the region.

MR. KAELIN: I appreciate that, but the individual also wanted me to remind the section that the 2012 benchmark assessment estimated spawning stock biomass at 517,000 metric tons, which is above Bmsy of 157,000 metric tons. They wanted I think to make sure that the state of the spawning stock biomass be considered when an extension of the spawning closure was considered; again expressing their objection. Thank you.

CHAIRMAN STOCKWELL: Any other comments? Dennis.

MR. ABBOTT: To Mr. Paquette's comments about what happened in Area 1B, triggering it at 92 percent with about 3,000 ton quota puts you within 240 tons of the quota. Do we need a lower number there or at least can we have a review of what happened in 1B? I can't recall exactly, but wasn't it attributed to a particular operation or whatever? Was it beyond our control; did they go over the number so quick, so fast that the 92 percent number really wasn't significant in halting the fishery at the right time?

CHAIRMAN STOCKWELL: A small amount of fish. Doug.

MR. GROUT: Yes, that was my comment; that the Area 1B quota right now is extremely small compared to the total ACL of the fish. Given that we're dealing with boats that are high-volume fishery boats, it is very difficult for the National Marine Fisheries Service to predict on a weekly basis when 92 percent of the quota will be taken.

As a result, the council probably in next year's plan of action will be considering a management action that may change to makeup of 1B. It may be rolled into one of the other areas or some other kind of option that would try and address this constant difficulty with trying to manage a small quota compared to the other three areas.

MR. WHITE: Another way the section could influence this would be as we do in 1A, you know, a days-out scenario; only so many landing days a week, don't open it up full bore, a couple days a week or something; and that would slow down the harvest and give the Service better ability to shut down at an appropriate time.

MR. KAELIN: I think one of the other difficulties is it is very, very hard to guess where the fish are going to be, too. I think if you go back and we should look at the percentage of catches in 1B and the other areas over time. The industry has not always been over in 1B. This year there was no fish in Area 2. What did we take, 30 percent of the Area 2 quota or something like that? There has got to be plenty of forage out there because I think we're only talking about a third of the quota. It is hard to predict that the fish are going to be in 1B.

I think that is just where they happened to be; and that quota is very small. Remember, it was kept small because of Massachusetts concerns for the back side of the Cape. It is a big, big area; 1B is huge. I think it is bigger than 1A. It is hard to predict that they're there, so I'm not sure how a days-out scenario would work there

because you can't always predict how many fish are there and what year they're going to be there, I guess, Mr. White. That is just another thought I had.

CHAIRMAN STOCKWELL: Any other thoughts for inclusion in this draft amendment? Seeing none; **we are going to need a motion to move the draft amendment as amended forward to the PDT for development. Made by Bill Adler; seconded by Steve Train.** Is there a need for discussion? Are there any further comments? Are there any objections? **The motion carries**. Melissa, we're on to Agenda Item Number 6, the AP.

REVIEW AND POPULATE ADVISORY PANEL MEMBERSHIP

MS. YUEN: We sent a memo to section members with a list of the current advisory panel membership, which includes notes of attendance; for example, if an attendant has excellent participation or poor. We would like for each state to review their membership, reach out to people that may not be very active and see if they're interested in continuing to support the advisory panel. As we move forward, we would like to have more active participation so we can have comments as we develop options for this document and moving forward as well. Please take a look at the list and get back to me as soon as possible.

MR. WHITE: Melissa, can you tell me when the AP phone calls usually take place; are they during the day or in the evening?

MS. YUEN: Usually during the day; but I do sense people's availability and I'm trying to be as flexibility as possible.

MR. WHITE: Okay, because I know one of our participants has not been active; but he has a lot of interest and fishes everyday short of a hurricane. His availability probably is extremely limited during the day. Was there ever a discussion of an evening phone call?

MS. YUEN: Not during my requests; but I do make a point that if they cannot attend the conference call, they can always e-mail me or call me at their convenience. I always try to call them back.

MS. YUEN: So, state directors, if you could work with your fellow commissioners and see if we can populate or repopulate this AP; we're going to need the AP as we move forward with the draft amendment in the fall. Okay, we're on to other business. Toni.

MS. TONI KERNS: This is in regards to the letter that we sent to both the New England Fishery Management Council as well as the Northeast Fisheries Science Center on whether or not there would be any opportunity for sampling to look at the Nantucket Shoals spawning area. We are still working with the science center on trying to see if they would have sampling opportunities within their current sampling protocol to help us with this study.

We will continue to discuss at the fall NRCC meeting and report back to the section at the October meeting. I will say that in the discussions that we've had so far it would most likely need to be sampling that is currently occurring within the science center; because right now they also have very tight budgets; and so there isn't additional funding available for any new sampling unless potentially we made a priority change through the council provisions, which then would set changes in the priorities for the science center, which I think is how that occurs.

CHAIRMAN STOCKWELL: There is also a logistical issue with the sampling of getting fresh fish ashore when they're coming from offshore even if it is an RSW. David.

DR. PIERCE: Thanks, Toni. I'm still trying to understand the sequence of events and what still needs to be done. My understanding is that the NRCC did task the Northeast Fisheries Science Center to go over the proposal and then to suggest additional sampling that could be done with the existing sampling program. The tasking has occurred, the center just has not yet responded; correct?

MS. KERNS: The tasking has occurred. There was a misunderstanding of what the tasking was; and so they are going back and redoing the task.

DR. PIERCE: Okay, so just some miscommunication that has been corrected and now we wait for a response?

MS. KERNS: Correct.

CHAIRMAN STOCKWELL: And the request was on behalf of both the council and the commission. It is still the same miscommunication. David.

OTHER BUSINESS

DR. PIERCE: This is under other business. I thought I would inform the section that in light of what happened this past year with concern about fishing for sea herring off of the back side of the Cape, fishing right on the state line, perhaps even fishing illegally inside of state waters – that still has been alleged and not proven – I'm continuing to address what I may bring forward to the New England Fishery Management Council and to the Herring Committee; and that is a revisiting of what was offered up quite a few years ago regarding restrictions on fishing on the back side of the Cape Cod; and not just near state waters but farther from state waters, going quite a ways off.

Those of us who have been around may recall all the discussions we had about concern about local depletion, about the fixed gear purse seine gear-only area and exclusion of other mobile gear. There was a proposal at that time, when we first considered this concept, for an extension of that closure to midwater trawling off of the back side of the Cape; coordinates that I can't recall at the moment.

I'm looking into that again in light of the very legitimate concerns expressed by many individuals, recreational fishermen and commercial fishermen, regarding the intensive effort of midwater trawling on the back side of the Cape right on state waters; concern about catch of haddock and other things. So, just advance notice that this is something I'm pursuing and eventually this concept, this idea may be brought forward to the section.

ADJOURNMENT

CHAIRMAN STOCKWELL: Is there any other business to come before the section today? Seeing none; this meeting is adjourned.

(Whereupon, the meeting was adjourned at 9:00 o'clock a.m., August 5, 2014.)

Atlantic States Marine Fisheries Commission

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MEMORANDUM

October 15, 2014

To: Atlantic Herring Section

From: Toni Kerns, ISFMP Director TMK

RE: Development of Draft Amendment 3

The Section tasked the Atlantic Herring Plan Development Team (PDT) to develop Draft Amendment 3 to the Atlantic Herring Fishery Management Plan (FMP) with the following issues: spawning area efficacy (including an option to extend the Massachusetts-New Hampshire spawning area closure period from four weeks to six weeks), fixed gear set-aside rollover provision, and empty fish hold provision. In order to conduct a complete analysis on spawning efficacy and socioeconomic impacts to inform management options, the PDT requests additional time to develop the amendment and delay approval for public comment until the ASMFC Winter Meeting (February 2015).

The PDT is seeking clarification from the Section on the management goal for the FMP's spawning protection program: is the goal of the spawning protection program to prevent disruption of spawning activities or to prevent catching of spawning fish? The current spawning sampling program is fisheries-dependent (i.e. all samples are sourced from the commercial fishery), which relies on fishing activity to occur up to and possibly during spawning events to obtain samples for analysis. A statement of the management goal will guide the PDT's development of spawning protections management options.

As part of the spawning efficacy issue, the PDT is including an option to adjust the provision stating a closure is effective seven days after the spawning trigger is reached. Currently, a spawning area closure will begin seven days after female herring have reached the following spawning conditions: females greater than 28 cm in length have reached a mean gonadosomatic index of 20%, or females between 23 and 28 cm have reached 15% GSI. During the Public Information Document comment period, stakeholders commented a closure should be effective sooner than seven days. Since the seven-day period takes into account the rate of ripening in female herring, the PDT will conduct an analysis of spawn herring maturation stages to update the current knowledge of herring reproduction.

Please contact Melissa Yuen at (703)842-0740 with any questions.

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