

Atlantic States Marine Fisheries Commission

Atlantic Menhaden Management Board

May 22, 2013
8:00 – 11:00 a.m.
Alexandria, VA

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 (*L. Daniel*) 8:00 a.m.
2. Board Consent 8:05 a.m.
 - Approval of Agenda
 - Approval of Proceedings from February 2013
3. Public Comment 8:10 a.m.
4. Consider Episodic Events Set Aside Proposal by Board Subcommittee 8:15 a.m.
(*M. Waine*) **Action**
5. Consider State Implementation Plans and Amendment 2 Compliance **Action** 9:15 a.m.
 - Plan Review Team Report (*M. Waine*)
 - Consider approval of state implementation plans
6. Technical Committee Report (*M. Dean*) 10:00 a.m.
 - Benchmark stock assessment progress report
7. Consider Benchmark Stock Assessment Terms of Reference (*M. Dean*) **Action** 10:30 a.m.
8. Other Business/Adjourn 11:00 a.m.

The meeting will be held at the Crown Plaza, 901 North Fairfax Street, Alexandria, VA 22314; 703-683-6000

MEETING OVERVIEW

Atlantic Menhaden Management Board Meeting
Wednesday, May 22, 2013
8:00 – 11:00 a.m.
Alexandria, VA

Chair: Louis Daniel (NC) Assumed Chairmanship: 3/11	Technical Committee Chair: Micah Dean (MA)	Law Enforcement Committee Representative: Lloyd Ingerson (MD)
Vice Chair: Robert Boyles (SC)	Advisory Panel Chair: William Windley (MD)	Previous Board Meeting: February 20, 2013
Voting Members: ME, NH, MA, RI, CT, NY, NJ, DE, MD, PRFC, VA, NC, SC, GA, FL, NMFS, USFWS (17 votes)		

2. Board Consent

- Approval of Agenda
- Approval of Proceedings from February 20, 2013

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. Consider Episodic Events Set Aside Proposal by Board Subcommittee (8:15 – 9:15a.m.)
Background
<ul style="list-style-type: none"> • At its February meeting, the Board directed a Subcommittee of New England states to further develop the parameters for an episodic events set aside program. • The task included developing a program that includes a qualifying definition of episodic events, required effort controls to scale a state’s fishery to the set aside amount, and a timely reporting system to adequately monitor the set aside (Supplemental Materials).
Presentations
<ul style="list-style-type: none"> • Board Subcommittee Report by M. Waine
Board actions for consideration at this meeting
<ul style="list-style-type: none"> • Approve Episodic Events Set Aside Proposal

5. Consider State Implementation Plans and Amendment 2 Compliance (9:15 – 10:00a.m.)
Background
<ul style="list-style-type: none"> • States submitted implementation plans to comply with Amendment 2 to the ISFMP for Atlantic Menhaden (Briefing CD). • The Plan Review Team reviewed state implementation plans to assess compliance with Amendment 2 (Supplemental Materials).
Presentations
<ul style="list-style-type: none"> • Plan Review Team Report by M. Waine

Board actions for consideration at this meeting
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| <ul style="list-style-type: none">• Approve State Implementation Plans for Amendment 2 |
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6. Technical Committee Report (10:00 – 10:30a.m.)
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Background

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| <ul style="list-style-type: none">• At its February meeting, the Board requested quarterly progress reports on the upcoming Benchmark Stock Assessment for Atlantic menhaden, currently scheduled for 2014 (Briefing CD). |
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Presentations

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| <ul style="list-style-type: none">• Benchmark Stock Assessment Progress Report by M. Dean |
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7. Consider Benchmark Stock Assessment Terms of Reference (10:30 – 11:00a.m.)
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Background

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| <ul style="list-style-type: none">• The Technical Committee recommends the Board approve the terms of reference for the upcoming Benchmark Stock Assessment for Atlantic menhaden (Briefing CD). |
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Presentations

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| <ul style="list-style-type: none">• Technical Committee Report on Terms of Reference by M. Dean |
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Board actions for consideration at this meeting
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| <ul style="list-style-type: none">• Approve Terms of Reference |
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8. Other Business/Adjourn

DRAFT

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DRAFT

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

**Crowne Plaza Hotel - Old Town
Alexandria, Virginia
February 20, 2013**

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

TABLE OF CONTENTS

Call to Order 1

Approval of Agenda and Approval of Proceedings, December 2012 1

Public Comment 1

Technical Committee Report 2

Discussion of Amendment 2 Implementation and Compliance..... 12

Multispecies Technical Committee Report..... 23

Populate the Stock Assessment Subcommittee 26

Populate the Plan Review Team..... 26

Other Business..... 26

Adjournment 27

INDEX OF MOTIONS

1. **Approval of Agenda** by consent (Page 1).
2. **Approval of Proceedings of December, 2012** by consent (Page 1).
3. **Move to recommend that the commission allocate \$35,000 as recommended by the technical committee to digitize the tagging data** (Page 10). Motion by Robert Boyles; second by Pat Augustine. Motion carried (Page 12).
4. **Move that states that wish to opt into the 2013 episodic set-aside quota must submit effort control criteria to the PRT by April 15th for board approval at the May meeting. This criteria will include, but is not limited to, maximum harvester and carrier vessel sizes and a maximum daily trip limit** (Page 15). Motion by Terry Stockwell; second by Pat Augustine. Motion carried (Page 17).
5. **Move to task the Plan Review Team to provide the board for approval at the at the May meeting an appropriate daily trip limit reduction at 75 percent of the episodic set-aside quota** (Page 17). Motion by Terry Stockwell; second by Pat Augustine.
6. **Motion to substitute that for 2013 the episodic event fishery, all states will retain their initial Amendment 2 allocations and all states that qualify for episodic events will be able to harvest from the 1 percent set-aside** (Page 18). Motion by A.C. Carpenter; second by Adam Nowalsky.
7. **Motion to postpone the substitute motion and the original motion until the May meeting** (Page 21). Motion by Dennis Abbott; second by Bill Adler. Motion carried (Page 21).
8. **Motion to approve the stock assessment subcommittee membership as presented** (Page 26). Motion by Pat Augustine; second by Bill Adler. Motion carried (Page 26).
9. **Motion that the board accept the plan review team membership as proposed** (Page 26). Motion by Pat Augustine; second by Bill Adler. Motion carried (Page 26).
10. **Motion to adjourn by consent** (Page 27).

ATTENDANCE**Board Members**

Terry Stockwell, ME, proxy for P. Keliher (AA)
 Rep. Walter Kumeiga, ME (LA)
 Dennis Abbott, NH, proxy for Sen. Watters (LA)
 Doug Grout, NH (AA)
 G. Ritchie White, NH (GA)
 Rep. Sarah Peake, MA (LA)
 David Pierce, MA, proxy for P. Diodati (AA)
 Bill Adler, MA (GA)
 Rep. Sarah Peake, MA (LA)
 Robert Ballou, RI (AA)
 Bill McElroy, RI (GA)
 Rick Bellavance, RI, Proxy for Rep. Martin (LA)
 David Simpson, CT (AA)
 Dr. Lance Stewart, CT (GA)
 James Gilmore, NY (AA)
 Pat Augustine, NY (GA)
 Peter Himchak, NJ, proxy for D. Chanda (AA)
 Adam Nowalsky, NJ, proxy for Asm. Albano (LA)

Tom Fote, NJ (GA)
 David Saveikis, DE (AA)
 Roy Miller, DE (GA)
 Tom O'Connell, MD (AA)
 Lynn Fegley, MD, Administrative proxy
 Bill Goldsborough, MD (GA)
 Russell Dize, MD, proxy for Sen. Colburn (LA)
 Jack Travelstead, VA (AA)
 Cathy Davenport, VA (GA)
 Kyle Schick, VA, proxy for Sen. Stuart (LA)
 Louis Daniel, NC (AA)
 Mike Johnson, NC, proxy for Sen. Jenkins (LA)
 Sen. Ronnie Cromer, SC (LA)
 Robert Boyles, Jr., SC (AA)
 Jim Estes, FL, proxy for J. McCawley (AA)
 Kelly Denit, NMFS
 Jaime Geiger, USFWS
 A.C. Carpenter, PRFC

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

Ex-Officio Members

Jeff Brust, Technical Committee Chair

Staff

Robert Beal
 Toni Kerns

Mike Waine
 Mark Robson

Guests

Matt Cieri, ME DMR
 Steve Meyers, NMFS
 Geoff White, ACCSP
 Kim Marshall McLean, NMFS
 Michelle Walsh, NOAA
 Ken Hastings, MSC
 Joe Fessenden, ME DMR
 Jimmy Kellum, Kellum Protein
 Ken Hinman, NCMC/Wild Oceans
 Chris Moore, CBF
 Jeff Tinsman, DE DFW

Drew Minkewick, KellyDrye Warren
 Shaun Gehen, KellyDrye Warren, DC
 Michael Luisi, MD DNR
 Elizabeth Scheck, PEW
 Joseph Gordon, PEW
 Wilson Laney, USFWS
 Raymond Kane, CHOIR
 Ben Landry, Omega Protein
 Ron Lukens, Omega Protein
 Bud Brown, Georgetown, ME
 Jeff Kaelin, Lund's Fisheries

The Atlantic Menhaden Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, February 20, 2013, and was called to order at 8:00 o'clock a.m. by Chairman Louis Daniel.

CALL TO ORDER

DR. LOUIS B. DANIEL: Good morning! Welcome to another installment of the Atlantic Menhaden Management Board. You should have our agenda and there is various supplemental materials that hopefully everyone has had a chance to thoroughly review and digest. I am Louis Daniel; I'm the chairman of the board. I am going to continue in that role until the annual meeting just to try to get us through the compliance criteria and the state plans.

APPROVAL OF AGENDA AND PROCEEDINGS

CHAIRMAN DANIEL: Then my vice-chairman, Mr. Boyles, will take over at the annual meeting. Hopefully, everyone has had a chance to take a look at the agenda. If were really bored, you read our meeting minutes from our December meeting. For those of you that weren't at that meeting, that was definitely an interesting meeting and one for the record books. If there are no changes to the agenda or modifications to the minutes – Jack.

MR. JACK TRAVELSTEAD: I would like to add an item under new business just to discuss the potential updates to the stock assessment. It should take five minutes or less.

MR. A.C. CARPENTER: I don't want to put you under any pressure, Mr. Chairman, but we had two very good chairmen yesterday. (Laughter)

CHAIRMAN DANIEL: I will do my best to keep us on schedule and moving right along, Mr. Carpenter.

PUBLIC COMMENT

CHAIRMAN DANIEL: Without objection and with that addition from Mr. Travelstead, we will move on to public comment. Is there anyone in the audience that would like to speak on items that are not on our agenda? Shaun.

MR. SHAUN M. GEHAN: Thank you, Mr. Chairman and members of the board. My name is Shawn Gehan. I am here representing Omega Protein, one of the signers, and some of the other

folks in the bait industry in Virginia and New Jersey. I guess maybe this issue has somewhat come up onto the agenda as it relates to the upcoming stock assessment and the need to avoid the same situation we had last year with the 2012 update.

One of the things, having talked to many of the members of the technical committee, the stock assessment subcommittee and others, that in terms of useful information probably the one thing that is feasible to achieve this year that could most help get us over this hump, it would be doing sort of a broader survey than the one that the industry did the year before last based on the survey design that the technical committee and the stock assessment committee approved.

This issue obviously has become that much more important because in the meeting materials today the technical committee determined that it couldn't make a determination about the overfished status of the stock because it depended upon whether the selectivity in the fishery is flat-topped or domed, and that is a question.

Obviously, it is a consequential question because it changes the legal status of the stock. This was also an issue that had been raised in the 2010 assessment peer-review report. One of the reasons we had undertaken the survey is that obviously whether a dome-shaped selectivity or flat-top is appropriate depends on now much and if there are fish outside the range of the fishery.

The Virginia Marine Resources Commission had funded an aerial survey design and gave a grant to the Virginia Institute of Marine Sciences to design the survey. They outsourced that in part to a person who designed the Pacific Coast Pelagic Survey. They are expecting to have that design early this spring.

As part of that design, there will actually be a biological sampling program so that it is not just an abundance survey but we could also get distributional information and age-length data and so forth. Obviously, the effort will take a lot of money. The people who signed this letter – I know there are other people that we have been talking to and just couldn't reach – from the industry side are willing to contribute financially and in-kind resources in terms of planes and boats to make this a reality.

What we're asking the board through this letter today is once that survey design is produced is to assign the technical committee to review it. Hopefully, it will have some price tag and if we could do the whole thing feasibly, that would be great. If it is broader than might be needed to produce reliable information that could be used in the upcoming assessment to task the technical committee to scale it back to meet those, but work within the design that they have approved that the board would like to see used in the upcoming assessment.

With those commitments on your part, which I think are really minimum, the industry is willing to put up big time to make this – you know, answer these obviously very important questions. And then the final thing to the extent that the states have some resources to put into a collaborative effort, other stakeholders in the industry, we'd certainly encourage them to help make this possible. Obviously, as December showed, a lot of people care about the fishery. I think this is a good opportunity to see how much. Thank you very much.

CHAIRMAN DANIEL: Thank you, Shaun. Jeff.

MR. JEFF KAELIN: Mr. Chairman, I'm Jeff Kaelin with Lund's Fisheries in Cape May, New Jersey. I just wanted to follow up on Shaun's discussion about the survey design and so forth to allow you to understand that we have been working with both VIMS and now the University of Southern Mississippi, originally Rutgers, to establish a Fishery Science Research Center with the National Science Foundation.

There are several of these research centers that have been established for car seats and a number of other things. We just got word that has been funded. There is a certain amount of seed money, about \$300,000, from the cooperators around the table, industry people primarily in the in Mid-Atlantic Region and a couple of Gulf people. So we have some seed money. This project continues to be a priority for us.

We have learned that we could potentially bring the survey project through the Science Center for Marine Fisheries; and by doing that reduce the overhead rate at VIMS, for example, if they become the lead scientists on this thing to 10 percent. It is a requirement with the NSF that overhead does not exceed 10 percent. We're trying to find vehicles to bring resources to the table to finally get this project done on a regular basis. It is not a lot of money, but it is an organization and a conduit for making a

project like this be successful. We just wanted to let you know that. Thank you.

CHAIRMAN DANIEL: Is there anything else from the audience? If not, Ritchie.

MR. G. RITCHIE WHITE: Mr. Chairman, a few comments about the meeting that we had in Baltimore. First, I think it is worth repeating our executive director's comments that this was the commission at its best, and I hope we can use that momentum into other boards when we're dealing with difficult issues.

I also think that our leader in this did a fantastic job and that was a big part of how we finished the day successfully. The other issue I wanted to bring up were the signs that were at the meeting. I don't know what group or groups were responsible for the signs; but when the signs were held up and made noise, it was disruptive to the meeting.

It was disrespectful to the commission and certainly disrespectful to the audience behind the signs that were being blocked. Those people clearly didn't know what influences this body because that kind of bullying does not work here. I thought about bringing this to the Policy Board, but in reflection hopefully it is a one-time incident and we won't see this kind of activity again. Thank you, Mr. Chairman.

CHAIRMAN DANIEL: Is there anything else? All right, if not, we will move on from public comment into the technical committee report, and I will call on Jeff Brust to provide us with that.

TECHNICAL COMMITTEE REPORT

MR. JEFF BRUST: Good morning, everyone. My name is Jeff Brust with the New Jersey Division of Fish and Wildlife. I am the Chair of the Menhaden Technical Committee, and I've got a real quick presentation for you today. I have just three items to discuss. First, I want to go over the new stock status relative to the SSB reference point based on the 2012 stock assessment.

We've got a funding request to get some historic data into play for the 2014 stock assessment and just a quick update on the development of a fixed-gear adult index similar to the PRFC index. Stock status; you will remember during

Addendum V the board changed the fishing mortality reference points to maximum spawning potential-based numbers; 15 percent MSP for the threshold and a 30 MSP for the target.

But at that time the SSB reference point remained in terms of median recruitment, so we had this inconsistency in the reference points. This inconsistency was resolved through Amendment 2. Amendment 2 changed the SSB reference points and they are now MSP based as well. With the change in the reference points, the technical committee went back to look at the stock status relative to the new reference points. We used the 2012 stock assessment update results.

Unfortunately, the results are inconclusive at this time. Depending on the selectivity curve that we used, whether it was flat-top or dome-shaped, we got different results. If we used the flat-topped selectivity curve, we found that the stock was determined to be overfished. If we used the dome-shaped selectivity curve, the stock is considered not overfished.

Because of the uncertainty in the actual shape of the selectivity curve, there has been a lot of discussion about which one is the most appropriate one, and this point we just don't know. We will be looking into it in the 2014 stock assessment, but at this point it is too uncertain so the outcome is that we can't make a determination on stock status in terms of overfished.

The overall status determination; overfishing is occurring, and we told this to the board back in October. That is the fishing mortality reference point, but the SSB reference point we cannot tell and overfished status is unknown. Are there any questions on that?

DR. GEIGER: Mr. Chairman, a question for Jeff. Jeff, has the technical committee evaluated in priority order the specific kinds and types of data that are needed to further resolve and decide on this particular issue?

MR. BRUST: I don't think we've come up with a list and ordered them, but there are a couple of items that would be helpful. One of them is the survey that Mr. Gehan was talking about earlier. Also next on my presentation is something that I think will be very helpful to get to that.

MR. WILLIAM GOLDSBOROUGH: Jeff, two questions for you. First of all, was it just dome-shaped or not dome-shaped or were there degrees of shape? The second one is when you did those

different runs, were there other variables as well as that that were considered?

MR. BRUST: We only investigated one dome-shaped curve, so we didn't do a lot of sensitivity around that. It was just the one. I'm sorry; what was the second question?

MR. GOLDSBOROUGH: Whether there were other variables?

MR. BRUST: No; it was just the main change that we made – in fact, the only change that we made was the shape as a selectivity curve for both the reduction and the bait fishery.

DR. GEIGER: Mr. Chairman, given the increasing financial issues related to federal, state and private entities going on this year and probably will into the future, I would strongly suggest that if somehow for this management board we can have a prioritized list of those critical research needs; okay, some priority list of those resource needs that we can take back to respective funding agencies and make a case that these are the highest priority research activities that need to be done to meet the management responsibilities of the individual agencies of the commission and other states. I think this is going to be helpful.

For example, in the Fish and Wildlife Service we have the North Atlantic LCC, a consortium of research interests. This North Atlantic LCC is soliciting proposals. Certainly, a priority list of the highest research needs would be very beneficial to help assist and get these proposals in some kind of priority order. I know other agencies have other priority activities that can be brought to bear that in spite of scarce and increasingly diminished resources available for these kinds of activities, we can at least make the case that these are priority actions. Anything we can do, Mr. Chairman, to accelerate or transmit clearly what are the highest priorities needed to achieve these objections would be extremely beneficial, especially in this particular budget year.

CHAIRMAN DANIEL: Good comments, Jaime. Are there any others? If not, I guess I have one and maybe it is more of a comment than a question. This is not an indictment on the technical committee, but I am very concerned about we said many times – I know I said it many times during the deliberations of this board

that if we selected the new MSP-based reference points, that we would be overfished. That was stated as a fact in the deliberations.

Now a posteriori us accepting the amendment and moving forward, we're now not sure if we're overfishing or not and nothing has changed. That is a real concern and an overarching issue with the ASMFC and our technical committees.

I think we had four runs that said we were overfished, but now we have this one based on, of all things, the dome-shaped selectivity that now says we're not overfished, and so for that reason we don't have a commitment from the technical committee on the status. That raises real concerns to me; just as a comment. Dr. Pierce.

DR. DAVID PIERCE: I appreciate your concern, Louis, but I'm not. At the last meeting it became clear to me that we would continue to be plagued by the question of is it dome-shape or not? I knew that it would continue plague us because the information brought forward by Dr. Butterworth indicated there was a dome-shaped selectivity curve, and we were therefore not overfished. I knew it was unresolved, but the technical committee will continue to work on that.

I believe Jeff is going to get to the next part of his report where he is going to indicate that there is data available that needs to be analyzed – entered into the computer so it can be analyzed that will help answer the question as to whether it is dome-shaped or not. I still look at this as work to be done, an unresolved issue, and it cuts across many species and not just menhaden but codfish as well.

I appreciate your concern, but I am not troubled by it. The technical committee is working on it and now we will find out whether that Jeff is going to highlight and whether the survey work that has been noted during the public comment, whether that will get us to the point where we can resolve this important question of dome-shape versus flat-top.

CHAIRMAN DANIEL: I agree with you. Tom.

MR. THOMAS FOTE: I guess I am also not as concerned as you are. I mean, I remember and Mark and I were talking last night about a striped bass technical committee in Hyde Park where we had to separate three of the technical committee members because they were believing different models and were going around and around.

That is what scientists do. I mean, that is what college professors do and it is a part of the process. Hopefully, at the end of game we come up with the right decision, which is what we're supposed to do. But as far as the difference we have seen at every species when we look at one technical report, it changed a little the next time and then it goes back the other way. Striped bass is a perfect example over the years.

CHAIRMAN DANIEL: I appreciate the comments. I'm still concerned, but I do appreciate and understand that difference of opinion. I do think it is important for us, when we're going through these deliberations, if we make a matter of fact statement at the board level, it needs to be qualified if there are qualifiers. That is what I'm saying, and it wasn't and it should have been, in my opinion. Do you want to continue?

MR. BRUST: Yes, moving into the next topic that I wanted to bring up, back in the late 1960's and early 1970's the Beaufort Lab coordinated an extensive tagging program of menhaden. Over one million fish were tagged at that time and a very large majority – I don't remember the number off the top of my head, but a very large proportion was recovered.

The information from this tagging program can provide information on the size-specific migration of menhaden, natural mortality rates, fishing mortality rates and the fishery selectivity in different parts of the range. At this point this is the only known source of information to base a spatially explicit stock assessment model on. That is what we're aiming for in 2014.

This will incorporate the dome-shaped selectivity curves in different parts of the region. It is the only source of information that we are aware of that we can actually base this model on. The problem is it is all currently in paper format. We do not have electronic data. It was brought to the technical committee's attention.

The technical committee is requesting approximately \$35,000 for a contractor to key enter this data before the end of this year; actually by the end of this summer, hopefully, so that we can use the data in the 2014 stock assessment. For that timeline to actually work, we need a promise of this funding by sometime in March.

Sooner would be better; but if we have a promise of this money in March, the contractor can start the work. We can get the data by I believe it was August, and then we can incorporate it into the stock assessment. Again, this information will provide valuable information on natural mortality, fishing mortality, migratory rates and patterns and the selectivity, which will get to that question of dome-shaped or flat-topped and the selectivity rates. You look like you have a question, Mr. Chairman.

CHAIRMAN DANIEL: It will get to it or it will answer it?

MR. BRUST: I can't give you a definite. I mean, it is certainly more information than we have right now. This also assumes that – I mean, it is 50-year-old data at this point. Assuming the dynamics have not changed, it will answer it; but there is no guarantee that what happened back in the 1960's is what is happening right now, also.

It is the only source of information we have; and short of a survey right now to do it, this is – I guess to get to Dr. Geiger's comment; this is our first priority. We can do this now and it is a very small price tag relative to a survey, so the timeline and the funding seems to fit our requirements right now.

One other comment is we can build a spatially explicit model without this information, but it is going to be based on conjecture. Without any hard information, we will be making assumptions about selectivity patterns and migration rates and things like that. The technical committee was concerned that without this underlying information, we can build the model, but it is probably not going to pass peer review. Having this information will certainly give us a much better chance going to peer review with the 2014 model.

CHAIRMAN DANIEL: And that is like three grand a state. Bob, can you help us?

EXECUTIVE DIRECTOR ROBERT E. BEAL: I'm not sure help is going to be the right word. One, is \$35,000 the best offer that we can get? One company has bid on this. Can we get other bids and maybe at a better price; I'm not sure. It is one thing to think about. It looks like there are about 250,000, 255,000 records that need to be entered; is that right, Jeff; 180,000 plus 75,000.

MR. BRUST: Something like that, yes.

EXECUTIVE FDIRECTOR BEAL: Yes, so it is quite a few records; but as far as the ASMFC budget goes, we did not set aside \$35, 000 for this project so we don't have it in there. I know the technical committee would like to know by March if we have the money or not. I guess the smart-aleck answer is we'd love to know from congress if we're going to get funded this year or not by March, too.

Without a commitment on the budget and unknowns about sequestration, I don't think the ASMFC budget can absorb \$35,000 with the uncertainty. If our budget is held at status quo, we may be able to cobble something together, but I think we may going the other way, which is we may be looking for areas to cut as the year wraps up here.

I don't think we can get this out of the ASMFC budget. I don't know if we can cobble things together from different states or different areas or if the federal government has any money to kick in or anything else. I think that is the unfortunate reality of where we are with money right now.

MS. LYNN FEGLEY: Is there any way that the board could have a little more description of the actual study. \$3,000 is not a lot of money per state, but it would be nice to know a little bit more about – well, and just to say I think we can use all the data we can get, but it would be nice to know a little bit more about the study itself; how many years it ran, where all the fish were tagged, just so we can see what we're buying.

MR. BRUST: There was a memo in the briefing materials that outlined the – it was written by the Beaufort staff actually about the quote. I don't think it provided as much detail as you're looking for. I believe the survey ran 1967 to 1971 1.2 million fish or 1.02 million fish were tagged throughout the range. There were recovered at the reduction plants.

They actually also took some known quantities of tagged fish and threw them in – these were not captured by the fishery but just put into the reduction plants to estimate recovery rates of tagged fish; so if we know we threw in a thousand and we get 900 of them, then we have a 90 percent recovery rate of the actual tagged fish.

I believe the recoveries were throughout the range. I don't know exactly where they were

tagged or when they were tagged. I wish we had someone from the Beaufort staff here who could provide some more information. That is what I know; and if you need, I can get someone from Beaufort on the phone and get that information before the end of the meeting; or I can try, anyway.

MS. FEGLEY: Thank you; that's great. I missed the memo; sorry.

CHAIRMAN DANIEL: My understanding is it is nineteen cents per record, and there are 180,000 records, so it is thirty-four grand. I guess what I'm thinking is – I mean, I will take a big chunk of those and enter them. We have done this before with aging and growth, passed otoliths around and stuff. Every state I would assume has a data entry program and why couldn't we parse them out and do it ourselves? We could do a large chunk of those, I think, and it wouldn't cost us anything, really. Jim.

MR. JAMES GILMORE: I was thinking the same thing, Louis, but do we run into problems then if we've got a dozen states entering data and QA-QC issues that we suddenly have fifteen different people entering data. Even we got a plan to follow, I've got a body that can put data in, but I'm not sure I can do the QA-QC.

CHAIRMAN DANIEL: Yes, from this SC Data, Inc., I don't know what kind of QA-QC we would get there either, but maybe it would more reliable than ours. I would feel comfortable with it, but that is just one option that just came to my head. Jeff.

MR. BRUST: If I could just comment that this SC Data is a company that the Beaufort Lab has used before. I don't know if they went for other bids, but I believe they went to these guys because they have used them in the past and are comfortable with their work.

MR. ADAM NOWALSKY: Jeff, what advice can the technical committee give to this board with regards to the use of 40- to 50-year-old data that could potentially be the determining factor on what selectivity curve to use that will determine the overfished status? To walk out of here to constituents and say that we used 40- to 50-year-old data, I would need pretty strong advice from my technical committee to say this is a good path to go down; this data is still valid today despite the fact that we have got differing changes in water temperatures, different changes in the way the fisheries are pursued with regards to the increase in bait landings today. What advice can you give us that I can go back to

constituents and say, yes, we're okay with using 40- to 50-year-old data to make this determination?

MR. BRUST: The technical committee did not get into that level of detail in the discussions. What we said was – I mean your points are valid and I sort of alluded to them when I was responding to the chairman a few minutes ago we would be making assumptions. I should qualify this as these are my statements.

Like I said, we did not get into this level of detail with the discussions. We would be making the assumption, as you said, that the stock dynamics and the fishery dynamics are similar if not the same as what they were back then. Well, we know the fishery isn't the same because we've lost all of the northern fisheries; all the northern reduction plants. The bait landings have increased.

The key point I think to take away is it is the only source of data that we have. We have been talking about spatially explicit model and we just talked about the concerns with not knowing the shape of the selectivity curve. They might not be a hundred percent, but there is only so much they can change in the past fifty years. I would bet that even they're not a hundred percent spot-on, they're pretty darned close. If you want a spatially explicit model to get passed through the peer review, we need something; and if not this, then what in the timeline and the funding that we have available.

MR. FOTE: I have real concerns also using 50-year data. I think the Bureau of Sport Fisheries, all that information that we had went up to the seventies and the documents were reported. When NMFS took over, they basically disallowed almost all that material, all that survey that was done because they said it wasn't done properly or it was too old and that things have changed. I'm very concerned going down that road. If we need to do tagging studies, then maybe we can figure out a way of doing it in the present atmosphere so it is valid. I'm concerned about using 50-year-old data since we've started out on the recreational side in a whole bunch of areas.

MR. PETER HIMCHAK: Mr. Chairman, I'm getting a little frustrated here. I think we need a reality check here. Certainly, the technical committee has done an excellent job of locating

a potential source of information that for \$35,000 it would contribute something to the stock assessment, and that is worth pursuing. It seems like chump change.

But let's consider the menhaden we're led to believe is the most important fish in the sea; so if you have the prospects of an aerial survey that can give you more current information on this dome-shaped selectivity issue that is critical to the benchmark, why are we going cheap here? Let's get the definitive answer and not be in the same position with the benchmark saying, well, so many runs said it was overfished and so many said it wasn't; so what is the answer? It is never black and white; but if you have a vehicle that can get you current information and it is going to cost money, let's do it, schedule be damned; I'm sorry.

MR. BRUST: Well, maybe your last statement there really makes my point moot; but if you want a spatially explicit model in 2014 when we said we would have one for you, then we don't have time to wait for an aerial survey, I don't think, unless that can be done over the summer and get the data entered and audited and available for use in the stock assessment in 2014.

Doing it next year isn't going to help us. We need the information before 2014 to be doing the model in 2014, which means the aerial survey needs to be done this summer. My understanding is we don't yet have a survey design, let alone a commitment for funding and all the resources available to run out and do that survey over the summer so that we can do this.

I believe your point is a valid one; but given the timeframe that we have, this is the most promising source of data, at least in my mind. To the concerns of changing climate and all that and the stock dynamics being different, this survey was conducted throughout the entire range of the fishery, throughout the entire range of the stock.

There is only so much the entire stock can shift over time. It is the board's decision but the technical committee has said we will get this for you and this is our best chance. The technical committee has decided that this is their best chance to get you something workable under the timeframe that we have committed to.

MR. HIMCHAK: My point comes down to the issue of do you get it faster or do you get it right? If it takes another year, then it takes another year. I will leave it at that.

DR. GEIGER: Mr. Chairman, I think the last couple of comments have been very helpful and I think illustrate again going back to my point. I need the best professional judgment of the technical committee where to invest scarce resources to get the maximum research information to make the management decisions that this commission needs to make. It boils down to that.

I am somewhat troubled with using a 50-year-old dataset knowing full well what has happened just to the Chesapeake Bay Executive Order and the changes we have seen there in the last fifty years and continuing to be changes, and those changes appear to be accelerating. I have concerns about that. As Jeff has aptly pointed out, the aerial survey may be the best chance to get the necessary information. As Peter has said, get it done.

I think what we need is – I am struggling since I haven't seen the aerial design and the survey may not be completed. I would like to see that. I would like to get more information on this dataset that the technical committee is proposing and have a little bit more robust discussion. Mr. Chairman, it is all about choice; but right now every choice that has a price tag, we can't afford to make a Type II areas. We can't afford to choose the wrong path to go down and that is my dilemma right now.

If I can make a case; I appreciate the hard work and effort by Jeff and every member of the technical committee. You all are doing a yeoman's job under very tight deadlines with just huge pressures on you. I thank you very much. I appreciate your hard work. We continue to support you a hundred percent on this. If you need additional resources in the technical committee, please let us know. Thank you.

CHAIRMAN DANIEL: I've got a list as long as my arm. I'm trying to go back. I'm going back to December now and I think we all agreed that we wanted the new stock assessment in 2014. We modified our stock assessment schedule in order to accomplish that goal. Now, that can change if I'm not mistaken.

We can make a change there; but as we're currently sitting here we have committed to ourselves and to the public to do an updated stock assessment in 2014; right, benchmark

stock assessment in 2014. Now, the only way to do that and have any meaningful results, according to the technical committee, is to pony up this 35 grand and get this information, this 50-year-old data, updated and analyzed to include it in the stock assessment.

There is a lot of concern about using 50-year-old data around this table. Is that what we want to do? That is our only choice and meet the 2014 deadline. So, if we agree with Pete – and I tend to – we need this aerial survey, we need to work with industry, we need to have the design peer reviewed, we need to make sure we could do it right and we don't make a Type II error, where we can't afford to, we're going to have to delay the stock assessment from 2014.

Now, now that impacts politics, how that impacts other people's opinions on what needs to be done, I'm not sure, but that is where I see us sitting right now. We can talk about how important the survey is, we can talk about how old the other data is all day; but if we're going to maintain our 2014 deadline, what the technical committee has advised is the only route we have to take from my perspective. I think that summarizes it, maybe; maybe not. I'm going to go to A.C. and then I've got hands up all over the place.

MR. CARPENTER: The idea of 50-year-old data doesn't bother me in the least because the Potomac River Index extends back to the 1960's and the timeframe of this tagging study and the timeframe of our index study will overlap. I don't know what that is worth to the modelers, but we do have that one bit of consistent data. That doesn't bother me at all. I agree with your analysis of where we are today, and I would like to offer \$3,000 from the PRFC to get this done and get it done in March.

MR. GOLDSBOROUGH: Mr. Chairman, you made my first point, which was basically a note to self about the hazards of moving up an assessment schedule. My second point was, Jeff, you had said if the board wants you to use a spatially explicit model, how about if you were to spell out the alternative?

CHAIRMAN DANIEL: Before Jeff starts, he also had a comment; so do you want to just say what you need to say and then we will move on.

MR. BRUST: Well, pretty much the alternative is we have the model that we have now. We can revise it somewhat, but without any information on the selectivity pattern we will be making assumptions about the selectivity pattern. We could come up a

dome-shaped run that might be more believable, but there wouldn't be any information to base it on; or we could just keep running with the one that we have now that passed peer review two times ago, squeaked by peer review the last time and without any additional information.

One of the main recommendations from that peer review panel, the most recent one in 2010, was develop a spatially explicit model. If we don't, is there really any point going back to peer review. I guess the alternative is pretty much what we see now or making something but basing it on very little to no information.

I guess the one comment that I had, I wanted to sort of flip the coin and say – well, several people have mentioned our concern about using 50-year-old data, and they want new data, but would you be more comfortable using current data and applying it to 1960 than you would be taking 1960's data and applying it to now?

The historic data is from when the fishery was much more active and much more widespread. It is still an important source of information. Perhaps it might not be 100 percent representative of what is happening now, but it is representative of what was happening then, and that was a very important part of the fishery history; so just keep that in mind. The coin has a second side. It is not just new data for now, but we need something for back then as well.

MR. ROY MILLER: Mr. Chairman, just to be supportive of the need to examine this data source, would this data have any potential for using mark-and-recapture estimation, some of the parameters that can be generated as a result of mark and recapture, you know, like survivorship and that type of thing; fishing mortality rates.

It just seems to me that if this information is out there and it can be scaled to indices that were long running like the Potomac Pound Net Fishery, that it may have additional utility in addition to the examination of the shape of the selectivity curve. I am unable to commit funds, but this is one more appeal for the importance of conducting this work. Thanks.

MR. BRUST: Just to respond; yes, the utility of this data goes beyond just the selectivity curve and the migration rates. It will help determine the natural mortality rates that were occurring back then; natural mortality rates at age, at size;

as well as the fishing mortality rates; so, yes, it has all the benefits of a typical mark/recapture study as well as helping us evaluate the selectivity patterns.

DR. PIERCE: I think tagging information and tagging data has limited use, and I'm not confident that an analysis of that database will actually enable us to conclude confidently that we know whether it is a dome-shape or flat-top selectivity. It would be nice to do the work, of course, but I'm not confident it is going to get us what we need.

My preference is to move forward and to work with the industry to do the aerial survey that would be, I suspect, peer reviewed by the technical committee to ensure or to best try to ensure that particular survey will help us answer this very important question. Frankly, I look at what we have done already, and that is described in our plan how we set the TAC.

Whether we're overfished or not doesn't really play a role in the setting of the TAC. It is whether we're overfishing and we're able to determine that. We don't need to evaluate the tagging information to determine that, and I can reference the language in the TAC-setting method of our plan where it says because overfishing is occurring the board is using the ad hoc TAC approach to end overfishing and reduce fishing mortality to the target level.

To me that is what we did and I think that is what we're going to continue to do. I think the benchmark assessment will give us some updated information regarding the fishing mortality rates, whether we're overfishing or not, and we will continue to use the ad hoc method for setting TACs until, hopefully, we get the aerial survey going and we get some benefit from that, meaning we can answer that question of dome-shaped selectivity or not, and then we will know whether we're overfished or not. Frankly, I think we are.

I'll reserve judgment on that, but for now, like in December, I'll just move forward with the assumption that we are overfishing and we have to set restrictive TACs and then lessen the degree of restriction if we can determine through the benchmark the fishing mortality rates have gone down enough for us to consider raising the TAC. So, again, overfished or not; to me it doesn't play into what we are doing and what we have done.

CHAIRMAN DANIEL: All right, I've got more folks that I'm going to call on and then I'm going to summarize and hopefully move on or else A.C. is going to be upset with me. Steve.

MR. STEVE MEYERS: Mr. Chairman, we're having a series of different conversations at the table today relative to the old data, perspective new data, how much it is going to cost, who is going to do what, where and when. I would like to suggest that we form a small group of members of the board to work very closely with the technical committee over the next month to try and figure out cost of various aerial surveys, design for those surveys, peer review with the technical committee cost, different approaches, and then report back via e-mail, telephone or whatever to the board for resolution to try and come up with a conclusion to this excellent discussion that could last all day long, and press on. Thank you, Mr. Chairman.

CHAIRMAN DANIEL: I'm not going to let it last all day. Jack.

MR. TRAVELSTEAD: Mr. Chairman, I'm wondering why we can't do both or at least attempt to do both. For a couple thousand bucks from every jurisdiction around this table, we could come up with the \$35,000. That is just a laughable amount. Knowing how valuable this information could be, I would hope we could get a commitment at least from a majority of the jurisdictions to put up that kind of minimal amount of funding to get that done. Certainly, Virginia would be willing to put up its share.

In terms of the survey that we have been talking about and the letter that we have from industry, I would advise the board that I have had some conversations from some of those that signed that letter and others and there seems to be some willingness on the part of industry to help fund that type of survey work. That seems to me to be something we should explore immediately.

The work that Dr. Latour and others have been doing to design this aerial survey should be completed in March. His final report to us was not due until June, but we have asked him to accelerate that to the point where I think we could have that from him next month. If we could get a commitment from the technical committee to review that fairly quickly, based on the conversations I've had with industry, it is their hope that the survey could actually be done this summer and that data could be available for the benchmark.

I would hate to walk away from the table today not taking any action on this. I think we should

at least try to accomplish both, but I think we need a commitment from the technical committee to review the results of Dr. Latour's design. I would certainly be willing to go to the Virginia members of industry to see how willing they are to put money up to do the survey, and we need a commitment from all the jurisdictions around the table to come up with a couple thousand dollars. I just would hate to leave not having some commitment to at least attempt to do both of these. Thank you.

CHAIRMAN DANIEL: You just about gave my summary. Robert.

MR. ROBERT H. BOYLES, JR.: Mr. Chairman, I was going to make a motion if you're ready for it.

CHAIRMAN DANIEL: Certainly.

MR. BOYLES: **I would make a motion that we recommend the commission allocate \$36,000 to do the work that is requested by the technical committee** and that the commission could scrape together, whether it is a deduction of ACFCMA funds – I'm not quite sure how, but that the commission come up with this; going back and sharpening the pencil with the 2013 budget.

I make the motion because it is going to be difficult for South Carolina to contribute. Granted it is a modest amount, and I think I speak for a lot of us when I think about the budget difficulties we have got at home, so I wonder if the commission might sharpen its pencil and that we make a recommendation to the commission to sharpen the pencil.

CHAIRMAN DANIEL: We have a motion from Robert; second from Pat. Let me go ahead and get the two folks that I had left to speak. We have got a motion and a second. Sarah Peake.

REPRESENTATIVE SARAH K. PEAKE: Mr. Chairman, the comments I was going to make before the motion; you in your comments talked about the impact on the politics of delay and perhaps waiting a year. I think there are politics to be considered in moving forward and basing decisions on this 50-year-old data.

I know I would have a great deal of difficulty returning to Massachusetts and looking straight-faced at my constituents, the people of the Commonwealth, to say that we are making decisions moving forward based on this data that is forty and fifty years old, especially when any of the other fisheries that we're

looking at – we're looking at the impact of climate change and different migratory and habitat patterns, with the warming of water.

We see it in striped bass, the Southern New England Lobster Stock; you know, across the board we can look at that and see the impact and how different things are today than they were fifty years ago. I'm just concerned that if we're going to be basing management decisions in part on this data, what will be the impact and will we continue to hear the echo of this as we move forward because the old adage is data out is only as good as the data in.

I think that there may be and probably will be a widespread lack of confidence on the data-in in this situation. In addition, we have all talked about tightening of resources, and I know we're moving forward in the budget process in the state of Massachusetts. Nobody is seeing increases in their budget lines. The Department of Marine Fisheries is no exception to that.

Certainly, on the federal level, every day when we pick up the newspaper we see a threat of sequestration that is affecting agencies all across this country. I am sure that ASMFC is no exception to that; so while \$35,000 may not seem like a lot or \$3,000 from each state, these are still are very, very tight fiscal times that we live in, and \$3,000 can be a lot of money.

MR. WHITE: Mr. Chairman, I wonder if the maker of the motion would accept a friendly amendment where A.C. has already kicked in two grand, we could bring it down to 33? That might be one idea. Did he kick in three; then we could bring it down to 32. Secondly, on the data, if you could indulge me to ask a question since I didn't get a chance before the motion was made, if my understanding is correct, if we analyze the data, input the data, the technical committee then will run that through a model that they're in the process of creating.

The technical committee then would make a decision whether they think that data is useful or not after running it through the model. Then that model would be peer reviewed, so independent scientists then also would look at that use of the old data and say, yes, it is worthy of coming to the board or not; am I correct in that?

MR. BRUST: Yes, that would be the process. Once it is entered, the technical committee

would have to evaluate it and there is a chance that we could say, no, it is not what we thought it was; but if we move forward with it, yes, then it would go through peer review; and assuming we like that better than what we have now, that would be the preferred model. It would go through peer review and they would also say, well, thumbs up or thumbs down, yes, this data is useful – the model that is based on this data is useful. So, yes, that is the process.

If I could while I have the floor, I guess I just wanted to point out to the board that this is not a unique circumstance. There are many stock assessments that are based on life history information that were done in the seventies and eighties that have not been updated. It is just the way it is.

A lot of life history work that was done in the seventies and eighties – like the fecundity work in the menhaden assessment is from the seventies or eighties. It is not uncommon that a lot of the data that we use to evaluate these species, particularly the life history information is not really up to date.

CHAIRMAN DANIEL: No question we see changes in age at maturity, size at maturity, those types of things as time progresses. I am going to try to summarize this. This is the most important fish in the sea, right? Everybody agrees with that? The best approach is to do a benchmark stock assessment with both of these pieces of information in them; have both the old data and the new aerial survey.

We may be able to have that information for the 2014 benchmark; we may not. I'm willing to risk the may not and have the benchmark stock assessment delayed a year if we haven't gotten both the aerial data and the old data analyzed. I agree that we need a group to get together and make sure industry is comfortable with this and make sure that they are on board with some type of assistance in getting this done.

I think VIMS is the correct place to have the design analyzed and have it run through our technical committee. Then as for the money, I don't think we need the motion. I think we need to simply request that Bob and Paul and I look – during the executive committee we can have a discussion on do we have some money that we could move into this.

Then if there are states that can contribute some money or there may be one or two states – North Carolina would be one – that has a bullpen of data enterers that could do some in-kind contribution in this. I personally believe that we should not move

forward, based on everything I've heard around the table, with only one of these two pieces of information. We need to commit that the benchmark will include both. Does anyone disagree with that approach? Dave.

MR. DAVID SIMPSON: It is about the money; you know, where is \$35,000 going to come from; what isn't going to get done because we do this. That I would like to evaluate because I have my own skepticism about using 50-year-old distribution data. I fail to see the relevance of that in 2013 and 2014. Yes, more information is always great, but what are we going to give up? I would like to have that discussion at the full commission meeting.

CHAIRMAN DANIEL: Yes, I think that is what we need to do. First, Paul is not here so I think first Paul and Bob and I need to talk about what monies we do have and others that could contribute. North Carolina could contribute some money, North Carolina could contribute in-kind.

I think Virginia could probably contribute money, and I think there are other states that could probably do the same. Maybe the Services could provide some funds. I'm just trying to move this thing along, and I think we're making a mistake rushing this. I know we said 2014 and that may happen. As Jack said, we may make it and we may not. That's kind of where I'm coming from. I think that is my opinion the way to go. Jim Gilmore.

MR. JAMES GILMORE: Mr. Chairman, you answered most of my questions. I think that was a great summary, Louis. We completely agree with that. I was just going to throw in the \$3,000 or whatever money we're going to come up with. I can come up with the money. The procedure to get the money to wherever is a big problem, and some of the other states may have that, also. Considering I'm a state that I can't come to a meeting for free; that is paid for by the commission, so \$3,000 would be like a pretty lift for me.

CHAIRMAN DANIEL: Doug Grout is going to have the final word on this.

MR. DOUGLAS GROUT: And I'm going to have the final word from a small state where \$3,000 is much more important. Relative to your budget, as they said, is a drop in bucket, but to

mine it is something significant. I will tell you as a state with only a hundred pound quota, I'm willing to contribute a hundred pounds of data entry.

I also support this motion, but with the caveat that Dave Simpson made is that I want to have some say in what we're giving up in the commission budget. I want to take a look at that so I support it with the caveat that we need to take a look at that. If it is going to be cutting out something much more valuable in my opinion in a bigger picture, then we may have to reconsider this.

CHAIRMAN DANIEL: Yes, and I would assume that this would either done at the full commission meeting and we can have some discussion on this at our executive committee as well, but I think we can do that. Bob, if you would summarize; I had you down to speak.

EXECUTIVE DIRECTOR BEAL: No, I think we're close. I think folks can sleep on this and bring it back to the executive committee in the morning is the right thing to do. Then maybe we can talk to our partners and see if there are any dollars available in different areas and look at the ASMFC budget, you and Paul and me. I don't think we're going to be able to solve it around this table in the next ten minutes, so I think it is probably executive committee material.

CHAIRMAN DANIEL: The motion does what I think we have agreed to do. I don't think there needs to be any further discussion on the motion; does there? Tom.

MR. FOTE: The executive committee is listed as a closed meeting. Will this part of the meeting be open?

CHAIRMAN DANIEL: Yes. Is there anything further? Does anybody need to caucus on this motion? It is simply a recommendation – and I will it – simply a recommendation to the commission that we try to generate this money to accomplish this one of two parts that need to be generated.

We will move to recommend that the commission allocate \$35,000 as recommended by the technical committee to digitize the tagging data. Motion by Mr. Boyles; seconded by Mr. Augustine. Is there any objection to that motion? Seeing none; **that motion carries.** We will take that to the executive committee and the full commission. I will try to get that first on the agenda so that it will be open; so that any of the commissioners that want to attend that part

of the executive committee could do so. Is that fair? Jeff.

MR. BRUST: So much for my quick presentation. This is just an update on the fixed-gear index. Amendment 2 requires the states to develop a fixed-gear adult index a la PRFC. Amendment 2 requires the states to collect the pounds landed and the number of nets fished, so at the very least we will be able to develop an index just like we do for PRFC. It is not going to stop there. The technical committee will continue to refine the process.

We will be looking at other gears and additional data elements that might help us refine the effort estimates that we can get a more realistic CPU estimate, improve the resolution of the estimates, and maybe a more rigorous analytical method. We will also start looking at datasets that are available prior to when Amendment 2 went into place.

I wanted personally to thank you guys for lighting the fire underneath us. I think this is something that each of the technical committees need to do. My personal opinion is that technical committees have gotten complacent with the surveys that we have or the datasets that we do have, and it is good every now and then to go back and beat the bushes to see what else is out there. It was Amendment 2 that made us do that for menhaden, and we're going to take farther. We will be looking at both fishery-independent and fishery-dependent datasets prior to Amendment 2 and see what we can do to beef up this adult index. That is my presentation.

DISCUSSION OF AMENDMENT 2 IMPLEMENTATION AND COMPLIANCE

CHAIRMAN DANIEL: All right, I am scared to ask are there any other questions for Jeff at this time? Okay, we will next move into a discussion on the implementation and compliance. Mike, you're going to run us through these various issues that we still need to resolve. I know that there are a couple of other questions or issues around the table that need to be resolved. I'm going to ask everybody to kind of try to get to the point and get it quick because we've got about 30 minutes left in our allotted time.

MR. MICHAEL WAINE: I'm going to skip right to the episodic event set-aside as that is some unfinished business. Pretty much everything else in the amendment is straightforward and decided. The board approved this set-aside for episodic events through Amendment 2; and it is incomplete so we have got to discuss and finalize the implementation details.

The set-aside is 1 percent off the overall TAC. The episodic events are timed in areas where Atlantic menhaden are available in more abundance than they normally occur. This is historic mainly to the New England Region and it provides flexibility for states to opt into this set-aside to harvest more than what they were allocated under the provisions of the plan.

To qualify for the episodic event set-aside, a state's bait landings must have been less than 2 percent of the total coast-wide bait landings from 2009 through 2011. At the December meeting actually I misspoke and said to qualify it was off of total landings and not just bait, but what was written in the amendment was bait so we just went with that as the default.

The eligible states are Maine, New Hampshire, Rhode Island, Connecticut, New York, Delaware, South Carolina, Georgia and Florida. States opting into this set-aside end up forfeiting their state allocations, so they give up their allocations. That allocation is then reallocated to all the states that weren't eligible for the set-aside or decided not to opt in.

Then the states that do opt into the set-aside after they've given up their allocated quota end up sharing that 1 percent overall set-aside from the TAC. There are also some provisions that go along with this. The first is that the unused quota will be rolled over to the overall quota if that set-aside isn't harvested by September 1.

These episodic events are just that; they don't occur on a regular basis. If they don't occur, that unused quota would roll over to the overall TAC. The board is also requiring catch-and-effort controls be used by states opting in to scale their fisheries to the set-aside amount, so remember that all the states that opt in are sharing it so there needs to be some control on the fisheries to provide some equal opportunity to the set-aside.

Another provision is to meet or exceed the timely reporting requirements as approved through the plan. I will go into a little bit more detail on that later, but it would obviously be very important to be

monitoring this set-aside very closely because you have the potential for more than one state harvesting from it, so we need to be tracking it in real time. And then the overages of the set-aside are payback the following year.

So just to put this into perspective, with the current TAC that we have, it is roughly 170,000 metric tons; a 1 percent set-aside is 1,700 metric tons, so that just puts it into perspective about how much we're talking about. Under the plan provisions, there are nine states that are eligible for the set-aside.

If all of these states opt in, then they give up roughly 273 metric tons total to gain access to the 1,700 metric ton set-aside, but remember all those states would be sharing that amount. That 273 metric tons that they give up is then reallocated to all the states that weren't eligible, and those reallocated TACs are shown in that far column to the right.

There are a couple of things that came up when the PRT was sort of reviewing how this would all work that we think the board should consider. First is to develop specific criteria to determine if a state's effort controls actually do scale their fisheries to the size of that set-aside. It would be nice for the board to also be approving whether those effort controls do that or not.

The states need to consider a mechanism to adjust those effort controls if they don't adequately reduce the effort in their fishery as we would monitor the set-aside and see how these episodic states are progressing towards the overall TAC. If in-season adjustments were necessary, that the states would have the flexibility to put those into effect to scale back their fisheries.

The board should also consider requiring trip-level reporting through the e-trips SAFIS system for all states that opt into the set-aside. As I mentioned, we're going to really need keep track of the set-asides so that we don't end up going over it. Our data partner, ACCSP, has the SAFIS system set up to handle these types of situations, so the board should consider using that system to be able to monitor this quota in real time.

Without doing that, there are words of caution that we might go over or overharvest, and those overages could be significant if we aren't

keeping track of this on a regular basis. The other thing for the board to consider is that if it is an episodic year and these states are harvesting off of this episodic set-aside, the board might consider not rolling over on September 1 and allowing the set-aside to go through the end of the year to accommodate for that episodic event year.

Lastly, the PRT recommended that if states opt into this episodic set-aside, that they would not be eligible for de minimis status because it would be important to get the biological data and monitoring from that set-aside amount. If they were de minimis, they would be exempt from collecting that information, so that was also a recommendation. Anyway, there are some things for the board to consider and I will take any questions.

CHAIRMAN DANIEL: Are there questions for Mike? Bob.

MR. ROBERT BALLOU: Mike, I'm sorry if you mentioned this already, but I thought I read in here is there a date certain by which states need to declare their intent to opt in? Haven't we already passed that for implementation in 2013; and if so, how would that work in 2013?

MR. WAINE: Yes; a good question. Actually, I didn't mention that, but you're right. I think one of the other questions here is we have already allocated 1 percent to the set-aside for 2013. The question is do we want to go through this in 2013; and if so, we basically need – I think it would be wise for states to indicate in their implementation plans whether they want to opt into the set-aside or not for this year, because we're already past that date.

Normally it would occur – November 1 think is the date that we put in there and states would just notify the commission that for the following year, yes, I would like to opt into the set-aside. But, considering where we're at right now, I think it could just be done this year through the implementation plans. Does that answer your question?

MR. BALLOU: It does; thank you, Mike, and if I could just follow up. My take on this is that on the one hand I think this is one of the best provisions in the plan. On the other hand, I think it is one of the weirdest provisions in the plan. I mean, it is sort of like would you rather give up 273 to get, what is it, 1,700? It doesn't take a whole lot of thinking to make that decision.

On the other hand, in a sense I'm thinking all the states are almost going to think to be inclined to opt in. Of course, you have to make that decision prior to November 1. That gives you access to a much larger amount of fish. I guess it is then up to those states to just simply work together to fish off that pool, that reserve, over the course of the year.

I mean, again, I like the idea because I think given the variability of the way the fish distribute themselves throughout the course of any given year, there might be a charge up in the Gulf of Maine, there may be a charge in Narragansett Bay, Long Island Sound, on down the coast, so it does make sense to be able to have this reserve to tap into and to be able to utilize it.

But, managing it and trying to think about the whole process of do you opt in or not and making that decision prior to November 1, it seems like you'd be crazy not to; because if you didn't, you'd be cutting yourself off from access to that reserve. I'm wondering what the other states who qualify think. I'm thinking Rhode Island's answer is going to be almost an automatic yes, and then we just need to work together to manage that reserve. I'm curious to hear what the other states think. Thank you.

MR. WAINE: Just to that point, Bob, I think you're essentially talking about some of the issues that the PRT brought up, which is, yes, at this point in time it would make sense for any state to just opt in. You're getting the opportunity to harvest off that larger amount; but does the board want to consider that if you are doing that, you have some other criteria that you need to meet. You have to demonstrate that you have the ability to regulate your fishery to the size of that set-aside.

You have to demonstrate that you have the timely reporting in place that would be needed to monitor the set-aside. I think sort of what you were talking about is exactly where some of the questions still lie is, yes, the states opting in do get access to this other quota, but can they demonstrate that privilege is warranted,

MR. TERRY STOCKWELL: Mr. Chairman, since advocating for inclusion of this measure back in December, I have been thinking about the implementation details. At risk of saying I might speed things up after our last discussion, I

do have some motions that addresses each of the issues Mike laid out, if you ready for them.

Okay, concerning the first issue that Mike addressed, **I move that states that wish to opt into the 2013 episodic set-aside quota must submit effort control criteria to the PRT by April 15th for board approval at the May meeting. This criteria will include, but is not limited to, maximum harvester and carrier vessel sizes and a maximum daily trip limit.**

CHAIRMAN DANIEL: Is there a second? Seconds around the table; seconded by Pat Augustine. Do you want to speak to it?

MR. PATRICK AUGUSTINE: Could we clarify that, Terry, by including how it was going to be reported on a weekly basis. I know there was mention in the document about – is that your assumption here that that would be a given?

MR. STOCKWELL: It is in a separate motion. I have motions for each of the five issues that were raised by the PRT.

MR. AUGUSTINE: Well, this issue was also raised by the PRT, but you'd rather have it separate? Okay, fine, my second still stands.

CHAIRMAN DANIEL: All right, is there other discussion on the motion? Dr. Pierce, did you have comment?

DR. PIERCE: Yes, I guess since I'm a state that does not qualify. As indicated by Mike, we had a misunderstanding. At our meeting in December I thought that we would qualify, but Mike indicated that he misspoke – no criticism. I misspoke many times as well. In going over the report from Mike I note that we don't qualify because we don't meet the 2 percent criteria.

It is interesting because I had supported the episodic event strategy since, as we know, fish show up in large numbers unexpectedly, so why not take advantage of that. It is an episodic event, unexpectedly availability of fish. At first I was disappointed that indeed we don't qualify, but then again I thought about it, wait a minute, we've get a quota of three million pounds, the strategy for the plan is we have to take our three million, give it up to all the other states that don't qualify for an episodic event. Then we share three million pounds or so with the states that want to take advantage of the episodic event, so what is the sense of that? It is nonsense.

The preferred way to go, frankly – and I'm not going to make a motion to go in this direction yet, because I consider this whole concept of an episodic event to be evolving and eventually I may make a motion for an addendum that would create a more sensible way to move forward, which would be you don't lose your quota.

It's a small quota to begin with; it is basically a pittance compared to other quotas for other states where the fishery is predominant. You keep your quota and then a strategy is developed where you can draw upon that additional three million pounds or so. If indeed you have a true episodic event because this motion – well, I understand the maker of the motion's intent. All this does is provide a state with an opportunity to increase its share.

That's fine; but that is all it does, because how do you anticipate an episodic event before it happens? Do you know what I mean; you're trying to increase your quota for the year in anticipation of an episodic event which may not happen; so basically what you're doing is increasing your quota for the year.

The whole concept to me right now is shaky, and I am very uncomfortable with it because I think it has a fatal flaw certainly from my perspective as a state that will have episodes of unexpected abundance, and we're not going to be able to take advantage of it with the way the plan is currently described.

No criticism; you know, this was a concept that we struggled with hastily at our December meeting because there were bigger fish to fry at that time. I'm not sure what I'm going to do with motion at this time, but just to put the board on record as this year goes on, as we begin to deal with control of effort in our state – and we're doing that now; a number of ideas as to live within the allocation for us – we will likely offer at some time in the future an addendum that would actually make the episodic event accomplish what it is supposed to do, which is take advantage of expected unavailability of fish.

CHAIRMAN DANIEL: I want to say something really bad, but I'm not going to do it. Lynn.

MS. FEGLEY: Mr. Chairman, I'm a little confused and I would like to understand better for 2013, because I think all of the states have

their crash helmets on trying to get this implemented this year. In the case of episodic events, the implementation plan would get to the board the 15th, it would be approved in May, but the fisheries are running.

In Maryland our menhaden catches are going to start in March. I don't know when they start up north. The question is between the time that we're approving all this, the fisheries are running; how do we know what happened before we approved it and what if we've already met our set-aside by the time we approve the thing, because we're sort of starting this all late in the game? Maybe my question is what are our assurances of monitoring early in the fishery to know how we're progressing? It is kind of funny; so, anyway, I'm not sure what my question is except we've got a little time lag issue I think we should discuss.

MR. STOCKWELL: I'll try to respond to both Lynn and Dr. Pierce. The 2013 timeline there is specific for this year. April 15th is as close as we can get in order to have something before the board for approval. Following this year, we would go into the November timeline. Pat has suggested I cobble them all together. It would be a page and a half of a full-fledged motion.

I have a monitoring component, a de minimis component and an in-season adjustment component all relative to this year. The choice is not to opt into it this year; let this year run its course for those states who might want to opt into it or might be able to qualify for the criteria; and then if Dr. Pierce comes up with an addendum that he wishes to perfect the whole concept with, I would be comfortable with that. This is perhaps I guess a band-aid for opportunities for this fishing year as it is.

DR. DANIEL: At the risk of being hissed at, I am going to remind everybody that this is 1 percent of the total coast-wide quota. We're not talking catastrophe here. No matter what the situation is, this going to be damned complicated. I am not picking on Georgia and South Carolina, but they don't have any quota. They've never had any landings but now they have access to more fish than North Carolina does.

I don't care; that's fine, but there are certainly circumstances here that it is a little more complicated than we may have thought it would be coming into this meeting. If you think we're going to get this fixed by the end of the day, I don't think we will, especially if we've got four more motions to go

through. I give up trying to make A.C. happy, so I'm just going to say that right now. I've got hands up all over the room, but this is going to be arduous. Pete Himchak.

MR. HIMCHAK: Mr. Chairman, I have a suggestion on this issue of circumventing the quota by opting in. If you look at each state's bait landings historically going back to 1985, when the dataset began, I think there is an element of who might have an episodic event. I think the whole intent of this was when the IWP was operating in the Gulf of Maine in the late 1980's, that was an episodic event. There were substantial numbers of older fish in the Gulf of Maine – IWP, first with the USSR and then with Russia – so there is a precedent for this episode.

In my mind and being quite familiar with the history on all the states, that is the only thing that is relevant here as far as I was concerned, and I thought that was the intent of putting aside the set-aside was specifically for the Gulf of Maine and these larger, older fish showing up in huge numbers, which, boy, we would like to see, I think.

MR. WILLIAM A. ADLER: Mr. Chairman, just a technical thing. Is the November date in the amendment – and I understand where Terry is coming from and I just didn't want this to be a block that you can't do April because it says November in cement. I just wanted to check and make sure.

MR. WAINE: We didn't improve Amendment 2 until December; so this year is different. That was the best approach we thought of was just to do it with the implementation plans for this year, but for future years it would be November 1.

MR. SIMPSON: I'll speak for Connecticut. I doubt we would opt into it. In fact, I would say we will not opt into it, and I suspect there might be other states that would also not really be interested in a directed fishery in their state waters or close by. It may not be as big a problem as we think it is, but I really like this idea.

I know it is going to take a while to figure out how do we deal with these moving resources. This is a common theme across all our species, so I hope we can move it forward and make it work over time.

MR. CARPENTER: Mr. Chairman, I must admit I very quickly glanced over and moved on when we were dealing with the plan about this set-aside deal. I was under the impression that the states that had these small landings, the less than 2 percent, would still monitor their landings and be responsible for fishing to that level.

And if they went over because they had an episodic event, it would be the equivalent of having the balance of that 1 percent that they could draw on and call it a state transfer mechanism; not that they got to the opportunity to go fish and increase their quota; and after four or five or ten years they have been fishing over their quota and they now say, well, we've got historical information that we want to reallocate this stuff and that whole thing.

I'm somewhat confused on this. I think it would be much, much simpler if everybody fished to their quota. Those states that opt in opt in to the ability to draw from the balance of the 1,700 metric tons; and come September 1st, if there is any left of that 1,700, it gets redistributed to the rest of us. That sounds like a much simpler idea.

CHAIRMAN DANIEL: Yes, I tend to agree. I think we need to be cognizant of the fact that we don't want folks taking advantage of this and going out and pursuing these fish; but if they do become available, is that not a good thing? Are those fish that move north, having those large concentrations up there; is that not a positive sign for the stock? Yes, it should be.

Those are larger, older fish that are important to the spawning stock biomass, but it is controlled by the fact that is only 1 percent of the total coast-wide quota. I don't know that it would have substantive biological impacts to have that episodic fishery. But having that opportunity coastwide I think is a little different than what I had anticipated as well, A.C.

This was really I think – from all of the discussions, this was really a Maine set-aside because they see the fish show up and maybe in Massachusetts, too, maybe Rhode Island, but certainly not a common event. I like your suggestion, A.C., and I agree with that being a better approach, but it is not my call. Pat.

MR. AUGUSTINE: Could we vote on the motion; kill it or approve it?

CHAIRMAN DANIEL: Do we need to caucus on this? I hear talking so I assume we do.

(Whereupon, a caucus was held.)

CHAIRMAN DANIEL: Remember, we have got four more motions to go. All right; all those in favor of the motion raise your right hand; all those opposed same sign; null votes; abstentions.

MR. HIMCHAK: Abstain.

CHAIRMAN DANIEL: Okay, one abstention. **The motion carries 14 to 1 with one abstention.** All right, Terry.

MR. STOCKWELL: Mr. Chairman, I just want to remind the board that these motions are specific to a request from the PRT. **The second one is to task the PRT to provide the board for approval at the May meeting an appropriate daily trip limit reduction at 75 percent of the episodic set-aside quota.**

CHAIRMAN DANIEL: Second by Pat Augustine and a comment by Pat Augustine.

MR. AUGUSTINE: We've almost got the cart before the horse here because I thought we should clearly identify the fact that you need a very quick reporting on a weekly basis or something. We're allowing them to set up a 75 percent level without saying that you're going to have to report. I know it is probably your next motion; is it? Okay; that's fine; my second stands.

MR. WHITE: Mr. Chairman, on the last motion we did a lot of discussion about the general structure of this and not on the motion. I think Terry is trying to put something in place for this year and then obviously we will revisit the whole structure going forward. Maybe the Chair will appoint a committee to work on that. I think working on the overall structure doesn't get us anywhere today, so just a point.

MR. CARPENTER: I question the 75 percent. Is that 75 percent of documented landings or is that 75 percent of our projected quota? You have at least a one-week lag time and probably two- or a three-week lag time between knowing what you have landed and what is actually going on. I would like the maker of the motion to clarify that.

MR. STOCKWELL: A fair enough question, A.C. My intent would be at the projected landings. To Pat Augustine's point, I should

have probably made the monitoring motion first; but for all of your reference, it is for weekly trip-level reporting.

DR. PIERCE: Just a clarification; I believe Terry indicated that these were recommendations from the plan review team? I didn't see this specific one in their list of recommendations. I'm just checking to see it is consistent with what the plan review team has suggested we consider.

MR. STOCKWELL: The second bullet is to consider a mechanism to adjust the effort controls for an in-season adjustment.

MR. RICK BELLAVANCE: Mr. Chairman, I just had a question in regards to the process for the plan review team. Did they confer with the advisory panel when they would do something like that or it would be worth it to put some sort of a bullet in here where they could get with the advisory panel if there is a specific daily trip limit that work with them from a business perspective that might offer some insight into that process as well.

CHAIRMAN DANIEL: That is not built into the system, no.

MR. BELLAVANCE: Is it something that maybe should be or worthwhile to confer with the advisors or not?

CHAIRMAN DANIEL: I don't know. You would have those folks that would be involved – I mean now we're talking three-quarters of 1 percent of the total coast-wide landings, and the states that opt in would be the ones that would be interested in whatever their trip limit would be. You're talking about probably more effort than the fishery is actually worth trying to manage it. That is where I am headed with this, and that is where I keep coming back to. I think I would rely on folks like Terry to tell me what is the most appropriate trip limit and have them implement that, because he understands this episodic fishery.

I could go out and catch millions of pounds of menhaden; is that an episodic fishery? We just never have, so I'm a little bit confused about this whole episodic fishery as well. I liked A.C.'s idea better that everybody just keeps their quota; and then if you have an episodic fishery you have something to work on that can pay it back.

That is simple; that is really simple; and I like simple, especially as complicated as this daggone thing is

getting. I think also we have got to come up with something that we can get through here today, but then recognize that we're going to have to spend more time on this little tiny piece of the pie, and that is kind of frustrating.

I think it has also got to be frustrating to staff that we have seen this and we've talked about this component of the plan now for a year and a half, and now all of a sudden we've got all these great ideas. That is because we had, as Dr. Pierce said, a lot bigger fish to fry as we were developing this thing.

Now we've come back and it looks like we're going to have two board meetings to figure out how to handle this small component of the fishery. I think we need to get through these motions for this year; and then I think as was suggested, there needs to be a group of those players that want to opt in and let you all figure it out and then come back with some recommendation to the board as to how you want to work this, because I don't even have a clue.

I mean, I can't imagine Robert is interested in this. Maybe he is, but who is actually going to be involved in this and who is going to use it? We need to know that and we need know it by May. I would probably task Terry to give me a list of three or four people that could be a subcommittee – that I don't want to be a part of – that could come back to the board and provide a better feel, and maybe we could do it by an addendum or whatever if we have to make some modifications to the amendment. I do support Terry moving forward with his motions as quickly as we can, but we need to move. Is that a fair and reasonable way to move forward on this? We have got a motion. A.C.

MR. CARPENTER: I don't want to upset the applecart and tell you that I had asked for a quick meeting, but would it be in order, Mr. Chairman, to have a **motion on the floor that would essentially say for 2013 the quotas that were in place or shown on this table that we're all looking at will be in effect for everybody. The ones that highlighted as below the 2 percent will have the option to fish this year; and if they have an episodic event, they can draw on the balance of the 1,700 metric tons.** In the meantime you can set this group aside and come back in a future meeting to solve it for '14, '15 and '16.

CHAIRMAN DANIEL: Are you making that as a substitute motion?

MR. CARPENTER: And if it is in order I would make that as a substitute motion.

CHAIRMAN DANIEL: I think it is in order. Is there any objection around the table to having that motion besides Terry? Terry.

MR. STOCKWELL: Not as much of an objection as the monitoring issue isn't addressed. If we're going to have any episodic event, we have to have the monitoring system in place, so that would be my objection.

CHAIRMAN DANIEL: Well, I think that the monitoring goes hand in glove, and I think it has to be – you know, it is going to be incumbent on the states that take advantage of it to monitor it; because if not, you've got to pay it back the following year and then you won't have an episodic fishery the next year if you don't monitor it.

Really, that is incumbent upon those folks that are taking advantage of the episodic fishery to make sure that you monitor it. Obviously, if you're moving along and you've caught half of the 1,700 metric tons, you probably ought to quit or at least talk to some of the states and find out what they're doing in terms of these episodic fisheries. Again, I don't know who is going to be involved in these episodic fisheries besides you and maybe Massachusetts. Okay, Pete.

MR. HIMCHAK: I unfortunately would speak against the motion because it undermines what we set up an episodic event to become even though we didn't define it, but essentially you're taking any state that has bait landings of under 2 percent and allowing them to expand in the absence or in the presence of an episode. That 2 percent is significant in the overall scheme of 170,000 metric tons is a lot of fish for somebody to – I think you're going to allow a lot of states to just expand their bait fisheries.

CHAIRMAN DANIEL: Well, I have got a substitute motion on the table and I need a second. Second from Adam Nowalsky. I think the intent here is to get us through this year. I don't think we're going to have some huge expansion in any fisheries at 1 percent of the total. We might; somebody might take advantage of it.

If you do, shame on you; but at the same point it is that or spend another – we're going to have to figure

out what to do with the schedule because we have run way over our time, and we have got a lot more to do. I don't want to be the reason to vote for or against this, so I just bring it up as fact. Doug.

MR. GROUT: Just potentially a clarification on the motion that we might want to put in there that states that qualify for an episodic event will be able to harvest the 1 percent set-aside because right now it says any state can –

MR. CARPENTER: I would accept that as a friendly amendment.

CHAIRMAN DANIEL: Yes, we will make that correction, but I think that is a good clarification. Jack.

MR. TRAVELSTEAD: I'm not sure where I am on this motion, but I would note when the concept of an episodic event was first introduced by the state of Maine they pointed out to us that maybe once every ten years we get a slug of menhaden that show up in our waters, and we would like to take advantage of that.

They asked that 1 percent of the quota be set aside so that they could do that. Now it seems to have morphed into a situation where we're taking that 1 percent and we're allocating it to nine different states so that they could fish potentially more than they were originally allocated every year. We have sort of moved away from this concept of episodic event, it seems to me. I don't know that I have a problem with that, but it is definitely not where we started.

If we really want to go back to where we started, it seems to me we need to spend a little more time on defining what an episodic event is. When it was first introduced, it seemed to me it was something that hardly ever occurred; but if it did occur, we wanted to be able to accommodate it rather than providing an opportunity to reallocate some percentage to everyone. I don't know if that helps anybody with anything, but it just makes it more complicated.

CHAIRMAN DANIEL: Well, I agree with you. Certainly, menhaden are available all the time in Florida, Georgia, South Carolina, Delaware; probably New York; and then once you get north, that is where it becomes episodic. Perhaps in the future what we need to do as we move

forward with this group is perhaps define where that episodic event may occur and that would whittle down the number of states that would be eligible because it is not episodic in a lot of states because the fish are there. It is just that they haven't taken advantage of it in the past; and I think that is the concern that states that haven't had a fishery in the past could develop as fishery, at least a small level fishery based in 1,700 metric tons, and that was never the intent of the set-aside, but that is where we are now. Is there any further comment on the motion? Bill.

MR. WILLIAM A. McELROY: Mr. Chairman, I agree with Jack, but the problem that we have in the New England Region is to try to wait for the episodic event to occur. By the time we notice that it is there and petition the commission for some access to it, the likelihood is the event will be over. I'm struggling.

Obviously, we don't like the idea of increasing the quotas automatically ahead of time because that goes counter to what we have done as a board. At least in New England the fish come and go in a very quick fashion and the likelihood of us being able to tap into an episodic event if we had to wait for it to occur, it will be over before we could harvest it. Thank you.

DR. PIERCE: I think Jack Travelstead said it best. That is essentially what is going to happen. It's not really an episodic event, which is allowing states to increase their take. It is not really a big deal because the take is small, anyways. However, it would just not be consistent with the whole concept of what an episodic event is.

Now, I'm going to have to oppose the motion even though I like the fact that it has been changed consistent with what I said before; that is, states would retain their initial Amendment 2 allocations, but then it says that qualify for episodic events, so I think that is where the 2 percent figure kicks in.

As I said in my initial remarks at our meeting in December, we would have qualified. That was the understanding; and then there was a misunderstanding and that has been made known by Mike we wouldn't qualify now. I have to oppose the motion for that reason only that we would not qualify because we're being – we and other states, for that matter, would be restricted to that rather subjective 2 percent.

Frankly, I can't recall why the 2 percent was even developed. If this was to apply to all New England states, I would be more receptive to it; but then again

Mid-Atlantic states might find that to be objectionable. I would rather just have this concept be, as you indicated before, brought to a small subcommittee for further development and for further work so that we can make it truly consistent with the intent. The motion really isn't consistent with our intent.

CHAIRMAN DANIEL: I agree; and I'm trying to get us through this year or at least through this early season without it blowing up. Again, we're talking about a very small portion. I don't anticipate Delaware south taking advantage of this. It is not episodic event to have menhaden in Delaware. It is just not.

It really is a New England issue, pure and simple, and that is who I would expect to take advantage of it. I can't speak for them, but I can't imagine there would be a circumstance where all of a sudden it would be some surprise to South Carolina or Georgia there are menhaden off the beach. Dennis.

MR. DENNIS ABBOTT: Mr. Chairman, I have done my best through the whole meeting to get us to the end by not saying anything. I think that going along with Dr. Pierce we really need to define what an episodic event is. The general statement of it covering nine states obviously is not working. Then you have just said that no one would take advantage of it.

I don't think that is the history of fisheries that fishermen don't take advantage of things when they have the opportunity; but be that as it may I think we're spinning our wheels here. As I talked to Catherine Davenport yesterday, we were realizing that we really need a clearer definition of "episodic" in this menhaden management scheme.

MS. FEGLEY: Well, realizing that this is just for 2013; would it help to amend this motion to say that any harvest that occurs under the set-aside will not count towards future harvest history under allocation? It sounds like that is some of the concern is that states are going to take advantage of the situation to build harvest history. I don't know; just a thought.

CHAIRMAN DANIEL: I don't think there is any intent in changing the harvest history that we based Amendment 2 on; so it would be moot in my opinion. If anybody has a different opinion; that's fine. Dave Simpson.

MR. SIMPSON: I agree with Jack's comments; and I will say again, as I said at the last meeting, my recollection of this entire discussion until we took the vote was that it was a Maine concern. I didn't hear any other state mention any – okay, I never heard New Hampshire or Massachusetts comment, but I guess we will have to check Joe's record on that.

To Jack's point, "episodic" was characterized to be very infrequent, less than every year, once every ten years, five years. To that point, I don't see that it would hurt us to just set this aside for 2013, do some work this year to figure out what we mean by episodic events and who will qualify and where the fish will come from, because this should not end up being some kind of a small-scale fish grab or reallocation.

It was meant to address a particular concern, and I think we're worried about messing things up here. We have a year I think to deal with this and come out knowing what we're doing and agreeing on what we're doing going forward if we put it off for one year and start this set-aside in 2014.

MR. HIMCHAK: I agree with Jack Travelstead's position entirely. I didn't state it as eloquently, I guess, but what is the problem with tabling the issue for today and at least allowing Terry and some other members to define what an episode would be, who would qualify, and come back to the board at the May meeting and then we can maybe implement some kind of set-aside for 2013; and if not, then we can suspend it until the 2014 fishing season.

MR. STOCKWELL: After this discussion, Murphy's Law is going to be this is going to be our episodic year. I'm comfortable with the will of the board. If you want to table this, fine. I came here prepared to address the issues that were left unfinished in December. I am going to tell you if there is menhaden in the Gulf of Maine this year, we're going to harvest them.

EXECUTIVE DIRECTOR BEAL: The board is in a spot here, but I think the 1 percent has already been taken off the top of the quota. That is set aside and it is in a Conservation Fund if you want to call it that. If the board doesn't take action today, that 1 percent is not reallocated to the individual states. They can take some time and think about this.

The fish, if they show up in the Gulf of Maine, I think it is later in the summer usually – middle of summer, so definitely after our May meeting, so there may be some time to chew on this between now and

the May meeting and come up with a scenario that figures out what we do with these – what you folks want to do with the 1 percent of the fish that are already set aside and sort of taken out of the overall quota for this year.

MR. AUGUSTINE: Will you call the question, Mr. Chairman?

CHAIRMAN DANIEL: Yes, I am starting to get a little flustered. What I would like to do is table this issue. I would like to ask for Terry to lead a subgroup that is made up of Bob Ballou or your designee, Dave Pierce or your designee and Dave Simpson or your designee and Doug Grout or your designee to come back at the May meeting.

I would like for you to come back with a very succinct motion on how you want to address this issue. Then what I would really appreciate would be if there are other states that are on the episodic list, particularly New York, Delaware, South Carolina, Georgia and Florida, if you could indicate whether or not you intend or not intend to participate in that, it would be a big help.

I don't believe it is consistent with what Jack was talking about that everybody seems to agree with; it is not consistent with the episodic nature of the fishery and where the fish occur all the time. My hope would be is we could limit it to the New England states and come back with something in May that will avoid us having an episodic event this summer that prevents somebody from being able to take advantage of that, which was our intent. Dennis.

MR. ABBOTT: Are you finished?

CHAIRMAN DANIEL: I'm as done as I can be.

MR. ABBOTT: And you did a good job, Mr. Chairman. I think we have a motion in the possession of the committee and I think a motion to table would be in order, **so I make a motion to table this motion to the May meeting; actually move to postpone until the May meeting might be a more proper motion.**

CHAIRMAN DANIEL: I have got a motion to postpone and a second from Mr. Adler. **Is there any objection to the motion? Seeing none; we will move on.** Is the direction clear, Terry? I don't mean it that way, but do you understand

what I'm asking for and hopefully you support that motion.

MR. STOCKWELL: Yes, Mr. Chairman, I will cycle it, and Mike Waine as well.

CHAIRMAN DANIEL: Yes.

EXECUTIVE DIRECTOR BEAL: I think we should just plow through the remainder of the agenda. I think the remainder should be hopefully more efficient than what we've had so far, but I think we can push through.

CHAIRMAN DANIEL: That us fine; we will push through with my apologies to the Horseshoe Crab Board because they do have an important issue that they need to deal with as well. Mike, do you want to continue?

MR. WAINE: In the interest of time, every board member and state has in front of them passed out this morning a memo from myself that indicates the implementation criteria for the implementation plans that we will be expecting from every state that is due on April 15th. I did the best job I could to lay out very specifically what the PRT will be looking for in those implementation plans and the format at which we hope to receive those. I'm not going to go through each item specifically. If there are any questions or anything is unclear, feel free to contact me. I can answer any questions if you have reviewed it before now.

MR. TRAVELSTEAD: Mike, I had one question and I think you have answered it on the very top of Page 2 of your memo. We've noted in Virginia that there are some very small differences between what is reported on a captain's daily fishing report and the list of all the items that are to be collected in Amendment 2.

You seem to be indicating in your memo that the CDFRs are still an acceptable format for reporting, and I agree with that. I would hate to have to go back and do away with that in favor of some new reporting form because industry is so used to using that. Can you clarify that the CDFRs for our reduction purse seine boats, our bait purse seine vessels, that is an acceptable form for reporting.

MR. WAINE: That is part of the implementation plan is essentially to submit that the CDFRs is Virginia's timely monitoring for the reduction industry and are recommending that meeting that weekly criteria and being able to monitor the

reduction landings on a weekly basis, indicating you can do that through the CDFRs present all the information in your implementation plans, the PRT will review that. I am going to tell you that, yes, that is going to be adequate because it has been for the past. I know that mechanism because it was written up in the amendment, but, anyway, yes, that would be the procedure would be just to submit that, and it will go before the PRT and then to the board.

CHAIRMAN DANIEL: Does that answer your question, Jack?

MR. TRAVELSTEAD: Yes, sir; thank you.

MR. GROUT: Thank you, Mike for this. This will be very helpful from a de minimis state standpoint. One thing that I just wanted to clarify; is there a clear definition in the FMP of what a directed fishery is and what a non-directed fishery is? Do you recall that at all?

MR. WAINE: I don't know what you mean by "clear". (Laughter) It is not specific but the bycatch allowance is what you're referring to, and the bycatch allowance is for non-directed fisheries. These are fisheries that are not directing on Atlantic menhaden. There is no percent provision in there, meaning there isn't a percent that has to come from other species, so there is no formal definition in that sense. Other than an industry member indicating that they were directing on another species and just happened to catch menhaden as bycatch; that is the only formal definition that we have.

MR. GROUT: Well, if I might work with you in developing my plan just to make sure that I'm not going to go outside the bounds of the plan; again, from a de minimis and how we're going to deal with a quota that is a hundred pounds a year. Where we don't really ever catch that much, I want to be able to put in rules that will be in compliance with this plan without being overly burdensome on our reporting system which will provide you with the landings data and our rule-making system.

MR. WAINE: Yes, absolutely, Doug. I developed this so that states could – so it would be more easy for the states to determine what implementations would require, and I would be happy to work with everybody to make sure that they're adhering to what we're expecting.

CHAIRMAN DANIEL: Are there any other questions for staff? Mike has done a fabulous job herding cats and I appreciate it. Matt, have you got a quick update or a quick version of an update?

MULTISPECIES TECHNICAL COMMITTEE REPORT

DR. MATT CIERI: Yes, we can do that. Okay, my name is Matt Cieri, and I am the Chair of the Biological Ecosystem Reference Point Working Group as well as the Multispecies Technical Committee. Just for today, what we're going to go over is we're going to talk about some additional predators to the MS-VPA and what is required to be added as requested by the board.

I'll also give you an update on the biological reference points as well as the multi-dimensional analysis. The first part is that the board tasked the BERP Working Group with investigation of predators to add to the MS-VPA, and a list of additional predators were considered. Note that some of these predators had been initially removed and then we have some preliminary estimates of some additional predators that might be important, keeping in mind that the overall goal of the MS-VPA and the ecosystem model in general for menhaden is looking at what predators are important – what species are important predators on menhaden rather than what species are menhaden important for.

When we go through the list, you can see that there – when you go through the food habits list from the National Marine Fisheries Service, you can find that a lot of different species actually end up becoming fairly important predators for menhaden or at least seemingly so. However, if we remove a good chunk of these, for example, you can see that weakfish – and these are listed in order – is right about here.

If you reduce all the ones that may not be that important, for example, a little bit less than weakfish, you remove the ones in the red, and then the ones in the yellow highlighted are actually in the model as it stands. That would leave potential predators to be added to include spiny dogfish, butterfly ray, smooth dogfish and monkfish. These are just some sort of preliminary estimates.

Remember, there are sort of two components that go into what makes a predator an important predator on menhaden. One is how much menhaden does it eat on an individual per capita basis, but also how big is your biomass. If something eats a lot of menhaden

all the time but has a very, very small biomass, then it may not be an important predator.

We also need to recognize that adding in predators into the ecosystem model is going to be limited on data. There is no sense in adding in a predator that you think might be important if you don't have a lot of food habits' database to back that up with. But there are also some others that might be important that we haven't included and we're starting to take a look at as well.

These include things such as birds, marine mammals and some of the highly migratory, including bluefin tuna. Then we have also been looking at using a feedback mechanism to look at what are the effects of menhaden availability as prey on the predator through its stock-recruitment relationships?

One of the goals, of course, is to get your feedback with the understanding that we're looking at what predators are important for the menhaden population. Then going into the BERP Working Group Update, we've figured out that, of course, as you all know, that there are issues with the current menhaden assessment, and these issues also translate through the MS-VPA.

There is a real need to actually correct some of these issues within the underlying assessment rather than going on ahead. This will require a large time commitment of staff as well as the scientists that work on these models. Therefore, we suggest actually delaying an update in favor in actually going through and correcting some of these issues in the MS-VPA for a peer review. That is the recommendation of the working group.

Next is just to give you a brief update on the MODA. The MODA is the Management Objective Decision Analysis. Currently we were looking for funding, but it seems like most of those options are probably not going to pan out, so we're probably not going to end up getting funding in time to do the work as requested.

The working group has resumed work on the ERP task as it stands, and that would be to quantify the amount of menhaden biomass necessary to sustain the forage needs of striped bass, bluefish and weakfish predators at their threshold biomass levels. That is how we have interpreted what the board has been looking for.

We're going to generate some biomass reference points for you using that as an outline and indicate when menhaden biomass has dropped below that level to support key predators at those biomass thresholds rather than the targets. This will give us the opportunity to generate those reference points. The task is using the MS-VPA to generate an estimate of the biomass of menhaden required to maintain these predators at this given reference point; so when you have your predators at the threshold level, how much menhaden do you need to keep the food availability stable over that time horizon.

This is pretty much on track and we have done some preliminary runs to take a look at what that might look like, but we're currently still tweaking the model. The other thing that we're doing is parameterizing that predator/prey feedback loop as I suggested earlier because, of course, food availability does have a profound effect on striped bass as far as weight at age, bluefishes weight at age, those types of things, and so that can actually translate back into your predator population in terms of SSB as well as fecundity and your stock-recruitment relationship.

For the ecological reference points, we anticipate having the strawman result for board feedback at the annual meeting this year and then a peer review of all the models that we're thinking about using, as well as the ERP options. All this of this stuff has sort of been delayed until 2015, and, of course, it will depend on the menhaden timeline itself. That's all I have for you.

MR. AUGUSTINE: Matt, it was really interesting that chart you had up there about all of the predators, including sharks, and I think you had herring down there. Now, when you develop your model, are all of those species evaluated in terms of what their food need is at the threshold, also?

I know we had a lot of sharks – those that are listed; most of them are either overfished or overfishing is occurring; so if it is anything other than at the threshold, how do you balance it? What is the fudge factor, if you can help me with that? I don't mean to put you on the spot, but, boy, that is big when you look at what the impact is particularly on the herring. I couldn't believe that number.

DR. CIERI: Right; when you actually go back through; we're not going to be looking at everything in red probably because it is not going to end up being important within the model, anyway. Basically we're going to use weakfish as sort of our benchmark. If it is going to be less important than

weakfish, then you pretty much just need to get rid of it, because it is going to end up being background noise and you're just adding variability.

For everything above weakfish and above, yes, you do actually have to take a look at what those kinds of things are going to be at different levels. It will depend on whether or not you want to put those in as biomass predators or whether or not you're going to put them in as fully explicit predators. We will have to take a look at all that as we go through, but the idea would be to keep these predators fairly stable.

DR. PIERCE: Matt, let me get this straight. All the species above the line, if they were included, then the model and the work that your group is doing, the end result would be that we must make sure that there is enough menhaden left in the water to feed these predators; so we have to feed the dogs, which I don't want to do. If the choice is to feed the dogs and not the dogs, I would say leave them out of the list.

DR. CIERI: And I think we all understand your affinity for dogfish. What I will say is what we're planning on doing is to look at the threshold levels of each of these predators and take a look at how much menhaden is needed in order to maintain those populations at those levels. This is just a strawman first step. Of course, we all know that the likelihood that weakfish are actually going to get up to their threshold is pretty moot. Likewise, striped bass, we're far and away well above their threshold level. This is just going to be a sort of minimum estimate of much menhaden you need and what those biological reference points would look like as a minimum.

DR. PIERCE: Okay, that is a good exercise and I appreciate the fact that you were able to come up with this list. It will be important to include them and we will then have to make some decisions down the line as to how much menhaden to leave in the water for each of these individual predators.

I assume that we will then make some value judgments as to what predators need to be fed and what can find something else, if you know what I mean. By the way, the spiny dogfish estimate of menhaden predation, the amount they have been consuming, we actually have that

estimate from some source? I didn't realize that we had one for menhaden.

DR. CIERI: Well, these are the species that may look important in the food habits' database. Remember, this is only preliminary numbers. When we actually go through and take a look at, okay, who is eating menhaden, how much, and then how big their population is, when you actually start going through and taking a look at, okay, how does it overlap and those types of things, some of these species may not end up being important.

This is just the first preliminary cut of an idea of what predators in the current NMFS Food Habits Database might be added into the MS-VPA. Okay, it is a preliminary cut. These may not actually end up being added in. It will all depend on the final analysis, but they do show up in the Food Habits Database.

CHAIRMAN DANIEL: I feel like I have to make a comment as a member of the South Atlantic states; and that is this is meaningless to me because it doesn't have any of the fish that eat menhaden south of Virginia. That is going to make it a hard sell in North Carolina, South Carolina, Georgia and Florida. Red drum aren't listed here. King mackerel aren't listed here. Spanish mackerel aren't listed here.

You know, huge population and abundances of fish that occur in the South Atlantic that aren't even included, and so that is going to be a big question that we're going to get from the South Atlantic. This is all Mid-Atlantic and New England stuff. Basically at this point, now that North Carolina has prohibited the reduction fishery fishing off of North Carolina waters, is a refugia basically from the Virginia Line to Key West for menhaden.

How that factors into a multispecies analysis I think is going to be very important to be able to answer those questions to those constituents that are going to be wild. When we see a school of menhaden in the wintertime being fed upon, none of these species are included. It is red drum, false albacore, king mackerel, whales; and then probably the biggest component is blacktip sharks and blacknose sharks, and those aren't listed. That is going to be a difficult sell.

The other part of the MODA Analysis and the Multispecies Analysis that has raised some concerns to me is the variability and the changing in the gelatinous zooplankton predator communities in the areas where menhaden are spawning and the substantive impact

of those jellyfish, basically, that are feeding on the eggs and early larvae of the menhaden and that could have a substantive impact on the recruitment strength of menhaden more so now than it has in the past.

Those parts, when you're making a puzzle, if you have only got three of ten pieces, it is hard to tell what it looks like. Those are the kinds of questions and concerns that I would ask when the presentation is given and just to kind of give a heads up on the concerns that I have and I have heard about the analysis and what I see as some of its shortcomings; recognizing you're not going to have the information for every single thing.

The point I'm trying to understand is at what point are the results meaningful for management purposes. That to me is the \$64,000 question when it comes to multispecies analysis, so I felt like from the South Atlantic perspective, those would be my concerns and questions in a future presentation.

DR. CIERI: And, of course, we do sort of address those things as time goes by. Partly it is about what is available in the Food Habits Database, but there are also other sources of information in the MS-VPA as well. You can't add in data if you don't have it. You can't suggest that type of stuff ends up becoming important.

Some of the spatial analysis does look at habitat and overlap with certain of these predators, and I think a lot of the stuff will end up coming out in wash. As well, if you have any information on food habits of any of the species that are within the menhaden's range, we're always looking for new sources of information and potential predators.

But what we were really trying to focus on was what predators are really important for regulating the menhaden population, and that is a very different question than who eats menhaden. If you had to list all the predators that ate menhaden, you'd come up with a list as long as this room, but it is really trying to quantify the predators that are important for regulating the menhaden population. That list actually ends up becoming a lot shorter.

CHAIRMAN DANIEL: And I just think that there are species in the South Atlantic that are

equally if not more important than the ones on the list and particularly king mackerel and red drum. I think that the best information for that is in South Carolina. There has been a tremendous amount of data work done on offshore populations of red drum there, and we're starting to get that information, too; but as that spawning stock biomass continues to improve and increase, which it is doing, then I think their impact is going to be far, far more.

They tend to stay with the schools under them, and so they're feeding on them all the time; just like a striped bass, no different striped bass. Those are the kinds of things that – you know, I don't want the process to get hammered by saying, well, you didn't think about this, this, this.

I'm just laying out kind of apriori what the issues are that you're going to hear from folks in the South Atlantic when they see this list. That's my main point. Is there anything further on the MODA Analysis and the multispecies that is going on? All right, we have got to populate some boards and technical committees and things. Thank you, Matt.

POPULATE THE STOCK ASSESSMENT SUBCOMMITTEE

MR. WAINE: In anticipation of the benchmark stock assessment occurring in 2014 for Atlantic menhaden, I just wanted to run through the stock assessment subcommittee membership for that group. As it stands now, that is Matt Cieri from the state of Maine, Rob Latour from VIMS, Micah Dean from Massachusetts, Behzad Mahmoudi from Florida, Jason McNamee from Rhode Island, Amy Schueller from the National Marine Fisheries Service, Alexis Sharov from Maryland and Joe Smith from the National Marine Fisheries Service.

MR. AUGUSTINE: **Mr. Chairman, I move to approve the stock assessment subcommittee membership as presented.**

CHAIRMAN DANIEL: Motion by Mr. Augustine; seconded by Mr. Adler. Is there discussion on the motion? Are there any additions to the list from anybody? Any objection? Seeing none; **that motion carries**. Then we have a plan review team?

POPULATE THE PLAN REVIEW TEAM

MR. WAINE: Because we are implementing Amendment 2, we are also populating the plan review team to track implementation of those compliance criteria. Those members as it stands now

are Ellen Cosby from Potomac River Fisheries Commission, Steve Meyers from the National Marine Fisheries Service, Trisha Murphey from North Carolina and we have a nomination for Nichola Meserve from the state of Massachusetts.

MR. TRAVELSTEAD: I wonder if I could ask Joe Grist to that list from Virginia.

CHAIRMAN DANIEL: Without objection; add Joe Grist to the list. Are there any others? Pat.

MR. AUGUSTINE: **Mr. Chairman, I move that the board accept the plan review team membership as proposed.** You might want to read the names into the record, Mr. Chairman.

CHAIRMAN DANIEL: I'm just making sure that Joe Grist is added. Motion seconded by Mr. Adler. Is there discussion on the motion? Dave.

DR. PIERCE: I'm just making sure Nichola is on the list. Okay, good.

CHAIRMAN DANIEL: She is on there. It is Steve Meyers, Nichola, Ellen Cosby, Trisha Murphey from North Carolina and now Joe Grist from Virginia are the five members of the PRT, and it is good to have that fairly small group, but I think that is good representation. Is there any further discussion on the **motion? Seeing none; any objection to the motion? Seeing none; that motion carries and that is our plan review team.** We have got one other piece of business from Mr. Travelstead.

OTHER BUSINESS

MR. TRAVELSTEAD: Mr. Chairman, this will be brief. I think we all understand the importance of the benchmark stock assessment that we're working on and hope to have done in 2014. It is certainly something that is of great interest to the constituents here in Virginia and in particular the 140 legislators who are responsible for managing that fishery here in Virginia.

My reason for putting this on the agenda was to ask that you direct that we get an update on the status of that benchmark at all of our future meetings. I don't want to arrive at a situation where some time in 2014 we hear from the stock assessment subcommittee that we ran into trouble a year ago and we're just hearing about it for the first time.

I would request that at every meeting we get an update from staff on what has occurred the previous two or three months, what is supposed to occur in the next two or three months, whether we have run into problems, whether people need to be prodded to do what they're supposed to do. I would also ask that in the event the Menhaden Board does not meet at one of our future meetings that we get that same update perhaps through the Policy Board. Thank you.

CHAIRMAN DANIEL: Yes, I don't think there is any objection around the table for having that as an important component. I would like to just add one thing to that because I want to make sure – there were some comments made to me that this board supports – I want to make sure that there is agreement that this board supports the work that industry is trying to do and that at this board we're supportive of them moving forward in their collaborative cooperative efforts to make these surveys happen, working with the states and make sure that we're all in support and there is not going to be pullback from that support as we move forward. I don't think it means financial support, but just making sure that we are in agreement with moving forward in that direction and that collaborative spirit. Dave.

DR. PIERCE: Yes, I certainly support that survey, the work that the industry is doing. It is unclear to me, however, whether we actually have formally requested the technical committee to review the aerial survey design so that we can make sure from the get-go that we're not going to have a problem after the fact by someone eventually saying the survey design was off, we can't use the information. I look to you, Mr. Chairman, for some direction on that. Have we charged the technical committee to do that; and if not, should we?

CHAIRMAN DANIEL: If we haven't; we should. I believe Jack indicated that Rob Latour should have a design approved by March; and if that is indeed the case, then my hope would be the technical committee would review that design.

I'm assuming that industry would be involved in looking over that as well and have comments on that since they are going to be funding it in part and that would be a formal charge from the chair to the technical committee to make that review happen for our May meeting. Does everybody agree with that approach? Bob.

EXECUTIVE DIRECTOR BEAL: Mr. Chairman, just to clarify Mr. Travelstead's request, I just want to make sure he is requesting updates at each of the

quarterly meetings on progress toward the benchmark assessment and the steps we're taking through the data and modeling, but he is not asking for preliminary model results and other details of what may be anticipated as far as results of the assessment; is that correct?

MR. TRAVELSTEAD: That is exactly correct. I'm not looking for preliminary results because they're meaningless. Until the thing has been peer reviewed, we don't need to hear results. I want to make sure that the timeline to get this done is being met and that all the partners are doing what is supposed to be done to get us there. Thank you.

CHAIRMAN DANIEL: Okay, anything else on Jack's other business? I have another business, too. A.C.

MR. CARPENTER: I would just like to request that Mike e-mail his February 15th memo because we can handle it better if we get a copy that way. Thank you.

ADJOURNMENT

CHAIRMAN DANIEL: Certainly. Is there anything else from the board? If not, I have been doing this since 1995, I guess, when I started as a Fish and Wildlife Service representative on the Weakfish Technical Committee. I have dealt with a lot of technical committee people and a lot of chairs, and I don't know that there has been many, if any, that have exceeded my expectations like Jeff. This is his last meeting as our technical committee chairman; and for an outstanding job, well done, I just wanted everybody to give him a round of applause for his efforts. (Applause) With that happy note, we will stand adjourned.

(Whereupon, the meeting was adjourned at 10:42 o'clock a.m., February 20, 2013.)



Atlantic States Marine Fisheries Commission

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MEMORANDUM

TO: Atlantic Menhaden Management Board
FROM: Michael Waine, Plan Review Team Chair
SUBJECT: Implementation Plan Requirements for Amendment 2 Compliance
DATE: February 26, 2013

This memorandum details the implementation requirements for Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden. States must submit implementation plans by April 15, 2013, but are encouraged to submit them early if possible. Amendment 2 will be effective on July 1, 2013, however beginning on January 1, 2013 all Atlantic menhaden landings will count towards a state’s total allowable catch (TAC).

Amendment 2 Compliance Criteria

- An implementation plan must be submitted by April 15, 2013 detailing the state’s actions to fully implement the requirements of Amendment 2. States must demonstrate (e.g., through inclusion of regulatory language) that the compliance criteria as listed below are satisfied. Please follow the numbering format when submitting implementation plans.
- Commercial Fishery Management Measures**
 - A mechanism to close directed commercial fisheries in your state once the TAC (or a percentage thereof) has been reached (see TAC table below). Every state is required to submit their official dated closure notice to the Commission at the time of closure and as part of their annual compliance reports (*TAC Specification 4.2.1.1 and TAC Allocation 4.2.1.3*).

State	Allocation %	TAC (MT)
ME	0.04	66.58
NH	0.00	0.05
MA	0.84	1417.94
RI	0.02	30.29
CT	0.02	29.50
NY	0.06	93.76
NJ	11.19	18924.42
DE	0.01	22.33
MD	1.37	2320.98
PRFC	0.62	1049.69
VA	85.32	144272.84
NC	0.49	833.23
SC	0.00	0.00
GA	0.00	0.00
FL	0.02	30.39

Note: The table of final TAC allocations was based on a coastwide TAC of 170,800 metric tons (MT) with a 1% TAC set aside for episodic events. These TACs are subject to change based on the number of states that opt into the episodic set aside.

- b) A mechanism to adjust a state's TAC as required by the Atlantic States Marine Fisheries Commission.
- c) A mechanism to enable transfer of unused TAC between states if warranted, and the ability to adjust a state's TAC as it relates to the transfer of quota (*Quota Transfers 4.2.1.4*).
- d) A repayment mechanism to reduce the subsequent year's quota to account for any over-harvest of the TAC on a pound for pound basis (*Quota Payback 4.2.1.6*).
- e) A bycatch allowance mechanism for non-directed fisheries following the harvest of the state's TAC and closure of directed fisheries (*Bycatch Allowance 4.2.1.7*).
Bycatch allowance has the following mandatory provisions:
 - i. 6,000 pound bycatch landing limit per calendar day for all non-directed fisheries
 - ii. Prohibit a vessel from making multiple trips in one day to land more than 6,000 lbs
 - iii. Prohibit the use of multiple carrier vessels per trip to offload bycatch exceeding 6,000 pounds
 - iv. Bycatch reporting requirements as detailed in section 2(b).
- f) A mechanism to adjust a state's TAC and effort controls if opting into the episodic events set aside (*Episodic Events Set Aside 4.2.1.8*). Logistics of the episodic events set aside are still being developed by the Board including a qualifying definition of an episodic event. Therefore, at this point, implementation plans do not need to address this set aside.
- g) For Virginia only, a Chesapeake Bay reduction fishery harvest cap with the following provisions. (*Chesapeake Bay Reduction Fishery Harvest Cap 4.2.2*.)
 - i. Prohibit harvest for reduction purposes within the Chesapeake Bay when 100% of 87,216 metric tons (mt) is harvested from the Chesapeake Bay.
 - ii. A repayment mechanism to reduce the subsequent year's harvest cap to account for any over-harvest of the cap on a pound for pound basis.
 - iii. A rollover mechanism to increase the subsequent year's harvest cap to account for unlanded fish to a maximum of 10,976 mt. The rollover applies to the following year only, and will not be carried for multiple years.

Note—All harvest within the Chesapeake Bay will count against the state's overall TAC

2. Monitoring Requirements

- a) A catch reporting system to enable weekly monitoring of a state's TAC, unless a state can demonstrate the effectiveness of an alternate reporting time schedule as approved by the Board (*Quota Monitoring 3.6.1.2*). A state's catch reporting plan must include the following information.
 - i. Indicate whether harvesters, dealers, or both are required to submit reports. The PRT recommends harvester reporting to account for Atlantic menhaden retained for personal use.
 - ii. Specify the amount of detail reported (e.g., trip level or summary). Define the data elements that are required to be collected (by license type or gear type where applicable). The Amendment recommends trip level reporting with the minimum data reporting elements as required by the Atlantic Coastal Cooperative Statistics Program. (1) trip start date (2) vessel identifier (3) individual fisherman identifier (4) dealer identification (5) trip number (6) species (7) quantity (8) units of measurement (9) disposition (10) county or port landed (11) gear (12) quantity of gear (13) number of sets (14) fishing time (15) days/hours at sea (16) number of crew (17) area fished.
 - iii. The plan must require purse seine and bait seine vessels (or snapper rigs) submit trip level reports (e.g., Captain Daily Fishing Reports).
 - iv. Specify the frequency and mechanism of submitting reports. The Amendment recommends weekly reporting.

- b) A mechanism to require timely reporting of bycatch allowance landings by non-directed fisheries through the reporting system approved by the Board in section 2(a).

Note—All bycatch from non-directed fisheries during a closed season must be reported separately from directed harvest in annual compliance reports. Bycatch during the open season will count towards a state’s TAC.

- c) A mandatory biological sampling program to collect age and length data from the commercial bait harvest to support improved stock assessments (*Biological Data 3.6.2.1*).
 - i. One 10-fish sample (age and length) per 300 metric tons landed for bait purposes for ME, NH, MA, RI, CT, NY, NJ, DE.
 - ii. One 10-fish sample (age and length) per 200 metric tons landed for bait purposes for MD, PRFC, VA and NC

Note—The Amendment recommends collecting the samples by gear type and defines each 10 fish sample as an independent sampling event; therefore, multiple 10-fish samples should not be collected from the same landing event.

- d) A mandatory monitoring/sampling program that requires all states with a pound net fishery collect catch and effort data elements (*Adult CPUE Index 3.6.2.2*). Mandatory reported data elements are,
 - i. total pounds (lbs) landed per day
 - ii. number of pound nets fished per day

Note—In order to characterize selectivity of this gear in each state, a goal of collecting five 10-fish samples from pound net landings annually is recommended.

3. *De minimis*

- a) State(s) with a reduction fishery are not eligible for *de minimis* consideration. 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 (*Criteria for De Minimis Consideration 4.5.3.1*).

Note—Based on 2010-2011 bait landings data, ME, NH, RI, CT, NY, DE, SC, GA, and FL are eligible for *de minimis* status in 2013).

- b) If granted *de minimis* status by the Board, states are exempt from implementation of 2(c) and 2(d), but must still submit a plan to implement all other compliance criteria as detailed in this memo. The Board also approved a *de minimis* exemption for NH, SC and GA from implementation of timely reporting, but those states are still required to describe their current reporting structure following the guidance in section 2(a). (*Plan Requirements if De Minimis Status is Granted 4.5.3.2*)

This memorandum is a summary of the Amendment 2 compliance requirements to assist states with the implementation of Amendment 2. Amendment 2 contains the specific regulatory and monitoring language as referenced in this memo. Please contact Michael Wayne at mwayne@asmfc.org or (703) 842-0740 if you have questions regarding the specific compliance criteria or implementation procedure of Amendment 2.

State of Maine Atlantic Menhaden Amendment 2 Compliance Plan

Please accept the following proposed compliance plan for Atlantic Menhaden Amendment 2. The Maine Department of Marine Resources (DMR) understands that Amendment 2 will be effective on July 1, 2013, however, a number of the required compliance measures will not be known until after final action by the Board in May 2013 that will decide the episodic events set aside. DMR highlights that some implementation measures will require state rulemaking authority, a process that takes approximately 90 days. Below is a summary of DMR's implantation plan:

1. Commercial Fishery Management Measures
 - a. The mechanism to close the fishery once the TAC has been reached is the Commissioner's emergency rulemaking authority.
 - b. The mechanism to adjust the state's TAC is the Commissioner's emergency rulemaking authority.
 - c. Same as 1a and 1b, through emergency rulemaking authority
 - d. DMR will initiate rulemaking to implement the measure to repay quota overage in the Chapter 41 rulemaking package to be initiated following the May Board meeting.
 - e. DMR will initiate rulemaking to implement the 6000# bycatch allowance measures in the Chapter 41 rulemaking package to be initiated following the May Board meeting. The rulemaking will prohibit vessels from making multiple trips and will also prohibit the use of multiple carrier vessels.
 - f. To be determined following the May Board meeting's final decision on episodic events.

2. Monitoring Requirements
 - a. DMR will supplement the existing Maine Pelagic License by adopting by rulemaking a daily reporting program that will require fishermen intending to land more than the 6000# incidental daily limit to notify DMR prior to taking or coming into possession of menhaden in Maine state waters. At that time the harvester will notify DMR of their intent to harvest menhaden and DMR will notify said harvester of any modifications which may have been established in the possession limit for menhaden. Each commercial menhaden harvester shall contact DMR at the end of each daily trip to report the data required by Amendment 2. See appendix 1
 - b. DMR will utilize the existing Maine Pelagic License data collection program to monitor the bycatch allowance landings by the non-directed fisheries
 - c. DMR plans to apply for de minimis status but, pending continued funding, will provide the Menhaden TC with the current level of biologic monitoring. If Maine opts in to the episodic events set aside it will most likely lose de minimis eligibility pending the restrictions of the set aside program. If not de minimis, Maine will collect one 10 fish sample for every 300mt of Atlantic menhaden landed.
 - d. Maine does not have pound net landings of Atlantic menhaden.

Appendix I

§ 6502-A. Commercial pelagic and anadromous fishing license

1. Definition. As used in this section, "pelagic or anadromous fish" means Atlantic herring, Atlantic Atlantic menhaden, whiting, spiny dogfish, alewife, Atlantic mackerel, blueback herring, squid, butterfish, scup, black sea bass, smelt and shad.

2. License required. A person may not engage in the activities authorized under this section without a current:

- A. Commercial pelagic and anadromous fishing license for a resident operator;
- B. Commercial pelagic and anadromous fishing license for a resident operator and all crew members; or
- C. Commercial pelagic and anadromous fishing license for a nonresident operator and all crew members.

3. Licensed activity. The holder of a commercial pelagic and anadromous fishing license may fish for or take or possess, ship, transport or sell pelagic or anadromous fish that the holder has taken. The commissioner shall determine by rule what crew members may fish under a commercial pelagic and anadromous fishing license that provides for crew members. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2A.

4. Exemption. The licensing requirement under subsection 2 does not apply to a person who fishes for, takes, possesses or transports any pelagic or anadromous fish that have been taken by speargun, harpoon, minnow trap or hook and line and are only for personal use.

5. Eligibility. A commercial pelagic and anadromous fishing license may be issued only to an individual.

6. Fees. Fees for commercial pelagic and anadromous fishing licenses are:

- A. Forty-eight dollars for a resident operator;
- B. One hundred twenty-eight dollars for a resident operator and all crew members; and
- C. Five hundred dollars for a nonresident operator and all crew members.

7. Surcharges. The following surcharges are assessed on holders of commercial pelagic and anadromous fishing licenses issued by the department:

- A. For a commercial pelagic and anadromous fishing license for a resident operator, \$50;
- B. For a commercial pelagic and anadromous fishing license for a resident operator with crew, \$200; and
- C. For a commercial pelagic and anadromous fishing license for a nonresident operator with crew, \$400.

The commissioner shall deposit surcharges collected pursuant to this subsection in the Pelagic and Anadromous Fisheries Fund established under section 6041.

8. Violation. A person who violates this section commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

Atlantic Menhaden Implementation Plan for Amendment 2 Requirements

1. Commercial Fishery Management Measures

a) Mechanism to close the fishery if the TAC has been reached.

The state of New Hampshire (NH) has no directed fishery for Atlantic menhaden. A small, non-directed fishery has occurred in past years with the use of cast nets and small mesh gill nets. Since 1988, there have only been three years (1990-1992) where the total annual harvest exceeded the daily bycatch allowance of 6,000 pounds. Harvesters who catch menhaden are typically targeting Atlantic herring and river herring and use it for personal use as bait. No harvest has occurred in the past two years by either the recreational or commercial sectors, which constitutes less than 1% of the coastwide bait landings. NH will implement regulations to prohibit the development of a directed commercial fishery by implementing rules that prohibit the harvest and possession of more than 6000 pounds of menhaden per day per person.

b) Mechanism to adjust the state's TAC

Not applicable. The state of NH has no directed fishery.

c) Mechanism to enable transfer of unused TAC between the states

Not applicable. The state of NH has no directed fishery.

d) Repayment mechanism to reduce subsequent year's quota.

Not applicable. The state of NH has no directed fishery.

e) Bycatch allowance mechanism for non-directed fisheries following closing of directed fishery

i. A 6,000 pound daily bycatch landing limit for menhaden will be established..

ii. A regulation will be put into place to allow vessels to land only once per calendar day.

iii. The use of carrier vessels for transporting menhaden will be prohibited..

iv. Bycatch reporting is accounted for with a requirement under the Coastal Harvest Permit.

f) Episodic events set aside

Not applicable

g) Chesapeake Bay provisions

Not applicable

2. Monitoring Requirements

a) Catch Reporting system

i. Harvester and Dealer Reporting

Harvesters are currently required to submit monthly trip-level data under licensing provisions for the Coastal and Estuarine Harvest Permit (Coastal Harvest). This permit is required of any individual engaged in the taking of finfish by net or trap within New Hampshire state waters.

State only dealers are not required to report menhaden landings under current regulations. Changes to regulations will be proposed and include this provision. Federal dealers are required to report all landings. Most NH dealers are both licensed by the state and permitted by NOAA Fisheries.

ii. Data Reporting Elements

Trip-level harvest reports are collected to ACCSP data reporting standards. They include the following data elements:

On a monthly basis:

Name

Signature of permittee subject to the penalties for unsworn false statements under RSA 641.3.

Coastal harvest permit number

Month and Year

Whether fishing occurred that month

On a trip basis:

Trip date

Dealer(s) name or license number(s) harvest was sold to

Trip number

Species harvested

Quantity or weight of species harvested

Disposition of harvested species

Type and quantity of gear

Hours gear fished or harvest time

Size of gear

Area of fishing activity

Number of gear fished

Port, county, state landed, if harvest sold

Vessel Name

State vessel registration number, USCG documentation number, or National Marine Fisheries Permit number

Unloading date, if harvest sold

Transaction level dealer reports are collected under federal permits to ACCSP data reporting standards. They include the following data elements:

- Name of processor, primary dealer, or properly licensed person;
- The dealer's or processor's wholesale marine species or commercial saltwater license number;
- Week of reporting period;
- Commercial harvester's trip start date;
- Vessel name;
- State of vessel registration and number or coast guard number;
- Commercial harvester's first name, last name, date of birth, and license number;
- Number of trips for commercial harvester per day;
- Species purchased;
- Number or pounds of species purchased;
- Disposition of species purchased;
- Ex-vessel value or price of purchased species;
- Port, county and state where species were landed;
- Date species unloaded from commercial harvester's vessel;
- Grade and market size of purchased species;
- Gear used to harvest species; and
- Dated signature of dealer or processor, signed subject to the penalties for unsworn false statements under RSA 641:3.

iii Purse and Bait Seine Reporting

Amendment 1 and 2 to the Fishery Management Plan for Atlantic menhaden require that all states implement reporting requirements for all menhaden purse seine and bait seine vessels. New Hampshire state law (RSA 211.49) prohibits the use of mobile gear in state waters. As a result, the New Hampshire fleet does not have any vessels rigged for purse seining or bait seining.

iv. Report Frequency and Mechanism

State Coastal Harvest reports are required on a monthly basis, and are due by the 10th of the following month. Federal dealers are required to report on a weekly basis. The reporting week runs from Sunday to Saturday and reports are due by the following Tuesday.

b) Mechanism to require timely reporting of bycatch allowance landings by non-directed fisheries.

Harvesters are required to report catch and effort on a monthly, trip level basis under the Coastal Harvest Permit. They are required to report any catch including both targeted catch and bycatch. Reports are due by the tenth of the following month.

Changes to regulations will require state dealers to report menhaden landings on a weekly basis. The reporting week will be Sunday to Saturday with reports due Tuesday of the following week, which is consistent with Federal requirements. Federally permitted dealers report on a weekly basis. New Hampshire is requesting *de minimis* status and Amendment 2 provides an exemption for New Hampshire and two other *de minimis* states to the requirement for timely reporting.

c) Mandatory biological monitoring/sampling program.

Not applicable. Not required by *de minimis* states.

d) Mandatory monitoring/sampling in states with a pound net fishery.

The state of New Hampshire does not have a pound net fishery. There are no pound net landings in current or historical harvest or landings data. Additionally, NH is requesting *de minimis* status which carries an exemption to this requirement.

3. *De minimis*

- a) New Hampshire is requesting *de minimis* status. The state of NH lands less than 1% of the coastwide bait landings. In the past two years NH has had no menhaden landings and no recreational menhaden harvest. .

Massachusetts Implementation Plan

Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden



Prepared by
Massachusetts Division of Marine Fisheries
April 15, 2013

The Massachusetts Division of Marine Fisheries (*Marine Fisheries*) is in the process of implementing regulations to fully comply with the requirements of Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden. *Marine Fisheries* has proposed to amend the Code of Massachusetts Regulations (CMR) by adding 322 CMR 6.43 to manage Atlantic menhaden and by revising 322 CMR 7.01(4) to create a regulated menhaden commercial permit endorsement. Draft regulations are attached. *Marine Fisheries* will enact regulations by emergency action in order to meet the July 1, 2013 implementation date. Emergency regulations are effective for 90 days in Massachusetts; within 90 days of the emergency regulations' effective date, *Marine Fisheries* will hold public hearings and permanently codify the regulations.

1. Commercial Fishery Management Measures

a) A mechanism to close directed commercial fisheries in your state once the TAC (or a percentage thereof) has been reached.

Amendment 2 allocates 0.84% of the coastwide commercial Atlantic menhaden total allowable catch (TAC) to the Commonwealth of Massachusetts. The Atlantic Menhaden Management Board sets the TAC annually or for multiple years with annual review. The 2013 TAC is 170,800 metric tons (mt) giving Massachusetts a 2013 quota of 1,417.94 mt (3,126,019 pounds).

Marine Fisheries will use a declaration process to close directed commercial fisheries once the Massachusetts quota is projected to be reached. It will be unlawful to catch and retain or land menhaden for commercial purposes from a directed fishery once the Director of *Marine Fisheries* has declared that 100% of the quota has been harvested. "Declare" means to file an advisory notification with the *Massachusetts Register* and publish it via the *Marine Fisheries* electronic mailing list and website. All primary buyers are included in the email notification. *Marine Fisheries* will provide official, dated closure notices to the ASMFC at the time of closure and as part of annual compliance reports.

Marine Fisheries will also use the declaration process to amend trip limits during the course of the directed fishery season. Trip limits will differ by two participant types. Those commercial fishermen that desire to land more than 6,000 lbs per day will be required to obtain a limited entry regulated fishery permit endorsement. This permit endorsement will only be available to individuals or vessels with a history of landing more than 6,000 lbs of Atlantic menhaden in Massachusetts during any trip in 2009, 2010 or 2011. Holders of this permit endorsement will be subject to trip limits declared by the Director as follows: no trip limit until at least 50% of the quota has been landed; a 200,000-lb trip limit once at least 50% of the quota has been landed and until 85% of the quota has been landed; and a 6,000-lb trip limit once 85% of the quota has been landed and until 100% of the quota has been landed. All others will be restricted to a 6,000-lb trip limit for the entirety of the open directed season. All trip limits are per trip or 24-hour day, whichever duration is longer.

b) A mechanism to adjust a state’s TAC as required by the ASMFC.

Marine Fisheries is adopting a definition of “quota” that enables adjustment to the quota as required by the Atlantic States Marine Fisheries Commission (ASMFC). Quota means the Commonwealth of Massachusetts’ annual commercial Atlantic menhaden quota adopted by the ASMFC and amended by required paybacks and authorized quota transfers and rollovers.

c) A mechanism to enable transfer of unused TAC between states if warranted, and the ability to adjust a state’s TAC as it relates to the transfer of quota.

Marine Fisheries is adopting a definition of “quota” that provides the ability to account for any transfers of unused TAC between states. For any transfer, *Marine Fisheries* will follow the transfer mechanism described in Amendment 2: come to mutual agreement with another state(s); obtain review of transfer by the ASMFC Executive Director or designated staff before finalizing the transfer; forward transfer agreements to the Management Board through ASMFC staff; and assume responsibility for any overages of quota transferred to the Commonwealth.

d) A repayment mechanism to reduce the subsequent year’s quota to account for any over-harvest of the TAC on a pound for pound basis.

Marine Fisheries is adopting a definition of “quota” that provides the ability to reduce the subsequent year’s quota to account for any over-harvest on a pound for pound basis. For any overharvest of the Commonwealth’s quota, *Marine Fisheries* will reduce the following year’s quota by the equivalent amount.

e) A bycatch allowance mechanism for non-directed fisheries following the harvest of the state’s TAC and closure of directed fisheries.

Marine Fisheries is adopting a 1,000 lb bycatch tolerance for non-directed fisheries once the commercial quota has been harvested and the directed fishery closed. The bycatch tolerance is per trip or 24-hour day, whichever duration is longer, meaning a vessel could not make multiple trips in one day to land in excess of the bycatch tolerance. Multiple carrier vessels could not be used to offload bycatch exceeding the tolerance because: a) the tolerance applies to both retention and landings, and b) the definition of “land” includes to transfer to another vessel. The weight of the bycatch of Atlantic menhaden cannot exceed 5% of the weight of the entire catch being landed, thus restricting use of the bycatch tolerance to non-directed fisheries.

f) A mechanism to adjust a state’s TAC and effort controls if opting into the episodic events set aside.

Marine Fisheries does not intend to opt in to the episodic events set-aside as currently defined; therefore, the proposed regulations do not address this set-aside.

- g) For Virginia only, a Chesapeake Bay reduction fishery harvest cap with the following provisions.**

Not applicable.

2. Monitoring Requirements

- a) A catch reporting system to enable weekly monitoring of a state's TAC, unless a state can demonstrate the effectiveness of an alternate reporting time schedule as approved by the Board.**

Both harvester and dealer data will be used to monitor Massachusetts' commercial menhaden quota. Dealer reports will provide the record of commercially harvested menhaden sold into commerce, while harvester reports will provide the record of commercially harvested menhaden kept for personal use.

All primary buyers in Massachusetts are required to report their purchases of any marine species from fishermen. This includes purchases of bait products as well as species caught and sold by a fisherman acting as his own dealer. Primary buyers report weekly. All data are reported through the Standard Atlantic Fisheries Information System (SAFIS). Federal-reporting dealers must report electronically to the SAFIS database; state-reporting dealers may do the same (and most do) or submit paper forms to *Marine Fisheries* which are then entered into SAFIS by staff. Information includes: date purchased, date landed, fisherman name, fisherman permit ID number, port landed, vessel name, Vessel Trip Report number (if applicable), gear type, species, grade, market category, harvest area (shellfish only), unit, disposition, amount, and price per unit. Failure to report in a timely manner may result in the non-renewal of primary buyer status and/or dealer permits in the following year.

While primary buyer reporting requirements are weekly, *Marine Fisheries* is adopting regulations that will enable the vast majority of menhaden sold into commerce to be monitored daily. All regulated Atlantic menhaden fishery permit endorsement holders (those allowed to catch or land more than 6,000 lbs per trip) will also be required to obtain a bait dealer permit, act as their own primary buyer for menhaden and report menhaden transactions during the open season to *Marine Fisheries* on a daily basis (electronically via SAFIS or paper form to *Marine Fisheries* for staff entry into SAFIS). This action, beyond the requirement of the plan, is being taken due to the large capacity of some vessels expected to land menhaden in Massachusetts relative to the size of the Commonwealth's quota.

Marine Fisheries requires standardized, trip-level data for all commercial trips conducted under the authority of Massachusetts commercial permits (with the exception of trips conducted on federally-permitted vessels for which reporting is made to National Marine Fisheries Service.) Reports are due monthly. Fishermen either submit their trip-level reports in paper form or online using the SAFIS eTrips application. *Marine Fisheries* personnel use the same application to enter data submitted on paper forms. Information includes: fisherman name and permit identification number, vessel name and registration

number, date, trip start time, port, statistical area, management area, gear type, gear hauled and total (fixed gear only), fishing time, disposition, species, quantity, unit, and name and permit number of the primary buyer sold to. Fishermen are required to report marine species taken under the authority of a commercial permit when kept for personal use. Failure to report for all months of the year in a timely manner may result in the non-renewal of commercial permits and endorsements in the following year.

In summary:

- All menhaden purchases over 6,000 lbs will be reported daily by dealers;
- Additional menhaden purchases less than 6,000 lbs by regulated menhaden fishery permit endorsement holders will be reported daily;
- The above two categories of sales have accounted for 98.5% of reported sales the last seven years (median value);
- The remaining menhaden purchases under 6,000 lbs will be reported weekly by dealers; and
- Commercially harvested menhaden kept for personal use will be reported monthly on trip-level harvester forms. Each of these harvests must be less than 6,000 lbs and will more likely be in the tens to hundreds of pounds. *Marine Fisheries* will have monthly monitoring (rather than weekly) for what will amount to a small fraction of the quota. Any harvest above the quota that occurs due to the month-long delay in harvester reporting will be taken off the quota in the subsequent year.

b) A mechanism to require timely reporting of bycatch allowance landings by non-directed fisheries through the reporting system approved by the Board in Section 2(a).

Following closure of the directed menhaden fishery, reporting of bycatch landings in non-directed fisheries will occur weekly by dealers (menhaden sold into commerce) and monthly by harvesters (menhaden kept for personal use). As all reports include the date of landing, *Marine Fisheries* will be able to tally the bycatch landings separately from directed harvest, and will report the fisheries' harvests separately in annual compliance reports.

c) A mandatory biological sampling program to collect age and length data from the commercial bait harvest to support improved stock assessments.

Massachusetts is required to collect one 10-fish sample (age and length) per 300 metric tons landed for bait purposes. Consequently, Massachusetts may need to collect as many as four 10-fish samples. *Marine Fisheries* will utilize dockside sampling to collect menhaden age (scale) and length data, which will be sent to NOAA Fisheries' Beaufort Laboratory for processing. Sampling will be stratified by gear type, to the extent practicable. Only one 10-fish sample per sampling event will be counted towards the goal. *Marine Fisheries* has demonstrated the ability to collect the required number of samples; through a concerted effort in 2012, *Marine Fisheries* collected eight 10-fish samples.

d) A mandatory monitoring/sampling program that requires all states with a pound net fishery collect catch and effort data elements.

Marine Fisheries will continue to collect catch and effort data from the Commonwealth's fish weir fishery. Mandatory monthly trip-level reports collect total pounds landed per day and amount of gear hauled per day.

Marine Fisheries will strive to collect the recommended number of biological samples from the fish weir fishery (five 10-fish samples annually), although, as the number of weir fishermen in Massachusetts is low (<10) and landings are sporadic year-to-year, this may not always be feasible.

3. *De minimis*

Marine Fisheries acknowledges the eligibility criteria for *de minimis* status (bait landings less than 1% of the total coastwide bait landings for the most recent two years) and the compliance criteria exemptions for *de minimis* states (2(c) and 2(d) above). Massachusetts is not currently requesting *de minimis* status under the plan.

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.
 - a. Atlantic menhaden means that species known as *Brevoortia tyrannus* or commonly referred to as pogey or bunker.
 - b. Bait dealer means any person issued a bait dealer permit in accordance with 322 CMR 7.01(3)(g).
 - c. Bycatch means the non-targeted commercial catch and possession of a species.
 - d. Commercial Fisherman means any person fishing under the authority of a permit issued in accordance with 322 CMR 7.01(2).
 - e. Declare means to file an advisory notification with the *Massachusetts Register* and publish it via the *Marine Fisheries* electronic mailing list and website.
 - f. Director means the Director of the Division of Marine Fisheries.
 - g. 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.
 - h. 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.
 - i. 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.
- 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).
- 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 322 CMR 7.01(4)(a)(4), shall abide by the following trip limits:
 - i. Open Period. There shall be no Atlantic menhaden trip limit until the Director has declared that more than 50% of the quota has been landed.

ii. Trip Limit Period.

1. Once the Director has declared that 50% of the quota has been landed, it shall be unlawful to possess or land more than 200,000 lbs of Atlantic menhaden during any trip or 24-hour day, whichever duration is longer.
 2. Once the Director has declared that 85% of the quota has been landed, it shall be unlawful to possess or land more than 6,000 lbs of Atlantic menhaden during any trip or 24-hour 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 322 CMR 7.01(4)(a)(4) 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), and report their directed commercial Atlantic menhaden landings in the Commonwealth on a daily basis on forms provided by the Director.

7.01 Forms, Use and Contents of Permits

(4) Special Permits. The following special permits may be issued by the Director for the following activities:

(a) Regulated Fishery. Authorizes the named individual and/or a commercial fishing vessel to engage in the harvest, possession and landing of fish or shellfish from a fishery regulated pursuant to M.G.L. c. 130, § 17A, to be issued in addition to those permits required pursuant to 322 CMR 7.01(2).

4. Atlantic Menhaden. A regulated fishery permit shall be required to harvest, possess or land Atlantic menhaden for commercial purposes. This permit authorizes only the named individual and/or vessel to catch and retain or land more than 6,000 lbs of menhaden.

a. Eligibility. For 2013, the Director may issue a single Atlantic Menhaden Regulated Fishery Permit Endorsement to a Massachusetts commercial fisherman permit holder, provided there is valid documentation of landing more than 6,000 lbs of Atlantic menhaden in Massachusetts during any trip in 2009, 2010 or 2011.

b. Renewals. In 2014 and beyond, the Director may issue an Atlantic Menhaden Regulated Fishery Permit Endorsement to only those commercial fisherman permit holders who received an Atlantic Menhaden Regulated Fishery Permit Endorsement in 2013 and have renewed their permits in accordance with 322 CMR 7.00.



Rhode Island
Department of Environmental Management

DIVISION OF FISH AND WILDLIFE

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MEMORANDUM

To: Michael Waine
Atlantic States Marine Fisheries Commission

From: Jason McNamee
RI Division of Fish and Wildlife

Date: March 29, 2013

SUBJECT: Implementation Plan Requirements for Amendment 2 Compliance

Below are RI's plans for the implementation requirements for Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden, set forth in the format requested.

1. Commercial Fishery Management Measures

- a) RI has an existing mechanism to close directed commercial fisheries in state waters, specifically in Narragansett Bay where the main fishery exists (see attachment 2 to this memo). We will be following up with regulatory changes via a public hearing in July of 2013 to satisfy the remaining state waters closure regulatory authority once our state waters TAC has been reached (see attachment 1 to this memo). RI publishes notice of all regulatory closures through our secretary of states office and through our marine fisheries listserve, which the ASMFC is on. RI can add any additional ASMFC staff who may need to be added to this listserve, please contact Jason McNamee to accomplish this (Jason.mcnamee@dem.ri.gov). The closures will also be incorporated in to the annual compliance report, as is done with the current management plan in RI state waters.
- b) RIs proposed state waters regulations will also allow for the adjustment of the annual TAC (see attachment 1 to this memo).
- c) RIs proposed regulations will be flexible enough to allow for transfers of quota (see attachment 1 to this memo).
- d) RIs proposed regulations will allow for the repayment of quota were an overage to occur (see attachment 1 to this memo).
- e) An important part of the RI proposed regulatory framework will be to allow for the non directed bycatch allowance. RI main landings come from the floating fish trap fishery, which would meet the definition of a non directed fishery. It is imperative

that these small scale operators be allowed to continue to harvest once the state TAC has been met as it is an important supplemental fishery for them (see attachment 1 to this memo).

- f) RI is currently unsure of what to include for the episodic event language. It is hoped that the management board sorts this out in the near future so that it can be entertained during the July public hearing. RI would certainly be considered one of the states that has episodic high biomass events in its state waters and would like to be able to avail itself of these events when they occur.
- g) Not applicable to RI.

2. Monitoring Requirements

- a) RI currently uses and will continue to use SAFIS to report all commercial landings in the state including menhaden. All dealers, state and federal are required to report trip level data for all fishermen twice a week.
- b) The bycatch fishery will be captured in the same way as noted in a) above, which will be reported separately in the annual compliance report.
- c) RI currently employs a sampling program for state waters for menhaden that exceeds the requirements of the plan.
- d) Beginning in 2007, RI implemented a catch and effort logbook. This requirement captures the menhaden harvesting information for our floating fish trap fishery.

3. *De minimis*

- a) RI would meet the *de minimis* standard, but the state does not see much value in exercising this status as the only real flexibility it provides is in the biosample aspects, and RI already has a sampling program for this species in place. This biological information is important, therefore we do not intend to terminate our sampling program.

Attachment 1 – RI proposed additions to its menhaden regulations. Will go to hearing in July 2013

16.3 Harvest of Menhaden - The total allowable harvest of menhaden will be established annually, and will be that amount allocated to the State of Rhode Island by the Regional Fishery Management Council and/or the Atlantic States Marine Fisheries Commission. The quota may be harvested only by permitted gear types and licensed fishermen in accordance with all rules and regulations promulgated by the DEM and the RIGL Title 20. The total allowable harvest will apply to fish landed in RI.

16.3.1 - Within each period the allocation may be harvested until it is exhausted. Any unused quota not harvested during a sub-period will be carried forward into the next period, unless an overage has occurred in a previous sub period during the same calendar year, and any over-harvest will be deducted equally from all periods in the next calendar year.

16.3.2 – Upon closure of the RI state waters fishery, a non directed possession allowance of 6,000 pounds per vessel per calendar day will be allowed. A vessel will be considered to be non directed if it is a passive gear type such as a floating fish trap, or if the other non menhaden species harvested during the trip exceed the amount of menhaden harvested.

**Attachment 2 – RI Atlantic menhaden regulations
R.I. Marine Fisheries Statutes and Regulations
PART XVI - MENHADEN REGULATIONS**

16.1 Prohibition on the Harvesting of Menhaden for Reduction Processing – The taking of menhaden for reduction (fish meal) purposes is prohibited in Rhode Island waters. A vessel will be considered in the reduction (fish meal) business if any portion of the vessel’s catch is sold for reduction. (RIMF REGULATIONS)

[Penalty - Part 3.3; (RIGL 20-3-3)]

16.2 Narragansett Bay Menhaden Management Area – Narragansett Bay, in its entirety, is designated a Menhaden Management Area. The area shall include the east and west passages of Narragansett Bay, Mt. Hope Bay, and the Sakonnet River, and be bordered on the south by a line from Bonnet Point to Beavertail Point to Castle Hill Light. The southern boundary further extends from Land’s End to Sachuest Point and then to Sakonnet Light. The following regulations govern all commercial menhaden operations conducted in the Narragansett Bay Menhaden Management Area.

16.2.1 Gear Restrictions --The use of purse seines shall be permitted only in accordance with the following terms and conditions:

(A) All nets shall be less than 100 fathoms (600 feet) in length and less than 15 fathoms (90 feet) in depth.

(B) All nets shall be marked with fluorescent-colored float buoys, distinguishable from the other float buoys on the net, at intervals of 50 feet.

(C) Annually, prior to use, all nets shall be inspected and certified as being in conformance with the provisions of this section by the DEM Division of Law Enforcement. Once inspected and certified, a net may be used throughout the duration of the calendar year in which it was inspected, provided that it is not altered with regard to any of the provisions of this section. Any net that is altered with regard to any of the provisions of this section must be re-inspected and recertified prior to use.

16.2.2 Vessel Restrictions – When engaged in the commercial menhaden fishery, vessels may not have a useable fish storage capacity greater than 120,000 pounds. Prior to the commencement of fishing, for any vessel not previously certified through this process, each vessel must be inspected by a certified marine surveyor and assessed with regard to its fish storage capacity. A document reflecting the assessment must be kept aboard the vessel at all times. Any vessel with a fish storage capacity greater than 120,000 pounds may only engage in the fishery if the excess capacity is rendered unusable in accordance with the specifications set forth in the assessment.

16.2.3 - Possession Limits

(A) When the commercial menhaden fishery opens, per section 16.2.5 of this part, the possession limit shall be 120,000 pounds per vessel per calendar day, per section 16.2.5. The possession limits may be modified by

the DEM Division of Fish & Wildlife (DFW) on the basis of the estimated weekly standing stock of menhaden in the management area derived, in accordance with section 16.2.5, via approved scientific monitoring methods.

(B) No commercial menhaden fisher shall possess menhaden or otherwise engage in the taking of menhaden anytime on Saturday, Sunday, on any official state holiday, or prior to sunrise or following sunset.

16.2.4 Reporting Requirements -- In order to permit the Department of Environmental Management to monitor the fishery, any fisher intending to engage in the commercial menhaden fishery shall notify the DEM Division of Law Enforcement (DLE) at (401) 222-3070 prior to taking or coming into possession of menhaden in the management area. 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. Each commercial menhaden fisher shall also contact the Division of Fish and Wildlife at (401) 423-1943 at the end of each trip to report the amount of menhaden in possession by the fisher in pounds and area fished.

16.2.5 Opening/Closure of Fishery Based on Biomass Estimates --

(A) Biomass "Floor". On an annual basis beginning every spring, the DFW, utilizing approved scientific monitoring methods, shall conduct regular estimates of the weekly standing stock of menhaden present in the management area. On the basis of those estimates, the DFW shall issue a notice when the estimated weekly standing stock reaches a threshold of 1,500,000 pounds, and the DFW shall open the commercial fishery, at an initial possession limit of 120,000 pounds per vessel per calendar day, when the estimated weekly standing stock reaches 2,000,000 pounds. If, at any time, the stock estimate drops below 1,500,000 pounds, the DFW shall close the commercial fishery until further notice.

(B) Biomass "Ceiling". When 50% of the estimated weekly standing stock of menhaden stock present in the management area, above the minimum threshold amount of 1,500,000 pounds, is harvested, the DFW shall close the menhaden fishery until further notice.

16.2.6 Permanent Closures -- The following areas are permanently closed to purse seining for menhaden:

Providence River

- All waters north of a straight line running from Rocky Point to Conimicut Light to Nayatt Point.

Greenwich Bay

- All waters in Greenwich Bay west of a line from the flag pole on Warwick Point to Sandy Point.

16.2.7 [Repealed 4/2011]

16.2.8 Harvest of Menhaden in Permanently Closed Areas – No person harvesting menhaden by any fishing method shall possess more than 200 menhaden per vessel per calendar day in any closed area of the menhaden management area as set forth above.



**Connecticut Department of
Energy & Environmental Protection**
Bureau of Natural Resources
Marine Fisheries Division

**State of Connecticut
Implementation Plan for Compliance of Amendment 2
to the Interstate Fishery Management Plan for Atlantic Menhaden**

April 15, 2013

I. Introduction

The Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden in December of 2012. The Amendment establishes a 170,800 MT total allowable catch (TAC) beginning in 2013 and specifies state-by-state allocation based on landings history of the fishery from 2009-2011. States will be required to close their fisheries when the state-specific portion of the TAC has been reached; along with overages paid back the following year. The amendment also includes provisions to allow for transfers of quota between states and a 6,000 pound bycatch provision for non-directed fisheries that are operating after a state TAC has been landed. Amendment 2 additionally establishes requirements for the reporting of bycatch landings by non-directed fisheries and introduces a requirement for biological sampling of the commercial bait harvest to support improved stock assessments. This report includes specific compliance criteria established under Amendment 2 for implementation in Connecticut on July 1, 2013.

1. Commercial Fishery Management Measures

*a) A mechanism to close directed commercial fisheries in your state once the TAC (or a percentage thereof) has been reached (**Connecticut: 0.02% of coastwide TAC or 64,900 pounds**). Every state is required to submit their official dated closure notice to the Commission at the time of closure and as part of their annual compliance reports (TAC Specification 4.2.1.1 and TAC Allocation 4.2.1.3).*

Note: The final TAC allocations were based on a coastwide TAC of 170,800 metric tons (MT) with a 1% TAC set aside for episodic events. State TACs are subject to change based on the number of states that opt into the episodic set aside.

Connecticut 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. Pound nets are also used in some regions to target menhaden, 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 Office of Long Island Sound Programs 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 application for a pound net prohibitively expensive.

Amendment 2 defines a bycatch fishery as one landing up to 6,000 pounds of menhaden per trip. Connecticut has adopted a 6,000 pound possession and landing limit by Commissioner Declaration authority signed April 8, 2013 (see PDF: Declaration 13-02 signed), effectively prohibiting a directed fishery in this state. As a consequence, no mechanism to close a directed fishery is needed.

b) A mechanism to adjust a state's TAC as required by the Atlantic States Marine Fisheries Commission.

Connecticut generally incorporates TAC's into regulations by reference to the ASMFC FMP eliminating the need to change regulations every time the quota changes. However, as the menhaden TAC only has regulatory significance for directed fisheries and our 6,000 pound possession and landing limits bar directed fisheries, we have not included reference to the TAC in regulations.

c) A mechanism to enable transfer of unused TAC between states if warranted, and the ability to adjust a state's TAC as it relates to the transfer of quota (Quota Transfers 4.2.1.4).

Regulations of Connecticut State Agencies (RCSA) §26-159a-27. Transfers of Quotas. (see Appendix 1) provides the authority and mechanism to enable transfer of unused quota between states if warranted. In addition Commissioner Declaration 13-02 (see PDF: Declaration 13-02 signed) provides a mechanism for out-of-state vessels wishing to land large quantities (>6,000 lb) in Connecticut provided a quota transfer from its home state is arranged in advance.

d) A repayment mechanism to reduce the subsequent year's quota to account for any over-harvest of the TAC on a pound for pound basis (Quota Payback 4.2.1.6).

Having barred directed fisheries through the 6,000 pound possession and landing limit it is not possible for Connecticut to exceed its TAC and be subject to pay back provisions.

e) A bycatch allowance mechanism for non-directed fisheries following the harvest of the state's TAC and closure of directed fisheries (Bycatch Allowance 4.2.1.7).

By implementing a 6,000 pound commercial possession and landing limit, Connecticut has excluded directed fishing in this state. The bycatch allowance will be in place year round.

Bycatch allowance has the following mandatory provisions:

i. 6,000 pound bycatch landing limit per calendar day for all non-directed fisheries

A 6,000 pound commercial possession or landing limit has been adopted by Declaration 13-02.

ii. Prohibit a vessel from making multiple trips in one day to land more than 6,000 lbs

Declaration 13-02 prohibits possessing or landing more than 6,000 pounds, but is silent on multiple trips per day. Given that no directed menhaden fishing gears (purse seines or pound nets) are authorized to be used in this state, and our very low recent historical

landing rates (see table below) we do not believe this omission in regulatory language will undermine compliance with the conservation provisions of the FMP.

Connecticut menhaden commercial landings (pounds) per fisherman per day statistics for 2010-2012.

Year	Mean	Median	Mode	95th percentile	Largest single landing
2010	137.5	60	20	500	
2011	127.7	44	20	480	
2012	149.2	66	200	500	

iii. Prohibit the use of multiple carrier vessels per trip to offload bycatch exceeding 6,000 pounds

Declaration 13-02 prohibits possessing or landing more than 6,000 pounds, but is silent on the use of “carrier vessels”. Given that no directed menhaden fishing gears (purse seines or pound nets) are authorized to be used in this state we do not believe this omission in regulatory language will undermine compliance with the conservation provisions of the FMP.

iv. Bycatch reporting requirements as detailed in section 2(b).

Regulations require commercial fishermen to report all commercial fishing activity including the catch and landing of all species in monthly logbooks (See RCSA sec 26-157b-1 in Appendix 1).

f) A mechanism to adjust a state’s TAC and effort controls if opting into the episodic events set aside (Episodic Events Set Aside 4.2.1.8). Logistics of the episodic events set aside are still being developed by the Board including a qualifying definition of an episodic event. Therefore, at this point, implementation plans do not need to address this set aside.

Connecticut does not intend to opt into the episodic event set aside option at this time.

g) For Virginia only, a Chesapeake Bay reduction fishery harvest cap with the following provisions. (Chesapeake Bay Reduction Fishery Harvest Cap 4.2.2.)

- i. Prohibit harvest for reduction purposes within the Chesapeake Bay when 100% of 87,216 metric tons (mt) is harvested from the Chesapeake Bay.*
- ii. A repayment mechanism to reduce the subsequent year’s harvest cap to account for any over-harvest of the cap on a pound for pound basis.*
- iii. A rollover mechanism to increase the subsequent year’s harvest cap to account for unlanded fish to a maximum of 10,976 mt. The rollover applies to the following year only, and will not be carried for multiple years.*

Note–All harvest within the Chesapeake Bay will count against the state’s overall TAC

Not applicable.

2. Monitoring Requirements

a) A catch reporting system to enable weekly monitoring of a state's TAC, unless a state can demonstrate the effectiveness of an alternate reporting time schedule as approved by the Board (Quota Monitoring 3.6.1.2).

A state's catch reporting plan must include the following information.

i. Indicate whether harvesters, dealers, or both are required to submit reports. The PRT recommends harvester reporting to account for Atlantic menhaden retained for personal use.

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 daily records of fishing activity including gear type and area fished (See RCSA §26-157b-1 in Appendix 1). Marine Fisheries staff enter Catch Logs into the Standard Atlantic Fisheries Information System (SAFIS) as reports are received. VTR data is downloaded as needed.

Having no directed fisheries for menhaden we have eliminated the need for weekly monitoring commonly used to effectively manage such fisheries.

ii. Specify the amount of detail reported (e.g., trip level or summary). Define the data elements that are required to be collected (by license type or gear type where applicable). The Amendment recommends trip level reporting with the minimum data reporting elements as required by the Atlantic Coastal Cooperative Statistics Program. (1) trip start date (2) vessel identifier (3) individual fisherman identifier (4) dealer identification (5) trip number (6) species (7) quantity (8) units of measurement (9) disposition (10) county or port landed (11) gear (12) quantity of gear (13) number of sets (14) fishing time (15) days/hours at sea (16) number of crew (17) area fished.

Connecticut requires all commercial fishermen to submit monthly Catch Logs of daily trip level fishing activity (see RCSA §26-157b-1 in Appendix 1). Connecticut has adopted all of the minimum data elements required by ACCSP and staff enter that data into the ACCSP eTrips application as they are received.

iii. The plan must require purse seine and bait seine vessels (or snapper rigs) submit trip level reports (e.g., Captain Daily Fishing Reports).

Purse seining is prohibited in state waters, while possession or landing is limited to 6,000 pounds by Declaration 13-02, effectively eliminating these fisheries (purse seine or "snapper rigs" from landing in this state even if fishing were taking place outside our state waters.

iv. Specify the frequency and mechanism of submitting reports. The Amendment recommends weekly reporting.

See section a) i above

b) A mechanism to require timely reporting of bycatch allowance landings by non-directed fisheries through the reporting system approved by the Board in section 2(a).

Note—All bycatch from non-directed fisheries during a closed season must be reported separately from directed harvest in annual compliance reports. Bycatch during the open season will count towards a state's TAC.

Connecticut requires all harvest of bycatch to be reported in the same manner as stated in section a) *i* above (RCSA sec 26-157b-1). Should total landings exceed the TAC under the 6,000 pound limit, those excess landings will be reported separately in annual compliance reports.

c) A mandatory biological sampling program to collect age and length data from the commercial bait harvest to support improved stock assessments (Biological Data 3.6.2.1).

i. One 10-fish sample (age and length) per 300 metric tons landed for bait purposes for ME, NH, MA, RI, CT, NY, NJ, DE.

Note—The Amendment recommends collecting the samples by gear type and defines each 10 fish sample as an independent sampling event; therefore, multiple 10-fish samples should not be collected from the same landing event.

Connecticut's 2013 TAC is 64,900 or 0.02% of the coastwide quota. Menhaden bait landings from all gear types in Connecticut have been less than 50,000 since 2010. Nonetheless, Connecticut will make an effort to collect at least one biological sample annually.

ii. One 10-fish sample (age and length) per 200 metric tons landed for bait purposes for MD, PRFC, VA and NC

Not applicable.

d) A mandatory monitoring/sampling program that requires all states with a pound net fishery collect catch and effort data elements (Adult CPUE Index 3.6.2.2). Mandatory reported data elements are,

i. total pounds (lbs) landed per day

ii. number of pound nets fished per day

Note—In order to characterize selectivity of this gear in each state, a goal of collecting five 10-fish samples from pound net landings annually is recommended.

Not applicable.

3. De minimis

a) State(s) with a reduction fishery are not eligible for de minimis consideration. 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 (Criteria for De Minimis Consideration 4.5.3.1).

Note—Based on 2010-2011 bait landings data, ME, NH, RI, CT, NY, DE, SC, GA, and FL are eligible for de minimis status in 2013).

Connecticut is not considering *de minimis* status for 2013.

b) If granted de minimis status by the Board, states are exempt from implementation of 2(c) and 2(d), but must still submit a plan to implement all other compliance criteria as detailed in this memo. The Board also approved a de minimis exemption for NH, SC and GA from implementation of timely reporting, but those states are still required to describe their current reporting structure following the guidance in section 2(a). (Plan Requirements if De Minimis Status is Granted 4.5.3.2)

Not applicable.

APPENDIX 1

26-157B - REPORTS TO THE COMMISSIONER

26-157B - REPORTS TO THE COMMISSIONER..... 6

26-157b-1 Reports 6

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 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.

- (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.

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.

New York State Department of Environmental Conservation

Fish, Wildlife & Marine Resources

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Joe Martens
Commissioner

April 15, 2013

New York Report for the Implementation of Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden (*Brevoortia tyrannus*)

The Atlantic States Marine Fisheries Commission's (ASMFC) Atlantic Menhaden Management board approved Amendment 2 to the fisheries management plan on December 14th 2012. Amendment 2 establishes a total allowable catch (TAC) for the Atlantic coast of 170,800 metric tons. This TAC was allocated on a state-by-state basis according to the average reported menhaden landings from 2009 through 2011. New York was allocated 0.06% of the TAC. In addition, the amendment established biological sampling requirements, timely quota monitoring, and bycatch reporting. States are eligible for *de minimus* status if they do not have a reduction fishery and their commercial bait landings do not exceed 1% of the bait landings portion of the TAC. This amendment is atypical with its treatment of states that qualify for *de minimus* status, in that it only exempts them from the biological monitoring requirements of the plan. Therefore, even if a state is *de minimus* it must still comply with quota allocations and timely reporting requirements. This amendment was established in response to the 2012 stock assessment update which employed new stock reference points based on maximum spawning potential. Utilizing these new reference points, the 2012 update determined that overfishing is occurring but the stock is not overfished.

The TAC of 170,800 MT represents a 20% reduction in the average coast wide reported landings from 2009 – 2011. A major concern for New York is the lack of completeness of the state landings data that was used to establish the state allocation. During scoping for this plan, it was discovered that compliance for all harvesters required to report for 2012 is only 31%. The compliance rate for the reference period of 2009-2011 is currently unknown, as the state is behind in data entry for that period. Discussions with commercial harvesters and dealers during scoping revealed that fishermen that were otherwise in compliance with reporting requirements were not aware that menhaden bait fishing activity needed to be included on their harvester reports. Several harvesters have provided the department with documentation for yearly landings as high as or higher than our amendment-assigned quota. The department estimates that actual landings for the reference period were somewhere in a range of 1.5 – 2.1 million pounds.

With New York's landings data incomplete, the assignment of a state-specific allocation of the coast-wide TAC based on those landings represents a reduction far in excess of 20%. Operating under the current quota allocation could produce a number of complications for New York including unnecessarily severe bait shortages, effort shifts to other fisheries, and a significant economic impact on participants in menhaden-based fisheries. This limited quota will also thwart efforts to increase compliance and collect more accurate data from the fishery.

This situation is untenable; New York must be granted time to rebuild landings history so that the reduction can be properly applied. In the meantime, New York will adopt regulations, effective July 1, 2013, that will enable the department to effectively manage the menhaden bait fishery in accordance with all other elements of Amendment 2 to the Fishery Management Plan for Atlantic Menhaden.

1. Commercial Fishery Management Measures

- a) The mechanism to close the directed commercial bait fishery is through proposed new regulations, amendments to 6 NYCRR Part 40.1 Marine Fish, to read as follows:

6 NYCRR Part 40.1 Marine Fish

(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 New York State Resident or Non-Resident Commercial Food Fish license, a New York State Resident or Non-Resident Menhaden Vessel License, or a Marine Bait Permit. For purposes of this subdivision, a person is presumed to be taking menhaden for commercial purposes when that person possesses more menhaden than the possession limit indicated in Table A of this section.

(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 1 through December 31. Annual harvest limits for menhaden are based on the Fishery Management Plan (FMP) for menhaden as adopted and approved by the Atlantic State Marine Fisheries Commission (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, filed weekly, that trip limits are necessary as provided in Table B of subdivision (i), such trip limits will be required and enforceable upon 72 hours written notice to license holders 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 (1). 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 (1).

(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 district except as bycatch aboard vessels participating in other fisheries. The use of multiple carrier vessels per trip to offload any bycatch exceeding 6,000 pounds of Atlantic menhaden is prohibited.

(5) Reporting. When notified by the department, license holders covered by this section shall report their harvest of menhaden to the department weekly on forms provided by the department.

- b) The mechanism to adjust NY's TAC as required by ASMFC is as provided in the proposed regulations, Part 40.1(x)(2)(i) which adopts the annual harvest limit set by ASMFC.
- c) The mechanism to enable transfer of unused TAC between New York and any other state in the management unit shall be through official correspondence confirming the transfer and copying the ASMFC. The TAC will subsequently be adjusted to reflect the transfer.
- d) The mechanism to repay any TAC overage in the following year will through official correspondence to the ASMFC confirming New York's overage and adjusting the TAC for the overage. Such new TAC will then be managed in accordance with (b) above.
- e) A bycatch allowance mechanism is established in the proposed new regulations for menhaden. A 6,000-pound bycatch limit is established by the regulation. The intent of the department is to manage New York's TAC in one annual period, however these regulations would enable the department the flexibility to manage using multiple periods and segregate the quota among gear types.
- f) New York does not anticipate opting for episodic event quota, but will address the mechanism for opting into the quota when the Board develops criteria for such. In 2009 and 2010, massive fish kills in the area of Riverhead, NY resulted in death and partial harvest of over 1,000,000 pounds of menhaden in each case. Fresh dead fish were harvested as commercial bait, for personal use as bait, and as fertilizer for farm fields. It is critical that states have a mechanism to utilize what would otherwise be wasted.
- g) The Chesapeake Bay reduction fishery harvest cap does not apply to New York.

2. Monitoring Requirements

- a) The Atlantic Menhaden bait fishery includes the Marine Bait, Lobster Bait Gillnet, Food Fish Resident and Non Resident, Food Fish Landing, and Menhaden Purse Seine permits (Tables 4 – 7). Landings will be reported through the New York State Fishing Vessel Trip Report (SVTR) and Dealer Report programs. The SVTR program collects trip level fishing activity and is submitted to the department monthly. The Dealer Report program also collects trip level information, but is submitted weekly. Currently most finfish species with quotas in NY are monitored solely through Dealer reports. This will not be an option for menhaden quota monitoring because of the Marine Bait permit. The Marine Bait permit was created specifically for bait and tackle shop owners to allow them to catch their own bait to sell directly at retail. Since these permit holders sell their catch directly to the final consumer, they are only required to submit SVTRs. In addition, 18% of the reported landings from Food Fish licenses in 2012 are either sold for cash or barter, or sold or retained for bait (Table 8). New York proposes to monitor the TAC monthly through SVTRs, though we will require submission of SVTRs weekly should the need arise, as per proposed Part 40.1(x)(5).

The following information is collected from SVTRs:

Vessel Name	Average Depth
State Reg or Vessel Doc #	Species Fished
Permit Type and Number	# of each Species Kept or Discarded
Date/Time Sailed	Dealer Permit # or Sales Disposition
# of Crew	Dealer Name
# of Anglers	Date Sold
Gear Fished	Port and State Landed
Mesh/Ring Size	Date/Time Landed
Quantity of Gear	
Size of Gear	
# of Hauls	
Average Tow/Soak Time	
NMFS Statistical Area Fished	
LAT/LONG or Loran of Area Fished	

The following information is collected from Dealer Reports:

Dealer Name, Address and Phone Number	Fishermen SVTR #
Dealer Permit Number	Species and Grade
Number of Purchases	Pounds
Purchase Date	Price per lb
Fishermen Name and Permit	Dollars
Vessel	
Vessel Fed Permit #	
State Reg Number	
Gear	

All of these licenses except for the Menhaden Purse Seine permits require mandatory reporting of landings through SVTRs and Dealer reports. The Food Fish Landing license started requiring mandatory reporting in 2011 (Table 1). New York will require reporting via SVTRs for Menhaden Purse Seine permits, through a regulatory amendment. Below are the current regulations from Part 40.1(c):

(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. 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.

(2) Food fish and crustacea dealers and shippers license holders.

Any person who is the holder of a marine and coastal district food fish and crustacea dealers and shippers license issued pursuant to section 13-0334 of the Environmental Conservation Law shall:

(i) Complete and sign an accurate Purchases From Fishing Vessels and/or Fishermen report detailing each purchase of marine food fish, crustacea, horseshoe crabs, and whelks from harvesters, on a form prescribed by the department. The license holder must submit these reports to the department within 3 days after the end of each week, or at a frequency specified by the department in writing. A Purchases From Fishing Vessels and/or Fishermen report shall be completed, signed and submitted to the department each week; if no purchases of food fish, crustacean, horseshoe crabs or whelk were made during that week, a report must be submitted stating no purchases were made for the week. Incomplete Purchases From Fishing Vessels and/or Fishermen reports or unsigned reports will not satisfy these reporting requirements. Any New York license holder who is also the holder of a federal dealers permit issued by NOAA Fisheries Service must instead satisfy the reporting requirements specified by NOAA Fisheries Service.

- b) Timely reporting of the bycatch allowance landings will also be implemented through the above program outlined in section a.
- c) New York has a biological sampling program for other fisheries and will collect the appropriate number of length and age samples for menhaden, based upon our reconstructed landings figures. These samples will be collected from the cast net, gill net and pound trap fisheries.
- d) Pound trap fishery data is also monitored through the program outlined in section a, however it is anticipated (based on our analysis of SVTRs) that no meaningful information may be obtained through this program.

3. *De minimus*

- a) New York does not have a reduction fishery, however its eligibility for *de minimus* status is currently unknown. New York's allocation of 0.06% of the TAC, which is outlined in Amendment 2, is less than 1% of the total coast wide bait landings. New York's actual harvest during the reference period, however, is estimated to be 1.5 to 2.1 million pounds. One percent of the average coastal bait landings of menhaden for 2009-2011 is a little over 1 million pounds. New York is therefore not requesting *de minimus* and will adopt all components of the management plan.

TABLE 1. PERMITS REQUIRING MANDATORY REPORTING BY YEAR

PERMIT	2009	2010	2011	2012
Food Fish - NR	X	X	X	X
Food Fish - Resident	X	X	X	X
Food Fish Landing			X	X
Food Fish/Crustacea/Shipper/Dealer	X	X	X	X
Lobster Bait Gill Net	X	X	X	X
Marine Bait	X	X	X	X
Menhaden Purse Seine 30 - 200 GT				
Menhaden Purse Seine 30 GT or less				

TABLE 2. COMPLIANCE FOR 2012

TOTAL MENHADEN PERMITS	1,776
TOTAL FISHERMEN/ DEALERS *	1,683
TOTAL REQUIRED TO REPORT	1,678
TOTAL IN REPORTING COMPLIANCE	514
% IN REPORTING COMPLIANCE	31%
TOTAL REPORTING MENHADEN	29
% REPORTING MENHADEN	1.7%

* Differences in numbers are from fishermen holding multiple permits

TABLE 3. NY RECONCILED MENHADEN LANDINGS BY YEAR AND SOURCE

SOURCE	YEAR		
	2009*#	2010*#	2011#
LOBSTER BAIT GILL NET	189,480	161,900	127,230
FEDERAL VTR	30,103	30,170	39,236
STATE VTR/ETRIPS/DEALER	85,352	168,330	77,555
TOTAL	304,935	360,400	244,021
AMENDMENT 2 TOTALS	226,980	321,043	232,807
PERCENT INCREASE	34%	12%	5%
AVERAGE INCREASE	17%		

* VTR REPORTING WAS NOT MANDATORY FOR FOOD FISH LANDING LICENSE
VTR DATA HAS NOT BEEN FULLY ENTERED

TABLE 4. NUMBER OF PERMIT HOLDERS BY PERMIT TYPE FOR 2012

PERMIT TYPE	NUMBER OF PERMIT HOLDERS
Food Fish - NR	38
Food Fish - Resident	974
Food Fish Landing	101

Food Fish/Crustacea/Shipper/Dealer	513
Lobster Bait Gill Net	46
Marine Bait	81
Menhaden Purse Seine 30 - 200 GT	2
Menhaden Purse Seine 30 GT or less	21
Grand Total	1776

TABLE 5. NUMBER OF PERMIT HOLDERS BY PERMIT TYPE FOR 2011

PERMIT TYPE	NUMBER OF PERMIT HOLDERS
Food Fish - NR	44
Food Fish - Resident	988
Food Fish Landing	53
Food Fish/Crustacea/Shipper/Dealer	451
Lobster Bait Gill Net	47
Marine Bait	66
Menhaden Purse Seine 30 - 200 GT	2
Menhaden Purse Seine 30 GT or less	21
Grand Total	1672

TABLE 6. NUMBER OF PERMIT HOLDERS BY PERMIT TYPE FOR 2010

PERMIT TYPE	NUMBER OF PERMIT HOLDERS
Food Fish - NR	40
Food Fish - Resident	994
Food Fish Landing	47
Food Fish/Crustacea/Shipper/Dealer	426
Lobster Bait Gill Net	50
Marine Bait	74
Menhaden Purse Seine 30 - 200 GT	2
Menhaden Purse Seine 30 GT or less	21
Grand Total	1654

TABLE 7. NUMBER OF PERMIT HOLDERS BY PERMIT TYPE FOR 2009

PERMIT TYPE	NUMBER OF PERMIT HOLDERS
Food Fish - NR	45
Food Fish - Resident	1017
Food Fish Landing	37
Food Fish/Crustacea/Shipper/Dealer	407

Lobster Bait Gill Net	47
Marine Bait	75
Menhaden Purse Seine 30 - 200 GT	2
Menhaden Purse Seine 30 GT or less	19
Grand Total	1649

TABLE 8. COMMERCIAL LANDINGS FATE IN 2012

	LANDINGS (lbs)	PERCENT OF TOTAL
SOLD FOR CASH OR BARTER	40078	24%
SOLD OR RETAINED FOR BAIT	40625	24%
SOLD TO DEALER	86035	52%
TOTAL	166738	



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

MEMORANDUM

April 15, 2013

TO: Mike Waine, Atlantic Menhaden Species Coordinator

FROM: Tom McCloy, Administrator, NJ Marine Fisheries Administration

SUBJECT: New Jersey's Atlantic menhaden implementation plan

Attached, please find a copy of New Jersey's proposed regulations for the Atlantic menhaden fishery under Amendment 2 to the fishery management plan. The draft regulations explicitly outline how New Jersey will control effort, allocate harvest among gears, and track harvest for quota monitoring purposes. 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, given the timeframe of New Jersey's regulatory process, it will not be possible to get regulations approved prior to the July 1 implementation date. As an alternative, a copy of these draft regulations has been provided to industry in an attempt to enact State legislation that is compliant with Amendment 2. Unfortunately, although the intent of the draft regulations is clear, the State has no control over the legislative process, and legislative requirements may differ to some degree from the regulations provided here. It has been agreed that the regulations, once approved, will supersede the legislation.

Thank you for your consideration in this matter. If you have any questions, please do not hesitate to contact me.

SUBCHAPTER 22. FISHERY MANAGEMENT IN NEW JERSEY

7:25-22.1 Taking of Atlantic menhaden for fish meal reduction

No change.

7:25-22.2 [(Reserved)] General provisions for harvesting and landing menhaden for bait in New Jersey

- (a) A vessel or individual shall not land more than 100 pounds of menhaden at any time for the purpose of sale or barter unless said vessel or individual is in possession of a New Jersey Menhaden Landing License to participate in the directed fishery for menhaden for bait. The license shall be issued in the name of the vessel and the owner of the vessel and for the specific gear type(s) used to qualify for the license. If no vessel is utilized in the harvest and landing of menhaden bait, the individual shall be licensed.
1. Applicants for a New Jersey Menhaden Landing License shall complete an application provided by the Department no later than December 31, 2013. Applications for a New Jersey Menhaden Landing License received after the above date shall be denied.
 2. To be eligible for a New Jersey Menhaden Landing License the vessel's owner or an individual shall meet the following criteria:
 - i. For a vessel applying for a Menhaden Landing License to land menhaden taken by purse seine, the vessel shall have landed in New Jersey at least 500,000 pounds of menhaden for bait during one year between 2009 and 2012, inclusive.
 - ii. For a vessel applying for a Menhaden Landing License to land menhaden taken by pound net, the vessel shall have landed in New Jersey at least 100,000 pounds of menhaden for bait during one year between 2009 and 2012, inclusive.
 - iii. For a vessel applying for a Menhaden Landing License to land menhaden taken by gill net, the vessel shall have landed in New Jersey at least 10,000 pounds of menhaden for bait during one year between 2009 and 2012, inclusive.
 - iv. For a vessel applying for a Menhaden Landing License to land menhaden taken by trawl, the vessel shall have landed in New Jersey at least 200 pounds of menhaden for bait during one year between 2009 and 2012, inclusive.
 - v. For a vessel or individual applying for a Menhaden Landing License to land menhaden taken by bait net, the vessel or individual shall have possessed a New Jersey Bait Net License, pursuant to N.J.S.A. 23:5-24.2, during one of the years 2009 and 2012, inclusive.
- (1) The Commissioner may require that applicants for a 2014, or future year, Menhaden Landing License for use by bait net prove landings and sale of menhaden during the respective years commencing in 2013.

3. The New Jersey Menhaden Landing License shall be on board the vessel, or if no vessel is used, in possession of the individual to whom it is issued at all times. The Menhaden Landing License is valid for the calendar year for which the Menhaden Landing License was issued. The New Jersey Menhaden Landing License must be renewed annually by December 31. Failure to renew a Menhaden Landing License will result in forfeiture of the right to obtain a Menhaden Landing License in succeeding years. The vessel or individual to whom the landing license is issued may only have on board or be in possession of the gear type(s) listed on the New Jersey Menhaden Landing License.
 - i. A licensee who is otherwise eligible for New Jersey Menhaden Landing License, but who fails to renew his or her license before the December 31 expiration of that license, may request an extension of time to renew in accordance with this subsection __ through __ below. The written request, along with any supporting documentation, shall be submitted to the New Jersey Division of Fish and Wildlife, PO Box 400, Trenton, New Jersey 08625.
 - (1) The request shall:
 - (A) Identify the specific license for which the extension of time is requested;
 - (B) Explain in detail why the extension of time to renew is needed including a statement of 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
 - (C) Provide appropriate documentation as necessary to support the request for extension.
 - ii. The Division shall nullify request a renewal extension under 3. above if it determines that:
 - (1) By reason of extraordinary hardship or exceptional situation or condition, the licensee was precluded from complying with the renewal requirements;
 - (2) By reason of extraordinary or exceptional situation or condition, strict compliance with the renewal requirements at __ above would result in exceptional and undue hardship upon the licensee; and
 - (3) The circumstances supporting __ 1 and 2 above were not created by the licensee or persons under his or her control, and the approval of the extension will not unreasonably interfere with the orderly administration of these reporting requirements.
 - iii. The Division shall provide written notice to the licensee of its decision to approve or deny the request for extension. The denial of an extension request may be appealed pursuant to the procedures outlined in N.J.A.C. 7:25-18.17, Request for adjudicatory hearing.
 4. The resident fee for the Menhaden Landing License shall be \$150 annually for vessels landing menhaden by purse seine and \$50 annually for vessels landing menhaden by any other gear. The non-resident fee shall be 5 times the resident fee or an amount equal to the non-resident fee charged by the non-resident's state, whichever is greater.

5. The owner of a licensed vessel pursuant to this subsection not pending revocation or court action or serving a suspension may transfer the right to his or her New Jersey Menhaden Landing License, upon application to the Department, as follows:
 - i. To his or her replacement vessel. In the case of vessels licensed to land by purse seine, the replacement vessel shall be no greater than 10 percent in length or 10 per cent in hold capacity, as measured in cubic feet, of the originally licensed vessel.
 - ii. Along with the sale of his or her vessel to a new owner. The owner selling the vessel shall no longer be eligible for a New Jersey Menhaden Landing License based on the history of the vessel being sold.
 - iii. Transfer of a landing license shall be limited to the same gear type(s) of the originally licensed vessel.
 - iv. Applicants for license transfer shall complete an application provided by the Department, and no license may be transferred without the prior approval of the Department.
6. A vessel or individual that does not possess a New Jersey Menhaden Landing License shall be permitted to land not more than 100 pounds of menhaden at any time on any trip or day provided the amount of menhaden landed shall not exceed 10 per cent, by weight, of the total weight of all species landed and sold.
7. All New Jersey Menhaden Landing License holders shall submit completed monthly reports in a format provided by the Department. The monthly report shall be signed by the licensee attesting to the validity of the information and be submitted electronically using a method approved by the Division (eTrips).
 - i. The monthly report shall include, but not be limited to, the following information: Name, New Jersey Menhaden Landing License number of the vessel or individual, total amount (in pounds) of menhaden landed, discards, harvest location, gear type used to harvest, landing port, date sold and buyer. This information shall be provided on an individual trip basis.
 - ii. If no trips for menhaden were taken and no menhaden were landed during the month, a report to that effect shall be required.
 - iii. Any person failing to submit the monthly landing report on or before the 10th day of the month following the month of record shall be subject to the following penalties:
 - a. First offense: \$50
 - b. Second offense: \$100
 - c. Subsequent offenses: subject to provisions prescribed in N.J.S.A. 23:2B-14
8. All menhaden landed in New Jersey for sale or barter must be sold to an entity in possession of a New Jersey Menhaden Dealer License.

(b) A New Jersey Menhaden Dealer License shall be required for any entity that wishes to purchase menhaden from a menhaden harvester.

1. A resident New Jersey Menhaden Dealer License shall be \$100 annually and the non-resident fee shall be 5 times the resident fee or an amount equal to the non-resident fee charged by the non-resident's state, whichever is greater..

i. A New Jersey Menhaden Dealer shall not accept more than 100 pounds of menhaden from any vessel or individual unless that vessel or individual is in possession of a New Jersey Menhaden Landing License.

ii. The Menhaden Dealer License must be renewed annually following issuance.

iii. An entity must obtain both a New Jersey Menhaden Landing License and a New Jersey Dealer License if such entity is the point of sale of menhaden harvested and landed.

iv. All licensed menhaden dealers shall submit weekly reports electronically using a method approved by the Division (eDR). The weekly reports shall include, but not be limited to, the New Jersey Menhaden Landing License number of the vessel or person selling the menhaden, total amount (in pounds) of menhaden landed, gear type used to harvest, and date sold on a daily basis and any other information required by the Department.

v. If no menhaden are purchased, a report to that effect shall be required. For the purpose of this provision, the week shall begin on Sunday and end on Saturday.

2. Any person failing to submit the weekly dealer report electronically by the following Tuesday at noon shall result in the following penalties:

i. First offense: \$50

ii. Second offense: \$100

iii. Any subsequent offense: subject to the provisions prescribed at N.J.S.A 23:2B-14

3. There is established within the "Hunters' and Anglers' license fund", created pursuant to the provisions of R.S. 23:3-11 and R.S. 23:3-12, a separate and dedicated, 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 all Menhaden Landing and Dealer Licenses described, in addition to the revenue received through the issuance of menhaden purse seine licenses pursuant to N.J.S.A. 23:3-51 and N.J.S.A. 23:3-52. The revenue 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 disbursed only for quota management, biological monitoring and enforcement.

(c) The annual New Jersey menhaden bait quota will be established by the Atlantic States Marine Fisheries Commission.

1. The season for landing menhaden in New Jersey shall be the following:

Purse seine	January 1-December 31
Pound Net	January 1-December 31
Gill Net	January 1-December 31
Otter Trawl	January 1-December 31
Bait Net	January 1-December 31
2. The annual New Jersey menhaden bait quota shall be divided among the following gear types, with the purse seine fishery being allocated 95% and pound nets, gill nets, trawls, and bait nets being allocated the remaining 5%, combined.
3. The Commissioner, or his or her designee, shall close the season for the commercial menhaden bait fishery for the respective gear type(s) with two days public notice of the projected date the New Jersey gear quota shall be landed. Public notice shall be done electronically to all New Jersey Menhaden Landing License and New Jersey Menhaden Dealer License holders. All New Jersey Menhaden Landing License and New Jersey Menhaden Dealer License holders must supply an e-mail address in order for the agency to timely notify them of in-season quota monitoring updates.
4. If the Commissioner, or his or her designee, closes the New Jersey season prematurely because of unanticipated events resulting in the quota not being landed by the projected date, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days public notice. Public notice shall be done electronically via e-mail to all New Jersey Menhaden Landing License and New Jersey Menhaden Dealer License holders.
5. If the season for a particular gear is closed because the gear allocation has been harvested, Menhaden Landing License holders for that gear type(s) shall not land more than 6000 pounds per day. The menhaden landed under this provision shall not be applied to New Jersey's menhaden bait quota.
 - i. No licensed menhaden dealer may accept more than 6,000 pounds from a vessel or individual in possession of a Menhaden Landing License after a gear specific season has closed.
6. If the quota for any gear is exceeded, the amount overharvested shall be deducted from the following year's gear quota.
7. The Department may request a quota transfer from other states or regions in accordance with the administrative process defined by the Atlantic States Marine Fisheries Commission.

7:25-22.3 Taking of Atlantic menhaden for bait in State waters utilizing a purse seine

(a) Persons [licensed] **intending** to fish for or in any way participate in the fishery for Atlantic menhaden (*Brevoortia tyrannus*) with a purse seine or shirred net in the marine waters of New Jersey **shall be licensed** pursuant to N.J.S.A. 23:3-51 and N.J.S.A. 23:3-52[, may apply between January 1 and March 1 for a permit for the purpose of taking Atlantic menhaden for bait purposes only].

[1. All persons licensed to take Atlantic menhaden for bait purposes only shall keep, on forms furnished by the Division's Bureau of Marine Fisheries, accurate records of the amount and location of Atlantic menhaden harvested. Forms are available from the Trenton office of the Division, Bureau of Marine Fisheries, 501 East State Street, Third Floor, Trenton, New Jersey 08625. These records shall be filed by the 10th day of each month with the Division's Trenton office. If no Atlantic menhaden were harvested during the month, a report to that effect shall be provided to the Division's Bureau of Marine Fisheries.]

1. **The catch vessel used in the deployment of a purse seine net shall be licensed pursuant to N.J.S.A. 23:3-51 and N.J.S.A. 23:3-52.**
2. **The carry vessel used for the purpose of landing menhaden that works in conjunction with a catch vessel shall be licensed pursuant to N.J.S.A. 23-51 and N.J.S.A. 23:3-52.**
3. **Set boats or skiffs that participate only in setting the purse seine net in conjunction with the catch vessel shall not be required to possess a license pursuant to N.J.S.A. 23:3-51 and N.J.S.A. 23:3-52.**
4. **All licensed catch vessels shall provide certified baseline data on length overall and horsepower.**
5. **All licensed carry vessels shall provide certified baseline data on length overall and hold capacity, the latter measured in cubic feet.**
6. **The owner of a licensed vessel pursuant to this subsection not pending revocation or court action or serving a suspension may transfer the right to his or her New Jersey Menhaden Purse Seine License, upon application to the Department, as follows:**
 - i. **To his or her replacement vessel. In the case of carry vessels licensed to land by purse seine, the replacement vessel shall be no greater than 10 percent in length or 10 percent in hold capacity, as measured in cubic feet, of the originally licensed carry vessel.**
 - ii. **Along with the sale of his or her vessel to a new owner. The owner selling the vessel shall no longer be eligible for a New Jersey Menhaden Landing License based on the history of the vessel being sold.**
 - iii. **Transfer of a purse seine license shall be limited to the same license category (catch or carry) of the originally licensed vessel.**
 - iv. **Applicants for license transfer shall complete an application provided by the Department, and no license may be transferred without the prior approval of the Department.**

(b) Persons licensed to fish for Atlantic menhaden with a purse or shirred net in the marine waters of New Jersey, for the purposes of taking Atlantic menhaden for bait purposes only, shall be subject to the following:

1. No change.
2. Fishing shall be restricted to not closer than 0.6 nautical miles of any point along the shore, jetties or fishing piers in the Atlantic Ocean, in the portion of the Delaware Bay south and east of [LORAN C line 42850} **GPS coordinates/Lat-Long**____, and in Raritan and Sandy Hook Bay. It is incumbent upon the captain of a purse seine vessel to determine the possibility of

drifting inside the limit while fishing, before setting his or her net. Drifting into the restricted area along the shore or around the jetty or pier while fishing shall be considered a violation of this subsection.

[i. Any vessel operating under a permit for the purpose of taking Atlantic menhaden for bait purposes outside the legal area of fishing as specified in (b) 2 above shall be subject to the following penalties:

(1) A one month permit suspension shall be imposed on the permittee for a first offense.

(2) A two month permit suspension shall be imposed on the permittee for a second offense.

(3) A six month permit suspension shall be imposed on the permittee for a third offense.

ii. A permit suspension applicable to both the vessel and the owner must occur within the normal season of fishing operations which extends from May 15 through October 15 each year.

iii. If the duration of the permit suspension is not completed during the current year's normal season of fishing operations, the balance of the permit suspension shall be made up during the following year's normal season of fishing operations.

iv. A permit holder incurring a permit suspension who does not incur a second offense for a three year period following the initial violation shall have the first permit suspension removed from consideration in determining a penalty for any subsequent violation.]

3. No change.

4. No change.

5. A person shall not fish on Saturdays, Sundays, and the days on which New Year's Day, Martin Luther King's Birthday, [Lincoln's Birthday,] Washington's Birthday, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veteran's Day, Thanksgiving Day, Christmas Day are officially observed by the State of New Jersey.

6. No change.

7. Removal of fish from the purse seine shall be by brailing or dip net only. No fish pump shall be on board any vessel operating under a [permit] **license** for the purpose of taking Atlantic menhaden for bait purposes.] **unless the pump is completely covered with a brightly colored tarp or other material and securely fastened and the pump intake is disconnected from the pump and securely stored away from the pump and not readily available for use when the vessel is in State waters or has declared it intends to fish in State waters.**

8. The possession of any fish, as defined at N.J.S.A. 23:2B-3e, other than Atlantic menhaden on a purse seine vessel harvesting Atlantic menhaden is prohibited.

i. The simultaneous possession of Atlantic menhaden and any other fish, as defined at N.J.S.A. 23:2B-3e, and a purse seine, aboard a vessel of any person holding an Atlantic menhaden bait [permit] **license** or any vessel conducting menhaden fishing operations, shall constitute prima facie evidence of the violation of this subchapter.

9. No change.

10. **The licensee shall immediately notify the Division's Marine Enforcement Region at 609-748-2050 of any substantial fish spill that may require cleanup.** The licensee is responsible

for cleaning up any fish, fish-part, refuse, litter, garbage of any kind which is released during any fishing operation or as a result of a fishing operation and must initiate such cleanup no later than 24 hours after the release begins. Upon the licensee's failure to initiate such cleanup within the 24-hour period, the Department may conduct or arrange for the performance of the cleanup. In addition to any other penalties and remedies provided by law, the licensee shall be liable for all costs associated with such cleanup, including any administrative costs incurred by the Department. Such cleanup costs shall include, but not be limited to, the marine and estuarine waters of the State and adjacent beaches, shorelines and marshes. **If the licensee fails to report the release of fish, fish parts, refuse, litter, or garbage of any kind during any fishing operation or as the result of a fishing operation and said responsible licensee is identified by the Department, that licensee shall be subject to license suspension and/or revocation.**

11. No change.

12. [Any vessel engaged in fishing for Atlantic menhaden for bait under the provisions of this section shall display, on both sides of the vessel amidship, a yellow capital letter "B" not less than five feet in height on a black square background not less than six feet on a side. For any vessel where the gunnel height is less than eight feet above the waterline at amidship, the ratio of height of the letter "B" to height (or width) of the square black background of the display shall remain in the same proportion, that is, 5:6, but may be reduced in size. In all cases, however, each side of the black background shall be no less than three-quarters of the height of the gunnel at amidship from the waterline.]

[13.] **12.** Any vessel operating under a [permit] **license** for the purpose of taking Atlantic menhaden for bait purposes shall be required to notify the Department of the intended fishing location of the vessel. The notification shall be made by calling the Division's Marine Enforcement [Unit] **Region**, [Bureau of Law Enforcement] at (609) 748-2050, prior to fishing in State waters and prior to change of location. **Once a vessel has declared its intention to fish within State waters on any given day that vessel shall comply with all provisions of this section for the entire day, regardless of where they actually fish.**

[14.] **13.** No change.

[15. The annual purse seine quota for the purpose taking menhaden for bait shall be unlimited.]

[(c)] **7:25-22.4 Revision of regulations through a Notice of Administrative Change**

The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the annual quota, [or] seasons, **annual quota allocation, definition of gear categories, by-catch allowance, application of the by-catch allowance to the annual quota, eligibility and/or qualifications for either a New Jersey Menhaden Landing License or New Jersey Menhaden Dealer License, reporting requirements, license suspension or revocation schedule for reporting and/or fishing area non-compliance, license transferability requirements, trip limits, vessel upgrade specifications, etc** specified in this subchapter by notice in order to maintain consistency with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. §5104(b) or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service[. The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the seasons specified in this subchapter by notice in order] to provide for the optimal utilization of any quotas specified in this section. The Commissioner will review the catch rate in relation

to the season quota and if harvest data indicate that upward adjustments in harvest control measures are warranted to maximize utilization of the available quota within a specific season for a specific fishery, the Commissioner may adjust the above specified control measures to achieve optimal utilization of the total allowable catch. The Department shall publish notice of any such modification by filing and publishing in the New Jersey Register and in the Division's commercial regulation publication. All such notices shall be effective when the Department files the notice with the Office of Administrative Law or as specified otherwise in the notice.

7:25-22.[4] 5 Vessel Boarding

No change.

7:25-22.6 Penalties

- 1. Penalties for violation of this Subchapter 22 shall be subject to the penalties prescribed at N.J.S.A. 23:2B-14 unless specified in this Subchapter 22. In addition to the penalties prescribed at N.J.S.A. 23:2B-14 or elsewhere in this Subchapter 22, failure to comply with the provisions of N.J.A.C. 7:25-22.2 (a) 7 and (b) 2, falsifying harvester and dealer reports, N.J.A.C. (b) 3 fishing in a restricted area, (b) 7 use of a fish pump, (b) 10 failure to report a fish spill, or N.J.A.C. 7:25-22.[4] 5 failure to facilitate a safe vessel boarding by Law Enforcement personnel, shall result in the suspension or revocation of the appropriate license (landing, dealer, purse seine fishing) according to the following schedule:**
 - a. First offense: 60 day suspension**
 - b. Second offense: 120 day suspension**
 - c. Any subsequent offense: permanent revocation**
 - i. A license suspension applicable to both the vessel and the owner must occur within the normal season of fishing which extends from May 15 to October 31 each year.**
 - ii. If the duration of a license suspension 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.**
 - iii. In calculating the period of suspension or revocation applicable under (b) 2.ii above, the number of previous suspensions shall be reduced by one for each three-year period in which the license holder does not commit any other violations subject to this subsection, provided, however, that if more than one suspension is imposed within a three-year period, only one of those suspensions may be forgiven under this subparagraph; therefore, a license holder who incurs more than one suspension in a three-year period shall not be considered a first offender under this subsection regardless of the length of time of any subsequent period without violation. The reduction in suspensions provided in this subparagraph applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B-14.**
 - iv. Prior to the revocation of the license, the licensee shall have the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.**



State of Delaware Atlantic Menhaden Amendment II Compliance Plan

April 15, 2013

1. Commercial Fishery Management Measures

- a) Delaware's Total Allowable Catch (TAC) of Atlantic menhaden for 2013 is 0.01% of the total TAC or 22.33 metric tons. Delaware is promulgating regulations that will give the Division of Fish and Wildlife (the Division) authority to close Atlantic menhaden fisheries once the TAC has been reached. The Division will submit a dated closure notice to the Atlantic States Marine Fisheries Commission (ASMFC) when Delaware's TAC is reached. The Division will inform ASMFC of its bycatch landings in Delaware's annual Atlantic menhaden compliance report.
- b) Delaware will propose menhaden regulations that allow its TAC to be changed whenever required under Amendment 2.
- c) Delaware does not anticipate having unused TAC. The 2013 TAC is approximately 35% of 2012 landings. All landings will be counted against the TAC until total landings reach the TAC.
- d) Delaware does not anticipate having any TAC overages. Delaware's gill net fishery does not target Atlantic menhaden, thus all Atlantic menhaden catches above the TAC will be reported as bycatch.
- 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.
 - i. Harvesters will be 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

ii. Daily reports will 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

iii. Not applicable

iv. Daily reporting for Atlantic menhaden, monthly reporting at the trip level for all other species.

- b) The IVR system for landings reports will be used for bycatch reporting.
- c) Delaware will collect the required biological samples. Delaware will be required to collect one 10-fish sample based on 2012 landings.
- d) Delaware does not have a pound net fishery.

3. *De minimis*

- a) Delaware will implement all compliance criteria required by Amendment 2.



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor
John R. Griffin, Secretary
Joseph P. Gill, Deputy Secretary

Implementation Plan for Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden April 11, 2013

Background

Since the December decision to reduce menhaden harvest and manage to a state-specific quota, Maryland has been engaged in an intensive outreach program with commercial bait harvesters. Due to Maryland's regulatory process, regulations to manage the menhaden fishery will not be effective until June of 2013 at which point we will implement mechanisms to monitor and adjust menhaden landings. Because the fishery is currently ongoing, menhaden will be landed and reported under our current system of monthly logs of daily activity. Harvesters submit these logs at the end of each month which means that we will not be able to quantify harvest occurring prior to June 1 until mid August of 2013. Therefore, it is Maryland's intention to honor its assigned TAC of 2,320.98 MT or 5,116,976 pounds by selecting a conservative date on which to close the unlimited 2013 menhaden fishery occurring mostly from pound nets. The closure date will be chosen by examining historical dates when Maryland would have achieved the TAC, and by examining incoming 2013 harvest reports to assess the performance of the 2013 fishery relative to past years. Because of uncertainty in early season harvest and to avoid the risk of overage, Maryland will likely close the unlimited 2013 fishery before the TAC is fully harvested.

By June 1, 2013 Maryland will have in place both the regulation and the infrastructure to receive daily or weekly menhaden harvest reports from pound netters and carefully monitor the progress of the 2013 menhaden harvest. By late August of 2013, Maryland will be able to add together harvest that occurred prior to the closure of the unlimited fishery and the harvest occurring under the bycatch allowance and project the total 2013 harvest relative to the TAC. This will inform Maryland as to whether the 6,000 pound bycatch limit should be adjusted downward to avoid substantially exceeding the TAC under the bycatch allowance.

Because regulations will be effective in the middle of the 2013 fishing season, provisions laid out in this document will apply to 2013 only. Maryland will evaluate the effectiveness of these provisions and submit a revised plan for the 2014 season.

1. Commercial Fishery Management Measures

- a) Maryland's regulation (appendix 1) will allow the use of Public Notice authority to close the unlimited menhaden harvest from pound nets and other non-directed gears such as gill nets and fyke nets when Maryland's quota is projected to be achieved. Public notice authority provides flexibility to adjust the closure date based on incoming 2013 harvest reports. Maryland will select a conservative closure date because Maryland's current commercial reporting system includes delays of approximately two months from the time of harvest until data become available to managers. Since this situation cannot be rectified prior to the start of the 2013 menhaden season, we will likely begin limiting the pound net fishery to the 6,000 pound bycatch allowance on June 15, 2013. This date is based on a comparison of daily catches in all years between 2006 and 2012 to Maryland's projected 2013 quota of 2,320.98 metric tons (5.12 million pounds). According to this time series analysis, Maryland would have achieved the quota as early as June 15th and as late as

September 14th, with the average date being August 8th. Landings during this time have been highly variable with a record high catch in 2012. Although the number is still preliminary, the current estimate of 2012 menhaden harvest in Maryland is approaching 14 million pounds – nearly three times the 2013 quota. Therefore, to ensure Maryland does not exceed the quota in 2013, the closure date likely will be set at June 15, 2013 unless there is strong evidence that the 2013 fishery is performing at a slower pace than it did in 2012.

- b) Proposed regulations will include the authority of the Secretary of Natural Resources to change season dates, catch limits and the TAC limit through public notice in response to ASMFC management requirements.
- c) The public notice authority described in 1.b) above provides for changes in TAC to account for transfers to or from Maryland.
- d) The public notice authority described in 1.b) above provides for changes in TAC to account for a repayment mechanism to reduce the subsequent year's quota to account for any over-harvest of the TAC on a pound for pound basis.
- e) On average between 2009 and 2011, pound nets accounted for 92% of Maryland's annual menhaden harvest. Although pound netters are primarily targeting striped bass, there are a small number of pound netters who do not have a striped bass allocation and therefore rely on white perch, catfish, and gizzard shad as their primary species. Pound nets are large stationary gears that are deployed on sites that fishermen must register with the Department. Each harvester is limited to 8 registered sites, but few fish more than 4 nets in any given year. A Pound net is a multi-species gear that is not selective for a particular species. Therefore, undesirable or controlled species trapped in pound nets must be either discarded or harvested as bycatch. Because menhaden travel in schools, when a pound net traps menhaden, the numbers are generally large. Culling or discarding large numbers of menhaden would likely result in large quantities of dead discards. Therefore, Maryland will limit the 6,000 pound bycatch allowance to those individuals who had at least one registered pound net site as of February 18, 2013. Maryland regulation will stipulate that an individual who wishes to land 6,000 pounds of menhaden from a pound net after the closure of the unlimited fishery must be in possession of a 6,000 pound menhaden bycatch permit. Maryland estimates the number of active fishermen in this group to be approximately approximately 100 individuals fishing for striped bass and an additional 30 to 40 perch netters. There are additional latent harvesters with registered pound net sites, but it is unlikely that these sites would be activated in any number for the 2013 season which is already underway. There can be no growth in the number of individuals engaged in the striped bass pound net fishery because Maryland has, for 2013, frozen the ability to transfer into the fishery by previous regulation (COMAR 08.02.15.04). All temporary transfers that might occur among current holders of striped bass pound net permits must be completed by March 31, 2013. Therefore, there will be no opportunity to increase the number of individuals targeting striped bass using pound nets after that date. Through a regulation effective April 15, 2013 (COMAR 08.02.05.01F), that requires harvesters to declare to the Department when they activate a pound net, Maryland will be able to closely monitor any growth in the number of active pound nets. Additionally, legislation passed during Maryland's 2013 session will require that, beginning on July 1, harvesters will need to pay a fee for each pound net site they activate. This will further discourage new effort in the fishery.

Gears other than Pound Nets

One of Maryland's foremost priorities in managing the menhaden fishery is to prevent growth in directed effort by mobile commercial gears such as gill nets. Therefore, upon closure of the unlimited fishery Maryland will place all non-pound net gears deployed within Chesapeake Bay on a limited bycatch allowance ranging from 1,000 – 1,500 lbs per vessel per day. The final number will be set by public notice and will be decided upon based on industry input and on information on menhaden harvest rates from incoming 2013 reports. Maryland is considering offering the 6,000 pound bycatch permit to approximately 5 individuals who fish gill nets in the Atlantic Ocean to target dogfish. These individuals

can have significant menhaden bycatch, although most of these encounters occur early in the season prior to June 1.

Application of the 6,000 lb Bycatch Allowance for Pound Nets - Daily Limits:

Several small groups of pound net fishermen have been working in cooperation on the same vessel for many years. Several of these vessels are operating in Maryland, and are allowed to do so by law (Natural resources article §4-701, Annotated code of Maryland). These individuals may land their combined striped bass quota from one vessel. Additionally, in April of 2009, Maryland changed the regulatory structure of the striped bass pound net fishery and allowed individual pound netters to accrue up to 5 pound net permits. There are approximately 33 individuals who hold multiple striped bass pound net permits. The striped bass pound net fishery is currently controlled through daily landing limits. Pound netters who hold 1 permit are restricted to 800 pounds of striped bass per day. Those holding multiple permits may land up to 1,600 lbs per day. Commonly, those holding multiple permits are cooperative fishermen harvesting multiple nets from the same vessel. Maryland is concerned that limiting harvesters that are fishing cooperatively from a common vessel and/or working with multiple pound net permits to a single 6,000 pound allowance, may result in the dissolution of these cooperative groups and, in turn, result in more boats on the water, more crew, and therefore diminished economic returns for the pound net fisheries. To avoid this situation, Maryland is proposing that when a vessel has 2 individuals on board, each holding a 6,000 lb menhaden bycatch permit, that the vessel may bring in 12,000 lbs for the day. Maryland regulation will stipulate that both permit holders must be aboard the vessel with their bycatch permits. Likewise, those 33 individuals who hold multiple striped bass pound net permits will be allowed 12,000 pounds as a daily limit because they are harvesting larger volumes of striped bass – often from multiple nets. These individuals must have their striped bass permits on board the vessel. Maryland estimates that the ‘duel bycatch’ provision would apply to approximately 40 vessels. Without this 12,000 pound provision, the same harvest of menhaden would result, but would occur using a greater number of vessel, crew and fuel.

Safeguards for Allowance of Two 6,000 Pound Bycatch Permits per Vessel:

Maryland regulation will stipulate that all individuals who possess a 6,000 pound menhaden bycatch permit must report their harvest on a daily or weekly basis. Maryland will use public notice authority to adjust daily bycatch limits downward if it appears that the total 2013 harvest (sum of the harvest occurring before the closure and the harvest occurring under the bycatch allowance) will greatly exceed Maryland’s TAC of 5.12 million pounds. As mentioned earlier, Maryland will likely close the unlimited fishery on June 15 because this is the earliest date the quota was achieved in the outlier year of 2012. In a typical year, harvest prior to June 15 is substantially less than Maryland’s TAC, but Maryland cannot afford the risk of overage if 2013 performs like 2012. Using 2011 as an example of a more typical year, Maryland harvested just under 2.3 million pounds prior to June 15. An additional 2.5 million pounds of harvest under the bycatch allowance after June 15 would have resulted in a total 2011 harvest of 4.8 million pounds. Total harvest in 2011 was 5.9 million pounds. In most years since 2006 a June 15 closure plus an additional harvest of 2.5 million pounds, resulted in a total annual harvest that is nearly equivalent to our assigned TAC.

The Bycatch Allowance will have the Following Mandatory Provisions:

- i. Harvesters may not land more than one bycatch allowance in a calendar day. A vessel carrying a single 6,000 lb menhaden bycatch permit may not land more than 6,000 pounds in a calendar day. A vessel with two 6,000 pound menhaden bycatch permits on board may not land more than 12,000 lbs of menhaden per calendar day. An individual holding multiple striped bass pound net permits may not land more than 12,000 lbs of menhaden in a calendar day.

- ii. Multiple trips on a calendar day or the use of multiple carrier vessels for the purpose of exceeding the allowable daily limit will be prohibited.
 - iii. See section 2b.
- i. See section 2(b).
- f) Maryland does not qualify for the Episodic Events Set Aside.
 - g) N/A (applies to Virginia only)

2. Monitoring Requirements

- a) Maryland DNR Fisheries Service currently requires trip level harvester reporting on paper forms submitted on a monthly basis. As previously stated this level of reporting cannot be changed prior to June 1, 2013. Maryland will likely close the fishery on June 15th, the earliest date the fishery would have closed in previous years, since timely monitoring will not be possible for the first half of 2013.
 - i. Harvesters are, and will be, required to submit reports.
 - ii. Trip level reporting on paper forms contain the following data reporting elements: (1) trip start date (2) vessel identifier (3) individual fisherman identifier (4) dealer identification (5) species landed (6) quantity landed (7) units of measurement (8) disposition (9) county or port landed (10) gear (11) quantity of gear (12) number of sets (13) amount of time gear fished (14) hours at sea (15) number of crew (16) area fished. Once the menhaden fishery has closed, individuals holding a 6,000 pound menhaden bycatch permit will be required to report daily via text message or online and will include the following information: (1) 6,000 pound menhaden bycatch permit number (2) number of nets fished (3) number of days each net fished (4) menhaden landed (5) units of measure. Harvesters will still be required to fill out their paper report forms, so all 16 of those data elements will be recorded.
 - iii. N/A (Purse seining is illegal in Maryland waters)
 - iv. All harvesters must report daily trip level information on a monthly basis. Individuals holding a 6,000 pound menhaden bycatch permit will be required to report daily after the fishery closes - likely on June 15, 2013 – and all daily reports will be reported to ASMFC as bycatch. At the end of the year, Maryland will report to ASMFC all menhaden landings that occurred prior to fishery closure – likely on June 15, and all landings that occur as bycatch after the closure.
- b) Maryland DNR Fisheries service conducts an annual onboard pound net survey that has been collecting age and length samples for Atlantic menhaden. This sampling effort will be modified to collect the recommend number of samples of the sample size listed in (ii) below. If needed dealer sampling will be used to supplement onboard sampling.
 - i. N/A (Maryland is not in this region)
 - ii. One 10-fish sample (age and length) per 200 metric tons landed for bait purposes will be taken.
- c) Maryland DNR will collect the mandatory data elements as indicated in section 2. a. ii.
 - i. total pounds (lbs) landed per day
 - ii. number of pound nets fished per day

3. *De minimis*

N/A (Maryland does not qualify)

Appendix 1 – Draft Regulation for Atlantic Menhaden.

Maryland will submit the following as an emergency regulation to be effective June 1, 2013 and will simultaneously propose permanent regulation. This regulation must be considered draft as Maryland's public comment period remains open, but no substantive changes will occur.

08.02.05.07

.07 [Repealed.] Menhaden.

A. Quota.

(1) The annual total allowable landings of menhaden for the commercial fishery is established by the Atlantic States Marine Fisheries Commission and shall be established and may be modified 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. The season for harvesting menhaden shall be established and may be modified through a public notice issued in accordance with §F of this regulation.

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 menhaden.

(2) Upon the State quota being met or exceeded, the catch limit for menhaden shall be established and may be modified through a public notice issued in accordance with §F of this regulation.

D. Menhaden Bycatch Allowance Landing Permits.

(1) An individual may apply for a 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 only be issued one menhaden bycatch allowance landing permit.

(3) A permittee shall possess the menhaden bycatch allowance landing permit when engaged in permitted activities.

(4) Menhaden bycatch allowance landing permits may not be transferred.

(5) Menhaden harvested under a menhaden bycatch allowance landing permit must be on the same vessel as the permittee.

E. Reporting.

(1) In addition to the requirements of Natural Resources Article, §4-206, Annotated Code of Maryland, an individual in possession of a menhaden landing permit shall report in the manner as specified by the Department.

(2) The Department may suspend the holder of a menhaden landing permit from participation in the menhaden fishery for up to 90 days per violation for failing to comply with §E(1) of this regulation.

(3) The Department may deny an application for a menhaden landing permit for failing to comply with §E(1) of this regulation during the previous season.

F. General.

(1) The Secretary may establish or modify catch limits, quotas, and seasons for menhaden in order to implement the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Menhaden by issuing a public notice on the Fisheries Service website.

(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 §F of this regulation is a violation of this regulation.



MARYLAND - VIRGINIA
"Potomac River Compact of 1958"

Potomac River Fisheries Commission

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Colonial Beach, Virginia 22443

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Atlantic Menhaden Implementation Plan

April 15, 2013

The Potomac River Fisheries Commission's (PRFC) Atlantic menhaden allocation for 2013 was determined by the ASMFC to be 1,049.69 MT (2,314,170 lbs.), which was 0.62% of the coastwide TAC.

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 2013. 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 on Sundays when 70 percent of the quota is projected to be landed. All pound net fishermen and significant buyers will be notified by phone when the catch limit is reached and when the fishery shall be closed. A closure notice will be mailed to all PRFC licensed fishermen and the ASMFC.

b) The PRFC adopted Order #2013-08 which declared and ordered the catch limit of menhaden for 2013 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 2013 PRFC allocation of the TAC will be subtracted from the 2014 PRFC allocation of the TAC.

e) The PRFC adopted Order #2013-08 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, and iii) PRFC Order #2013-08 declared and ordered when the commercial fisheries for Atlantic menhaden are closed, subject to the provisions of the ASMFC Amendment 2 to the IFMP for Atlantic Menhaden, PRFC pound net licensees are permitted to possess and/or land no more than 6,000 pounds of menhaden for a single vessel per day, which must be harvested by the pound net licensee from his licensed pound net(s). Notwithstanding the provisions of Order #2013-08, the PRFC reserves the right to modify Order #2013-08 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 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 pound net fishermen will be required to continue to submit daily harvest reports on a weekly basis. All menhaden reported by pound 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. In 2012, there were eight 10-fish samples collected and submitted for analysis. The PRFC will continue this biological sampling program in 2013.

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 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 limits for Atlantic menhaden provided for in Regulation III, Section 10(a) shall be 2,314,170 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 to the IFMP for Atlantic Menhaden, pound net licensees 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 pound net licensee from his licensed pound net(s).

AND IT IS FURTHER DECLARED AND ORDERED: this Order #2013-08 will become effective March 18, 2013, and remain in effect until March 18, 2014.

This Order was duly adopted by the Potomac River Fisheries Commission on March 8, 2013.



COMMONWEALTH of VIRGINIA

*Marine Resources Commission
2600 Washington Avenue
Third Floor
Newport News, Virginia 23607*

Douglas W. Domenech
Secretary of Natural Resources

Jack G. Travelstead
Commissioner

April 15, 2013

Robert E. Beal
Executive Director
Atlantic States Marine Fisheries Commission
1050 North Highland Street
Suite 200A-N
Arlington, VA 22201

Dear Mr. Beal, *Bob*

Enclosed is the Commonwealth of Virginia's Implementation Plan to comply with Amendment 2 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 Joseph D. Grist, Deputy Chief of the Fisheries Management Division.

Sincerely,

A handwritten signature in cursive script that reads "Jack".

Jack G. Travelstead

cc: Robert L. O'Reilly
Joseph D. Grist

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 Fisheries Commission

April 15, 2013

1. Commercial Fishery Management Measures

a. Mechanism to close directed commercial fisheries in your state once the TAC (or a percentage thereof) has been reached (*TAC Specification 4.2.1.1 and TAC Allocation 4.2.1.3*).

Virginia statutory law was enacted by the General Assembly of Virginia on February 23, 2013 by signature of the Governor (Appendix I: S1291) and provides that the closure of the Virginia menhaden fishery shall occur when the Commissioner projects and announces that 100 percent of the total allowable landings have been taken (§ 28.2-400.4). Virginia Regulatory Code, Chapter 4 VAC 20-1270-10 et seq. “Pertaining to Menhaden” (Appendix II) was adopted by the Marine Resources Commission on March 26, 2013 and provides that once ninety-seven percent of either purse seine sector’s quota (menhaden reduction sector or menhaden bait sector) is projected and announced to have been met, any licensee of that purse seine sector shall be required to provide daily harvest totals to the Commission’s interactive voice recording system. Once ninety percent of the non-purse seine menhaden bait sector’s quota is projected and announced to have been met, each harvester of this sector is required, at a minimum, to report his previous 10 days of landings to the Commission’s interactive voice recording system, and every 10 days after that date of announcement, until it is announced that the non-purse seine quota has been attained.

b. Mechanism to adjust a state’s TAC as required by the Atlantic States Marine Fisheries Commission.

If the total allowable landings are exceeded in any year, the total allowable landings for the subsequent year will be reduced by the amount of the overage (§ 28.2-400.2; Appendix I). If any portion of the one percent of the coast-wide total allowable catch set aside by the ASMFC for episodic events is returned to Virginia, the total allowable landings will be increased for that year.

c. Mechanism to enable transfer of unused TAC between states if warranted, and the ability to adjust a state’s TAC as it relates to the transfer of quota (*Quota Transfer 4.2.1.4*).

The Commissioner may request a transfer of menhaden landings from any other state that is a member of ASMFC, and may receive a transfer of menhaden in any year from another state (§ 28.2-400.2; Appendix I).

d. A repayment mechanism to reduce a subsequent year's quota to account for any over-harvest of the TAC or a pound for pound basis (*Quota Payback 4.2.1.6*).

If the total allowable landings are exceeded in any year, the total allowable landings for the subsequent year will be reduced by the amount of the overage (§ 28.2-400.2; Appendix I).

e. A bycatch allowance mechanism for non-directed fisheries following the harvest of the state's TAC and closure of directed fisheries.

i. 6,000 pound bycatch landing limit per calendar year; ii. Prohibit vessel from making multiple trips in one day to land more than 6,000 pounds; iii. Prohibit the use of multiple carrier vessels per trip to offload bycatch exceeding 6,000 pounds

Once the closure data of the non-purse seine menhaden bait sector 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 (§ 28.2-400.4; Appendix I)

iv. Bycatch reporting requirements as detailed in section 2(b).

All commercial harvesters in the non-purse seine menhaden bait sector must provide daily harvest reports, on a monthly basis, for all Virginia menhaden harvest and landings per Chapter 4VAC-20-610-10 et seq. "Pertaining to Commercial Fishing and Mandatory Harvest Reporting" (Appendix III).

f. A mechanism to adjust a state's TAC and effort controls if opting into the episodic events set aside (*Episodic Events Set Aside 4.2.1.8*).

Not applicable for Virginia.

g. For Virginia only, a Chesapeake Bay reduction fishery harvest cap.

i. Prohibit harvest for reduction purposes within the Chesapeake Bay when 100% of 87,216 mt is harvested from the Chesapeake Bay; ii. A repayment mechanism to reduce the subsequent year's harvest cap to account for any over-harvest of the cap on a pound for pound basis; iii. A rollover maximum to increase the subsequent year's harvest cap to account for un-landed fish to a maximum of 10,976 mt.

The annual Chesapeake Bay menhaden harvest cap for the purse seine reduction fishery for Atlantic menhaden shall be 87,216 mt, subject to the annual adjustment for underages or overages (§ 28.2-1000.2; Appendix I). If the harvest of the purse seine reduction fishery for Atlantic menhaden in the Chesapeake Bay does not exceed 87,216 mt 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 reduction fishery for Atlantic menhaden for the following year. In no event, however, shall the harvest of this fishery exceed 98,192 metric tons in any one year.

2. Monitoring Requirements

a. A catch reporting system to enable weekly monitoring of a state's TAC (*Quota Monitoring 3.6.1.2*).

i. Indicate whether harvesters, dealers, or both are required to submit reports; ii. Specify the amount of detail reported and define the data elements that are required to be collected; iii. Require purse seine and bait seine vessels (or snapper rigs) to submit trip level reports (e.g. Captain Daily Fishing Reports); iv. Specify frequency and mechanism of submitting reports.

Any person licensed for the purse seine menhaden reduction sector or purse seine menhaden bait sector shall submit landings reports to the Commissioner each non-weekend and non-holiday day that the applicable sector of the menhaden fishery is open for harvest utilizing the Captain's Daily Fishing Report produced by the National Marine Fisheries Service (§ 28.2-400.5; Appendix I). Those same licensees shall 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 (Chapter 4 VAC 20-1270-60.A; Appendix II).

The non-purse seine menhaden commercial bait sector shall submit daily reports according to the schedule and reporting requirements established by 4 VAC 20-610-60.F.1 (Appendix III). 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.

b. A mechanism to require timely reporting of bycatch allowance landings by non-directed fisheries through the reporting system approved by the Board in section 2(a).

As provide in section 2(a), the non-purse seine menhaden commercial bait sector shall submit daily reports according to the schedule and reporting requirements established by 4VAC20-610-60.F.1 (Appendix III).

c. A mandatory biological sampling program to collect age and length data from the commercial bait harvest (*Biological Data 3.6.2.1*).

ii. One 10-fish sample (age and length) per 200 metric tons landed for bait purposes for MD, PRFC, VA and NC.

Per § 28.2-400.6.A.1 (Appendix I), the Commission's biological sampling program shall collect one 10-fish sample per 200 landed metric tons for length and weigh-at-age data from the commercial menhaden harvest.

d. A mandatory monitoring/sampling program for all states with a pound net fishery.

Per Chapter 4VAC20-610-60.F.1 (Appendix III), the pound net fishery shall be responsible for providing monthly harvest report and daily harvest records that include the amount of gear used for that harvest and the live weight or processed weight of species harvested.

3. De minimis

Not applicable to Virginia.

VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 59

An Act to amend and reenact §§ 2.2-4002, 28.2-204.1, 28.2-402, 28.2-403, and 28.2-1000.2 of the Code of Virginia and the second enactment of Chapter 41 of the Acts of Assembly of 2007, as amended by Chapters 178 and 728 of the Acts of Assembly of 2010; to amend the Code of Virginia by adding sections numbered 28.2-400.1 through 28.2-400.6; and to repeal § 28.2-1000.2 of the Code of Virginia, relating to management of the menhaden fishery.

Approved February 23, 2013

Be it enacted by the General Assembly of Virginia: [S 1291]

1. That §§ 2.2-4002, 28.2-204.1, 28.2-402, 28.2-403, and 28.2-1000.2 of the Code of Virginia and the second enactment of Chapter 41 of the Acts of Assembly of 2007, as amended by Chapters 178 and 728 of the Acts of Assembly of 2010, are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 28.2-400.1 through 28.2-400.6 as follows:

§ 2.2-4002. Exemptions from chapter generally.

A. Although required to comply with § 2.2-4103 of the Virginia Register Act (§ 2.2-4100 et seq.), the following agencies shall be exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 2.2-4024, 2.2-4030, and 2.2-4031:

1. The General Assembly.
2. Courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.
3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of Title 29.1.
4. The Virginia Housing Development Authority.
5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities.
6. Educational institutions operated by the Commonwealth, provided that, with respect to § 2.2-4031, such educational institutions shall be exempt from the publication requirements only with respect to regulations that pertain to (i) their academic affairs, (ii) the selection, tenure, promotion and disciplining of faculty and employees, (iii) the selection of students, and (iv) rules of conduct and disciplining of students.
7. The Milk Commission in promulgating regulations regarding (i) producers' licenses and bases, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.
8. The Virginia Resources Authority.
9. Agencies expressly exempted by any other provision of this Code.
10. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.2-1164.
11. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.
12. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.2-6002 and in adopting regulations pursuant to § 3.2-6023.
13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and D of § 3.2-3601, subsection B of § 3.2-3701, § 3.2-4002, subsections B and D of § 3.2-4801, §§ 3.2-5121 and 3.2-5206, and subsection A of § 3.2-5406.

APPENDIX I: S1291

14. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.
 15. The Commissioner of the Department of Veterans Services in adopting regulations pursuant to subdivision 18 of § 2.2-2004.
 16. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-203.2.
 17. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards or in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual live horse racing at race meetings licensed by the Commission.
 18. The Virginia Small Business Financing Authority.
 19. The Virginia Economic Development Partnership Authority.
 20. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to subsection A (ii) of § 59.1-156.
 21. The Insurance Continuing Education Board pursuant to § 38.2-1867.
 22. The Board of Health in promulgating the list of diseases that shall be reported to the Department of Health pursuant to § 32.1-35 and in adopting, amending or repealing regulations pursuant to subsection C of § 35.1-14 that incorporate the Food and Drug Administration's Food Code pertaining to restaurants or food service.
 23. (Expires January 1, 2014) The ~~Secretary of Natural Resources~~ *Commissioner of the Marine Resources Commission* in setting a date of closure for the Chesapeake Bay purse seine fishery for Atlantic menhaden for reduction purposes pursuant to § 28.2-1000.2.
 24. The Board of Pharmacy when specifying special subject requirements for continuing education for pharmacists pursuant to § 54.1-3314.1.
 25. The Virginia Department of Veterans Services when promulgating rules and regulations pursuant to § 58.1-3219.7.
- B. Agency action relating to the following subjects shall be exempted from the provisions of this chapter:
1. Money or damage claims against the Commonwealth or agencies thereof.
 2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
 3. The location, design, specifications or construction of public buildings or other facilities.
 4. Grants of state or federal funds or property.
 5. The chartering of corporations.
 6. Customary military, militia, naval or police functions.
 7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.
 8. The conduct of elections or eligibility to vote.
 9. Inmates of prisons or other such facilities or parolees therefrom.
 10. The custody of persons in, or sought to be placed in, mental health facilities or penal or other state institutions as well as the treatment, supervision, or discharge of such persons.
 11. Traffic signs, markers or control devices.
 12. Instructions for application or renewal of a license, certificate, or registration required by law.
 13. Content of, or rules for the conduct of, any examination required by law.
 14. The administration of pools authorized by Chapter 47 (§ 2.2-4700 et seq.).
 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the State Lottery Board, and provided that such regulations are published and posted.
 16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.
 17. Any operating procedures for review of child deaths developed by the State Child Fatality Review Team pursuant to § 32.1-283.1.

APPENDIX I: S1291

18. The regulations for the implementation of the Health Practitioners' Monitoring Program and the activities of the Health Practitioners' Monitoring Program Committee pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

19. The process of reviewing and ranking grant applications submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title 51.5.

20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.

21. The Virginia Breeders Fund created pursuant to § 59.1-372.

22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.

23. The administration of medication or other substances foreign to the natural horse.

C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act (§ 2.2-4100 et seq.), made by the Virginia Code Commission pursuant to § 30-150, shall be exempt from the provisions of this chapter.

§ 28.2-204.1. Limited sale of gear licenses and permits; regulations.

A. The Commission may limit the number of gear licenses or permits to fish, except those licenses issued pursuant to *subdivisions 1 and 2 of § 28.2-402*, issued for use in a specific fishery. The Commission may, despite any such limits, issue such gear licenses or permits to fish to any person who has resided for at least five years on an island in the Commonwealth that is at least three miles from the mainland.

B. The Commission is authorized to promulgate regulations to carry out the provisions of this section. In determining whether to limit the sale of gear licenses or permits to fish, and determining who receives licenses, the Commission shall consider all factors relevant to the Commonwealth's fishery management policy, including but not limited to:

1. Economic and social consequences;
2. Food production;
3. Dependence on the fishery by licensees;
4. Efficiency of gear used in the fishery;
5. Impact on species and fisheries; and
6. Abundance of the resource.

§ 28.2-400.1. Criteria for qualifying for a limited entry purse seine menhaden bait license.

A. *The Commission shall establish and administer a limited entry purse seine menhaden bait license that meets the requirements of this section.*

B. *In order to qualify for a limited entry purse seine menhaden bait license, an applicant shall have held a purse seine license, as established in § 28.2-402, in 2011 and shall have landed menhaden in the Commonwealth in each of the years 2009, 2010, and 2011. Such person shall also have used purse seine gear to harvest menhaden in at least one of those three years. Proof of landings and gear usage shall be in the form of receipts, landing reports, or other verifiable documents as designated by the Commission.*

§ 28.2-400.2. Total allowable landings for menhaden.

A. *Except as provided for in subsections B, C, and D, the total allowable landings for menhaden shall be 144,272.84 metric tons per year.*

B. *If the total allowable landings specified in subsection A 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 § 28.2-400.3.*

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. *Any portion of the one percent of the coast-wide total allowable catch set aside by the Atlantic States Marine Fisheries Commission for episodic events that is unused as of September 1 of any year shall be returned to Virginia and other states according to allocation*

APPENDIX I: S1291

guidelines established by the Atlantic States Marine Fisheries Commission. Any such return of this portion of the coast-wide total allowable catch to Virginia shall increase the total allowable landings for that year.

§ 28.2-400.3. Allocation of the total allowable landings for menhaden.

A. The total allowable landings for menhaden specified in § 28.2-400.2 shall be allocated among the purse seine menhaden reduction sector, purse seine menhaden bait sector, and non-purse seine menhaden bait sector in proportion to each sector's share of average landings in 2002 through 2011, and in proportion to each gear type landings within the non-purse seine bait sector during that period.

B. The Commission shall establish an Individual Transferable Quota System for any purse seine menhaden bait licensee that meets the requirements of § 28.2-400.1. The Commission shall not consider a limited entry purse seine menhaden bait licensee's landings of menhaden for reduction purposes for any purposes under the Individual Transferable Quota System required by this subsection.

C. Any landings of menhaden by a limited entry purse seine menhaden bait licensee at a qualified menhaden processing factory, as indicated on the mandatory daily landings reports required to be submitted under § 28.2-400.5, shall be attributed to the menhaden reduction sector for all purposes under this chapter. A qualified menhaden processing factory is one located in the Commonwealth and which has processed at least 100,000 metric tons of menhaden in each of the years 2009, 2010, and 2011.

§ 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. The Commissioner may reopen a fishery sector closed pursuant to this section if, after all reports have been received, the portion of the total allowable landings has not been harvested by that sector. The Commission may establish any regulations it deems necessary and advisable, including trip limits or a time-limited reopening, to ensure that the allowable landings for a reopened sector is not exceeded. Any such reopening and subsequent closure shall be done by direct notice to the relevant sector of the fishery.

C. The Commission shall maintain on its website a periodically updated tally of the menhaden harvest for each sector receiving an allocation under this section.

D. Except as provided in subdivision A 3, no person shall harvest menhaden for bait or reduction purposes after the portion of the total allowable landings for the sector in which that person holds a license has been closed. Any person violating this provision is guilty of a Class 1 misdemeanor.

§ 28.2-400.5. Reporting requirements.

APPENDIX I: S1291

A. Any person licensed for the purse seine menhaden reduction sector or purse seine menhaden bait sector shall submit landings reports to the Commissioner each non-weekend or non-holiday day that the applicable sector of the menhaden fishery is open for harvest utilizing the Captain's Daily Fishing Report produced by the National Marine Fisheries Service.

B. Persons licensed for the non-purse seine menhaden bait sector shall submit a report on a form and on a schedule established by the Commission. The reporting period established by the Commission shall be longer than one week.

C. The reporting form required to be developed by the Commission shall require the following information:

1. Trip start date;
2. Vessel identification number;
3. Individual fisherman identifier;
4. Identification of dealer purchasing landings;
5. Trip number;
6. Species harvested;
7. Quantity of fish landed and discarded in pounds or metric tons;
8. Disposition of the landings;
9. County or port landed;
10. Gear type used;
11. Quantity of gear used;
12. Number of sets made during each trip;
13. Time fishing gear is in the water;
14. Days or hours at sea;
15. Number of crewmembers;
16. Area fished; and
17. Date of unloading.

§ 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.

§ 28.2-402. License fee to take menhaden with purse nets.

Any person desiring to take or catch menhaden with purse nets shall pay to the officer or agent a license fee as follows or as subsequently revised by the Commission pursuant to § 28.2-201:

1. On each boat or vessel under ~~seventy~~ 70 gross tons fishing ~~with purse net, \$3 per gross ton, but not more than \$150 for the purse seine menhaden reduction sector,~~ \$249.
 2. On each vessel ~~over seventy~~ 70 gross tons ~~or over fishing with purse net,~~ \$5 per gross ton, provided the maximum license fee for such vessels shall not be more than \$600 for the purse seine menhaden reduction sector, \$996.
 3. On each boat or vessel under 70 gross tons fishing for the purse seine menhaden bait sector, \$249.
 4. On each vessel 70 gross tons or over fishing for the purse seine menhaden bait sector, \$996.
- The officer or agent shall thereupon grant a license to use such net or other device and state in the license the name or names of the person or persons who shall use the same and the amount of the license fee.

§ 28.2-403. Action of Commissioner on such application; transfer of license of disabled vessel; delegation of authority; appeals.

A. If the Commissioner is satisfied that the disclosures required by § 28.2-400 have been made and that the application conforms in other respects to the provisions of that section *or to § 28.2-400.1*, and upon payment of the license fee specified in § 28.2-402, the Commissioner, or the officer through whom or in whose district the application was made, shall issue to the applicant a license for each of the purse seines, vessels, or other watercraft specified in the application. The license shall state the name of the licensee and the name of the vessel or other watercraft licensed.

If any vessel or other watercraft so licensed becomes disabled during the period of such license, the licensee may, with the consent of the Commissioner, hire or charter a vessel or other craft belonging to a nonresident to replace the disabled one for the unexpired period of such license. In such a case, the officer shall transfer the license issued for the disabled vessel or other craft to the one so hired or chartered without requiring any additional license.

B. The Commissioner may delegate to the officers his authority under this section. However, any person aggrieved by any action of an officer exercising such delegated authority shall have the right to appeal to the Commissioner for a review and correction of the actions of the officer. The appeal may be made by mailing a statement of the officer's action, together with the appellant's objections and the grounds for his objections, to the Commissioner. Upon receipt of such appeal, the Commissioner shall immediately notify the officer involved, who shall, within three days, deliver to the Commissioner all papers in his possession concerning the subject matter of the appeal, together with a written statement of and reasons for his actions. The Commissioner shall issue his ruling granting, transferring, refusing, or refusing to transfer the license within ten days after receipt by him of the appeal.

§ 28.2-1000.2. (Expires January 1, 2014) Annual closure of the Chesapeake Bay purse seine fishery for Atlantic menhaden.

A. For the purpose of this section:

"Chesapeake Bay" means the territorial waters of the Commonwealth lying west of the Chesapeake Bay Bridge-Tunnel.

"Purse seine fishery for Atlantic menhaden" means those vessels licensed pursuant to § 28.2-402 that harvest menhaden for the purpose of manufacturing them into fertilizer, fish meal, or oil.

B. Upon ~~notification by the National Marine Fisheries Service of the date on which a determination that~~ the purse seine fishery for Atlantic menhaden meets the annual menhaden harvest cap in the Chesapeake Bay, the ~~Secretary of Natural Resources~~ *Commissioner* shall promptly publish a notice in the Virginia Register announcing the date of closure. The ~~Secretary of Natural Resources~~ *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 ~~catch~~ *landings* reports ~~submitted to the National Marine Fisheries Service required to be submitted under § 28.2-400.5~~ by the purse seine fishery for Atlantic menhaden.

C. The annual menhaden harvest cap for the purse seine fishery for Atlantic menhaden shall be ~~109,020~~ 87,216 metric tons, subject to annual adjustment for underages or overages as specified in subsection D. In no event, however, shall the harvest of this fishery exceed ~~122,740~~ 98,192 metric tons in any one year.

D. If the harvest of the purse seine fishery for Atlantic menhaden does not exceed ~~109,020~~ 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.

E. ~~The 2007 harvest cap for the purse seine fishery for Atlantic menhaden shall be adjusted for any underage or overage, as specified in subsection D, from the actual 2006 harvest of the purse seine fishery for Atlantic menhaden.~~

APPENDIX I: S1291

F. No person shall take Atlantic menhaden by purse seine for reduction purposes from the Chesapeake Bay after the later of the date of closure implemented pursuant to subsection B or the date that actual notice is provided of such closure pursuant to subsection B. Any person violating this provision shall be guilty of a Class 1 misdemeanor.

2. That the second enactment of Chapter 41 of the Acts of Assembly of 2007, as amended by Chapters 178 and 728 of the Acts of Assembly of 2010, is amended and reenacted as follows:

2. That the provisions of this act shall expire on January 1, ~~2014~~ 2015.

3. That § 28.2-1000.2 of the Code of Virginia is repealed effective January 1, 2015.

4. That the provisions of this act shall expire on January 1, 2015.

5. That an emergency exists and this act is in force from its passage.

APPENDIX II: CHAPTER 4 VAC 20-1270-10 ET SEQ. 'PERTAINING TO MENHADEN'

PREAMBLE

This chapter establishes an allocation system for three fishing sectors of the commercial menhaden fishery, establishes a limited entry and individual transferable quota systems for the purse seine menhaden bait sector and establishes reporting requirements for the three sectors of the commercial menhaden fishery. This chapter is promulgated pursuant to the authority contained in §§ 28.2-201, 28.2-204 and 28.2-204.1 and §§ 28.2-400.1 through 28.2-400.5 of the Code of Virginia. The effective date of this chapter is April 1, 2013. The provisions of this chapter expire on January 1, 2015.

4VAC20-1270-10. Purpose.

The purpose of this chapter is to comply with the Interstate Fishery Management Plan for Atlantic menhaden, including the mandated 20 percent reduction in total allowable commercial landings of Atlantic menhaden from the average of the 2009 through 2011 landings.

4VAC20-1270-20. Definitions.

“Non-purse seine menhaden bait sector” means those vessels that do not utilize a purse seine net to harvest menhaden and land menhaden only for use as bait in other fisheries.

“Purse seine menhaden bait sector” means those vessels that utilize a purse seine net to land menhaden only for use as bait in other fisheries.

“Purse seine menhaden reduction sector” means those vessels that utilize a purse seine net to land menhaden only at a qualified menhaden processing factory, as described by § 28.2-400.3 of the Code of Virginia.

4VAC20-1270-30. Total allowable landings for menhaden; allocation, accountability and overages.

A. Section § 28.2-400.2 of the Code of Virginia establishes the total allowable commercial landings for menhaden in 2013 and 2014 in metric tons equivalent to 318,067,167 pounds, and that total amount of allowable landings shall be allocated as quotas among three sectors of the menhaden fishery, as described below, pursuant to § 28.2-400.3 of the Code of Virginia. The purse seine menhaden reduction sector is allocated a quota of 286,396,768 pounds of allowable menhaden landings; the purse seine menhaden bait sector a 26,648,870-pound quota of allowable menhaden landings; and, the non-purse seine menhaden bait sector a 5,021,529-pound quota of allowable menhaden landings.

B. Any menhaden landings on and after January 1, 2013 count towards that particular sector's 2013 commercial quota.

APPENDIX II: CHAPTER 4 VAC 20-1270-10 ET SEQ. 'PERTAINING TO MENHADEN'

C. Any overages of a sector's commercial quota shall be deducted from the following year's quota for that sector.

4VAC20-1270-40. Purse seine menhaden bait sector; limited entry criteria; Individual Transferable Quota System.

A. To qualify for limited entry to the purse seine menhaden bait sector, the applicant must:

1. have held a purse seine license in 2011 and landed menhaden in Virginia in 2009, 2010 and 2011, while using purse seine gear to harvest menhaden in one of those three years; and,
2. provide the Commission receipts, landings reports or other requested reports as proof of landings and gear usage to demonstrate that the criteria described in subdivision 1 of this subsection have been met.

B. The Commission shall establish an individual transferable quota (ITQ) system for each purse seine menhaden bait licensee that meets the limited entry requirements in subsection A of this section. The quota for this sector will be allocated according to each qualified licensee's rounded percentage share of the average of the 2007 through 2011 menhaden landings.

C. Each licensee qualified under the ITQ system may transfer quota to another licensee's ITQ, upon approval of the Commissioner.

4VAC20-1270-50. Non-purse seine menhaden bait sector quota; allocation and bycatch provisions.

A. For 2013 and 2014, the non-purse seine commercial bait sector's allocation shall be, by gear type, as follows:

- | | |
|-------------------|---------------------|
| 1) cast net: | 1,930 pounds; |
| 2) dredge: | 3,069 pounds; |
| 3) fyke net: | 2,115 pounds; |
| 4) gill net: | 1,521,108 pounds; |
| 5) hook and line: | 234 pounds; |
| 6) pot: | 2,064 pounds; |
| 7) pound net: | 3,412,020 pounds; |
| 8) seine: | 20,103 pounds; |
| 9) trawl: | 58,847 pounds; and, |
| 10) trot line: | 39 pounds |

APPENDIX II: CHAPTER 4 VAC 20-1270-10 ET SEQ. 'PERTAINING TO MENHADEN'

B. Pursuant to § 28.2-400.4 of the Code of Virginia, once the Commissioner announces the date of closure for the non-purse seine bait fishery, any person licensed in the non-purse seine menhaden bait sector may possess and land up to 6,000 pounds of menhaden per day.

4VAC20-1270-60. 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 non-weekend or non-holiday 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 non-purse seine menhaden commercial bait sector shall submit daily reports according to the schedule and reporting requirements established by 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting".

C. When the Commissioner announces that 90 percent of the non-purse 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 non-purse seine bait quota has been attained. More frequent reporting is permissible. The Commission may also implement other harvest conservation measures such as trip limits.

4VAC20-1270-70. Penalty.

As set forth in §28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor. A second and each subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

APPENDIX III: CHAPTER 4 VAC 20-610-10 ET SEQ. 'PERTAINING TO COMMERCIAL FISHING AND MANDATORY HARVEST REPORTING'

PREAMBLE

This chapter describes the procedures and manner for application for registration as a commercial fisherman, the manner and form of mandatory harvest reports by commercial fishermen and others, and exceptions to the registration process and delay requirements as specified in § 28.2-241 of the Code of Virginia. A commercial hook-and-line license is also established.

This chapter is promulgated pursuant to authority contained in §§ 28.2-201, 28.2-204, 28.2-242, and 28.2-243 of the Code of Virginia. This chapter amends and readopts, as amended, previous Chapter 4VAC20-610-10 et seq. which was promulgated December 10, 2012 and made effective on January 1, 2013. The effective date of this chapter, as amended, is March 1, 2013.

4VAC20-610-10. Purpose.

The purpose of this chapter is to establish the procedures for the registration of commercial fishermen and the manner and form of mandatory harvest reports from fishermen and others. Further, the purpose is to license commercial fishermen using hook-and-line, rod-and-reel, or hand line.

4VAC20-610-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

“Agent” means any person who possesses the commercial fisherman registration license, fishing gear license, or fishing permit of a registered commercial fisherman in order to fish that commercial fisherman's gear or sell that commercial fisherman's harvest.

"Clam aquaculture harvester" means any person who harvests clams from leased, subleased, or fee simple ground or any aquaculture growing area, within or adjacent to Virginia tidal waters.

"Clam aquaculture product owner" means any person or firm that owns clams on leased, subleased, or fee simple ground, or any aquaculture growing area within or adjacent to Virginia tidal waters that are raised by any form of aquaculture. This does not include any riparian shellfish gardeners whose activities are authorized by 4VAC20-336, General Permit No. 3 Pertaining to Noncommercial Riparian Shellfish Growing Activities.

"Clam aquaculture product owner vessel" means any vessel, legally permitted through a no-cost permit, by a clam aquaculture product owner, used to transport clam aquaculture harvesters who do not possess an individual clam aquaculture harvester permit.

"Commission" means the Marine Resources Commission.

APPENDIX III: CHAPTER 4 VAC 20-610-10 ET SEQ. 'PERTAINING TO COMMERCIAL FISHING AND MANDATORY HARVEST REPORTING'

"Commissioner" means the Commissioner of the Marine Resources Commission.

"Continuing business enterprise" means any business that is required to have a Virginia Seafood Buyer's License or is required to have a business license by county, city or local ordinance.

"Oyster aquaculture harvester" means any person who harvests oysters from leased, subleased, or fee simple ground or any aquaculture growing area, within or adjacent to Virginia tidal waters.

"Oyster aquaculture product owner" means any person or firm that owns oysters on leased, subleased, or fee simple ground, or any aquaculture growing area within or adjacent to Virginia tidal waters that are raised by any form of aquaculture. This does not include any riparian shellfish gardeners whose activities are authorized by 4VAC20-336, General Permit No. 3 Pertaining to Noncommercial Riparian Shellfish Growing Activities.

"Oyster aquaculture product owner vessel" means any vessel, legally permitted through a no-cost permit, by an oyster aquaculture product owner, used to transport oyster aquaculture harvesters who do not possess an individual oyster aquaculture harvester permit.

"Sale" means sale, trade, or barter.

"Sell" means sell, trade, or barter.

"Selling" means selling, trading or bartering.

"Sold" means sold, traded, or bartered.

4VAC20-610-25. Oyster aquaculture permit requirements.

A. For the purposes of collecting oyster fisheries statistics from the Virginia aquaculture industry, as authorized by §28.2-204 of the Code of Virginia and in accordance with §28.2-613 of the Code of Virginia, which describes conditions that determine the duration of a lease, any oyster aquaculture product owner shall obtain an oyster aquaculture product owner's permit and shall report harvest of any oysters from leased, subleased, or fee simple ground or any aquaculture growing area within or adjacent to Virginia tidal waters in accordance with 4VAC20-610-60.

B. It shall be unlawful for any person, except an oyster aquaculture product owner permittee, oyster aquaculture harvester permittee, or a harvester designated for harvest by an oyster aquaculture product owner vessel permit, to harvest oysters from leased, subleased, or fee simple ground or any aquaculture growing area, within or adjacent to Virginia tidal waters, unless that

APPENDIX III: CHAPTER 4 VAC 20-610-10 ET SEQ. 'PERTAINING TO COMMERCIAL FISHING AND MANDATORY HARVEST REPORTING'

person is authorized to harvest oysters from areas described in this subsection by an oyster aquaculture product owner.

C. It shall be unlawful for any person permitted as an oyster aquaculture harvester to fail to possess that permit on his person while harvesting unless that person is on a permitted oyster aquaculture product owner vessel and is harvesting oysters of that oyster aquaculture product owner.

D. Minor persons younger than 18 years of age shall be exempt from the requirements to obtain an oyster aquaculture harvester's permit provided that minor person is harvesting oysters under the supervision of a legally permitted oyster aquaculture product owner.

4VAC20-610-26. Clam aquaculture permit requirements.

A. For the purposes of collecting clam fisheries statistics from the Virginia aquaculture industry, as authorized by §28.2-204 of the Code of Virginia and in accordance with §28.2-613 of the Code of Virginia, which describes conditions that determine the duration of a lease, any clam aquaculture product owner shall obtain a clam aquaculture product owner's permit and shall report harvest of any clams from leased, subleased, or fee simple ground or any aquaculture growing area, within or adjacent to Virginia tidal waters, in accordance with 4VAC20-610-60.

B. It shall be unlawful for any person, except a clam aquaculture product owner permittee, clam aquaculture harvester permittee, or a harvester designated for harvest by a clam aquaculture product owner vessel permit, to harvest clams from leased, subleased, or fee simple ground or any aquaculture growing area, within or adjacent to Virginia tidal waters, unless that person is authorized to harvest clams from areas described in this subsection by a clam aquaculture product owner.

C. It shall be unlawful for any person permitted as a clam aquaculture harvester to fail to possess that permit on his person while harvesting unless that person is on a permitted clam aquaculture product owner vessel and is harvesting clams of that clam aquaculture product owner.

D. Minor persons younger than 18 years of age shall be exempt from the requirements to obtain a clam aquaculture harvester's permit provided that minor person is harvesting clams under the supervision of a legally permitted clam aquaculture product owner.

4VAC20-610-30. Commercial Fisherman Registration License; exceptions and requirements of authorized agents.

A. In accordance with §28.2-241 C of the Code of Virginia, only persons who hold a valid Commercial Fisherman Registration License may sell, trade, or barter their harvest, or give their harvest to another, in order that it may be sold, traded, or bartered. Only these licensees may sell

APPENDIX III: CHAPTER 4 VAC 20-610-10 ET SEQ. 'PERTAINING TO COMMERCIAL FISHING AND MANDATORY HARVEST REPORTING'

their harvests from Virginia tidal waters, regardless of the method or manner in which caught. Exceptions to the requirement to register as a commercial fisherman for selling harvest are authorized for the following persons or firms only:

1. Persons taking menhaden under the authority of licenses issued pursuant to §28.2-402 of the Code of Virginia.
2. Persons independently harvesting and selling, trading, or bartering no more than three gallons of minnows per day who are not part of, hired by, or engaged in a continuing business enterprise.
 - a. Only minnow pots, a cast net or a minnow seine less than 25 feet in length may be used by persons independently harvesting minnows.
 - b. All other marine species taken during the process of harvesting minnows shall be returned to the water immediately.

B. Requirements of authorized agents.

1. No person whose Commercial Fisherman Registration License, fishing gear license, or fishing permit is currently revoked or rescinded by the Marine Resources Commission pursuant to §28.2-232 of the Code of Virginia is authorized to possess the Commercial Fisherman Registration License, fishing gear license, or fishing permit of any other registered commercial fisherman in order to serve as an agent for fishing the commercial fisherman's gear or selling the harvest.
2. No registered commercial fisherman shall use more than one person as an agent at any time.
3. Any person serving as an agent shall possess the Commercial Fisherman Registration License and gear license of the commercial fisherman while fishing.
4. When transporting or selling a registered commercial fisherman's harvest, the agent shall possess either the Commercial Fisherman Registration License of that commercial fisherman or a bill of lading indicating that fisherman's name, address, Commercial Fisherman Registration License number, date and amount of product to be sold.

C. Requirements of authorized blue crab fishery agents.

1. Any person licensed to harvest blue crabs commercially shall not be eligible to also serve as an agent.

APPENDIX III: CHAPTER 4 VAC 20-610-10 ET SEQ. 'PERTAINING TO COMMERCIAL FISHING AND MANDATORY HARVEST REPORTING'

2. Any person serving as an agent to harvest blue crabs for another licensed fisherman shall be limited to the use of only one registered commercial fisherman's crab license; however, an agent may fish multiple crab traps licensed and owned by the same person.

3. There shall be no more than one person, per vessel, serving as an agent for a commercial crab licensee.

4. Prior to using an agent in any crab fishery, the licensee shall submit a crab agent registration application to the Commission. Crab agent registration applications shall be approved by the Commissioner, or his designee, for a crab fishery licensee according to the following guidelines:

a. Only 168 agents may participate in the 2013 crab fishery, as described in subdivision 4 b of this subsection, unless the Commissioner, or his designee, approves a request for agent use because of a non-economic hardship circumstance and

b. 153 of the 168 agents may be utilized by those crab fishery licensees who received approval for agent use in 2012 or who currently are licensed by a transferred crab fishery license from a licensee approved for agent use in 2012, except that should any of these licensees described in this subdivision fail to register for agent use, applications for agent use by other 2013 licensees shall be approved on a first-come, first-serve basis, starting with those licensees who have registered prior to the effective date of this regulation.

D. Failure to abide by any of the provisions of this section, shall constitute a violation of this regulation.

E. In accordance with §28.2-241 H of the Code of Virginia, only persons with a valid Commercial Fisherman Registration License may purchase gear licenses. Beginning with licenses for the 1993 calendar year and for all years thereafter, gear licenses will be sold only upon presentation of evidence of a valid Commercial Fisherman Registration License.

Exceptions to the prerequisite requirement are authorized for the following gears only and under the conditions described below:

1. Menhaden purse seine licenses issued pursuant to §28.2-402 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.

APPENDIX III: CHAPTER 4 VAC 20-610-10 ET SEQ. 'PERTAINING TO COMMERCIAL FISHING AND MANDATORY HARVEST REPORTING'

2. Commercial gear licenses used for recreational purposes and issued pursuant to §28.2-226.2 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.

F. Exceptions to the two-year delay may be granted by the commissioner if he finds any of the following:

1. The applicant for an exception (i) has demonstrated, to the satisfaction of the commissioner, that the applicant has fished a significant quantity of commercial gear in Virginia waters during at least two of the previous five years; and (ii) can demonstrate, to the satisfaction of the commissioner, that a significant hardship caused by unforeseen circumstances beyond the applicant's control has prevented the applicant from making timely application for registration. The commissioner may require the applicant to provide such documentation as he deems necessary to verify the existence of hardship.

2. The applicant is purchasing another commercial fisherman's gear, and the seller of the gear holds a Commercial Fisherman Registration License and the seller surrenders that license to the commission at the time the gear is sold.

3. An immediate member of the applicant's family, who holds a current registration, has died or is retiring from the commercial fishery and the applicant intends to continue in the fishery.

4. Any applicant denied an exception may appeal the decision to the commission. The applicant shall provide a request to appeal to the commission 30 days in advance of the meeting at which the commission will hear the request. The commission will hear requests at their March, June, September, and December meetings.

5. Under no circumstances will an exception be granted solely on the basis of economic hardship.

4VAC20-610-40. Registration procedures.

A. An applicant may renew his Commercial Fisherman Registration License by registering during the months of December through February as commercial fishermen as follows:

1. The applicant shall complete an application for a Commercial Fisherman Registration License.

2. The applicant shall mail the completed application to the Virginia Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607.

APPENDIX III: CHAPTER 4 VAC 20-610-10 ET SEQ. 'PERTAINING TO COMMERCIAL FISHING AND MANDATORY HARVEST REPORTING'

3. The Commercial Fisherman Registration License will be returned to the applicant by mail upon validation of his application.

B. Persons desiring to enter the commercial fishery and those fishermen failing to register as provided in subdivision A may apply only during December, January or February of each year. All such applications shall be for a delayed registration and shall be made as provided below.

1. The applicant shall complete an application for a Commercial Fisherman Registration License by providing his complete name, mailing address (and 911 address if different than mailing address), social security number, birth date, weight, height, eye color, hair color, telephone number of residence, and signature.

2. The applicant shall mail the completed application to the Virginia Marine Resources Commission, 2600 Washington Avenue, Newport News, VA 23607.

3. The Commercial Fisherman Registration License will be returned to the applicant by mail two years after the date of receipt of the application by the commission. Notification of any change in the address of the applicant shall be the responsibility of the applicant.

C. No part of the Commercial Fisherman Registration License fee shall be refundable.

D. The Commercial Fisherman Registration License may be renewed annually during the months of December, January or February, only when any and all mandatory reporting harvest reports are up to date and there are no outstanding compliance issues. Any person failing to renew his license shall be subject to the delay provision of subsection B of this section.

4VAC20-610-50. Commercial hook-and-line license.

A. On or after January 1, 1993, it shall be unlawful for any person to take or harvest fish in the tidal waters of Virginia with hook-and-line, rod-and-reel, or hand line and to sell such harvest without first having purchased a Commercial Hook-and-Line License from the commission or its agent.

B. A Commercial Fisherman Registration License, as described in §28.2-241 H of the Code of Virginia, is required prior to the purchase of this license.

4VAC20-610-60. Mandatory harvest reporting.

A. It shall be unlawful for any valid commercial fisherman registration licensee, seafood landing licensee, oyster aquaculture product owner permittee, or clam aquaculture product owner permittee to fail to fully report harvests and related information as set forth in this chapter.

APPENDIX III: CHAPTER 4 VAC 20-610-10 ET SEQ. 'PERTAINING TO COMMERCIAL FISHING AND MANDATORY HARVEST REPORTING'

B. It shall be unlawful for any recreational fisherman, charter boat captain, head boat captain, commercial fishing pier operator, or owner of a private boat licensed pursuant to §§28.2-302.7 through 28.2-302.9 of the Code of Virginia, to fail to report recreational harvests, upon request, to those authorized by the commission.

C. All registered commercial fishermen and any valid seafood landing licensee shall complete a daily form accurately quantifying and legibly describing that day's harvest from Virginia tidal waters and federal waters. The forms used to record daily harvest shall be those provided by the commission or another form approved by the commission. Registered commercial fishermen and seafood landing licensees may use more than one form when selling to more than one buyer.

D. Any oyster aquaculture product owner permittee or clam aquaculture product owner permittee shall complete a monthly form accurately quantifying and legibly describing that month's harvest from Virginia tidal waters. The forms used to record monthly harvest shall be those provided by the commission or another form approved by the commission.

E. Registered commercial fishermen, seafood landing licensees, valid oyster aquaculture product owner permittees and valid clam aquaculture product owner permittees shall submit a monthly harvest report to the commission no later than the fifth day of the following month. This report shall be accompanied by the daily harvest records described in subsection F of this section. Completed forms shall be mailed or delivered to the commission or other designated locations.

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.

2. The monthly harvest report from oyster aquaculture product owner permittees and clam aquaculture product owner permittees shall include the name, signature, permit number, lease number, date of the last day of the reporting month, city or county of landing, gear (growing technique) used, weight or amount of species harvested by market

APPENDIX III: CHAPTER 4 VAC 20-610-10 ET SEQ. 'PERTAINING TO COMMERCIAL FISHING AND MANDATORY HARVEST REPORTING'

category, total number of individual crew members for the month, and buyer or private sale information.

3. The monthly harvest report and daily harvest records from seafood landing licensees shall include the name and signature of the seafood landing licensee and his seafood landing license number; buyer or private sale information; date of harvest; city or county of landing; water body fished; gear type and amount used; number of hours gear fished; number of hours the seafood landing licensee fished; number of crew on board, including captain; nonfederally permitted 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).

G. Registered commercial fishermen, oyster aquaculture product owner permittees and clam aquaculture product owner permittees not fishing during a month, or seafood landing licensees not landing in Virginia during a month, shall so notify the commission no later than the fifth of the following month by postage paid postal card provided by the commission or by calling the commission's toll free telephone line.

H. Any person licensed as a commercial seafood buyer pursuant to §28.2-228 of the Code of Virginia shall maintain for a period of one year a copy of each fisherman's daily harvest record form for each purchase made. Such records shall be made available upon request to those authorized by the commission.

I. Registered commercial fishermen, seafood landing licensees, oyster aquaculture product owner permittees and clam aquaculture product owner permittees shall maintain their harvest records for one year and shall make them available upon request to those authorized by the commission.

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.

K. The reporting of oyster harvest and transactions by licensed seafood buyers, oyster aquaculture product owner permittees, clam aquaculture product owner permittees, and any registered commercial fisherman who self-markets his oyster harvest shall be made in accordance with 4VAC20-200 and Article 3 (§28.2-538 et seq.) of Chapter 5 of Title 28.2 of the Code of Virginia.

L. The reporting of the harvest of federally permitted species from beyond Virginia's tidal waters that are sold to a federally permitted dealer shall be exempt from the procedures described in this section.

APPENDIX III: CHAPTER 4 VAC 20-610-10 ET SEQ. 'PERTAINING TO COMMERCIAL FISHING AND MANDATORY HARVEST REPORTING'

M. The owner of any purse seine vessel or bait seine vessel (snapper rig) licensed under the provisions of §28.2-402 of the Code of Virginia shall submit the Captain's Daily Fishing Reports to the National Marine Fisheries Service, in accordance with provisions of Amendment 1 to the Interstate Fishery Management Plan of the Atlantic States Marine Fisheries Commission for Atlantic Menhaden, which became effective July 2001.

4VAC20-610-65. Noncompliance.

A. Any initial violation of 4VAC20-610-60 by any registered commercial fisherman, oyster aquaculture product owner permittee, clam aquaculture product owner permittee, or seafood landing licensee shall be subject to penalties as described in subdivisions 1 through 4 of this subsection.

1. Any failure to report harvest or no harvest activity or no landing in Virginia within one to three months after that report was due shall result in a minimum of one year of probation.
2. Any failure to report harvest or no harvest activity or no landing in Virginia within four to six months after that report was due shall result in a minimum of two years of probation.
3. Any failure to report harvest or no harvest activity or no landing in Virginia within seven to twelve months after that report was due shall result in a minimum of six months of suspension of all commercial licenses and permits.
4. Any failure to report harvest or no harvest activity or no landing in Virginia more than twelve months after that report was due shall result in a minimum of one year of suspension of all commercial licenses and permits.

B. Any second or subsequent violation of 4VAC20-610-60 by any registered commercial fisherman, oyster aquaculture product owner permittee, clam aquaculture product owner permittee, or seafood landing licensee may be subject to having his commercial licenses and permits suspended by the Commission.

4VAC20-610-70. Penalty.

A. As set forth in §28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

APPENDIX III: CHAPTER 4 VAC 20-610-10 ET SEQ. 'PERTAINING TO COMMERCIAL FISHING AND MANDATORY HARVEST REPORTING'

B. In addition to the penalties described by law, any person violating any provision of this chapter may be subject to license suspension or revocation.

NORTH CAROLINA REPORT FOR THE IMPLEMENTATION OF AMENDMENT 2 TO THE INTERSTATE FISHERY MANAGEMENT PLAN FOR ATLANTIC MENHADEN

April 15, 2013

Introduction

This report details the implementation plan for North Carolina to meet the requirements of Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden. Amendment 2 will be effective on July 1, 2013 however all menhaden landings will count toward North Carolina's total allowable catch (TAC) beginning January 1, 2013. The TAC will be managed on a state basis and is based on a 20% reduction from the recent three year average. The TAC for North Carolina is 833.23 MT (1,836,958 lbs) and makes up 0.49 of the total coast wide TAC of 170,800 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 TAC is reached. A notice of closure will be submitted to the Commission at the time of closure and will be a part of the 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-289.4;

Eff. March 1, 1996;

Amended Eff. October 1, 2008.

b) The mechanism to adjust NC's TAC 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 TAC.

c) The mechanism to enable transfer of unused TAC between NC 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 TAC will then be adjusted to reflect that transfer. ASMFC will be notified of any transfer activity by NC.

d) The mechanism to repay any over-harvest of quota will be through a letter confirming the over-harvest poundage and new adjusted TAC for that year. ASMFC will be notified

by NC 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 fisheries following the harvest of the state's TAC 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 regardless of the number of persons, harvest methods or vessels involved. It will be made clear in this proclamation that the vessel is part of the operation. Multiple carrier vessels with purse seines are unlawful in NC coastal waters. Trip limits will also be applied through 15A NCAC 030M .0512 for operations of the haul seine fishery that does employ carrier vessels.

f) North Carolina does not anticipate opting for episodic events

g) Not applicable

2. Monitoring Requirements

a) Catch Reporting Plan

Catch reporting will be through the NC 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 capability to implement the collection of weekly data at this time. NC proposes to monitor the TAC on a monthly basis. Based on 2009-2011 data there are 70-80+ dealers reporting menhaden with 90-95% reported by e-dealers. The large landings during this timeframe were from fly nets but given the status of Oregon Inlet that fishery did not exist in 2012 and may not exist this year. The remainder of the landings are by gill net, pound net, 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 NC 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 will be 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 Trip Ticket Program. Data elements will be the same as stated in 2a). Numbers of pound nets fished per day or per trip are not collected through the trip ticket program. As noted in 2c), 10-fish samples will be collected from pound net trips.

3. De minimis

a) North Carolina does not have a reduction fishery and is considered eligible for de minimis. North Carolina does not meet the criteria of landings less than 1% of the total coast wide bait landings for the most recent two years (2010-2011).

b) Not applicable.

South Carolina Department of Natural Resources



Alvin A. Taylor
Director
Robert H. Boyles
Deputy Director for
Marine Resources

April 9, 2103

Michael Waine
ASMFC Menhaden PRT Chair
1050 N. Highland Street, Suite 200A – N
Arlington, VA 22201

Dear Michael,

This letter is provided to serve as South Carolina's plan for full implementation of the management measures and compliance criteria of Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden.

Pertaining to the Amendment 2 Compliance Criteria listed below, South Carolina intends to take the following actions:

Commercial Fishery Management Measures

No action is necessary since South Carolina has no directed or non-directed commercial menhaden fishery and no indication of any interest in establishing a fishery in the near future. Commercial menhaden landings were last documented in 1997.

Monitoring Requirements

Under authority of existing South Carolina State Law (SC Code Sections 50-5-355; 360; 365; 370 and 380) this state has established a thorough, inclusive catch reporting and monitoring system that requires all commercial fisheries harvesting activities from state waters to be conducted by SC Licensed Commercial Fishermen. Additionally, all commercial fisheries products landed in South Carolina, whether from state or federal waters, must be landed by a SC Licensed Commercial Fisherman (resident or non-resident) and must go through a SC Licensed Wholesale Dealer who must report all trip-level landings and effort data to the SCDNR Office of Fisheries Management, Fisheries Statistics Section on a monthly basis. Since South Carolina has no existing commercial menhaden fishery no landings are anticipated to be reported in the near future. However, if such landings were to occur from any new directed or existing non-directed fishery (by-catch) they would be captured and documented by this system. South Carolina will continue to monitor for the occurrence of menhaden landings and any interest in development of a fishery in this state.

With no existing commercial fishery and no designated TAC, monitoring requirements associated with a biological sampling program are not anticipated.

De minimis

Based on absence of documented menhaden landings and any evidence of an established fishery in this state, and given the current requirements established for criteria for *De Minimis* in the menhaden fishery, South Carolina anticipates requesting *de minimis* status for this fishery each year for the foreseeable future, unless something in the fishery changes.

Please let me know if you have any questions or require any additional information from us.

Sincerely,

A handwritten signature in black ink that reads "Melvin Bell". The signature is written in a cursive style with a large, stylized 'M' and 'B'.

Melvin Bell
Director,
Office of Fisheries Management
Marine Resources Division

cc: R. Boyles, SCDNR
W. Jenkins, SCDNR
J. Ballinger, SCDNR



State of Georgia Implementation Plan:
Amendment 2 to the Interstate Fishery Management Plan
for Atlantic Menhaden

Submitted by:

Jim Page
Georgia Department of Natural Resources
Coastal Resources Division
Marine Fisheries Section
One Conservation Way, Suite 300
Brunswick, Georgia 31520
(912) 264-7218

April 2013

Introduction

The State of Georgia submits the following implementation plan pursuant to the requirements of Amendment 2 to the Interstate Fishery Management Plan (FMP) for Atlantic Menhaden. As a state without reduction processing capabilities and no commercial landings of Atlantic menhaden, Georgia intends to continue requesting *de minimis* status for the foreseeable future.

Amendment 2 Compliance Criteria

1. Commercial Fishery Management Measures

- a) A mechanism to close directed commercial fisheries in your state once the TAC (or a percentage thereof) has been reached (see TAC table below). Every state is required to submit their official dated closure notice to the Commission at the time of closure and as part of their annual compliance reports (*TAC Specification 4.2.1.1 and TAC Allocation 4.2.1.3*).

State	Allocation %	TAC (MT)
ME	0.04	66.58
NH	0.00	0.05
MA	0.84	1417.94
RI	0.02	30.29
CT	0.02	29.50
NY	0.06	93.76
NJ	11.19	18924.42
DE	0.01	22.33
MD	1.37	2320.98
PRFC	0.62	1049.69
VA	85.32	144272.84
NC	0.49	833.23
SC	0.00	0.00
GA	0.00	0.00
FL	0.02	30.39

Note: The table of final TAC allocations was based on a coastwide TAC of 170,800 metric tons (MT) with a 1% TAC set aside for episodic events. These TACs are subject to change based on the number of states that opt into the episodic set aside.

- b) A mechanism to adjust a state's TAC as required by the Atlantic States Marine Fisheries Commission.
- c) A mechanism to enable transfer of unused TAC between states if warranted, and the ability to adjust a state's TAC as it relates to the transfer of quota (*Quota Transfers 4.2.1.4*).
- d) A repayment mechanism to reduce the subsequent year's quota to account for any over-harvest of the TAC on a pound for pound basis (*Quota Payback 4.2.1.6*).
- e) A bycatch allowance mechanism for non-directed fisheries following the harvest of the state's TAC and closure of directed fisheries (*Bycatch Allowance 4.2.1.7*).

Bycatch allowance has the following mandatory provisions:

- i. 6,000 pound bycatch landing limit per calendar day for all non-directed fisheries
 - ii. Prohibit a vessel from making multiple trips in one day to land more than 6,000 lbs
 - iii. Prohibit the use of multiple carrier vessels per trip to offload bycatch exceeding 6,000 pounds
 - iv. Bycatch reporting requirements as detailed in section 2(b).
- f) A mechanism to adjust a state's TAC and effort controls if opting into the episodic events set aside (*Episodic Events Set Aside 4.2.1.8*). Logistics of the episodic events set aside are still being developed by the Board including a qualifying definition of an episodic event. Therefore, at this point, implementation plans do not need to address this set aside.
 - g) For Virginia only, a Chesapeake Bay reduction fishery harvest cap with the following provisions. (*Chesapeake Bay Reduction Fishery Harvest Cap 4.2.2*.)
 - i. Prohibit harvest for reduction purposes within the Chesapeake Bay when 100% of 87,216 metric tons (mt) is harvested from the Chesapeake Bay.
 - ii. A repayment mechanism to reduce the subsequent year's harvest cap to account for any over-harvest of the cap on a pound for pound basis.
 - iii. A rollover mechanism to increase the subsequent year's harvest cap to account for unlanded fish to a maximum of 10,976 mt. The rollover applies to the following year only, and will not be carried for multiple years.

Note—All harvest within the Chesapeake Bay will count against the state's overall TAC

Proposal To Address These Criteria: The State of Georgia has no directed commercial fisheries for Atlantic menhaden and does not anticipate this changing in the foreseeable future. Thus, it is expected that the State of Georgia will continue to have a zero TAC; and no reported landings of Atlantic menhaden for either directed or non-directed fisheries. If Georgia qualified to participate in an episodic event, those that wish to harvest Atlantic menhaden would be required to obtain a Letter of Authorization from GADNR allowing them to harvest and land Atlantic menhaden for commercial purposes. The terms and conditions of this Letter of Authorization would require harvesters to report their landings weekly. The State of Georgia would close the commercial harvest when 80% of the TAC was reached.

2. Monitoring Requirements

- a) A catch reporting system to enable weekly monitoring of a state's TAC, unless a state can demonstrate the effectiveness of an alternate reporting time schedule as approved by the Board (*Quota Monitoring 3.6.1.2*). A state's catch reporting plan must include the following information.

- i. Indicate whether harvesters, dealers, or both are required to submit reports. The PRT recommends harvester reporting to account for Atlantic menhaden retained for personal use.
 - ii. Specify the amount of detail reported (e.g., trip level or summary). Define the data elements that are required to be collected (by license type or gear type where applicable). The Amendment recommends trip level reporting with the minimum data reporting elements as required by the Atlantic Coastal Cooperative Statistics Program. (1) trip start date (2) vessel identifier (3) individual fisherman identifier (4) dealer identification (5) trip number (6) species (7) quantity (8) units of measurement (9) disposition (10) county or port landed (11) gear (12) quantity of gear (13) number of sets (14) fishing time (15) days/hours at sea (16) number of crew (17) area fished.
 - iii. The plan must require purse seine and bait seine vessels (or snapper rigs) submit trip level reports (e.g., Captain Daily Fishing Reports).
 - iv. Specify the frequency and mechanism of submitting reports. The Amendment recommends weekly reporting.
- b) A mechanism to require timely reporting of bycatch allowance landings by non-directed fisheries through the reporting system approved by the Board in section 2(a).
Note—All bycatch from non-directed fisheries during a closed season must be reported separately from directed harvest in annual compliance reports. Bycatch during the open season will count towards a state’s TAC.
- c) A mandatory biological sampling program to collect age and length data from the commercial bait harvest to support improved stock assessments (*Biological Data 3.6.2.1*).
- i. One 10-fish sample (age and length) per 300 metric tons landed for bait purposes for ME, NH, MA, RI, CT, NY, NJ, DE.
 - ii. One 10-fish sample (age and length) per 200 metric tons landed for bait purposes for MD, PRFC, VA and NC
- Note**—The Amendment recommends collecting the samples by gear type and defines each 10 fish sample as an independent sampling event; therefore, multiple 10-fish samples should not be collected from the same landing event.
- d) A mandatory monitoring/sampling program that requires all states with a pound net fishery collect catch and effort data elements (*Adult CPUE Index 3.6.2.2*). Mandatory reported data elements are,
- i. total pounds (lbs) landed per day
 - ii. number of pound nets fished per day
- Note**—In order to characterize selectivity of this gear in each state, a goal of collecting five 10-fish samples from pound net landings annually is recommended.

Proposed Plan To Address These Criteria: Currently having no commercial landings of Atlantic menhaden and a zero TAC, Georgia is expected to be granted *de minimis* status and is thus exempt from the above monitoring requirements. However, it is important to note, though Georgia continues to have no commercial landings of Atlantic menhaden, the requirement to report any such landings should they occur is clearly defined in Georgia law as follows:

O.C.G.A. 27-4-118 states “a) *It shall be unlawful for any person landing seafood in this state to fail to maintain at all times a record book showing the amount of seafood landed per trip; the name and address of the person or persons to whom sold; the date of sale and the time and place of delivery; and such other information as may be required by the department.* b) *Each person required to maintain*

records pursuant to the provisions of subsection (a) of this Code section shall report such information to the department, whose address for the purpose of reporting shall be the Coastal Resource Division headquarters, at such times and in such manner as the board provides by rule or regulation.

O.C.G.A. 27-4-136 states “a)(1) It shall be unlawful for any person.....dealing in purchasing, landing, packing, or supplying raw shrimp, shellfish, crabs, FISH, or other seafood for commercial purposes to fail to keep a record in which is entered the amount of shrimp, shellfish, crabs, FISH, or other seafood taken from Georgia water for commercial purposes; the name of each person from whom purchased; the name, number, and approximate tonnage of the boat in which they were brought to the facility; the number of calendar days expended in harvesting the product; the approximate location or locations of harvest; the quantity canned and packed for shipment; the date and amount of each shipment; and such other information as the department requires.

Board Rule 391-2-4-.09 states “3) Effective October 1, 1998 all seafood dealers, commercial crab harvesters, and commercial shrimp castnet harvesters are required to report fishing trip level records on a monthly basis directly to the Department as specified below. All commercial seafood harvesters shall submit fishing trip level records to the seafood dealer at the time of transaction as specified below. Such fishing trip level records must be recorded at the time of the transaction on forms approved by the Department. 4) Monthly commercial fishing records are to be submitted on a form supplied by the Department or on an alternate form approved by the Department.....5) Seafood dealers, commercial crab harvesters, and commercial shrimp harvesters are required to submit written monthly commercial fishing records to the Department by the tenth day of the subsequent month.....All other commercial seafood harvesters are required to submit fishing trip level records directly to the seafood dealer at the time of transaction. 6) a) Seafood Dealer. At the time of the transaction the seafood dealer is required to record the information referenced below. All information must be complete and accurate. Reporting records of subsequent sales between dealers is not required. The information contained in the record shall include the following:

- 1. Trip Date – date the fishing trip started.*
- 2. Vessel ID – Coast Guard documentation or state registration number*
- 3. Individual ID – Personal commercial fishing license number*
- 4. Trip Number – used only if there is >1 fishing trip per day*
- 5. Species – each species landed, sold, or discarded*
- 6. Quantity – the amount of each species landed, sold, or discarded*
- 7. Units of measurement – landed units (pounds, each, bushels, etc.)*
- 8. Disposition – commercial food, discards, bait, per food species sold*
- 9. Ex-vessel value or price – dollar value or price per unit of species sold*
- 10. County or port landed – location where product was unloaded (dock, boat ramp)*
- 11. State landed – state where product was landed*
- 12. Dealer ID – dealer identification number*
- 13. Unloading date – the date of landing at the dealer*
- 14. Market – market category that effects the price (count size, etc)*
- 15. Grade – landing condition that affects price (fillet, gutted)*
- 16. Gear – type of gear used to catch landed species*
- 17. Quantity of gear – number of pots, etc.*
- 18. Days at sea – days from the start of the fishing trip to dock in days and hours*
- 19. Number of crew – number including captain*
- 20. Fishing time – total amount of time gear was in the water*

21. Area fished – specific area within water body where fishing occurred

22. Number of sets – total number of sets or tows per trip

b) Commercial fishing records for each fishing trip made by commercial seafood harvesters must be submitted to the seafood dealer to whom the product was sold at the time of transaction. Commercial fishing records to the seafood dealer by commercial seafood harvesters must contain all of the information specified in subparagraphs (6)(a)(1 – 22) above.

3. *De minimis*

a) State(s) with a reduction fishery are not eligible for *de minimis* consideration. 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 (*Criteria for De Minimis Consideration 4.5.3.1*).

Note—Based on 2010-2011 bait landings data, ME, NH, RI, CT, NY, DE, SC, GA, and FL are eligible for *de minimis* status in 2013).

b) If granted *de minimis* status by the Board, states are exempt from implementation of 2(c) and 2(d), but must still submit a plan to implement all other compliance criteria as detailed in this memo. The Board also approved a *de minimis* exemption for NH, SC and GA from implementation of timely reporting, but those states are still required to describe their current reporting structure following the guidance in section 2(a). (*Plan Requirements if De Minimis Status is Granted 4.5.3.2*)

Proposed Plan To Address These Criteria: Georgia has no commercial landings of Atlantic menhaden for the current and previous two years and has a TAC of zero. Consequently, we request *de minimis* status. Should commercial landings occur in Georgia, the current reporting system employed by GADNR utilizes the minimum data elements specified by the ACCSP and will capture information necessary to meet the requirements stipulated in section 2(a)(i, ii, and iv) of Amendment 2 as stated above. As specified in Georgia law, seafood harvesters are required to provide detailed landings information to the purchasing dealer. In turn, the dealer is then required to provide that information to the GADNR on a monthly basis, with reports due no later than the 10th of the month following when harvesting occurred. If reported landings are provided to the GADNR, these data would be provided to the ASMFC.

Summary

Based on zero commercial landings of Atlantic menhaden in the current and previous two years; a TAC of zero; and no current directed commercial fisheries for the species, Georgia continues to request *de minimis* status. Though Georgia currently has no commercial landings of Atlantic menhaden, the data reporting infrastructure currently in place will adequately capture the necessary information requested by ASMFC should commercial landings of Atlantic menhaden occur in the State of Georgia.

MEMORANDUM

To: Michael Waine
From: Jim Estes
Date: 4/15/2013
Re: Florida Implementation Plan for Amendment 2 of the Interstate Fishery Management Plan for Atlantic Menhaden

a) **Commercial Fishery Management Measures**

- a) *Mechanism to Close Fishery (TAC Specification 4.2.1.1 and TAC Allocation 4.2.1.3)*- 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 (FWC) abides by Ch. 120, Florida Statutes for due process procedures when making rules. The public is notified of rulemaking activity through the Florida Administrative Register. Rulemaking often includes direct contact with those who may be affected, extensive discussions with stakeholder groups, and public meetings to gather input from interested parties. Final rulemaking authority is held by the Governor-appointed Commission, which meet five times a year in locations throughout the state. Implementation of the Commercial Fishery Management Measures for Amendment 2 of the Interstate Fishery Management Plan for Atlantic Menhaden approved by the Atlantic States Marine Fisheries Commission will be a two step process. During the 2013 fishing season, the menhaden commercial fishery will be closed by executive order when the commercial harvest is projected to reach the 2013 annual quota (30.39 MT). A rule change will be advertised and presented to the Florida Fish and Wildlife Conservation Commission at the Commission's September meeting to allow for closures of the fishery per FS 120.81(5) (Appendix 1) based on Atlantic States Marine Fisheries Commission annual TAC, less any quota transfers or payback for previous year's overages. This rule would then be considered for approval at the November Commission meeting. A copy of the Executive order closing the fishery will be submitted as part of Florida's compliance report.
- b) *Adjustment of a state's TAC*- Florida will adjust its TAC by referring to the Atlantic States Marine Fisheries Commission annual TAC in FAC rule.
- c) *Transfer of unused TAC (Quota Transfers 4.2.1.4)*- Similar to the current bluefish quota transfer process, 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 Regional Administrator of the National Marine Fisheries Service.
- d) *Quota Payback (Quota Payback 4.2.1.6)*- Repayment language will be created with FAC rule language to allow adjustment of TAC.
- e) *Bycatch Allowance (Bycatch Allowance 4.2.1.7)*- Proposed FAC rule language will state that commercial landings of menhaden after seasonal closure will not be allowed.

- f) *Episodic event set aside (Episodic Events Set Aside 4.2.1.8)-*
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 (Chesapeake Bay Reduction Fishery Harvest Cap 4.2.2.)-*
N/A

2. Monitoring Requirements

a) Catch Reporting System (Quota Monitoring 3.6.1.2)-

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. Analysis of the historic commercial menhaden landings indicate that the current quota for menhaden may be overshot should landing reporting only occur monthly. Therefore, 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 and because of the sporadic nature of Florida's bait menhaden fishery, it would be easy to overshoot the quota. Therefore, for the 2013 fishing year, when landings are within half of the quota, weekly monitoring by telephoning dealers who have been reporting menhaden landings will be made until 70% of the quota is reached. The fishery will then be closed when 70% of the quota is reached. A rule change proposal will be submitted at the September Florida Fish and Wildlife Conservation Commission meeting to require weekly electronic reporting of menhaden landings by dealers. These data will be monitored until 70% of the quota is met. At that time the commercial fishery will be closed by rule.

i. Reporting entities-

Florida will require dealer reporting per 68E-5, FAC (Appendix 2). While fishers are required to sell only to licensed wholesale dealers, it is the dealer that carries the responsibility for reporting per rule. We believe that requiring harvesters to report personal use would be expensive and do not believe that there is significant harvesting by commercial harvesters for personal use.

ii. Reporting level-

Trip tickets already detail trip level information per 65E-5.003, FAC (Appendix 2), including (1) trip start date (2) vessel identifier (3) individual fisherman identifier (4) dealer identification (5) trip number (6) species (7) quantity (8) units of measurement (9) disposition (10) county or port landed (11) gear (12) quantity of gear (13) number of sets (14) fishing time (15) days/hours at sea (16) number of crew (17) area fished.

iii. *Purse seine and bait seine vessel reporting-*

Over the past five years 98% of Florida commercial landings of menhaden were taken by cast net. Therefore, Florida does not plan to change the reporting requirements rule, and only dealers will be required to report at the trip level.

iv. *Frequency and mechanism of reporting-*

For the 2013 fishing year, when landings are within half of the quota, according to the currently required monthly paper and electronic trip ticket system, weekly monitoring by telephoning reporting dealers will be made until 70% of the quota is reached. The fishery will then be closed when 70% of the quota is reached. A rule change proposal will be submitted at the September Florida Fish and Wildlife Conservation Commission meeting to require weekly electronic reporting of menhaden landings by dealers. Dealers will submit trip tickets using the Bluefin Data program. During catastrophes, when electronic reporting is not practical, weekly telephone reports will be required. These data will be monitored until 70% of the quota is met. At that time the commercial fishery will be closed by rule.

b) *Bycatch-*

A rule change will be proposed to require any dealer purchasing menhaden to provide electronic weekly reporting. The proposed rule change will include a provision that purchase of bycatch of menhaden after season closure will not be allowed.

c) *Biological sampling program (Biological Data 3.6.2.1).-*

Approval of Florida's request for *de minimis* status will exempt Florida from biological sampling requirements.

d) *Pound net fishery data (Adult CPUE Index 3.6.2.2)-*

Approval of Florida's request for *de minimis* status will exempt Florida from this requirement. However, should pound nets be used, data from the current trip ticket program will provide information about total pounds (lbs) landed per day and number of pound nets fished per day. However, 10-fish samples from this gear will not be collected.

3. *De minimis*

a) *Criteria for de minimis status (Criteria for De Minimis Consideration 4.5.3.1)-*

Based on 2010-2011 bait landings data, ME, NH, RI, CT, NY, DE, SC, GA, and FL are eligible for *de minimis* status in 2013. Florida requests *de minimis* status.

Appendix 1

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 2

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.



Atlantic States Marine Fisheries Commission

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MEMORANDUM

To: Atlantic Menhaden Management Board
From: Atlantic Menhaden Technical Committee
RE: Update on 2014 Benchmark Stock Assessment Progress
Date: May 7, 2013

In preparation for the 2014 benchmark stock assessment, the Atlantic menhaden Technical Committee (TC) and Stock Assessment Subcommittee (SAS) have held four joint webinars and one in-person meeting to date. Given the amount of preparatory work required for this benchmark, the TC/SAS felt it necessary to begin preliminary data gathering and analyses in 2013. The primary goal of these meetings is to identify and explore the utility of agency-collected data sources in advance of the 2014 Data and Assessment Workshops. These meetings have also included preliminary discussions about potential alternative modeling approaches. The TC/SAS plan to continue meeting regularly via webinar and at TC Meeting Weeks through 2013 to ensure steady progress on data collection tasks. Final vetting of data and decision-making with regard to modeling approaches will be made at the 2014 Data and Assessment Workshops, respectively. Consideration of public data submissions and analyses will occur at the 2014 workshops as well.

Below is a brief summary of topics discussed and progress made at each meeting to date. A tentative timeline for 2014 Atlantic menhaden workshops follows.

Meeting summaries:

December 18, 2012 webinar

- Discussed alternative modeling approaches that account for spatial heterogeneity in stock movement and fishery selectivity and identified data sources that might inform such models (e.g., tagging).
- Brainstormed potential sources of new data not included in previous assessments and developed plan to begin examining them.

January 25, 2013 webinar

- Discussed utility of historical tagging data for benchmark assessment.
- Discussed potential data sources available to build a coastwide, fixed-gear, fisheries-dependent index of adult abundance. Also discussed recommendations for biosampling requirements for Atlantic menhaden fixed gear fisheries.

February 26, 2013 webinar

- Further discussed alternative modeling approaches that account for spatial and seasonal heterogeneity in age structure and fishery selectivity.
- Discussed Multi-Species Virtual Population Analysis and prioritized tasks necessary to prepare it for use in the upcoming benchmark assessment.
- Discussed previous treatment of the Potomac River Fisheries Commission (PRFC) index and the juvenile abundance indices to identify potential new data analysis pathways.
- Discussed potential new data sources (e.g., VA shad survey) and assigned data collection tasks.

M#13-032

April 3, 2013 in-person meeting

- Identified draft criteria for inclusion of data sources in the stock assessment to be considered at the 2014 Data Workshop. Selected data elements desired for development of future catch per unit effort (CPUE) indices.
- Reviewed existing state data (Maine to Florida) collected from fixed gear fisheries that have potential to be developed into adult CPUE indices.
- Successfully identified new data sources (5 pound net or fish trap datasets and 5 gill net datasets) as candidates for index development. Planned additional data exploration to determine proper treatment of pound net data and utility of non-pound net gear data.
- Discussed development of state, regional, and coastwide indices.
- Reviewed details of historical tagging data study.

May 6th, 2013 webinar

- Received presentation from Kristen Anstead (Old Dominion University) on otolith microchemistry research identifying nursery contributions to the adult Atlantic menhaden population.
- Reviewed additional details gathered on fixed gear fisheries data, including effort measurements.
- Reviewed comparisons of age readings between MD Department of Natural Resources and NOAA Fisheries Beaufort Lab.
- Reviewed comparison of age distributions between purse seine and pound net bait fisheries. Additional analyses that incorporate seasonality and spatial considerations were identified for completion and review at future workshops.
- Identified 5 pound net (MA, RI, MD, PRFC, VA) and 1 gill net (NJ) data source that will be considered more thoroughly at the 2014 Data Workshop.

Tentative timeline for 2014 Atlantic menhaden workshops:

January 2014 – Data Workshop

June 2014 – Assessment Workshop

December 2014 – Peer Review Workshop (SEDAR)

DRAFT TERMS OF REFERENCE FOR THE 2014 ATLANTIC MENHADEN STOCK ASSESSMENT

Terms of Reference for the Stock Assessment Process

1. Review and vet all available data sources, including current and historical fishery-dependent and fishery-independent data. Justify inclusion or elimination of each data source. If possible, identify and prepare new data that could be used to inform the assessment of mortality and migration rates, commercial selectivity, and coastwide adult and/or spawning stock trends.
2. Characterize precision and accuracy of all data sources used in the assessment.
 - a. Provide descriptions of each included data source (e.g., geographic location, sampling methodology, potential explanation for outlying or anomalous data).
 - b. Discuss data strengths and weaknesses (e.g. temporal and spatial scale, gear selectivities, sample size) and their potential effects on the assessment.
 - c. Describe calculation and potential standardization of abundance indices.
 - d. Discuss trends and magnitude of uncertainty estimates (e.g., standard errors).
3. Develop population assessment models that are compatible with available data and can be used to estimate population parameters (e.g., F, biomass, abundance) and biological reference points. Analyze model performance.
 - a. Clearly and thoroughly explain model strengths and limitations.
 - b. Justify choice of CVs, effective sample sizes, and/or likelihood weighting schemes.
 - c. Describe stability of the model(s). Perform sensitivity analyses for starting parameter values, priors, etc. and conduct other model diagnostics as necessary.
 - d. 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.
 - e. State assumptions made for all models and explain the likely effects of assumption violations on model outputs.
 - f. If multiple models were considered, justify the choice of preferred model and attempt to explain any differences in results among models.
4. Characterize uncertainty of model estimates and biological or empirical reference points.
5. Perform retrospective analyses, assess magnitude and direction of any pattern detected, and discuss implications of any observed retrospective pattern for uncertainty in population parameters (e.g., F, SSB), reference points, and/or management measures.
6. Recommend stock status as related to current reference points (thresholds and targets). Recommend alternative reference points, if appropriate.
7. Identify potential ecological reference points that account for Atlantic menhaden's role as a forage fish. Provide proposed methodology, a model development plan, and example results using preliminary model configurations, if time allows. *Note: finalized ERPs will not be developed in time for the 2014 Atlantic menhaden peer review or 2015 Management Board meetings. Additional technical work and peer review will be necessary before ERPs will be available for management use.*

8. Develop detailed short and long-term lists of prioritized recommendations for future research, data collection, and assessment methodology. Highlight improvements to be made by next benchmark review.

9. 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 External Peer Review Panel

1. Evaluate the data used in the assessment.
 - a. Are data decisions made during the DW and AW justified (i.e. sound and robust)?
 - b. Are input data series reliable and sufficient to support the assessment approach and findings?
 - c. Are data applied properly within the assessment?
 - d. Are data uncertainties acknowledged, reported, and within normal or expected levels?
2. Evaluate the methods used to assess the stock, taking into account available data.
 - a. Are methods scientifically sound and robust?
 - b. Are assessment models configured properly and used consistent with standard practices?
 - c. Are the methods appropriate for the available data?
 - d. If multiple models were considered, evaluate the explanation of any differences in results and justification of a base model.
3. Consider how uncertainties in the assessment, and their potential consequences, are addressed.
 - a. Comment on the degree to which methods used to evaluate uncertainty reflect and capture the significant sources of uncertainty in the population, data sources, and assessment methods.
 - b. Are the implications of uncertainty on technical conclusions are clearly stated?
4. Evaluate the assessment findings with respect to the following:
 - a. Are estimates of biomass, abundance, and exploitation rate reliable and consistent with input data and population biological characteristics? Are they useful to support inferences on stock status?
 - b. Is the stock overfished? What information supports this conclusion?
 - c. Is the stock undergoing overfishing? What information supports this conclusion?
 - d. Is there an informative stock recruitment relationship? Is the stock recruitment curve reliable and useful for evaluation of productivity and future stock conditions?
 - e. Are the quantitative estimates of the threshold reference points reliable for this stock? If not, are there other indicators that may be used to inform managers about stock trends and conditions?
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. Review the TC's recommendations on research, data collection, and assessment methodology and make any additional recommendations or prioritizations, if warranted.

7. Provide guidance on key improvements in data or modeling approaches which should be considered when scheduling the next assessment.

8) Provide feedback on the proposed ecological reference points that account for Atlantic menhaden's role as a forage fish. Evaluate the appropriateness and feasibility of the proposed approach. Provide alternative suggestions, if necessary. *Note: this TOR is aimed at obtaining preliminary feedback on a proposed reference point development approach that would inform future ecosystem-based management plans. Further technical development and peer review would be required before these reference points would be used in management.*

9. Prepare a peer review panel 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.