

Atlantic States Marine Fisheries Commission

Atlantic Menhaden Management Board

*August 6, 2013
5:00 – 6:00 p.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*) 5:00 p.m.
2. Board Consent 5:05 p.m.
 - Approval of Agenda
 - Approval of Proceedings from May 2013
3. Public Comment 5:10 p.m.
4. Technical Committee Report (*G. Nessler*) 5:15 p.m.
 - Clarification on terms of reference **Action**
 - Benchmark stock assessment progress report
5. Consider Data Collection for Proposed Aerial Survey 5:30 p.m.
 - Technical committee review (*G. Nessler*)
6. Consider 2013 FMP Review and State Compliance (*M. Waine*) **Action** 5:50 p.m.
7. Other Business/Adjourn 6:00 p.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
Tuesday, August 6, 2013
5:00 – 6:00 p.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: May 22, 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 May 22, 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 Technical Committee Report (5:15 – 5:30 p.m.)
Background
<ul style="list-style-type: none"> • At its May 2013 meeting, the Board approved the terms of reference (ToRs) for the upcoming benchmark stock assessment in 2014. A suggested change was made to the ToRs since the May meeting (Briefing CD). • The Board requested quarterly progress reports on the upcoming benchmark stock assessment for Atlantic menhaden, currently scheduled for 2014 (Briefing CD).
Presentations
<ul style="list-style-type: none"> • Edit to Terms of Reference by G. Nesslage • Benchmark Stock Assessment Progress Report by G. Nesslage
Board actions for consideration at this meeting
<ul style="list-style-type: none"> • Approve edit to terms of reference • Consider data collection for proposed aerial survey

5. Consider Data Collection for Proposed Aerial Survey (5:30 – 5:50 p.m.)
Background
<ul style="list-style-type: none"> • An aerial survey design for Atlantic menhaden was developed by Dr. James Sulikowski and his colleagues at the University of New England (Briefing CD). • The Board Chair tasked the TC to review the Sulikowski et al. aerial survey design for Atlantic menhaden. Part of the survey design includes collecting data to verify school

size, and age of individuals (Supplemental Materials).
Presentations
<ul style="list-style-type: none"> • TC Report on Aerial Survey Design by G. Nessler
Board actions for consideration at this meeting
<ul style="list-style-type: none"> • Consider data collection for proposed aerial survey

5. Consider 2013 FMP Review and State Compliance (5:50 – 6:00 p.m.) Action
Background
<ul style="list-style-type: none"> • State Compliance Reports are due on April 1 (Briefing CD) • The Plan Review Team reviewed each state report and drafted the 2013 FMP Review (Supplemental Materials) • The states of New Hampshire, South Carolina, Georgia, and Florida requested <i>de minimis</i>.
Presentations
<ul style="list-style-type: none"> • Overview of the 2013 FMP Review by M. Waine
Board actions for consideration at this meeting
<ul style="list-style-type: none"> • Accept the 2013 Fishery Management Plan Review • Approve <i>de minimis</i> requests from New Hampshire, South Carolina, Georgia, and Florida.

6. Other Business/Adjourn

DRAFT

DRAFT

DRAFT

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

**Crowne Plaza Hotel - Old Town
Alexandria, Virginia
May 22, 2013**

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

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Adjournment60

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1. **Approval of Agenda** by consent (Page 1).
2. **Approval of Proceedings of February 20, 2013** by consent (Page 1).
3. **Move to approve the episodic event pilot program for 2013** (Page 8). Motion by Terry Stockwell; second by Peter Himchak.
4. **Move to amend that Massachusetts be included in the episodic event set-aside pilot program for 2013** (Page 10). Motion by David Pierce; second by Peter Himchak. Motion carried (Page 12).
5. **Move to further amend to include PRFC and North Carolina for the episodic event pilot program for 2013** (Page 12). Motion by Adam Nowalsky; second by Kyle Schick.
6. **Move to substitute that only New England, Maine, New Hampshire, Massachusetts, Rhode Island and Connecticut, states may participate in the episodic event pilot program for 2013** (Page 12). Motion by Doug Grout; second by Rick Bellavance.
7. **Move to initiate an addendum to more fully develop the episodic event program for 2014 and beyond** (Page 15). Motion by Adam Nowalsky; second by Pat Augustine.
8. **Motion to postpone the action until October 2013 in Georgia** (Page 15). Motion by Dennis Abbott; second by Terry Stockwell. Motion carried (Page 16).
9. **Move that the board approve the implementation plans for Massachusetts, the Potomac River Fisheries Commission and Florida as meeting the full requirements of Amendment 2** (Page 21). Motion by Pat Augustine; second by Bill Adler. Motion carried (Page 21).
10. **Move that the board not approve the Maryland, Virginia and Potomac River Fisheries Commission requests for bycatch allowance revisions** (Page 27). Motion by David Pierce; second by Ritchie White.
11. **Substitute motion to approve Maryland's proposal as presented** (Page 28). Motion by Pat Augustine; second by Lynn Fegley. Motion carried as the main motion on (Page 33).
12. **Move to amend the motion to include the Potomac River Fisheries Commission, Virginia and the state of North Carolina** (Page 32). Motion by Kyle Schick; second by Bill Cole. Motion was defeated (Page 32).
13. **Move that the Potomac River Fisheries Commission be approved** (Page 33). Motion by Kyle Schick; second by Pat Augustine.
14. **Above motion reworded to allow the Potomac River Fisheries Commission to add a bycatch allowance of 12,000 pounds on one boat with two licensees for pound net fisheries only** (Page 33). Motion by Kyle Schick; second by Ellen Cosby. Motion carried (Page 34).
15. **Move to approve the Virginia plan for 2013** (Page 34). Motion by Pat Augustine; second by Jack Travelstead. Motion carried (Page 43).

INDEX OF MOTIONS (CONTINUED)

16. **Move that North Carolina be approved for a bycatch of 12,000 pounds on one vessel for two licenses each for pound nets only in 2013** (Page 43). Motion by Bill Cole; second by Dennis Abbott. Motion carried (Page 45).
17. **Move that Rhode Island, Massachusetts, New York and Maine be approved for a bycatch of 12,000 pounds on one vessel for two licenses each for multispecies stationary gear only for 2013** (Page 45). Motion by Robert Ballou; second by David Simpson. Motion carried (Page 46).
18. **Move that for 2014 all states will be limited to a 6,000 pound per vessel per trip bycatch limit regardless of the number of permit holders on the vessel with only one landing event per calendar day unless the board approves an addendum to modify Section 4.2.1.7 of Amendment 2 to reflect this** (Page 46). Motion by Douglas Grout; second by Rick Bellavance. Motion carried (Page 48).
19. **Move to approve *de minimis* status for New Hampshire, South Carolina, Georgia and Florida for 2013** (Page 48). Motion by Pat Augustine; second by Bill Adler. Motion carried (Page 48).
20. **Move to approve Rhode Island's Plan as presented** (Page 50). Motion by Pat Augustine; second by David Simpson. Motion carried (Page 50).
21. **Move that the board approve the Connecticut Plan as presented** (Page 50). Motion by Pat Augustine; second by David Simpson. Motion carried (Page 51).
22. **Move to approve New York's plan for 2013** (Page 52). Motion by Pat Augustine; second by Bill Adler. Motion carried (Page 52).
23. **Move to approve New Jersey's plan for 2013** (Page 53). Motion by Peter Himchak; second by Bill Cole. Motion carried (Page 54).
24. **Move to approve North Carolina's plan for 2013** (Page 54). Motion by Bill Cole; second by Bill Adler. Motion carried (Page 55).
25. **Move to approve the plans from Maine, New Hampshire, Delaware, South Carolina and Georgia for 2013** (Page 55). Motion by Pat Augustine; second by Bill Cole. Motion carried (Page 55).
26. **Move that the board accept the terms of reference as presented by the technical committee** (Page 59). Motion by Robert Boyle; second by Pat Augustine. Motion carried (Page 59).
27. **Move to adjourn by consent** (Page 60).

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ATTENDANCE

Board Members

Patrick Keliher, ME (AA)	David Saveikis, DE (AA)
Terry Stockwell, ME, Administrative proxy	John Clark, DE, Administrative proxy
Steve Train, ME (GA)	Roy Miller, DE (GA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Doug Grout, NH (AA)	Lynn Fegley, MD, proxy for T. O'Connell (AA)
G. Ritchie White, NH (GA)	Bill Goldsborough, MD (GA)
Jocelyn Cary, MA, proxy for Rep. Peake (LA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
David Pierce, MA, proxy for P. Diodati (AA)	Jack Travelstead, VA (AA)
Bill Adler, MA (GA)	Kyle Schick, VA, proxy for Sen. Stuart (LA)
Robert Ballou, RI (AA)	Louis Daniel, NC (AA)
Rick Bellavance, RI, Proxy for Rep. Martin (LA)	Bill Cole, NC (GA)
David Simpson, CT (AA)	Robert Boyles, Jr., SC (AA)
Dr. Lance Stewart, CT (GA)	Malcolm Rhodes, SC (GA)
James Gilmore, NY (AA)	Spud Woodward, GA (AA)
Pat Augustine, NY (GA)	Jim Estes, FL, proxy for J. McCawley (AA)
Peter Himchak, NJ, proxy for D. Chanda (AA)	Kelly Denit, NMFS
Adam Nowalsky, NJ, proxy for Asm. Albano (LA)	Ellen Cosby, PRFC
Tom Fote, NJ (GA)	

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

Ex-Officio Members

Micah Dean, Technical Committee Chair

Staff

Robert Beal
Toni Kerns

Mike Waine

Guests

Charles Lynch, NOAA
Tom McCloy, NJ DFW
Dick Brame, CCA
Bill Archambault, US FWS
Steve Meyers, NMFS
Anthony Rios, Ofc. Sen. Phil Boyle, NY
Jimmy Kellum, Omega Protein
Ken Hinman, NCMC/Wild Oceans
Shaun Gehen, KellyDrye Warren, DC
Greg Nells, PEW

Benson Chiles, Chiles Consulting
Joseph Gordon, PEW
Arnold Leo, East Hampton Baymens Assn.
Raymond Kane, CHOIR
Jim Price, CBEF
Ron Lukens, Omega Protein
Robert Crockett, Advantus Strategies
Jeff Kaelin, Lund's Fisheries

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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, May 22, 2013, and was called to order at 8:00 o'clock a.m. by Chairman Louis Daniel.

CALL TO ORDER

CHAIRMAN LOUIS DANIEL: Good morning and welcome to another installment of the Menhaden Board Meeting. I hope everybody is ready to roll and try to get through this on time today. We're going to probably drive the analytics crazy today so be prepared.

APPROVAL OF AGENDA

CHAIRMAN DANIEL: I would like to go ahead and have everyone focus their attention on the agenda. I know there is one item of other business. Jack.

MR. JACK TRAVELSTEAD: Mr. Chairman, I would like to add under other business a very brief discussion of how – I think all of you are aware that Dr. Rob Latour at VIMS is working on a design of a coast-wide aerial survey to develop an adult index of abundance. His work will be done I think next month, and I would like to discuss how we might expedite getting that work peer reviewed and ask that you add that item to the agenda.

CHAIRMAN DANIEL: Without objection. Mr. Gilmore.

MR. JAMES GILMORE: Mr. Chairman, I would like to also add a possible discussion on New York's issue with compliance under Amendment 2. It may get resolved under the discussion under the agenda item, but just a placeholder.

CHAIRMAN DANIEL: That should be handled under Agenda Item Number 5. Does anybody else have any other items at this point? We can later as we go. We have an agenda.

APPROVAL OF PROCEEDINGS

CHAIRMAN DANIEL: We have our February proceedings. If there is no objection or correction to either one, we will move forward with those by consensus. Okay, good, thank you.

PUBLIC COMMENT

CHAIRMAN DANIEL: Next is public comment for items that are not on the agenda. I've got one person signed up and I know that somebody else indicated they had signed up, but they're not signed up so I will provide opportunity for anyone who wants to speak to the board on items again not on the agenda. The first one is Ken Hinman.

MR. KENNETH HINMAN: Thank you, Mr. Chairman. I'm Ken Hinman, NCMC; Wild Oceans. I have been asked to be brief. I know you have got a lot on your agenda today. I did want to diverge just for a moment to talk about a subject I have talked about to you many times in the past but not in the last year or two, and that is the ecological reference points for Atlantic menhaden. I just want to point out a few things. The new reference points that were adopted by the board through Addendum V in 2011 and through Amendment 2 last year are in a sense interim ecological reference points in that the board's stated intent is to use them as targets and limits to increase menhaden abundance and availability as forage.

Nevertheless, we encourage the board to continue your work toward your ultimate objective of adopting reference points that more fully protect menhaden's ecological role long into the future. We do understand that the recently adopted reference points will be applied to the upcoming benchmark stock assessment.

Because the intent of Amendment 2 is to provide and maintain adequate forage for predators, these reference points should be used not just to assess whether overfishing is

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occurring or the stock is overfished in the conventional sense, but whether or not we are leaving enough menhaden in the water to serve their vital role in the ecosystem for the most important fish in the sea.

That is what is most important, whether or not we are achieving the target population that we have set as a board as our goal. You have a working group that is looking at ecological reference points to put into place after 2015. I would recommend that rather than starting from scratch, a place to start is to measure the current reference points as to how well they protect the ecological role of Atlantic menhaden and adjust them accordingly.

Going back to the May 2010 motion on looking at what is done for other forage species, I would point out that we submitted a paper four years ago next month on Atlantic menhaden reference points citing the literature up to that point. The recommendations in that paper were corroborated since then by two very high-profile and high-level studies; first of all, a Low Trophic Level Task Force commissioned by the Marine Stewardship Council; and the LENFES Forage Fish Task Force.

Again, it is time to go back and look and see how menhaden's reference points measure up to those reference point standards that have been developed and that emerging consensus. Finally, I wanted to mention I know some of you were in Raleigh last month for the Mid-Atlantic Council's Forage Fish Task Force, and those were really good presentation.

They're available online on the council's website; and if you haven't checked them out, I would recommend that you do. In particular, Dr. Rob Latour from VIMS gave a presentation, and Dr. Latour made it very clear that there is a difference between accounting and managing; that calculating the losses due to predation in the stock assessment side of the equation was only part of it; that there was a management to this as well that makes sure that secondary benefits to predators are accounted for and that management objectives of leaving more fish in

the water for other reasons are brought into the reference points.

I think you that as analogy to balancing your checkbook and making sure you have enough money in the bank to pay all your bills are two entirely different things. Finally, I just wanted to urge the board to have an open and transparent process in moving ahead with the development of ecological reference points over the next year or two. I think this is something that a lot of us have a lot to offer, a lot of people have a lot to participate in developing management objectives, and I wanted to encourage that process to move forward and to invite as many stakeholders into that process as possible. Thank you.

CHAIRMAN DANIEL: Shaun indicated in the back that he wanted to speak.

MR. SHAUN M. GEHAN: Good morning, Mr. Chairman and members of the board. I am Shaun Gehan with Kelley, Drye and Warren and representing Omega Protein. One of the issues – I guess that the survey, although the survey design that Jack has asked to be on the agenda before us will be the future annual – hopefully an annual abundance survey.

At the last meeting this board was kind enough to task the technical committee to work with the industry within that design once it was available to do a more limited survey that the industry and academic partners and hopefully any others out there that would like to participate will conduct this summer to try and get information on the distribution, the age/size of the menhaden stock along the coast, trying to get some relative indication of the amount and age of menhaden within the general fishery, 99 percent of which occurs in the Mid-Atlantic.

We're very hopeful and we have been looking into various alternatives and particularly the potential use of drones, which I have been surprised to understand both the U.S. Geological Survey and NOAA

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have fleets of, which could make it very cost-effective and possible to actually do the survey more than once over the summer and over the long run may be a good way to actually make an annual survey viable because of the cost-efficiencies.

We're only awaiting the design. I would hope that as they task the technical committee to review the VIMS survey design that they also ask them to meet and work quickly with the industry to get that design going. I think once we have the design, we know we can get started and the industry is willing to do it.

One of the things I would also ask the board to consider that will make it more feasible – you know, right now we have no sense of how much this will cost. It will depend if we can use drones or airplanes, what in-kind resources the industry can contribute – but one of the things that would make it more viable is obviously there will be some sampling component.

Some number of samples will need to be taken throughout the range of the survey. If the board would consider instituting an addendum that allowed those vessels that are participating and doing the biological sampling according to the survey design to be exempt from whatever states' cap would otherwise apply to that vessel, I think it will encourage participation.

I can't imagine that the amount is going to be that great. Certainly, they're not going to put us over where we have been in the past and it will help us collect information that everyone agrees is vital to managing this stock. I would ask the board to consider that. You could initiate it now. I think if people knew it was in the works; that would be helpful. Again, we're going to keep working as hard as we can to get this underway.

We just need a little help from the board and the technical committee. That is really I had to say on that. Just following up on what Ken said, I agree about the ecological approach to management is I think the Management and Science Committee called it yesterday and the idea of taking a broader look at things.

He mentioned the LENFES Report and I think one of the issues that I actually raised with the Management and Science Committee yesterday was the impact the other way. The report focuses on filter feeding forage fish and the impacts that they could have on egg and larvae of ultimately predator species; and in terms of ecosystem impacts it actually suggests that there may be times when you want to pare back a so-called forage fish to help recruitment of the predators.

This is an issue we have raised before. It is a question and we have a lot of questions about ecosystem-based management but, you know, I think by and large the LENFES Report was a broad overview. It had a pretty good look at things; and as we move forward I think you should look at all aspects of these issues if we really want to say we're doing something that looks at ecological impacts. Thanks.

CHAIRMAN DANIEL: Is there anyone else from the audience? I am aware I gave great latitude to the speakers; I am aware of that. I would just respond to the LENFES Report very quickly that ecosystems management and managing for forage is not limited to menhaden and that we need to be thinking about that in all our plans and the implications of many of the species that we manage and the fact that in many times during their life history they provide extraordinarily important forage to other species, particularly in the South Atlantic.

There may be additional discussion about that at the South Atlantic Board tomorrow, maybe, so stay tuned. The next item on our agenda is we – Tom.

MR. THOMAS FOTE: It didn't occur to me after we left the meeting yesterday on eels that we never looked at their forage responsibility to the lakes, the streams and everything they flow out of. We basically start looking at what we harvest as glass eels. We should also look at their

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contribution to the fish they basically feed when they're in the lakes and the birds and everything else. It is something we didn't consider yesterday when we were going through this and we probably should since it is a forage species. That is the way we look at it.

EPISODIC EVENTS SET-ASIDE PROPOSAL BY BOARD SUBCOMMITTEE Plan Review Team Report

CHAIRMAN DANIEL: I agree we need to bring some of our inland partners in. I know they're important to bluegills, for sure. All right, we set up a small group of folks to look at this episodic events program proposal. There is a summary of that proposal in your briefing materials. I'm going to ask Mike to kind of review the work of that group and provide any input to the board.

MR. MICHAEL WAINE: As was mentioned, this is on your supplemental materials and I will walk through the subcommittee's report. Just as an overview of how we got to this point, the board approved a 1 percent tax set-aside for episodic events. Episodic events are times and areas where menhaden occur in higher abundance than they normally occur.

They did that through Amendment 2 in December. When we came back in February, the board discussed that we needed to finalize the implementation details for this program and tasked the subcommittee to do so. That had representation from the New England states, Maine, New Hampshire, Massachusetts, Rhode Island and Connecticut, to further develop this program.

They came up with a twofold approach to address this. The first is the enactment of a pilot program for 2013, and that is what I'm going to step you through this morning. The second is the initiation of an addendum to more fully develop this program for 2014 and thereafter. Moving into the specific pilot program for 2013; first is the eligibility.

To be eligible to participate in the episodic event program a state's bait landings must have been

less than 2 percent of the total coast bait landings from 2009 through 2011. Based on that criteria, Maine, New Hampshire, Rhode Island, Connecticut, New York, Delaware, South Carolina, Georgia and Florida are eligible to participate.

Interested states must implement the following mandatory provisions as part of the eligibility requirements to participate in this program. Those provisions are states must implement daily trip level harvester reporting that is submitted weekly to the ASMFC. This is so that we can track the set-aside as we move through.

The second is that episodic event harvest must be restricted to state waters only; so that means when a state declares an episodic event, they must license their fishermen to harvest off of this set-aside specifically in that state's state waters. The third is that the state must implement a maximum daily trip limit that is no greater than 120,000 pounds per vessel.

The qualification process is that, first, the states must demonstrate through resubmission of their implementation plans by July 1, 2013, that they have implemented those mandatory provisions that I just discussed. Then ASMFC will review the implementation plans that get resubmitted and issue a letter to the board that identifies the states that actually qualify to participate in the program.

This next point is something that has changed since you originally saw this program. It represents the major change in the subcommittee's proposal, and that is that states that qualify will not actually forfeit their allocated state quotas as they're going to use those state quotas to determine whether an episodic event has occurred or not.

Let me explain what that means. The next part is declaring participation in this program is first are you eligible or not, you submit to ASMFC, the PRT determines if

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you're eligible, and then you're going to declare participation if an episodic event occurs in your state waters. Episodic event shall be defined as any instances when a qualified state has reached its individual state quota prior to September 1 and has information indicating the presence of unusually large amounts of menhaden in its state waters.

If an episodic event is triggered, the state must declare to ASMFC by September 1 that it plans to begin harvest from the episodic event set-aside. States declaring participation in the program would not be eligible for de minimis status. What that means is that they would collect biological data and age and length information from their fisheries.

I'm going to go over that procedure for unused set-aside. If an episodic event is not triggered by September 1, the set-aside will immediately be rolled into the overall quota and redistributed to the states based on the historical allocation from 2009 through 2011. If an episodic event is triggered – and this is in any state that is eligible and qualifies – any unused set-aside at the end of that calendar year will remain unused and will not be rolled over into the coast-wide quota.

The justification by the subcommittee for this was that Amendment 2 does not currently allow for quota rollovers because Atlantic menhaden is experiencing overfishing. One thing that wasn't in the subcommittee's proposal is a quota payback mechanism, but I have included it here because it is important for accountability of this program.

It is to require that if the set-aside is exceeded, any overages are reduced from next season's episodic event set-aside, so there is a payback mechanism in this program as well. Then program review is that the board can review the performance of the episodic event pilot program or the subcommittee and report back to the board at the fall commission meeting.

The board may change the episodic event program through board action or the adaptive management addendum process. That is a quick overview of this pilot program from the

subcommittee, and I would be happy to take any questions. Thank you.

CHAIRMAN DANIEL: Are there questions for Mike? Jack.

MR. TRAVELSTEAD: The only question I have is in the event that two or more states determine that there is an episodic event in their waters; how is the 1 percent set aside allocated between those two or more states or do they just fish until it is gone?

MR. WAINE: There is actually no specific allocation of the set-aside, so the states are trying to restrict the effort through the mandatory provisions within the program and submitting weekly reports to ASMFC so that we can track the landings, but there is no specific allocation to states that opt into this program. Everybody is fishing from the common pool.

MR. TRAVELSTEAD: So the staff will track it; and when we hit the 1 percent, then it stops everywhere?

MR. WAINE: Correct.

MR. PETER HIMCHAK: I think the subcommittee did an excellent job in defining the episodic event and when this 1 percent would apply. I had one quick question. A state exceeds its original bait allocation and then it declares for an episodic event based on an unusually large presence of menhaden in state waters; who makes that call and how does the state demonstrate it and to whom?

MR. WAINE: The short answer is the state is going to make that call. They're going to be tracking their fisheries in their state waters, and they are the best people to know whether this is occurring or not. I think what you're getting at is – and this came up in the discussion of the subcommittee's deliberations – is if we're declaring episodic events every year and we find out that there aren't actually episodic events, then the program is not working with that criteria that we have set up. That is the whole

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purpose of having the review aspect of this pilot program is to see does the mechanism that we have in place to determine whether an episodic event is occurring actually work.

MR. HIMCHAK: So, yes, boy, we'd love to see schools or large, big menhaden up in the Gulf of Maine; and if they're there, then that is good cause to go out and declare an episodic event and them. I just wanted to know the – you know, it seemed like a little gray area as to we've got an episode here and then somebody has to respond and say, yes, you do, go ahead and take advantage of the 1 percent. I just wanted a little discussion on that and that's fine.

CHAIRMAN DANIEL: I believe we're going to run into a lot of gray areas today. Dave Simpson.

MR. DAVID SIMPSON: You seem very specific about the fishery occurring within a state's waters, and I wondered if there was any issue with landing in another state. I think we know Rhode Island and Massachusetts, in particular a lot of the fishery that happens in Rhode Island gets landed in Massachusetts. While none of that fishery would happen in Connecticut, we would be fine with them landing in Connecticut provided they were taken somewhere else. Did the group talk about that; is there any problem with landing in a different state?

MR. WAINE: Sorry I wasn't clear about that. When I say it is restricted to state waters, it would mean that – and, subcommittee, please correct me if I'm wrong – that it would be landed in the state that has declared episodic events; and so even if it is caught in another jurisdiction, it would have to be landed in the state that has an episodic event, and that vessel would have to be permitted through that state to land within it from the set-aside. Does that make sense?

MR. WILLIAM A. ADLER: Mr. Chairman, I think I figured it out, but down under the unused set-aside it says at the end of the calendar year – what you're saying here is that the unused will

not be rolled over into the next year, right; that is the way that works?

MR. WAINE: If an episodic event is declared in any state and they harvest off that set-aside and there is quota that doesn't completely get used from that set-aside, it will remain unused. It won't get rolled over into the same year and it won't get rolled over into the subsequent year. If there is not an episodic event triggered in any state, then it will be immediately rolled over into the same fishing year on September 1 or shortly thereafter.

DR. DAVID PIERCE: The board might have noticed that Massachusetts is not included as one of the states that would qualify for taking advantage of an episodic event. I'm on the subcommittee. I participated in the conference calls; but to be perfectly frank about it, I missed the fact that the 2 percent criteria would prevent us from being eligible.

I have spoken to the other states involved on the subcommittee, Maine, New Hampshire, Rhode Island – not Connecticut – to indicate that because we are making some rather significant changes to the criteria for the episodic event as it currently exists in the amendment – that is the states don't have to give up their initial allocations – that it would make sense for Massachusetts to be included as part of the group of states that would potentially qualify to take advantage of the set-aside.

I mean, after all, episodic events have occurred in Massachusetts waters in the past, Boston Harbor specifically where we have had massive fish kills, so it would be unreasonable to exclude Massachusetts from the research set-aside in 2013 because, once again, it is a pilot program and we're going to learn from this pilot program and then through an addendum make some changes for 2014, potentially.

What I'm informing the board is that the other states have agreed that in this particular case, for this pilot program, that

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Massachusetts would also qualify for the research set-aside with an understanding that it is no intent on the part of Massachusetts to get more menhaden quota.

It is to prepare us for the possibility of there being a tremendous amount of menhaden in Boston Harbor with a potential for major fish kills and all the consequences of that. It is a state waters fishery; and because it is a pilot program, we would be included in the – we would have that criteria – the criteria for the 2 percent would also be waived. The other states, again, who put this together also agreed that makes sense. It is a reasonable modification to what you have before, all the elements of that episodic event.

MR. ROBERT BALLOU: Dave Simpson's question and Mike's response got me thinking because I wasn't at first sure that I agreed with Mike's interpretation of Dave's question or his answer to Dave's question. This has to do with Item 2, episodic event harvest must be restricted to state waters only; and Dave asked the question does that mean that they can be landed anywhere, and I think Mike's answer was yes. My first thought was no – I'm sorry, did I mischaracterize the exchange?

My first thought was that is contrary to at least the spirit as I understood it in terms of what we were looking to set up, and my thought was that we should clarify Item 2 to say "episodic event harvest and landings must be restricted to state waters only," but I'm not sure if that is necessarily important.

I want to put it out there as something that I think the board should think about and determine. I guess I can see it going either way, but right now it is one or the other. In other words, either an episodic event is declared, let's say, in Rhode Island waters, in which case harvest must occur in Rhode Island waters under the program and either landings must also occur in Rhode Island or landings could occur in any state.

If it is the latter, it just creates a very different scenario and a different dynamic. I mean we're

not talking about a huge amount of fish, but it does mean a number of out-of-state boats coming in, harvesting in Rhode Island waters and landing elsewhere, say in Massachusetts as an example versus having to harvest and land in the same state. I guess I don't have a strong feeling and I realize now that it is something I don't think we really discussed in detail at the subcommittee level, so I'm open to it going either way, but I just find myself thinking that we should probably clarify that. Thank you.

CHAIRMAN DANIEL: I'm going to ask Mike to respond.

MR. WAINE: I'm just thinking from a staff perspective that it might create challenges in tracking the quota with this set-aside. If it is occurring in the states that are opting in and can participate, those states are submitting to ASMFC on a weekly basis what their harvest is under that set-aside. If you open that up to every other state, then we've got potentially a quota-monitoring issue specific to this set-aside unless those other states still have quota available through their state allocation in Amendment 2.

MR. BALLOU: So if I understood your point just now, you're correcting yourself in terms of your answer to Dave, because I think Dave's question was can you land anywhere, and I think your answer was yes, but now I think I heard you just say that wouldn't make any sense, and I agree. I think if Rhode Island is opting it; I think Rhode Island is responsible for monitoring the harvest and landings under that program; and it wouldn't make sense to have them diffuse out to other states because for the reasons you just stated.

MR. WAINE: Yes, I will just confirm that if you opt into the set-aside, the landings have to occur in that state that opts into the set-aside.

CHAIRMAN DANIEL: Is everybody clear about that? You're not clear?

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MR. FOTE: The only thing I'm not clear about because I just listened to that back and forth; if the fish are in Rhode Island's waters and Rhode Island fishermen can land those fish because that is where the landings take place; if Massachusetts as part of the set-aside sees the fish in Rhode Island waters, comes and catches the fish in Rhode Island waters; can they take it back to Massachusetts waters? That would clarify me and that is what I'm not sure you exactly said.

CHAIRMAN DANIEL: My understanding of the discussion is that if you opt in – let's say if Rhode Island opts into an episodic event, then Rhode Island fishermen can catch menhaden in Rhode Island waters and land in Rhode Island, period. If Massachusetts likewise requests an episodic event, then the same holds true.

It is going to be only those folks that apply for and receive an episodic declaration would be able to participate in that fishery, period. Is everybody clear on that and understand that and agree with that? Okay; slippery slope here. I'm just going to throw it out there. This is unusual. We have episodic events in lots of fisheries, so we're likely to see this issue come up again in another species near and dear to your heart. Jack.

MR. TRAVELSTEAD: Another question for Mike; does PRFC fit into this list of eligible jurisdictions since they take less than 2 percent?

MR. WAINE: It is less than 2 percent of the bait landings; and so from my records they are not eligible.

CHAIRMAN DANIEL: Okay, I think we need a motion to adopt this proposal. Terry.

MR. TERRY STOCKWELL: Thank you, Mr. Chair, and thank you for your remand back at the winter meeting that convened the subcommittee. You instructed us to keep it as simple as we can and we have despite the number of questions that have just been raised. **With that in mind; I am going to make a motion to approve the episodic event pilot program for 2013.**

CHAIRMAN DANIEL: Second by Pete Himchak. Is there discussion on the motion? Dr. Pierce.

DR. PIERCE: Just to make sure that the episodic event would also include Massachusetts as a state that would qualify, consistent with the arguments, the logic that I offered up before. Once again, New Hampshire, Maine and Rhode Island have agreed that it is a reasonable thing for us to do since Massachusetts is wedged in between those states to potentially take advantage of the episodic event. You will learn through a review of our compliance plan – of our implementation plan that we have taken the necessary steps to track our landings very carefully on a daily basis and on a weekly basis, so there will be the appropriate monitoring program in place.

CHAIRMAN DANIEL: I heard no objection to including Massachusetts in the program, but I think it does need to be explicit. Doug.

MR. DOUGLAS GROUT: Dr. Pierce, I was on the group and our last conference call, my understanding of this as to whether Massachusetts was going to be a part of the pilot program was that you were not, but that we were going to consider having a management change through an addendum that would allow you in. My question is under the current FMP that we have approved, Massachusetts, as I understand, doesn't qualify because their bait landings are greater than 2 percent.

Wouldn't we need a management action such as an addendum to allow them to be qualified even for a pilot program on this? To be honest with you, this is different from what I understood you had agreed to in the conference call, David, and maybe you have had sidebars with Terry and Bob, but I wasn't aware of this. First of all, Mike, is that something that we would have to change through a management action?

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CHAIRMAN DANIEL: I think it is squirrely because the subcommittee did make some modifications to the plan. That is what we have to either agree to on a pilot program, recognizing that there are some nuances that may fall outside a little bit of the plan, but that is what you've got. I think the technical answer is, no, Massachusetts does not qualify; but in the spirit of the pilot program they're asking to be included and that is the question before the board, as I understand it. Mike, are there any clarifying comments that you would make?

MR. WAINE: The only clarification I will make is that in Amendment 2 there is language that the board at the time that we put it to publication didn't have this program set in place, and so that is where the task to the subcommittee came in was to develop it and get it approved by the board. It is right now just a placeholder in the amendment and whatever gets approved or not approved today is what will fall into that spot.

CHAIRMAN DANIEL: Is everybody clear on that? I think that was Mr. Miller's point as well, but, Roy, did you have any further comments on that? Okay, thank you. Jack.

MR. TRAVELSTEAD: How close is Massachusetts to the 2 percent cutoff, and are there other states in similar range?

CHAIRMAN DANIEL: We will get that, Jack. Dr. Pierce.

DR. PIERCE: Relative to Jack's concern, it is a legitimate question to ask and offhand I can't think of the percentage, but, frankly, when we put this episodic event program together and when we discussed this at a previous board meeting and we adopted the amendment, I don't believe we really understood the merits of a 2 percent – the logic of a 2 percent.

As far as I'm concerned for a pilot program, what is most important from Massachusetts perspective is that we be included in it if for some reason this year there appears a tremendous abundance of menhaden in Boston Harbor and there is going to be a major fish kill. If our quota has been taken despite the measures

we have – well, we have slowed the quota – we slowed catch down from the measures we have implemented for this year.

But if our quota is gone, we can't have a situation where all this fish is in Boston Harbor and they're going to die from a fish kill that can't be caught because of the quota being taken, it is a true episodic event. That is what we're focused on this year, just to be prepared in case it happens. I would be surprised if it happens, but I don't want Massachusetts to be put in the position of not being able to deal with a very difficult situation if indeed it does happen.

How this ends up being constructed as part of a proposed addendum to refine this whole approach for episodic event, that all remains to be seen. I apologize, Doug, for the confusion this caused you in the conference call. I didn't think I said that we wouldn't be part of the pilot program. I believe I said that there was a need for us to consider waiving that particular criteria as well else the illogical thing happens. New Hampshire can take advantage of it, Rhode Island can take advantage of it but Massachusetts cannot. I apologize for the confusion I may have caused.

CHAIRMAN DANIEL: Before I go to Ritchie, I want Mike to answer Jack's question.

MR. WAINE: Besides the states that I said were eligible before that, the close states are the Potomac River Fisheries Commission, North Carolina and Massachusetts is hovering just under 4 percent and the other two were 2 to 3 percent.

CHAIRMAN DANIEL: We've got 2.2 for North Carolina and 2.8 for PRFC and 3.9 for Massachusetts. I think there are a lot of us that are real close just because of the nature of the fishery being primarily in Virginia and New Jersey. Jack.

MR. TRAVELSTEAD: Well, hearing those numbers, why don't we just change the 2

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percent criteria to something to capture everybody? That way Massachusetts can do what it needs to do and it captures PRFC and North Carolina who apparently have even smaller levels. I don't understand why it should – I don't disagree that it shouldn't apply to Massachusetts; but it seems given where they are, why wouldn't it apply to North Carolina or PRFC?

CHAIRMAN DANIEL: This is just my opinion, and I believe it is reflective of the discussion that we had at the meeting. We were talking about the northern range more than anything. North Carolina wouldn't have an episodic event. We've always got them. We just never harvested them before.

PRFC I think the same situation; I'm not sure there would be an episodic event in the PRFC that wasn't expected. I believe an episodic event is an unexpected abundance of menhaden outside of its normal range. I'm a little bit uncomfortable making a bunch of changes to the plan and the criteria, but certainly Massachusetts sits in the area where an episodic event would occur.

I think the question is – I mean, if we really want to get wrapped around the axle here, which is where we're headed on this, because there are about five people now that want to speak to this issue, I don't believe it is that big of an issue; I really don't. Now, if others do, then we will go around the table and we'll start talking about it. The question is do we include Massachusetts in the motion or not? I'm hearing concern and I'm hearing yes; so is there anyone that would like to speak in objection to including Massachusetts in the motion? Pat, if you point of order me, I'm going to be really mad.

MR. PATRICK AUGUSTINE: Mr. Chairman, I object only because we set criteria. You went out and you had your conference call and the decision was not to include them. I think Jack is right; you've got four or five in there that are close and so close is okay, but are we going to set a criteria and establish it or are we going to take a contrary position after we get to a point where now it is decision-making time? Based

on that, I find it a offense to believe that we had a subcommittee that reviewed all of this.

We had criteria that were established that I believe all the board members had a chance to look at. It went forward and now we're trying to make a decision and we want to change it. If that is the case, I move to table the whole action we're going to take. I would rather not do that. I'd rather go ahead and let's stick to what the plan was.

Unfortunately, in this case Massachusetts is going to get caught on the short end. I apologize for that, but I really don't because the criteria was set ahead of time. So which way do you want to go, Mr. Chairman; either I'll table the motion and go back and revisit or we drop adding another state to the mix.

CHAIRMAN DANIEL: I've got lots of hands ahead of the folks that have their hands up right now. What do I want to do? I believe it is not explicit that Massachusetts is included in Terry's motion. Does anybody disagree with that statement? Okay, so in order to include Massachusetts in this motion we would need an amendment to the motion to add Massachusetts. Does anyone want to make that amendment? Dr. Pierce.

DR. PIERCE: I would move to amend that Massachusetts be included in the episodic event set-aside pilot program for 2013.

CHAIRMAN DANIEL: Is there a second to that motion? There is a second from Pete.

MR. HIMCHAK: Could I explain why I seconded the motion?

CHAIRMAN DANIEL: If you must.

MR. HIMCHAK: Okay, because we're backsliding here. We're going back to the February meeting where everybody under 2 percent sees an opportunity to expand. In the whole history of the bait landings, going

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back to 1985, there has been one episode in the Gulf of Maine, IWPs. I don't even see why including all these other states that are in here – I didn't say it very politely – New York, Delaware, South Carolina, Georgia and Florida; there has been one episodic event in the whole history of the bait landings and we would like to see it again, so let's focus on that. Massachusetts, by their proximity and Boston Harbor, certainly does come into the Gulf of Maine situation, so that is why I seconded the motion, but I'd really to see this episode restricted. Boy, I wish in hindsight we had just restricted it to the Gulf of Maine.

CHAIRMAN DANIEL: All right, is there any other discussion on the motion? Doug.

MR. GROUT: One of the things that we did discuss at our subcommittee meeting was the fact that when the board charged us, this was really charged as a New England Subcommittee and event. We talked potentially making that as a change, that we're only going to have this allow for the six New England states, but we made a very conscious decision to try not change – go beyond the restrictions that we had already gone out for public hearing on this in the plan because we were afraid of changing it too much.

It sounds like now that Massachusetts does want to come in, then probably the best thing we could have done was just to say for this pilot event, yes, we're just going to have the New England states included. As a result, I would love to have this percentage taken out, which I don't think is really in the plan right now. I would support this motion with just Massachusetts being in there, because this is a New England situation that is going to be, as you said, Pete, extremely rare episodic events and not something that is going to be like a loophole that people are going to try and go through. I am going to support this.

MR. G. RITCHIE WHITE: I support the motion. I think we have to remember that this is just a pilot program; and at the end of this pilot program, we're going to have to do an addendum or change things for Massachusetts to

continue. That is why I support it; and as long as that is on the record, something will have to be done if you want to continue after the pilot program.

CHAIRMAN DANIEL: Very good points. Kyle.

MR. KYLE SCHICK: I know that we have been talking about this being a New England situation, but the Potomac River Fisheries Commission is a unique situation. We're a river and these fish do come up there in large numbers periodically. Last year was a good example. They hadn't done it like that for a while.

With the restrictions that we have, it will end up in a large number of fish – especially if we have an oxygen level drop, which happens, and these fish need to be caught or they're going to be dead. I think that if we're going to go beyond the scope, I think we have to consider everybody else that has this type of problem, too. I think the Potomac River Fisheries Commission, since they're lower than Massachusetts, should be included in this or just leave it for the state of Maine and see how it works for the pilot program and then talk about bringing in any other states later.

MR. TRAVELSTEAD: I think Pete Himchak made some good points. When this first came up, it was this strange event that occurred occasionally if not rarely in Maine. You said, Mr. Chairman, that episodic events don't occur in North Carolina and they can occur in the PRFC. If that is the case, I don't understand how they can occur New York or Delaware or South Carolina, Georgia or Florida.

It seems to me we either include everybody or we only include Maine in this thing. I guess that is where I am. I do like the fact that this is a pilot program and perhaps maybe we give this whole concept further discussion down the road. Maybe I can live with it for this one year, but I think we need

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to put it back on the agenda and take another look at it.

CHAIRMAN DANIEL: I guess I have one question to the subcommittee. It would be why wouldn't the 6,000 pound bycatch allowance accomplish what you want to accomplish? I mean, are talking about trying to go out there and harvest these things in much higher quantities than that; is that the issue? Okay; just making sure. All right, I'm going to ask for a vote on the amendment to include Massachusetts. I think it needs to be explicit for – it is clear that it is for one year and it is a pilot program. I think everybody has heard the concerns around the table that this needs to be readdressed. Do you need time to caucus? Yes; okay.

(Whereupon, a caucus was held.)

CHAIRMAN DANIEL: All right, I need to add a little caveat to this. In fact, I'm going to let Mike do it so I don't say something wrong. All right, I will do it then. Based on the eligibility criteria in the report from the committee, if this motion passes then that means Maine, New Hampshire, Rhode Island, Connecticut, New York, Delaware, South Carolina, Georgia and Florida and Massachusetts now are all included as eligible candidates for an episodic event. That is what it says. I'm just telling you what the pilot program report says.

Now, if you want to change the pilot report, then change it, but the pilot report says eligibility in number one that under this criteria, Maine, New Hampshire, Rhode Island, Connecticut, New York, Delaware, South Carolina, Georgia and Florida are eligible. What this motion does is it adds Massachusetts to that long list of eligible states. Now, if you disagree with that, you need to raise your hand and explain. You disagree with that, Bill?

MR. WILLIAM GOLDSBOROUGH: I was just going to offer a suggestion, Mr. Chairman. I disagree with the earlier notion that somebody mentioned that we're bound by everything that this proposal states. This is a subcommittee that is offering up a draft for this board's

consideration, and we can make any changes we think are wise. I think given the geographic origins of the concept, that we ought to change that 2 percent criteria to say for this one-year pilot program, the New England Episodic Event Program.

CHAIRMAN DANIEL: And that is a very good point and a very good clarification, but that is not what we're doing right now. If that is what the intent of the board is, you need to change what you're doing right now. If you want to limit to New England, then that's cool, but it is up to the board to make that decision. Adam.

MR. ADAM NOWALSKY: Mr. Chairman, if we don't change it to reflect that this is New England only, it would be my intention to follow up this motion with an amendment also to include PRFC and North Carolina; because when we need to leave the room, we need to be able to justify why we're allowing these states in for the pilot program in 2013. I think if we're using some justification of a percentage number, we need to be consistent up and down the coast for the pilot program.

CHAIRMAN DANIEL: Okay, the motion is on the table and you have caucused and threw a monkey wrench into it and now what do you want to do? All right, all those in favor of the motion say aye; all opposed. **I'm calling it approved.** I thought it would be a little more obvious than it was. All right, all those in favor of the motion raise your hand; opposed same sign; null votes; abstentions, 2 abstentions. **The motion carries, so the main motion now includes Massachusetts in that laundry list of eligible states from the report.** Adam.

MR. NOWALSKY: **Mr. Chairman, I move to further amend to include PRFC and North Carolina for the episodic event pilot program for 2013.**

CHAIRMAN DANIEL: There is a second from Kyle Schick. Is there discussion on that motion? Is there any objection to the

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amendment? **Seeing none; the amendment carries. The amended motion now becomes the main motion.** All right, while staff is getting the motion ready on the board –

MR. GROUT: Excuse me; we had a state that was an objection to this motion; the state of New Hampshire.

CHAIRMAN DANIEL: Okay, New Hampshire opposed. Are you raising your hand to speak?

MR. GROUT: We're on the main motion?

CHAIRMAN DANIEL: We're on the main motion. Doug.

MR. GROUT: I am going to make a motion to amend on this because I do think that this was an issue that was brought up to try and address episodic events in New England. **I am going to make a motion to amend that only the New England states will be able to participate in the pilot project.** This is something that we discussed at our – if there is a second to this, I would like to – okay, this is something that we did discuss –

CHAIRMAN DANIEL: He hasn't made the motion yet.

MR. GROUT: Yes, I have.

CHAIRMAN DANIEL: Okay, there was a second from Rick Bellavance.

MR. GROUT: This was something that we discussed in the subcommittee meeting, and the only reason we didn't go with this as a constraint was because we were trying to make things simple. We didn't want to change too much from what we had discussed and gone to public hearing with here.

Clearly, with the previous two amendments that we just passed, we are expanding this much wider than what we had anticipated and I think supporting this motion will support what the original intent of this board was; to have an opportunity for states that very rarely encounter these large abundances of menhaden – in New

Hampshire it has happened only in the early nineties. I think it is important that we do restrict this to just the New England states at least for the pilot program; and then if we feel that we need to address this in an addendum, changes to expand it to everybody or some subset, I think that would be the more appropriate way to go with this.

CHAIRMAN DANIEL: All right, I've got a motion to amend and a second. Is there discussion on that motion? Pat.

MR. AUGUSTINE: Contrary to normal belief, you're not the only states that have that episodic event. In 2009 and 2010, two years in a row we had in excess of a million fish in one location, and that was only those two years. I have been on Long Island since about 1979, and we've probably had fifteen over the years, not quite that big. But, again, to go back and now limit it to New England – I agree with Ritchie White when you suggested, Ritchie, it is a one-year program. I do believe that we should include all at this point in time, Mr. Chairman. Call the question.

MR. GROUT: The reason I thought it was move to amend is because we have a motion up there that now we're approving the episodic event pilot program to include those specific states, and I am amending the states that would be able to participate in this. It is still the same pilot project.

MR. ROY MILLER: Mr. Chairman, I think Joe is right. I think the nature of what we're about to do is a substitute motion. While I have the microphone open, if I may, let me express support for this motion, which I view as a substitute motion. Many of us, our state included, has fish kills, almost annual events, due to menhaden, with millions of menhaden, but I don't think that was the original intent of this program. If so, then I have lost sight of the original intent of this program, so I intend to support the motion to either amend or substitute, whatever we're calling it. Thank you.

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CHAIRMAN DANIEL: Well, I don't there is any question that your statement is accurate based on the discussion we had on what was an episodic event and the intent of the program. That is getting lost in this discussion, in my opinion. I'm not sure exactly what to do to correct the substitute versus the amendment.

I have got one that says it is an amendment and I've got one member that says it is a substitute. Does it matter in the grand scheme? It does? It's my call; it is a substitute. We have a substitute motion that would only include the New England states and those are identified here, so make sure if you're if a New England state you're included; Maine, New Hampshire, Massachusetts, Rhode Island and Connecticut. Dave Simpson.

MR. SIMPSON: While I agree that the original intent – and as I said in our last meeting the discussion all along through menhaden, my recollection was only Maine discussing the need. My perception all along has been this was a Maine issue, New Hampshire by its proximity, perhaps Massachusetts north of the Cape; the whole idea being the Gulf of Maine once a while menhaden go up in there and they would like the opportunity.

Maine has the capacity in terms of purse seiners and so forth. I am concerned enough about the record we created and how we go here, that for this pilot program my preference would be to allow all the states listed in the previous amendment and this one year for experience and then fix what we're doing through a more formal process. If we're going to restrict it to the Gulf of Maine, then we do that, but I think we need an addendum to do that.

MR. STOCKWELL: Mr. Chair, I was prepared to support the main motion and I'm also prepared to support the motion to substitute. I do want to remind the board that the additional states do have some significant quota that will accommodate their hopefully catch this coming year. We were talking about an unusual event and a pilot program. I would the board to move this along and let us develop a pilot program and

come back as we committed to for our review at the fall meeting.

CHAIRMAN DANIEL: I would just ask we make a decision. Is there any further discussion on the motion to substitute? Now I don't know what we do after this so somebody will have to help me. Adam.

MR. NOWALSKY: Mr. Chairman, I'm going to oppose this at this time. We've heard comment regarding potential for an event in PRFC, potential for an event in New York. This is a one-year pilot program. I think the next step immediately following this is somebody is going to make the motion to initiate an addendum to create a long-term solution, but for one year a pilot program we should make this as available to the entire coast as we can, which would give us more information as we pursue the addendum process.

CHAIRMAN DANIEL: I am going to say that's it. The motion to substitute is that only New England, Maine, New Hampshire, Massachusetts, Rhode Island and Connecticut, states may participate in the episodic event pilot program for 2013. Motion by Mr. Grout; second by Mr. Bellavance. Do you need time to caucus? Okay.

(Whereupon, a caucus was held.)

CHAIRMAN DANIEL: All those in favor of the motion raise your hand, 8; all opposed same sign, 5; null votes; abstentions, 3. **Okay, the motion carries eight to five with two abstentions. The main motion now is to approve the episodic event pilot program 2013 as substituted today.** Okay, the substitute motion is now the main motion.

The main motion is that only New England, Maine, New Hampshire, Massachusetts, Rhode Island and Connecticut, states may participate in the episodic event pilot program for 2013. Motion by Mr. Grout; seconded by Mr. Bellavance. **All those in**

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favor of the motion raise your hand, 13; opposed same sign, 1; null votes; abstentions, 3. Okay, comment.

MR. DENNIS ABBOTT: After all of this, we've finally achieved what you asked us to achieve at the last meeting where you stated that your hope would be that if 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, but that was our intent. Those are your words.

CHAIRMAN DANIEL: Thank you, Mr. Abbott. The motion carried 13 to one to three. Bob.

EXECUTIVE DIRECTOR ROBERT E. BEAL: This motion doesn't directly say the episodic event pilot program is approved; so if you're clear and the record is clear that those states that are listed, the New England states, Maine through Connecticut, are included in the episodic event pilot program for 2013 is approved; then it is okay.

If there is some concern about that, you may want to take another motion, but it doesn't directly say it in that motion; but if you feel the dialogue leading up to this point and numerous motions that you have wrestled with cover that, then you're okay. You probably need to state that for the record and make sure there is no objection.

CHAIRMAN DANIEL: Is there any objection to that being the intent of the board in this motion or would you like to do another motion? I don't want to do another motion. Okay, we're good. All right, that took longer than I expected, but it is good, we got it done. I think Adam is going to make a motion for an addendum.

MR. NOWALSKY: I move to initiate an addendum to more fully develop the episodic event program for 2014 and beyond.

CHAIRMAN DANIEL: Motion by Mr. Nowalsky and seconded by Mr. Augustine. Is there objection to the motion? Terry.

MR. STOCKWELL: Mr. Chairman, I don't object to the intent, but I think it is a little bit ahead of its time. The subcommittee intends to come back to the board with a program review at the annual meeting, and I think that would be the time to initiate an addendum with some specific context to it.

CHAIRMAN DANIEL: My only question is that I think there are other issues at least that I heard from the public that we may want to add to an addendum, so I don't know if there are other issues that are going to come up at this meeting. What I would like to do is hold that motion until the end of the meeting. Then if there is an interest and a desire to move forward with an addendum that includes the episodic event program and anything else that comes up today, we could add that; or, if you would like to go ahead and pursue this motion now, we can. It is up to you.

MR. NOWALSKY: Does that require a motion to table this to a time-sensitive or do you wish me to withdraw this motion at this time; what is the will of the Chair at this point?

CHAIRMAN DANIEL: To withdraw it until the end of this meeting today.

MR. NOWALSKY: I will withdraw the motion with the intent to put it back on the table prior to the end of the meeting.

CHAIRMAN DANIEL: Thank you very much.

MR. AUGUSTINE: It is okay with the second, Mr. Chairman.

MR. ABBOTT: Just from the parliamentary sense, the motion belongs to the board and it doesn't belong to Adam anymore; that we really should be tabling it or postponing it to a time certain, which could be the annual

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meeting I think Terry indicated. I would prefer a motion to postpone until the annual meeting. **I will make that motion that we postpone this action until the annual meeting in October in Georgia.**

CHAIRMAN DANIEL: Second by Mr. Augustine.

MR. AUGUSTINE: Point of information, Mr. Chairman; it wasn't a second. It was to respond to the discussion as to whether or not we should postpone to the end of the meeting or postpone until a later date. Based on your comments, Mr. Chairman, other issues may come up during this meeting before it is terminated that may warrant being considered as a part of the motion that Mr. Nowalsky made, at which time I would second also. I think to postpone it to the end, we may miss an opportunity of issues that come on the table at this board before this meeting is over. I would go ahead and amend that motion to state time certain before the termination of this meeting on this date.

CHAIRMAN DANIEL: All right, I do have a second and one speaking in opposition to the motion. Terry.

MR. STOCKWELL: Mr. Chair, the reason I support postponing the action is specific to the development of the episodic event program. There may be other action items that are going to come up today that will require another addendum; and I think that if we initiate that addendum, it should be specific to those action items.

MR. NOWALSKY: So at this point the motion is not withdrawn, and I would just offer that with regards to my initial motion the intent of that was not to necessarily have the addendum completed in two meeting cycles as we can typically go to. There would not necessarily be that need to rush to complete this addendum prior to the end of the year. The addendum could go additional meeting cycles, give us more time to develop it and to address your concerns with regards to making sure we get the most information in it that we need to.

CHAIRMAN DANIEL: Is there further discussion on the motion? **The motion is move to postpone this action, which is the addendum, until October 2013 in Georgia. Motion by Mr. Abbott and second by Mr. Stockwell. All those in favor of the motion raise your right hand, 13; all opposed same sign, 2; null votes; abstentions, 2. The motion carries.**

We will address this at the annual meeting when we have the information from the New England states and then any other – it does not preclude us from having a motion to do an addendum at the end of the meeting if there are issues that come up. All right, the cat is flat officially. All right, we're moving into the implementation plans. That is what I thought was going to be the issue today, but I was wrong.

STATE IMPLEMENTATION PLANS AND AMENDMENT 2 COMPLIANCE

Plan Review Team Report

MR. WAINE: In December the board approved Amendment 2; and just a quick overview; state implementation plans were on your briefing CD. The plan review team reviewed the implementation plans to see if they met the requirements of Amendment 2, and their report was in the supplemental materials.

Just as a reminder; Amendment 2 will be implemented July 1, 2013, but beginning on January 1, 2013, all landings will count towards the state's quota as quota management was part of Amendment 2. Moving into the PRT's report, I will start with some general recommendations. The first is to approve the implementation plans from Massachusetts, Potomac River Fisheries Commission and the state of Florida as is because their plans fully met the requirements of Amendment 2.

The states of Maine, New Hampshire, New York, New Jersey and Delaware need to clarify when their proposed regulations will be implemented. The states of Maine, New

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Hampshire, Delaware and South Carolina should submit rule language to support their submitted plans because it is difficult for the PRT to determine if requirements have been met without a state's regulatory code. We find those plans incomplete until we see that regulatory code.

The states of Delaware, South Carolina and Georgia, the PRT recommends that they implement the bycatch allowance provision in Amendment 2 to prevent directed fisheries from developing. That recommendation was such that states that do not have directed fisheries went ahead and implemented that landing limit to prevent directed fisheries from starting up in their state. The PRT felt it was appropriate for the other states that say they don't have directed fisheries to do the same.

There are some bycatch allowance issues that the PRT have, which was – I'm just going to quickly review the way the bycatch allowance is written in Amendment 2 just to remind everybody. That bycatch allowance mechanism is for non-directed fisheries following the harvest of a state's quota and the closure of their directed fisheries,

The bycatch allowance has the following mandatory provisions as written in Amendment 2. It is 6,000 pound bycatch landing limit per calendar for all non-directed fisheries. It needs to prohibit a vessel from making multiple trips in one day to land more than 6,000 pounds; prohibit the use of multiple carrier vessels per trip to offload bycatch exceeding 6,000 pounds; and it must have a mechanism to require timely reporting of the bycatch allowance landings by non-directed fisheries.

A couple of states submitted some revisions for this bycatch allowance provision. Specifically, the state of Maryland is proposing that a single vessel may land or possess 12,000 pounds per day when there are two individuals physically on board. To further restrain that, they specified that each individual needs to hold a 6,000 pound menhaden bycatch permit; and that additionally the individuals who hold striped bass pound net permits be allowed that same 12,000 pounds

daily limit because they are harvesting larger volumes of striped bass.

The justification there was such that some individuals that hold these permits like to operate from a single vessel for economic reasons, so that was the basis behind their proposal. The second was Virginia requests that the bycatch allowance provision applied to any purse seine licensed individual, meaning it does not prohibit two or more individuals from operating from a single vessel with each landing up to 6,000 pounds of Atlantic menhaden.

Excuse me, let me back up and say that Maryland's request was specific to their pound net fishery. Virginia is such that it is not specific gear; it is for all gear types. The Potomac River Fisheries Commission has interest in allowing multiple individuals to harvest from a single vessel as well if the board is going to consider that for other states.

The PRT had general concerns over the bycatch allowance. The PRT is concerned that it may not prevent fisheries from directing on menhaden. Specifically, there were some states that submitted plans to restrict the bycatch allowance just to non-directed fisheries using a percent rule.

For example, the state of Massachusetts implemented a 5 percent by weight rule, so that the weight of bycatch of Atlantic menhaden cannot exceed 5 percent of the weight of the entire catch being landed, thus restricting the use of bycatch tolerance to non-directed fisheries. That was a concern of the PRT was the bycatch allowance not being misused.

Then the PRT had specific state recommendations to meet the requirements in Amendment 2, and I will just briefly move through those: that Rhode Island prohibit the use of multiple carrier vessels per trip to offload bycatch exceeding 6,000 pounds; that Connecticut prohibit vessels from making multiple trips and prohibit

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multiple carrier vessels for the bycatch allowance; that New York require that purse seine vessels to submit trip level reports to ensure purse seiners are reporting timely enough to prevent overages; that New York exclude the menhaden purse seine permit from landing out of the bycatch allowance if they directing on menhaden because the bycatch is supposed to be for non-directed fisheries; that New Jersey prohibit the use of multiple carrier vessels to offload bycatch and that they exclude purse seines and bait nets from landing under the bycatch allowance if they are directing on menhaden because the bycatch allowance is for non-directed fisheries; and that the state of North Carolina collect quantity of gear on trip tickets for pound nets to quantify effort as to meet the requirements of Amendment 2, and consider closing their directed fisheries sooner than 90 percent as proposed because of the one-month lag in reporting that may not be timely enough to limit the chance for quota overages.

To move into timely monitoring, Amendment 2 requires that each state's timely quota monitoring program be approved by the board using the following guidelines. It has to be timely and must be approved by the board. It must require menhaden purse seine and bait seine vessels to submit CDFRs, captain daily fishing reports, or similar trip level reports.

It is recommended to have trip level harvester reporting within seven days of the actual landing date unless a different timeframe is approved. It should have ACCSP data elements. In the state implementation plans, all the states informed us of what their monitoring will be for the quota, and so I have summarized that in a table in the PRT report, and I will briefly move through that now.

You can see the setup here is the first column is what the dealer reporting is. The second column is what the harvester reporting is, and the third is just some notes that were specific to that. For the state of Maine, they have got monthly dealer reporting and monthly harvester reporting with that moving to daily for harvesters that are landing more than 6,000 pounds.

For New Hampshire, they're implementing weekly dealer reporting for their state dealers, and they have got monthly harvester reporting although they were exempt from timely reporting through the approval of Amendment 2 because they essentially have no quota. For the state of Massachusetts, we have got weekly dealer reporting and monthly harvester reporting and moving to daily for those harvesters landing more than 6,000 pounds.

For Rhode Island, their dealers are reporting twice weekly and their harvesters are reporting quarterly with harvesters using purse seines will be reporting daily, so the ones harvesting larger amounts will be reporting more timely. Connecticut has no directed fisheries for Atlantic menhaden so they are maintaining their monthly dealer reporting and monthly harvester reporting.

The state of New York has weekly dealer reporting and monthly/weekly harvester reporting, so they haven't implemented weekly reporting but explained that they have the capability to require it if needed. The state of New Jersey has weekly dealer reporting and monthly harvester reporting and all menhaden sold or bartered must be done through a licensed dealer.

The state of Delaware has monthly/daily harvester reporting and they have set up an interactive voice reporting system to capture those daily landings. The state of Maryland has monthly dealer reporting and weekly harvester reporting, which they will be implementing in 2013. The Potomac River Fisheries Commission has weekly harvester reporting at the trip level. The state of Virginia has weekly harvester which will go daily at 97 percent of their quota.

The southern states, North Carolina, South Carolina and Georgia, all have monthly combined reporting, so they have dealer and harvester reports on the same trip ticket. Florida will be similar system but will actually be implementing weekly reporting

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later this year. That is a quick run through of the reporting.

From all of that information, the PRT recommends that the state of North Carolina adopt a more timely reporting system to monitor their quota. The PRT also recommends that states submit total annual landings from harvester reports to account for any fish that are retained for personal use as that may not come through with the dealer reports.

Just to wrap up our report, there were de minimis requests in the implementation plans, which usually would come through in our compliance reports; but because this was specific to implementing Amendment 2, the PRT requested that states notify whether they wanted to be considered or not.

The states of New Hampshire, South Carolina, Georgia and Florida requested de minimis status for 2013 and are eligible based on the criteria in Amendment 2, so the PRT recommends approval of those states for de minimis status. Thank you and I will take any questions.

CHAIRMAN DANIEL: Good job! Are there questions for Mike? Pete.

MR. HIMCHAK: Nice report! You talked about the frequency of the reporting -- the harvesters submitting monthly reports and the dealers' weekly reports, as in our case, but I thought the amendment further required that a monthly report from a harvester should also include a daily take. The report may come in every month, but the actual report will contain daily harvest; the same thing with dealers. I mean, the frequency of the reporting is weekly, but it will break down the entire week on a seven-day basis.

MR. WAINE: Yes, that is the PRT's understanding and that is the trip level reporting.

Consider Approval of State Implementation Plans

CHAIRMAN DANIEL: And just let me say that the PRT did a very good thorough job, and

they were being very conscientious in making certain that all the states are in compliance with this. There have been a lot of questions come up. While we are listening to Dave and Doug, who are the two hands that I have up, I want you to be thinking about how we want to handle this. We can go state by state and probably the quickest way to do it, but be thinking about how you want to handle this. Dave.

MR. SIMPSON: I just have a question about the states or jurisdictions that wanted to sort of stack the 6,000 bycatch. I guess the bottom line of that is does it put us at any greater risk of exceeding our overall quota; does it upset the appletart in terms of allocations? It is not usually what we do and I kind of joked with Jim that I know 15 guys that would like to get on one boat because it is more efficient and then they can land 90,000 pounds. If you could just explain that a little bit and what safeguard there is to keep from exceeding the quota or really changing what we laid out in the amendment, that would be great.

MS. LYNN FEGLEY: I'm assuming that is directed at Maryland, and it sounds like there is a couple of us in that category. But to explain Maryland, sure, when we went out to public hearing with this, what we started to understand fairly quickly was that we have some groups of fishermen -- and they're primarily family groups -- who have pound nets registered to individuals within their family. It is usually a father-and-son situation.

They fish from the same vessel. They service both their nets from the same vessel, and they do that, obviously, because they're saving gas and fuel expenses. We didn't see any reason to disrupt that means of doing business if we could ensure that we were not promoting growth in any way in the fishery.

That was one of our number one objectives and that is what we went out and told our fishermen. There are some safeguards within here. One of the things -- and I

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should say that the regulation that we submitted is slightly more restrictive than the one that went to the commission. Each individual who qualified for a menhaden permit, there are eligibility criteria. You must have a registered pound net site within the state of Maryland, and that had to happen by February.

You couldn't register for one after this all started happening, so we set a control date on that. An individual can have a permit if they meet that eligibility criterion. Here is the big one and here is the one – the permits are non-transferable. You have to be in possession of your permit, and you have to be on the boat.

This is pretty controversial. The fishermen are not so happy with this because it means if they're sick they can't just give the permit to somebody else, but it prevents them from passing permits around. There is a very strict limit; there is only two. This is very much intended for these family groups who fish together.

By the way, our law allows them to dedicate their two licenses to a single vessel, so we're supporting something that is set up in statute. The final piece that we have in place as a safeguard as – the tricky part about this is that our menhaden fishery is ongoing, and we don't have the reporting capability now to track that harvest in any kind of real time.

In other words, in order to ensure that we honor our quota, we're going to choose a conservative closure date. It will likely be June 15th, and that is when we met the quota last year. Anecdotally, it seems that the fishery is starting slower, but the point is that beginning June 15th the individuals with these permits will be required to report to us daily, so that we will be able to monitor their harvest.

We can change this bycatch allowance by public notice, which means we can do it quickly. In other words, if we see that we are – you know, we can track our harvest as it is progressing; and if we get to a certain point where we feel like it is growing or it is spinning out of control, we

can ratchet down that dual bycatch allowance back to the 6,000 pounds.

We can further take everybody on a 6,000 pound allowance down to something less than that if we feel that we're going to grossly exceed our quota. Our intent here is not to grossly exceed our quota. Our intent is to let these family groups continue to do business without undue economic harm and also to provide a little bit of window since we're going to do this very conservative closure. At the end of the year our goal is we add together the fish that we harvest under the quota and the fish that we harvest under the bycatch allowance. Obviously, our hope is to be as close to our quota as we can. Thank you.

MR. GROUT: A couple of things, Mr. Chairman. First of all, New Hampshire in de minimis; there were a couple of things. You wanted to have the rules and implementation date. We will be glad to provide that. If we're approved for de minimis, we will send you as an addendum to our plan, the implementation, which would be July 1 I think is what we're looking at, and what our formal rules are for it.

The next thing I wanted to ask the board; we had put in as one of our proposed rule changes was to implement weekly reporting for the very few state dealers we have. Now, this is just going to be a paper thing because we don't have any commercial – three are no landings for commercial purposes in our bycatch fishery.

People go out and are catching this for personal use for bait. We record it as landings. Would the board have any objection to us, since other states are having dealer reports on a monthly basis, that we just do it on a monthly basis as opposed to a weekly – require that they do it on a weekly basis. Again, this is going to be a paper rule.

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We don't have a commercial directed fishery for it. I just want to see if there would be any objection to that. If there is, fine, we'll put it in as weekly. I don't really care. The final thing that I wanted to get was there are a couple of other states on this modification to the bycatch allowance to allow a couple individuals to combine their two permits onto one boat and essentially allow six tons allowed to be landed.

I would like to hear what kind of constraints PRFC – and I think Virginia was another state – what kind of constraints they have compared to Maryland – just to keep in mind it was referred to this applying to the quota, but keep in mind, folks, that when we passed that amendment, any bycatch does not apply to the state quotas. That is what we approved, so this is catch above the quota. If I could hear from Virginia and PRFC as to what kind of constraints they have on this, I would appreciate it.

CHAIRMAN DANIEL: We're going to go off in so many directions that this isn't going to work like this, in my opinion, because everybody is going to talk about their individual situations, and that is what we have already started doing. What I would like to do is sort of back up here for just a minute.

One clarifying statement, I think, from what Doug just said in terms of the quota and the bycatch allowance, there has been a lot of confusion and a lot of questions to me and probably to staff in terms of what the quota means and how we're managing the fishery. I think my understanding is that the quotas are set and that we open our fishery and we close in a specific timeframe to make sure we don't go over our specific state quota.

And then once that quota is taken, any additional fish that are taken are held to the 6,000 pound bycatch allowance. The two times 6,000 was never a discussion; completely out of the realm of what we discussed in December, but there are a lot of questions and issues about that. There are questions about the reporting. There are questions about the way we're going to – there are many questions that I have based on the report.

One very specific question that I think that I want the technical committee to be thinking about is how getting the number of pound nets gives us any kind of meaningful information. My understanding is that folks go out and they fish several pound nets and they combine the fish into one boat and they come back and they offload their fish.

If they caught 6,000 pounds of menhaden in eight pound nets; is that 6,000 divided by eight; is that a meaningful CPUE? No; so how are you going to determine how many menhaden are in each individual pound? You can't do it; not unless you have observers or you have the fishermen keep their fish contained from each separate pound.

In North Carolina, at least, you might have one pound net out of eight have menhaden in it; so I think your pound net CPUE information is worthless, in my opinion. We're going to need to have some discussion on that as we get down in here. The reporting issues, changing the reporting strategy for a fish that makes up less than one-tenth of 1 percent of the value of the fishery, the cost associated with that needs to be considered and discussed.

There is a lot we need to discuss. What I would like to do, though, is go through the brief summary document here of the state implementation plans and go through first – take them one at a time. Please don't bring up any issues; don't raise your hand to speak about any issues other than what we're talking at the moment. Then if we get towards the end and there is something that we haven't covered, we will take those then, all right, so nobody is going to be constrained to speak.

I'm going to try not to cut off debate on any issues and ideas that folks may have on how to do this. The only way I know to move through this logically is to take it through these steps. The very first issue that I would like to address is the first bullet under general recommendations, and that is

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approval of implementation plans for Massachusetts, the PRFC and Florida because they fully meet the requirements of Amendment 2. If we can deal with that issue first, then we will move on. Pat.

MR. AUGUSTINE: **Mr. Chairman, I move that the board approve the implementation plans for Massachusetts, the Potomac River Fisheries Commission and Florida as meeting the full requirements of Amendment 2.**

CHAIRMAN DANIEL: Thank you, Mr. Augustine; seconded by Mr. Adler. Is there discussion on that motion? **Is there any objection to that motion? Seeing none; that motion carries.** The next two bullets are just sort of get-it-together type comments. I don't know that we need to take any formal action, but the states of Maine, New Hampshire, New York, New Jersey and Delaware need to clarify when their proposed regulations will be implemented. If you can just have that information to the staff within the next 30 days, then I think we're cool. Does anybody have a problem with that? Jim has a problem with that.

MR. GILMLRE: The issue with New York is essentially our reporting, and right now our quota, if we live under the amendment, I am going to close my fishery the day after July 1st. I can send anything in that you, but I'm still not going to resolve my problem. I have to come up with some option of how we're going to deal with the fact that our data is not correct in terms of what the quota was set.

CHAIRMAN DANIEL: Okay, we will deal with that as we move through, so we will deal with that issue here in just a few minutes. The next bullet is the states of Maine, New Hampshire, Delaware and South Carolina submit rule language to support submitted implementation plans because it is difficult for the PRT to determine if the requirements have been met without evaluating a state's regulatory code. Can everybody have that information to staff within 30 days? I don't know; you answer it. Robert.

MR. ROBERT H. BOYLES, JR.: It relates to the following bullet. I'll go out on a limb; we have got a non-existing fishery with prohibited gears. I don't know what the PRT wants us to do.

MR. WAINE: The recommendation here was just a precautionary one, which is there are other states that have non-directed fisheries. I understand the state of South Carolina doesn't have a documented fishery, and so the precaution here was just to keep status quo as no fishery, implement this bycatch allowance landing limit just to ensure that there are no fisheries that start up in your states.

MR. A.G. "SPUD" WOODWARD: We're in the same situation with South Carolina. If we do this, it is going to require legislative action to create regulations on menhaden where we simply have none. The only bycatch of menhaden that we're generating is in the penaeid shrimp trawl fishery and it is not landed. It is unquantified, not landed; and to do this is going to be a major effort on the part of Georgia just to stop something that will probably never ever happen.

CHAIRMAN DANIEL: Well, these are recommendations from the PRT so we can take or leave them, and there may be some that – I understand those constraints and those issues from Georgia and South Carolina. I don't know important it is to have that rule language of support in – I would just ask for – I mean, here is one way to handle it. If you can do it, do it for the statutory rule language. The bycatch allowance provision, which is the next bullet, the precautionary implementation of the 6,000 pound trip limit, that is what I think you're talking about, Spud.

MR. WOODWARD: Right.

CHAIRMAN DANIEL: Those are from the states of Delaware, South Carolina and Georgia, asking that they implement those 6,000 pound bycatch allowances. I think where you can – I mean, if Georgia all of a

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sudden starts out and a bunch of fish is landed in Georgia, you might need to deal with it; South Carolina, the same way. I don't know about Delaware; so if we could hear from Delaware on that issue as to whether that is an issue for you to implement that 6,000 bycatch allowance or not, that would be helpful.

MR. JOHN CLARK: What we're planning to do is put forth a regulation where all menhaden landed would be reported in our interactive voice response system. Once we hit our total allowable catch, we will be reporting that as bycatch from our fishery. We do not have any fisheries that have the capability to grow into directed fisheries on menhaden. Our state law bans trawling and purse seining in Delaware waters. We have a small gill net fishery and they will be taking menhaden, but that will be reported as bycatch. Thank you.

CHAIRMAN DANIEL: So is everybody comfortable with moving along with these two items? Is there any objection to moving on and letting those states deal with those issues as they deem appropriate; understanding if there are problems, we can fix them? Okay, the next bullet is multiple items. There are three open bullets and one closed bullet, and I'm not sure what the difference is. Oh, it is a general summary of the three bullets below.

It says, "The board consider the following state-specific bycatch allowance revisions," and in there the PRT has raised concerns about Maryland allowing up to 12,000 pounds as a daily limit. Virginia requests that the bycatch allowance provision apply to any non purse seine licensed individual, meaning it does not prohibit two or more individuals from operating from a single vessel with each landing up to 6,000 pounds of Atlantic menhaden as bycatch per day.

And a similar situation in the Potomac River and they expressed interest in allowing multiple individuals to operate from a single vessel with each landing up to 6,000 pounds. There are three jurisdictions that are interested in having more than the 6,000 pound bycatch allowance, and that would be based on numbers of

individuals. It doesn't seem like – it seems like they would all be limited to no more two, maybe not, but the question, which is the solid bullet on the next page is for the board to clearly define the non-directed fisheries and what we meant by the 6,000 pound bycatch allowance and is there the intent of the board to allow multiple 6,000 pound bycatch allowances in any one trip or day. It is, obviously, the intent of three jurisdictions to do that, so we need to address – I think we need to nip that issue in the bud. I am going to start with Tom.

MR. FOTE: I have a real concern about allowing more than two permits allowed to land on one boat for the fact that I went to my legislature, because they were calling me on this question, and they basically asked did I have concerns? I says, no, because nobody is going to go out and bycatch on a non-directed fishery to basically only land something that is only worth \$540.

I mean, it takes too much gas to do that. And because the environmental groups were basically calling and complaining, I says, no, this is not going to happen. It is one guy coming in because we did not put on this requirement as we do in all the other requirements where there is a bycatch fishery, that you have to land some other fish.

I mean, that is how you justify a bycatch fishery. This one is not really done that way so it is really outside the ballgame. It looks like a loophole. Now when you start adding multiple permits to that, it really looks like a loophole. I know it is small amount of fish, but again the integrity of the program was we were going allow one 6,000 pounds to go.

That is what I told my legislature, which is working on a bill right now to get through. It just got through the Senate on Monday; a committee; and it has got to get it for a full Senate vote. It makes what I was saying disingenuous to my legislature if we're

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going to start now going with multiple permits.

We have the same thing with pound nets in our state and are we going to look to basically allow those to basically do two things? We were saying, no, you basically come in with one load. This really creates something that we were not expecting. It was not what we had put forward for. Again, because it does not count against the quota, it even looks worse.

The perception out there is really bad if we start doing something like this. It was directed to allow for a bycatch; bycatch without other fish being on board; and that is the way it basically does it. Again, if you allow it in the ocean, it even looks worse than that. That is my concern here and I can't support it.

MR. GROUT: Thank you, Mr. Chairman, I was hoping you would start at the other end, but that's fine. I think that's wonderful that you came to me first. Just to clarify with you and the plan review team; you made a statement earlier that this 6,000 pound – these fisheries that have a bycatch are going to count towards the quota up until the time the quota has been attained, and at that point you're allowed to land 6,000 pounds per trip and only one trip in a single day.

I'm getting some heads shaking. I certainly appreciate the issues that these three jurisdictions are trying to address here because it sounds like these are family – they're working together and we want them to be more efficient with their operations here, but keep in mind that this is a bycatch allowance. It is not a directed fishery. We're trying to allow for small amounts so that we're not going to have these discards that we were concerned might occur to be landed.

I get a little bit uncomfortable with allowing now six tons to be landed as a bycatch. This to me – and I was going to ask, well, how many pounds of striped bass are they landing? Maybe that should be in their report. I'm sure they're not landing six tons of striped bass. This really to me, if they're trying to go out and land this much menhaden and need to have this six tons, this isn't a bycatch. This is a multispecies

fishery, a multispecies directed fishery. I'm very uncomfortable with expanding this beyond what we had originally intended here.

CHAIRMAN DANIEL: I appreciate those comments. I do feel like I should caution the board again about doing things in this plan that may be seen as inconsistent with other plans. That is where I'm seeing us head in several ways with this plan. I do feel it is important to point that out. Now, every one of you may disagree with me; and if you do, that's fine.

The first thing that comes to my mind is the hundred pound bycatch allowance on weakfish. We would sure love to have multiple opportunities to have multiple hundred pound trips. Just be wary of what might come around from another plan on a consistency basis on any of this stuff, reporting, anything. Jack.

MR. TRAVELSTEAD: A couple of general comments and then some specific to Virginia. You will recall the meeting back in December when we adopted the amendment, there was a fair amount of discussion on the bycatch issue, but we didn't spend a whole lot of time on it. There were a number of comments that this is the best we could do and we're going to have to pay close attention to how this proceeds over the next year and perhaps reevaluate at the end of the calendar year. I think that is where we are.

Part of Virginia's problem is we did not have the benefit of the staff document that describes how the entire plan should be implemented. That came out in late February; and by that time our General Assembly had completed all of its work and gone home. We did get brief guidance from Bob and Mike on how to proceed with our legislature in implementing the plan.

We're in a position now where the General Assembly won't be back in session until next January. Nevertheless, I think what

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Virginia has in place is pretty good. We don't license the vessel in Virginia. We license the gear; so in the case of the pound net fishery, the pound nets are licensed.

A pound netter could carry five vessels to his pound net if he wanted to; but under our law he is still restricted to the 6,000 pound limit per day. I don't see a problem there. I suppose two individuals who are licensed for pound nets under Virginia law could get aboard the same vessel and go to their respective pound nets and each bring back 6,000 pounds, but I don't see that happening. That is not standard practice in Virginia.

They're different fishing operations and they fish independently of one another. I suppose there could be some family situation where what you see happening in Maryland could also happen in Virginia. I mean Virginia has no opportunity to change what is on the books now until next January.

I think we're going to have to watch it and see what happens; and if things get out of hand, the numbers come back not looking the way we thought they would look, then we will make changes at that point in time. Between now and then I'm sort of stuck with what I've got.

MR. STEPHEN R. TRAIN: Mr. Chairman, I don't have a problem with stacking permits on a boat if the gear is licensed to not the boat. To me it appears wasteful to use two boats or three boats or four boats and waste the fuel and everything else to catch the same amount of fish. I have a concern as that is done that this becomes not a bycatch but a targeted fishery.

I understand the allowance is for 6,000 pounds and that this fish could be caught. Dead fish thrown overboard is very wasteful, and I have a problem with that, also. I think we need to keep a good eye on whether this is becoming a targeted fishery and stacking the permits is what allows it to happen.

But to not allow it just so four boats and five boats burn more fuel to catch and kill the same amount of fish, I have a problem with that, too.

If I look confused on it and I'm talking both ways, we have got an issue here that is hard to understand. Some places license boats and some places license people.

MS. FEGLEY: This is an issue because the end result I think is states are working on different playing fields which is going to make this difficult, I just want to clarify that back at the meeting in December, having put forward the motion for the 6,000 pound bycatch allowance, that number, as I was working from our knowledge of our fishery, was there is a fair percentage of our trips in those reference years – it is about an average of 60 percent of our pound net menhaden trips are catches over 6,000 pounds.

At that point it struck me as – on the fly – a midpoint and below the midpoint and it would be limiting. What I certainly, in that meeting, hadn't considered was that when watermen report, they're reporting as individuals. We just weren't considering this sort of family operation. I just felt the need to clarify that.

Also to the point of the directed fishery, I had thought in our conversation in December that this was specifically directed toward stationary non-targeted gear as a pound net. One can argue whether it targets menhaden or not because when a school of menhaden swims through a pound net, that is what you have got.

You are going to have other fish species in there, but you're pretty much going to be dominated by menhaden at that point. One of the reasons why these nets that these individuals are fishing are registered sites that in many cases have been registered with the department for over a decade, so they're not just running out and placing these things in the water.

Certainly, they need to have that site registered well before this started. All that being said, it may be time that given the logistics of changing things as they're written now, midpoint through the fishery, I

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don't if there is an approach we can take forward. We were very clear with our stakeholders that the plan that we proposed was for 2013 only.

We had no idea whether it would be approved, and we were very clear that it would have to go back and reevaluated in 2014. This is a learning year and I just wonder given the different playing fields that we're on if there is some, if you will, blanket action we can take that allows us to evaluate how these small artisanal gears, these non purse seine gears perform in 2013 relative to the purse seine sector; and if we can evaluate that at the end of the year and if the board needs to take action at that point to change things, maybe we should. Thank you, Mr. Chairman.

MR. WHITE: Mr. Chairman, a couple of issues. I agree with you about the slippery slope. Our Atlantic herring fishing fleet out of New Hampshire that is subject to a 2,000 pound a day would love to be able to pack up two or three permits on the boat and come in with 6,000, for sure. There are other species that I think we get into dangerous waters here if we open this up.

Secondly, I was opposed to the 6,000 pounds because I felt that was too high, but states that have a reasonable amount of quota, I view this as a quota management issue. These states are talking about catching their quota and then needing this bycatch after their quota is filled. I think that those states need to look at maybe having quotas divided up into quarters of the seasons so there is some left towards the end of the season for these bycatch fisheries. I would like to see these states kind of work within their existing quotas a little harder to try to address these issues and really have this as a last resort and not kind of let's catch our quota and then we have this as a backup. Thank you.

MR. SCHICK: I kind of disagree a little bit with this situation. When we're talking about a fixed gear like a pound net, this is not a quota management issue. This is an issue where we don't want dead fish thrown overboard and wasted. You can't manage unless you're telling a pound netter, okay, look, you know, we've

caught our quota and you've got to pull up your pound net and you can't fish for rockfish now or you can't fish for anything else because we've caught menhaden to our quota.

This is a different type of situation. This is not a directed fishery. I don't think the intent here was to stop people from fishing for other fish because we've got this quota limit on menhaden, which is not the money fish that these gears are going for. I think this is a situation that we have to look at. We do have people in the Potomac River who do group together for efficiency and fish these fixed gears.

CHAIRMAN DANIEL: Thank you, Kyle, good points and that was part of the discussion was trying to make certain that we didn't have the situation arise as you explained it where you would have to take gear out of the water to avoid menhaden. That was sort of the intent as I recall the 6,000 pounds. There was concern that was too high at the time of discussion, and it is a sizable bycatch allowance, 6,000 pounds. Dave.

DR. PIERCE: Are you looking for a motion, Mr. Chairman, relative to these specific requests?

CHAIRMAN DANIEL: Yes, at this point with no other hands up, this would be the opportune time for a motion.

DR. PIERCE: All right, I have listened to all of the specific requests and, of course, the concerns raised by a number of individuals regarding whether or not these particular bycatch allowance revisions will actually create more opportunity for directed fishing. I don't pretend to thoroughly understand each state's particular perspective because each state does have some rather unique issues to deal with.

I do agree with Ritchie that it is a quota management situation, large quotas for individual states or moderate-sized quotas

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that should be properly managed and not allow additional opportunities for directed fishing under the guise of bycatch. **I would move that the board not approve the Maryland, Virginia and Potomac River Fisheries Commission requests for bycatch allowance revisions.**

CHAIRMAN DANIEL: Is there a second to that motion? Seconded by Ritchie White. Is there discussion? Dave Simpson.

MR. SIMPSON: Yes, I sort of raised the first I guess, but at the same time I think I felt going into this that this was sufficiently different fishery from the others we deal with that we were going to require a little bit of learning and a little bit experience this year. The fixed gears were one of the things that is different than some of these other fisheries.

Especially after hearing Lynn describe how the statistics came in and how the 6,000 pounds, which came up on the fly, at the meeting was arrived at, I'm certainly willing to give them the latitude this year for fixed gears, for fixed gears only; unless I hear differently; that we give them a little latitude this year what they have implemented and what they have discussed and we take a look at it at the end of the year and make revisions if we need to.

MR. RUSSELL DIZE: I don't think that you actually realize how the pound net fishery has operated in Maryland. In Maryland each net is licensed. For instance, Lynn was talking about family. One family that I know on Tillman; one guy has three pound nets, but each pound net is licensed under someone different – it is not in his name – and there is a reason for that, and that is rockfish allocation.

What Lynn was suggesting I believe would actually save fish because they're going to fish those nets and catch 6,000 per each license. They're going to be fished with a separate license. Where the 12,000 may induce them not – because of the fuel consumption and the labor, they may not. You're going to catch 18,000 pounds with three nets the way it is now because each one of them is licensed separately.

Where you may get the guy to fish for 12,000 pounds on one vessel, but they will fish the net because the individual – each net is individually licensed under a different name. We have three, five, seven, nine, twelve nets in my area. They're all licensed differently. They all have a different license on them.

If one man has three nets, it is licensed under three different people. I believe that if you would allow the 12,000, it would not only save money through fuel and labor but it may save you 6,000 pounds in that scenario. Thank you.

MR. GROUT: My comment was mostly a clarification on this motion. It is a negative motion and wouldn't it be more appropriate to approve their plans with the exception of the 12,000 bycatch provision? I believe also that we already approved PRFC's plan and it did not have this provision in it. Would that require a substitute motion or a friendly clarification? It all depends – you know, we were discussing this. It is just a different way of writing it; approve their plans with the exception of the 12,000 pound bycatch provision.

CHAIRMAN DANIEL: Well, I think PRFC just expressed interest in doing that, so they haven't formally submitted that in their plan. That is the reason we went ahead and approved PRFC's. Again, I've got several other folks; and I'm trying to be really careful here, but I do feel that we are moving in a very difficult direction here. It is going to put me in a position where I'm going to have to step down as the Chair so whoever is the vice-chairman needs to be ready. Pete.

MR. HIMCHAK: Mr. Chairman, I don't support the motion. I think I'd go back to the December meeting when this was discussed. I think this Year One; I think the states are going to have to do a – we're going to have to allow a little bit of latitude here because we didn't know exactly what we were getting into.

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There is a lot of small operations that land bait that are now coming under monitoring requirements in state cast netters, for example. I think in Year One we address our quotas and stay as close to them as possible and then recognizing that if there – and these pound nets; I am sure that in Maryland's situation a lot of them had to have been quoting their historical landings for their bait landings.

I think after Year One we're going to have to look at landings that may exceed an individual state's TAC, and how they got to that point, the magnitude of the landings, and then start making modifications. Whether it be in the number of pounds allowed bycatch, whether it is linking it to a percentage of some other catch, or limiting it to a boat or a person, I think after Year One we're going to have to start doing some trimming as we learn more about each state's individual bait fisheries.

MR. WHITE: Maybe I don't have a good understanding of the fisheries in Maryland and Virginia. I had assumed that there was a purse seine and/or gill net fishery beyond the pound net, so that was my thought in quota management is that some of these other gear types may have to be limited some to allow enough quota for the pound nets to have the necessary amount that they need. I guess I would like clarification if that is the case. If it is just the pound net fishery and there is no other fisheries, then I might feel differently.

CHAIRMAN DANIEL: I think there are certainly multiple fisheries. There are active fisheries and there are passive fisheries. What we are talking about right now are pound nets. The beauty of a pound net is that those fish can be released alive in many instances, some instances; whereas, in some fisheries – at least in North Carolina and I don't know about the Maryland fisheries and the Virginia pound net fisheries, they may not, because I think they are a lot larger pound nets than what we typically use, but I don't know that.

I am concerned about the discussion, though, because we were very serious and we were very – you know, back in December we all came

together and we've put in some measures, the intent of which was to meet this new 30 percent target, and we put some substantive measures in on Omega Protein, the purse seine fishery.

The intent was to reduce harvest and to rebuild the stock. What I'm hearing around the table from a lot of folks is basically trying to do everything we can to maintain status quo and make sure that those fisheries are not impacted. I think one of the words that came up many times yesterday – and I think you could probably run around the room and find it on multiple sticky notes – was "fair". This ain't fair.

I don't know any other way to put it. The concern that I have is how do the other states – I think if this motion passes, I think what I would like to see us do is postpone any further discussion on this and let everybody go back home and revise their plan. I don't know about the other states, but I would assume everybody would like to have as many trip limits as they can. For those of us that home with only one trip limit for only our fishermen are going to go home to a hornet's nest. That would be my suggestion for consideration would be to simply postpone any further action until we all have a chance to go back and get ourselves on the same playing field and be fair. Pat.

MR. AUGUSTINE: Mr. Chairman, I don't support the motion. I think we're going backwards. I'm not sure that the three states that presented their case as to what they wanted to do in this particular case to again reduce waste, et cetera, et cetera, et cetera, all belong in the same motion. I would move to substitute this motion and divide; so if I substitute, I won't have to divide.

I would like to address the Maryland proposal directly, so the substitute would be to, one, approve Maryland's proposal as presented. **If I get a second to that, I'd go back and ask for a second motion for Virginia's request as a separate issue and**

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then a third motion for Potomac River consideration, Mr. Chairman. I think Ms. Fegley has put her hand up for a second.

CHAIRMAN DANIEL: One motion at a time; that's fine. There is a second by Lynn.

MR. AUGUSTINE: To the conversation that has been held so far, I thought Ms. Fegley did a very admirable description of what is going on there and what the intent was; that they were dealing strictly with a pound net situation. It clearly, in my opinion, turns out to be a state issue on how you manage your fishermen and your permits.

If each one is to have in this case a 6,000 pound allowance and two of them are in the same family and in the same vessel, I don't see the problem with it. If it is within the confines or sideboards, if you will, of your quota, it is incumbent upon your state to manage it appropriately.

It appears that you have set up some sideboards to do that. In order not to support this, I think we would be remiss not to recognize what your issue is and what you're trying to accomplish. We support the motion.

MR. FOTE: I think Pat is a little wrong here. The 6,000 pounds comes in after the quota is met, so this is not to stay within your quota. This is what happens after a quota is filled. That is what we need to be clarified over.

MR. CLARK: I agreed with the point you brought up about the weakfish plan, Dr. Daniel, that we've already got a plan in place where it specifically prohibits having multiple quotas on the same boat. Then I just had a question for Maryland as to whether in the pound net fishery menhaden can be released alive from these pounds? Thank you.

MR. WHITE: I guess I would ask Maryland if it would be possible for them to retain some quota from their purse seine fishery to be used in the pound net fishery to solve this problem. I guess I would ask that question; is that feasible, can they do that?

CHAIRMAN DANIEL: I'm going to go to Adam and then I'm going to go to Lynn to answer all the questions to her.

MR. NOWALSKY: Mr. Chairman, what we have before us is I don't know if having the debate about the Maryland Proposal is efficient at this time because we're really talking about substituting the motion right now, and that is really probably where our debate is probably best centered. Mr. Augustine focused on then taking up each individual issue.

We heard earlier that the initial motion was really a negative motion and something that we don't typically do. There was never a motion to move forward; so to that end, I would move we limit debate on this topic, get this substitute motion voted on, and then we could proceed with addressing these individual topics.

CHAIRMAN DANIEL: Now I know why I don't do substitute motions.

MR. AUGUSTINE: Call the question.

CHAIRMAN DANIEL: I have no idea what to do at this point. Okay, I'm going to continue to take debate; sorry, Adam. Lynn. MS. FEGLEY: I guess the first thing that I want to do is I feel compelled to go on record to say that it is not the state of Maryland's intention here to maintain status quo. It is our goal to come as close to our TAC as we possibly can even under the bycatch allowance as proposed. That being said, to the question of reallocating gear quotas, there is no purse seine fishery in Maryland. It is prohibited.

The pound net fishery accounts for 92 percent or more of our annual harvest. It is a multispecies fishery. In terms of releasing fish alive, that very much depends on what you're fishing for. In most cases it is very difficult because if you have rockfish in your net, these things are hauled up by hydraulics, dropped on the deck. The target

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fish are culled and then you have to release menhaden that you've had to get out of the way to get to your target fish, and the end result would be a whole lot of floating dead fish.

Our proposal is geared toward the multispecies stationary gears. In terms of the quota management point, to that point I entirely agree there are definitely some moves that we could make even with our pound nets to better control our fishery. It is a little challenging when you're trying to do that when the fishery has already been running for five months.

The majority of our menhaden harvest does happen earlier in the year. A lot of what we have talked about are changing seasons around with the watermen so they could harvest the menhaden really during the height of the crab season to maintain that bait supply. We could truncate either end, but this whole thing happened as the fishery was starting, so we have lost a good portion of our year to do these quota management maneuvers, which is why in our plan we specifically state that this a 2013 and only a 2013 plan. Thank you.

MR. SCHICK: I would like to speak to the substitute motion. The Chesapeake Bay, we all fish the same. Our non purse seine fishery in Virginia mirrors the Potomac River and Maryland. We have the same – the majority of our fish that are caught – not purse seine – you know, are caught by pound nets, the same as in Maryland. I think this is one region, the same type of fishery, same type of rules, it is all driven by rockfish quota. It is not driven by trying to increase menhaden catch.

I think it should be all talked about together and I think the substitute motion is not valid in this case. I think actually a substitute motion to the substitute motion, which I don't want to do; but I think we're right, I think we've got to go back and get rid of this negative motion and start from scratch here and make a motion that applies to all three areas since we all are in the same boat in the Chesapeake Bay Region.

MR. TRAVELSTEAD: This really is not about trying to jigger the system to catch more

menhaden in the bay jurisdictions. It truly is about just trying to prevent dead fish from being wasted. We don't want a lot of dead fish floating in the water that are not being used. We all agree to the 6,000 pound bycatch limit. We knew it was going to apply to pound nets.

A pound net is not a directed fishery; it is a stationary gear that sits in the water and from day to day you don't know what is going to be in that net when you get there. If a couple of guys want to get together for efficiency purposes to save money and fish their respective nets from the same boat, it is not going to increase the amount of menhaden that are coming out of the water.

If they fished separately, they would still be able to bring the 6,000 pounds in. I don't see where any of these proposals are in any way going to result in more fish coming out of the water. We need to look at this entire situation at the end of the year and determine if the 6,000 pound number is the right number, and it may not be.

We need to look at how quickly the states catch their allotted quotas before the bycatch kicks in; where does that happen in the year? At the end of the year we reevaluate that and perhaps we require the states to implement other trip limits while the quota is still in effect to spread that quota throughout the year and delay implementation of the 6,000 bycatch. I think these are the kinds of things we will need to look into at the end of the year once we have a year's worth of experience behind us.

MR. ADLER: On this particular substitute motion, you had mentioned that this is for one year only; is that what this plan is, it is for one year and then reevaluate whether something went wrong? Would that have to be in the motion or is that already implied there?

MR. AUGUSTINE: We will just amend the motion to add that; for one year; for the period of 2013.

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CHAIRMAN DANIEL: Well, I don't know if that was the intent of Maryland.

MS. FEGLEY: In our plan it is stated right up front I think in the first couple of sentences that it is a 2013 plan. It is in our plan; but if the board is more comfortable putting that explicitly in the motion, then that is fine with me.

CHAIRMAN DANIEL: I think if I can amending a substitute, I would like to do that. It is fine in the plan. Is there any other discussion on the motion? Dennis.

MR. ABBOTT: I don't know if I want to speak now, but I would say I have been initially opposed to allowing this to occur. It seems as though if we gathered enough data this year that shows that the pound net fishery is catching too much fish, then it would require an adjustment in how the individual states allocate their quota and would have implement things to ensure that they stayed under their quota number. Maybe we could probably live with this for a year, if that makes any sense.

MR. RICK BELLAVANCE: Mr. Chairman, I guess from a fisherman's perspective I'm just trying to think of what I'd rather prefer; a plan that allowed me to overfish and then I had to change my plan or we harvested more fish than we were supposed to and had to cut back the next year; or a plan that showed that we needed to adjust it to account for a larger fishery and make the following year an increase as opposed to a decrease. I'm thinking I would like the latter if I was a fisherman, anyway.

CHAIRMAN DANIEL: All right, we're going to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN DANIEL: All right, we're going to do a roll call vote on this one.

MR. WAINE: Maine.

MAINE: Null.

MR. WAINE: New Hampshire.

NEW HAMPSHIRE: No.

MR. WAINE: Commonwealth of Massachusetts.

MASSACHUSETTS: Yes.

MR. WAINE: Rhode Island.

RHODE ISLAND: No.

MR. WAINE: Connecticut.

CONNECTICUT: Yes.

MR. WAINE: New York.

NEW YORK: Yes.

MR. WAINE: New Jersey.

NEW JERSEY: Yes.

MR. WAINE: Delaware.

DELAWARE: Yes.

MR. WAINE: Maryland.

MARYLAND: Yes.

MR. WAINE: Potomac River Fisheries Commission.

POTOMAC RIVER FISHERIES COMMISSION: Yes.

MR. WAINE: Commonwealth of Virginia.

VIRGINIA: Yes.

MR. WAINE: North Carolina.

NORTH CAROLINA: Yes.

MR. WAINE: South Carolina.

SOUTH CAROLINA: Yes.

MR. WAINE: Georgia.

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GEORGIA: Yes.

MR. WAINE: Florida.

FLORIDA: Yes.

MR. WAINE: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Yes.

MR. WAINE: U.S. Fish and Wildlife Service.

U.S. FISH AND WILDLIFE SERVICE: Yes.

CHAIRMAN DANIEL: Clarify North Carolina's vote as a null, please.

MR. WAINE: To clarify, both North Carolina and Maine were null votes.

CHAIRMAN DANIEL: **All right, we have got 13 in favor, 2 no, and 2 null; so the motion carries.** Kyle.

MR. SCHICK: **I would like to amend this motion to include the Potomac River Fisheries Commission, Virginia and the state of North Carolina.**

MR. BILL COLE: Second.

MR. AUGUSTINE: Point of information, Mr. Chairman. Where did North Carolina show up on the report under the state implementation plans for Amendment 2? I saw Maryland, Virginia and the Potomac River Commission, but I did not see a request by or anything different from North Carolina. Was it submitted, Mr. Chairman, and we didn't get a copy of it?

CHAIRMAN DANIEL: I think our second expressed an interest. That is what the PRFC Proposal did.

MR. AUGUSTINE: Okay, again, the reason for my dividing the question was because if we ended up with a complicated motion like the first one, be it in a favorable vein or a negative

vein, typically, though, states around the table that will vote again one of those and blow the whole thing out of the water.

If you're going to move forward with that, Mr. Chairman, I would move to divide the question again. Your choice; I would rather take them one at a time or two at a time and be done with it as opposed to going a merry go around again like we usually do two hours at a time, spin our wheels and accomplish nothing and table it until the next meeting. Your choice.

EXECUTIVE DIRECTOR: I think if you want to keep these separate, vote against the motion to amend. I don't think we want to get another layer of motions in this thing. We've got too much going on.

Where we are is the motion that was just carried by the board on that roll call vote is now the main motion, which is approving Maryland's Proposal as presented. The amendment would add some other states to that. If you want to just take them one at a time, vote against this motion to amend. If you want to lump them all together, vote in favor of it and you've got one motion including the four jurisdictions.

CHAIRMAN DANIEL: Okay, it can't be any clearer than that, so we're going to vote on that and **we're going to vote on whether or not to amend to include three additional states to the motion. All those in favor of the motion to amend raise your right hand; all those opposed. Three to ten so the motion fails, so we will deal with them individually.** We need to vote on Maryland's main motion at this point, and I don't think there needs to be any further discussion.

MR. AUGUSTINE: Call the question.

CHAIRMAN DANIEL: Call the question; I never have understood that either because everybody keeps talking. All right, all those in favor of the Maryland motion raise your right hand; opposed, 3; null votes, 1;

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abstentions. **Okay, the motion carries.** Next; Kyle, do you want to do the Potomac River?

MR. SCHICK: Yes, I would move that the Potomac River Fisheries Commission be approved.

CHAIRMAN DANIEL: Second by Pat Augustine. Is there any discussion? Ritchie.

MR. WHITE: I would ask the same question that I asked of Maryland. Are there other fisheries other than pound net that could be restrained to allow enough quota for the pound net fisheries so that these fish are counted within our quota and not after the quota is filled?

MS. ELLEN COSBY: The pound net fishery in the Potomac takes 99 percent of the menhaden. It has historically been 98 and 99 percent, so we are basically a pound net bycatch fishery for the menhaden.

MR. BELLAVANCE: Under the Potomac River Fisheries Commission Proposal, would it be possible to have more than two 6,000 pound limits on one boat; would it be possible to have three or four or five? It says multiple individuals, but I don't know if that is constrained.

MS. COSBY: The Potomac River Fisheries Commission passed an order. In that order we specifically said that it is 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 own pound net or nets. The interest we had was from one father and son team that work together, that each have a couple of nets in their names, and they would be fishing their own nets if they were allowed to fish together.

As the order stands right now they are only allowed the 6,000 pound bycatch per day on their vessel even if they are together. Our interest was if Maryland was allowed to go with their family-type team with two people on the vessel, we were hoping that we would be able to allow this team to do the same. We don't ever

have more than two licenses on a vessel that I'm aware of.

MR. GROUT: The wording of this particular motion is very, very, very confusing because we already approved PRFC's Proposal as presented. Clearly, PRFC is asking for something different than what is in that motion there. I would hope that you rule this out of order because we've already approved this or something or have PRFC or some other member of this board make a motion that specifically states what they want.

CHAIRMAN DANIEL: Yes, this motion is out of order; and if you would withdraw it, I will speak to that.

MR. SCHICK: I can withdraw that.

CHAIRMAN DANIEL: I haven't had a chance to go back and look at the plan, and I'm assuming that the 6,000 pounds, it was silent on the number of trips, I guess. It's not? So more than one allowed the trip seems to be inconsistent with plan; but if we're going to go ahead and start approving all of these – we're going to start making all these motions and we're going to start approving all these new plans for multi-trips, what about if we just went ahead and just said everybody can have two trips; two permits? Why? That would be easier; that would be the fair thing to do, right? So that is not a good idea. All right, Kyle, go ahead.

MR. SCHICK: Actually, I feel that my motion wasn't out of order, but I will clarify it however we need because in our proposal we've stated that we wanted to have two licensees on one boat, 12,000 pounds, if Maryland was going to get approved. That was in our proposal from the Potomac River Fisheries Commission, **but I will move to allow the Potomac River Fisheries Commission to add a bycatch allowance of 12,000 pounds on one boat with two licensees for pound net fisheries only.**

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CHAIRMAN DANIEL: Is there a second to that motion? Seconded from Ellen. Bill.

MR. ADLER: Is this for one year just like Maryland?

MS. COSBY: That is correct.

CHAIRMAN DANIEL: Bob, was your issue resolved? Thank you. Bob Ballou.

MR. BALLOU: Mr. Chairman, I plan to oppose this motion for the same reason I opposed the Maryland Proposal. While I am very sympathetic to the basis for proposal, it is the slippery slope issue that concerns me, because we are now slip-sliding away. I plan to slide right in with a motion to request that Rhode Island be granted the same accommodation because we have a fishery that is identical to the ones that have been characterized earlier, primarily a pound net fishery.

From a fairness perspective, now that we have headed down this slope or we're in the process of heading down this slope, it compels me to try to get Rhode Island into the same status. I don't think that is consistent with the spirit nor intent of the amendment, so that is why I plan to vote no; but if the motion carries and if the Virginia motion carries and if North Carolina jumps in, rest assured Rhode Island will as well. Thank you.

CHAIRMAN DANIEL: Thank you, Bob. Is there any further discussion on the motion for the Potomac River Fisheries Commission? I guess to be consistent we should do roll call votes on these or should we? I mean, they're all pretty clear in favor. If somebody wants a roll call vote, all you have to do is ask. Otherwise, all those in favor raise your right hand; opposed same sign, 4 opposed; null votes; abstentions. **The motion carries 13 to 4.** All right, next.

MR. AUGUSTINE: **Mr. Chairman, I move that the board approve Virginia's request of a bycatch allowance for 2013 as recommended by the plan review team. Do I have to say 6,000 pounds; I don't think so.**

CHAIRMAN DANIEL: Clarification; it was not recommended by the PRT.

MR. AUGUSTINE: And then a follow-on question – well, I wanted to get a second. Jack, are you seconding that?

MR. TRAVELSTEAD: We didn't really submit a bycatch allowance request. I think the motion should be to approve Virginia's plan.

MR. AUGUSTINE: Was that embedded in your plan, Mr. Travelstead?

MR. TRAVELSTEAD: Well, the bycatch allowance is part of Virginia's plan but we need approval – we obviously need approval for the other parts of the plan, including the bycatch provision.

MR. AUGUSTINE: It is your preference, Mr. Chairman, how you want to clarify it.

CHAIRMAN DANIEL: I believe Virginia's plan was approved by the PRT with the only exception being the question regarding the double trips. I think the motion would then take Virginia – if approved would take Virginia off the table; you would be approved; you would be done. You could go home. That is the way I understand the motion and that would be the intent. That would be outcome of the motion.

MR. AUGUSTINE: That's good; thank you, but I have one question for that state. It says two or more individuals operating from a single vessel, and I understand that. The other states have clarified two. I think the PRFC said they were talking about two. I think Maryland was talking about two. Yours leaves it open-ended. Typically would it be more than two, Jack – could you help us with that – or are talking about father/son or family related or are we talking about maybe a hundred foot vessel with six permittees on it. It is too open-ended. Could you give us some help on that?

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MR. TRAVELSTEAD: First of all, I will second the motion, Mr. Chairman, for the record.

CHAIRMAN DANIEL: Thank you; seconded by Jack Travelstead.

MR. TRAVELSTEAD: Typically it is one person; it is one licensee going to his nets and bringing in the catch. There may be cases, as in Maryland, where family members might be fishing from the same boat. I don't know of any case where it would be more than two. I just don't have any knowledge that would ever occur. The way our law was written it limits a licensee to 6,000 pounds per day. Regardless of how many nets he has, he can bring in 6,000 pounds.

MR. AUGUSTINE: Mr. Chairman, it doesn't sound like it is going to be a problem. This is a provisional for one year, anyway; so long as you add 2013 to that, I think we're all set.

CHAIRMAN DANIEL: All right, can we get that clarification up there; move to approve the Virginia plan for 2013. Motion by Mr. Augustine; second by Mr. Travelstead. Is there any further discussion on the motion? Tom.

MR. FOTE: Can I ask Virginia two questions through the Chair? What percentage did you allocate outside of your purse seine fishery for the pound nets and for gill nets? I know we did 5 percent in New Jersey.

Did you do the same thing in Virginia to basically – because I'm just looking at it, too, we designed it into the thing so that the quota wouldn't be overtaken, and so I wanted to just know if there was a percentage. That is one question; and, again, this is only for the pound net fishery; this is not for the purse seine fishery or any other gear?

MR. TRAVELSTEAD: No, it is not for purse seine because purse seine is a directed fishery, but it does apply to all the other gears that are not directed on menhaden. It applies to gill gets. It applies to a cast net, for that matter, if you have a commercial hook-and-line license.

MR. FOTE: So I'd just like to know how much percentage you did because I what we did in New Jersey, but I'm not sure what you did in Virginia.

MR. TRAVELSTEAD: I don't know the percentages off the top of my head, but the pound net quota is I believe about 3.5 million pounds; the gill net quota was a million and a half; and then it is substantially less than that for the gears.

MR. SIMPSON: The issue here to me is that happens after in this particular case Virginia catches its state allocation, its state annual quota; what happens after that for pound nets in particular or other gears, for that matter. I'm not clear now what your law allows in terms of multipliers of 6,000 pounds per vessel. Would your law allow the same sort of thing that we have given Maryland and PRFC the latitude to do? I need to understand it a little bit better.

MR. TRAVELSTEAD: Yes, it would, yes.

MR. SIMPSON: So I would be concerned about that in Virginia's case because they do have substantial landings from other fisheries besides pound nets. To my mind, I approved PRFC and Maryland because we have potentially a discard mortality issue that we wanted to address, a passive gear fishery that may encounter more menhaden, and we don't want to produce dead discards there or make a fishery inefficient. I think Virginia has the latitude to manage within its state its total landings so that it can accommodate whatever pound net landings occur and count it within their directed fishery.

MR. TRAVELSTEAD: I don't have any latitude to change anything at this point; but, yes, you're right, if we see problems this year, we can go to the legislature and change it. Right now I'm in a situation where we have what we have. There will be cases, once the gill net quota is taken at some time this year, where a gill netter would have a bycatch of 6,000 pounds.

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MR. SIMPSON: So just to follow up; I think a gill net is the traditional fishery where it is actively fished. There is one boat that takes on that catch, lands it. With other fisheries, I assume the same thing happens. With pound nets, I'm still not clear if in Virginia's case if one vessel can come in with more than 6,000 pounds.

MR. TRAVELSTEAD: They could if they're multiple licensees on that vessel. If a father and son fish multiple pound nets and they're each licensed, then they could come in with 12,000 pounds under the Virginia law.

MR. ADLER: Jack, if this didn't get approved; would the plan that your legislature has approved already that you have to stick with for a year; what does that include already? Does it include what we were discussing about two or more – is that already in your approved thing in the state?

MR. TRAVELSTEAD: The legislation was approved back in January/February, and it simply contains a provision that any licensee in any non-directed fishery is entitled to a 6,000 pound bycatch after that gear's quota is caught. That is what it says. It doesn't go any further than that.

MR. ADLER: Okay, so if this isn't approved; would they still be able to put several people on the boat and get their six?

MR. TRAVELSTEAD: Yes.

MR. ADLER: Right now; I mean because –

MR. TRAVELSTEAD: Yes.

MR. ADLER: – it has been passed in your legislature and you can't change it?

MR. TRAVELSTEAD: That's right.

MR. GROUT: Mr. Chairman, I appreciate the issues that the Chesapeake Bay states have brought on this. I just want to make sure that we're doing this correctly in our process. As I recall, in the plan we were talking a 6,000 pound

bycatch limit per vessel per day. If there is a need for that to be changed it is my opinion – and I'm going to ask the executive director his opinion on this – that this needs to be done through a management action.

I'm just afraid that we're going to end up with a section here that has a very specific – in our management plan it has very specific regulation requirements, and then we're going to approve a series of plans that are a direct conflict with that. Now, there are a couple of ways that it could happen.

We either could change it by addendum or there could be a conservation equivalency proposal. That is clearly within our process here. I would like to ask Bob Beal directly, Mr. Chairman, are we doing something here that is in direct opposition to what we put in the fishery's management plan, and do we need to take a management action to allow these situations to occur?

EXECUTIVE DIRECTOR BEAL: Well, first of all, the plan in Section 4.2.1.7 is where all this is handled. To you last point of conservation equivalency; that is not available for this. It specifically states are not eligible to submit alternative state management regimes in lieu of bycatch allowance as written, so that one is pretty clear.

Then it gets less easy. The plan states that an incidental bycatch allowance of up 6,000 pounds of Atlantic menhaden per trip for non-directed fisheries shall be in place during a season closure. That sets the trip limit at 6,000 pounds per trip, but I guess the question there is what is a trip? If Doug and I are both on a boat; is my trip and his trip and we're each limited to 6,000?

That is probably some interpretation by the board. Then the next sentence goes on to say the amount of Atlantic menhaden landed by one vessel in a day as a bycatch allowance shall not exceed 6,000 pounds. This prohibits a vessel from making multiple

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trips in one day to land more than one bycatch allowance.

The wording there indicates that a vessel can't land more than 6,000, but the clarification part is that sentence was included to prevent a vessel from going out multiple times and landing 6,000 pounds each trip during that day. The question there is where does the board feel that leaves them? I don't know if I can give them yes or no on that one. There is a little room for interpretation there, but clearly the more 6,000 pounds of fish you put on the boat, the less restrictive all of these measures are.

CHAIRMAN DANIEL: Again, that translates over into many, many, many other plans; an inconsistent definition of a trip or if we're going to start trying to redefine a trip in this plan. I think that would have bearing on other plans. I think there is some confusion. We have a directed fishery with a quota, and those quotas are fairly small for the majority of us, I think. My understanding of the way the program works is, for example, in North Carolina there is a directed trawl fishery for menhaden in the winter, January and February.

I doubt we will see much because of Oregon Inlet in 2013, but there is a directed fishery that has landed as much as 3 million pounds in a year. We're constrained to a 1.5 million pound quota. My understanding of the plan – and I thought I had a pretty good understanding of it, but my understanding of the plan was that when we go back and do our state plans, we manage our directed fishery with the quota; and once that quota is achieved or we approach it, we close the fishery.

Then any subsequent landings after that fall under the 6,000 pound bycatch allowance. For us at least that is a pound net fishery, and so the assumption was is that anything over 6,000 pounds would have to go back overboard, and you would be able to retain 6,000 pounds. That is not the interpretation of the board, clearly, so there is a disconnect right now between the board's interpretation of the plan and the plan is what it sounds like to me.

Now, Bob says there room for some interpretation here. I'm having a hard time finding it, and it is an uncomfortable position to be in the Chair and be in such a minority on the intent here. Clearly, the intent of the board is far different than the intent of the plan, and I don't know how to fix that. We have already gone through and we have approved Maryland and we have approved Potomac River Fisheries Commission.

We're now starting to have some angst about Virginia. North Carolina and Rhode Island haven't submitted a formal request but have clearly declared an interest in moving forward. It is the same thing. What we're doing I think is promoting the development of a bait fishery in our various states to provide us with those opportunities and provide our fishermen with those opportunities, and that was never a discussion that I recall during the board deliberations.

Despite all the craziness that went on, I do remember the general sense, so I have got a real problem with this disconnect that I'm hearing and seeing, especially at 13 to 2 disconnect is extraordinarily concerning to me, and I don't know how to fix that. I need some help; I need some guidance on how to proceed.

We either need to continue moving forward and simply remove the discussion on the merits of the proposals to increase the bycatch allowance and just allow it – if a state requests it, allow it. Now that seems to be the general sense of the board, because all these questions about how the fishery operates or what, this, that and the other thing really doesn't have any bearing.

We're plowing new ground right now. I hate to move forward and do Virginia; then if North Carolina moves forward; if Rhode Island; whoever else wants to move forward and continue to have this discussion, because we're now 15 minutes and we haven't even – you know, this is the big

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issue, but we've got a long way to go before we're done. I would like to have some discussion on that specific point right now as to how you want to proceed because I feel like I'm going in a different direction than the majority. Doug.

MR. GROUT: Given where we are at this point, I know we're over, Mr. Chairman, but it really might be valuable for us to take like a five- or ten-minute break to take a breath, maybe have a few conversations about how we're going to address this and limit it very strictly to ten minutes, but I think it might be appropriate right now for us to just take breath here.

CHAIRMAN DANIEL: All right, I'm going to do the countdown with ten seconds to go.

(Whereupon, a recess was taken.)

CHAIRMAN DANIEL: We're ready to go. All right, Doug.

MR. GROUT: Some of the conversations I have heard, and clearly some of the votes that we have taken here from my standpoint are in conflict with what is the wording in the plan. Now, the commissioner from Maryland indicated to me that when she made the motion to allow a 6,000 pound bycatch, it wasn't her intent that it be a per vessel per trip bycatch.

Looking at some of the votes here right now, I'm beginning to wonder whether that was the intent of the rest of the board here. From my standpoint if we continue to approve these 12,000 pound bycatch allotments for each state, then I'm going to ask at the end of this meeting that we start an addendum to clarify that this is something that the board intended because it is not what is in our plan right now.

I'm very, very concerned that we're approving plans that have measures that are in conflict with what is in the fishery's management plan; the wording of the fishery's management plan. That is the way I'm going to come at this is that if the board continues to approve this, I am going to ask that section be changed through an

addendum process to reflect the will of the board here.

EXECUTIVE DIRECTOR BEAL: I think we're in a spot where when this amendment was developed, it was the December member, it needed to be turned around very quickly. The wording of the motion and some of the discussions at the December meeting may have left some room for interpretation and it put the PDT in a spot where they had to go home and interpret what they thought they heard from the board.

I think they did a good job of that. I think they're in a tough spot. A lot of times with something as complicated as this amendment, we would have taken the wording back to the board and said is this what you guys really meant? The PDT would have done their best job and interpret it and we would taken that extra step to go back to the board and said is this really what you guys envisioned at your December meeting?

Well, given the timeframe and the board's desire to affect the 2013 fishery, we didn't have that sort of luxury to go back and do that. I think the board is in a spot right now where they're trying to work through the details and work through the PDT's interpretation, which I think is very reasonable. The board has got to give itself a little flexibility here and figure it out.

I think things such as the resolution of the data is going to be really important; so, in other words, if these are approved – and I'm pushing for them to be approved or not – I think the resolution of the data from the states will need to be at level where they can tell how many trips were landed above this 6,000 pound one permit on the boat level and up to the 12,000 pounds.

The board is going to be able to look at that data and say, okay, there were X number of trips or X thousands pounds of fish landed in the provisions that were provided to each of

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these states to allow two licenses on a boat. If the board wants to do this, I think there needs to be a very strong sort of post mortem evaluation of how big a deal this really was. I think everybody around the table is speculating that and it may or may not be a big deal, but maybe you have to run the experiment and then evaluate how big of an impact it was to the fishery.

CHAIRMAN DANIEL: Thank you, both. Dave.

MR. SIMPSON: So just one comment to make the distinction that the two plans we have approved are from jurisdictions that are overwhelmingly a passive gear fishery that doesn't have a lot of latitude. I think the board's choice was either when you reach your quota, you pull stakes, literally, you know, that gear comes out of the water; or, we give them some latitude because we're learning things about that fishery that are different than the ones that certainly I'm accustomed to that are active pursuit fisheries, targeted fisheries.

In the case of Virginia, I do intend to vote no because they have directed fisheries that they can adjust so that their pound net catches count in their quota, and that is we're asking them to do. After that, then a landing to my view should only be up to 6,000 pounds considered as bycatch and not counted against the directed quota. These other jurisdictions don't have that latitude, but with the one we're up on now, Virginia does, so I intend to vote no on this one.

CHAIRMAN DANIEL: Well, I think just for clarification I don't believe that – I believe you either misspoke or misstated the issue with any of these fisheries to close and have to pull stakes. I don't think that would be what happens. I think the intent of the bycatch allowance, whatever it was, was to prevent that from happening.

If Maryland caught their quota by whatever means, then they would be allowed to continue pound net fishing for the remainder of the year and any bycatch of menhaden would be accounted for in the 6,000 pound bycatch

allowance. Where there seems to be a bit discrepancy is the intent of the board in that motion, as Bob suggested.

It was my thought and why I'm so confused is I thought it was very clear that it was 6,000 pounds per trip; and it didn't matter how many people were on the boat or anything; it is just 6,000 pounds per trip. So now we have run into this confusion, and that is what we need to fix. I think the characterization of the issue by Doug and Bob are good.

I think the break was good, but we need to decide how we're going to move forward with these. We've already moved forward on Maryland and PRFC, so we have approved those. I don't know if we want to go back and disapprove those or whether we just want to continue down the road of allowing this.

But, again, I would bring up the potential – and I know there was some angst – but to provide the states the latitude to have up to two bycatch allowances per trip if they so desire instead of taking it state by state by state; with the understanding that it is a 2013 provision that we can review and deal with in an addendum that I think it is very appropriate for us to move forward with to clarify our intent and clarify the impacts of what this is. But right now we have got to get through this issue and several other issues before we're done here today; so with that in mind, can we go ahead and vote on the Virginia motion is there further discussion on that motion?

MR. SCHICK: Since this is only for a year, Virginia doesn't have the flexibility of changing around quotas to allow for any kind of change, and we are in the same boat as everybody else with our pound netters. The issue here is fairness to the pound netters. In Virginia two licensees go out on one boat. It doesn't matter whether they're fishing for rockfish or whatever gear it is, when they come back and report, that is two trips.

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I know that might be different in other states. I was very fortunate that I had 103 degree fever so I couldn't go to December's meeting; but when I read the minutes, it was my impression that it was each licensee had a 6,000 pound bycatch because that is a trip. When a person goes out to fish and comes back with his license and his quota; that is a trip.

Obviously that communication issue isn't a hundred percent and we do need to discuss that in the future. Virginia is in the same position as Potomac River Fisheries Commission and Maryland land we have got pound netters and we don't want them to be put into the situation where they've got, you know, two people going out and having to throw fish overboard because they're trying to economize in a family fishing situation.

MR. MILLER: Just a quick clarification, Mr. Chairman. If this motion is approved – let me put it this way; if this motion is not approved; what are the implications for what Virginia can do in 2013? Do they have to resubmit their entire proposal? Are we only voting on the bycatch provisions of their proposal?

CHAIRMAN DANIEL: My understanding is the Virginia Proposal met with the approval of the PRT with the exception of clarifying the bycatch allowance; so that by approving this plan, Virginia's plan is done and approved. Now, if we vote this down, I guess Virginia is out of compliance and that will be an issue that we will have to address and deal with; because if we don't approve their plan and that is all they can implement, then that brings up a whole different can of worms issue that I'm not quite sure we're ready to skin right now. Jack.

MR. TRAVELSTEAD: The board put Virginia in a position of having to draft legislation during the period of December 14th to January 9th when the deadline for submission of legislation to the General Assembly ends. We did everything that we thought was right. We had a number of discussions with Bob Beal on exactly what Virginia needed to include in that legislation.

We did not have the guidance document. It didn't come out until February 26th. We did what we thought was the right thing in conformance with the guidance that we got from staff and that is where we are. The General Assembly will meet again next January; and if there are changes that need to be made, we can make them.

I agree with the previous speaker that I think we're going to need an addendum on this entire subject. There are too many questions being asked and too many concerns expressed. I think in many ways we're making a mountain out of a molehill here. Virginia's plan divides our non-directed bait quota by gear type, and those fishermen and those individual fisheries will fish under that quota until it runs out.

I can't tell you when that is going to run out. It may run out in October, it may run out in June. Whenever it runs out, that is when the 6,000 pound bycatch kicks in. Whenever it runs out, I think the amount of fish that are going to be landed under that 6,000 pound bycatch provision is going to be so small compared to the total amount fish that are going to be removed from the fishery, that it is virtually insignificant. Nonetheless, it should be subject to an addendum at end of this year and let's get it right for next year.

MR. WHITE: Mr. Chairman, I guess going forward when will we have the reporting information on this year's season and what will our timing be for states such as Virginia to be able to react to that? Is the timing going to be such that we're going to know what happened this season and still be able to change it? If it turns out that it is not small and it is something that we have to react to, will Virginia be able to react to that or are we really locking in two years?

MR. WAINE: Just to clarify, that would come through with the compliance reports, and those would be due April 1st of 2014. Often the data that gets presented in those in terms of landings is preliminary at that time.

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MR. WHITE: So in essence this is not one year; this is two years, then, on that basis, minimum?

EXECUTIVE DIRECTOR BEAL: We don't necessarily have to wait until the April 1st deadline for compliance reports. If the states have the data available or if this board wants to make a provision of approving these that those approved states are asked to supply data by a certain date, I think the board can ask that as well. I don't think we have to wait for that one date.

CHAIRMAN DANIEL: Well, the problem is from North Carolina's perspective, we have good landings' information through the clearing house and quality controls around that time, maybe a little later. I don't know if other states can go quicker, but we would have a hard time getting anything any sooner than April 1st. That is a tough nut for us. Other states are probably different; but just as an example.

MR. TRAIN: Mr. Chairman, I'm going to speak in favor of the motion. It seems to be – well, Virginia is the 300-pound menhaden gorilla in the room. They've got most of the quota and for some reason people might think about treating them differently. The fishermen fishing the pound nets are no different than the fishermen fishing the pound nets in any other river. Not voting in favor of this will not save a fish. It will just punish some fishermen.

MR. TRAVELSTEAD: I think there will be data that the states will have this fall that will be valuable in allowing us to make some changes that could be implemented in time for next year. If, for instance, Virginia's pound net quota is taken in May or June, we're going to know that real quick, and so we're going to know that Virginia needs to do something next year to force that quota to last longer in the calendar year than it did this year. That is before the 6,000 pound bycatch kicks in, so I think there is going to be a lot of information we will have. It may be preliminary but I think it will be good enough that we can react to.

CHAIRMAN DANIEL: Yes, I think we can definitely put some of that information together.

It is just the final landings' information may be difficult, but certainly getting some indication as to how the fishery is prosecuted and if there have been changes in the fishery because of the allowance. A lot of times what we find is when we put a limit on something, people go after it. Now whether they do that for menhaden or not is tough to say. Dennis.

MR. ABBOTT: Mr. Chairman, a question directed towards Jack; even if we were provided with some information this fall, would the General Assembly in the Commonwealth of Virginia – my guess would be they wouldn't act unless there was some management plan change so we're still back – whether we get the information next April or some preliminary information in the fall, we're still looking at an additional year before any action, if necessary, would be taken. Is that not true, Jack?

MR. TRAVELSTEAD: I would say the motion is asking you to approve Virginia's plan for 2013. If at the end of this year you don't want us to continue that, then you tell us the same plan is not approved for next year, and we modify the law for 2014. I think that can happen. If you want to give us further guidance for next year, we're ready to hear it.

MR. STEVE MEYERS: Mr. Chairman, we voted for Maryland and Potomac River because we saw it as a small fishery with fixed gear, limited timeframe, a learning experience. We're going to abstain on this vote for Virginia. We see this as getting into the realm where we really need to have a new addendum to fine tune this. This is kind of spiraling and that is not our intent when we support Maryland and Potomac River. Thank you.

MS. FEGLEY: Mr. Chairman, I just want to speak to the spiraling issue. One of the things that I think is very important here; you know, when we went forward, one of our goals was to absolutely avoid any growth in this fixed gear fishery that we

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have, so we have very strict eligibility criteria for who can qualify for this.

There are control dates, there are eligibility criteria, there are non-transferability provisions. We have built a lot of things in there to really support these family operations but prevent any growth and expansion of this thing to your point about when you have a limit you go after it. I guess I'm just putting out those eligibility criteria in relation to this spiraling situation; that I think that has to be, as we travel through this, a consideration.

MR. FOTE: I'm trying to think of how to deal with Virginia's problem. The only way I can see us dealing with that and maybe understanding it if it was said that this would be only 2013. You plan to go to your legislature for 2014 and they just come along with everybody else in this unless at that time you can prove to the board to do that. I'm looking at a sunset part of this legislation because I know you passed the legislation.

I don't want to vote you out of compliance. This is not going to go to the secretary to basically say, you know, that you're going to hurt the stock and we understand that. I'm looking for a way of getting around that and the only way I see, since it is already done by legislation, is to go and say you will put legislation in 2014 that will try to rectify this situation.

Now, at a later date if you can prove that it is not a problem and everything is going on, we can amend that, but I think this is with the understanding. Basically I don't want to see this drag out another year without a determination. If you can come back with all the information in, say, October and say here is where we are and we're not going to have a problem here and basically put it in force, then we might think differently. I don't know if that is an acceptable way to go on that.

MR. TRAVELSTEAD: Can I respond to that, Mr. Chairman? The motion only approves Virginia's plan for 2013. I am certainly willing to take any guidance from this management board back to the Virginia General Assembly to

change it in any way. I have no problem with limiting a boat to the 6,000 pounds at all. Unfortunately, our law wasn't written in a way to prevent that; but if that is the ultimate desire of the board to allow only one trip of 6,000 pounds, that is fine with me. I don't have a bit of problem with it, but I can't do it until 2014.

CHAIRMAN DANIEL: The last hand is Pete and then we're going to vote.

MR. PETER HIMCHAK: Mr. Chairman, I would just like to speak as the second largest gorilla in the room. We haven't gotten to New Jersey yet. I support the Virginia Proposal with the recognition that we realize that we may have to make adjustments as we learn in 2013; and if this issue is rectified in 2014 – I'm reading our legislation. We're in the same position.

We had to have – you know, it is ready for the governor's signature so we're not pulling anything back here. We can adopt regulations later in the year, which we intend to do, and then we can move things much quicker. Fortunately for us, we don't have the problem with pound nets and gill nets and other issues that you have, but we could have been in your position and be in the same position.

So, for 2013 I am at least voting in favor of this Virginia Proposal, recognizing that you've got 82 percent of the TAC and it is like, you know, what does gray area amount to in the whole scheme of things? We will determine what it is after executing these plans, and then we will make adjustments if it is bigger than 1 percent or 2 percent. We don't know.

CHAIRMAN DANIEL: Okay, that's it, time to caucus.

(Whereupon a caucus was held.)

CHAIRMAN DANIEL: Okay, there has been a roll call vote request.

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MR. WAINE: Maine.

MAINE: Yes.

MR. WAINE: New Hampshire.

NEW HAMPSHIRE: No.

MR. WAINE: Commonwealth of Massachusetts.

MASSACHUSETTS: No.

MR. WAINE: Rhode Island.

RHODE ISLAND: No.

MR. WAINE: Connecticut.

CONNECTICUT: No.

MR. WAINE: New York.

NEW YORK: Yes.

MR. WAINE: New Jersey.

NEW JERSEY: Yes.

MR. WAINE: Delaware.

DELAWARE: Yes.

MR. WAINE: Maryland.

MARYLAND: Yes.

MR. WAINE: Potomac River Fisheries Commission.

POTOMAC RIVER FISHERIES COMMISSION: Yes.

MR. WAINE: Commonwealth of Virginia.

VIRGINIA: Yes.

MR. WAINE: North Carolina.

NORTH CAROLINA: No.

MR. WAINE: South Carolina.

SOUTH CAROLINA: Yes.

MR. WAINE: Georgia.

GEORGIA: Yes.

MR. WAINE: Florida.

FLORIDA: Yes.

MR. WAINE: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Abstain.

MR. WAINE: U.S. Fish and Wildlife Service.

U.S. FISH AND WILDLIFE SERVICE: Abstain.

CHAIRMAN DANIEL: The motion carries ten in favor; five opposed; two abstentions; no null votes. All right, next. Bill.

MR. COLE: Well, we're next down the line, so I'm going to move that North Carolina be approved for a bycatch of 12,000 pounds on one vessel with two licenses each for pound nets only in 2013.

MR. BALLOU: Point of order.

MR. COLE: This is the same motion as was approved for the Potomac River Commission.

CHAIRMAN DANIEL: All right, I've got a motion, a second and a point of order. Motion by Mr. Cole; second by Mr. Abbott. Point of order by Mr. Ballou.

MR. BALLOU: I'm just curious; given the sequence you're going through with regard to the implementation plans, we are to take up North Carolina's implementation plan at some point. Are we just moving that up

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now and taking up the entire North Carolina plan, including the deficiencies noted by the PRT or are we dealing with this as a separate issue and then we will later get to the North Carolina plan in its entirety? It relates to how Rhode Island is going to position itself. Thank you.

CHAIRMAN DANIEL: Yes, I would like to get this issue done with so we're not dealing with it in every plan, so I would like to go ahead and get these issues done, notwithstanding it is from North Carolina, it doesn't matter. Any other state that wants this as a separate issue for their plan, this would not approve it. Unlike Virginia – now we have approved Virginia's plan; they're done. That would not be the case for North Carolina or Rhode Island if they wanted to follow suit with a request similar to the one just made by North Carolina,. Is everybody comfortable with that approach? Adam.

MR. NOWALSKY: For the states of Maryland, Virginia and PRFC, we were acting on recommendations from the PRT. Do we have any recommendations on this matter? Has this matter been discussed for North Carolina by the PRT that we would have any guidance to go on?

CHAIRMAN DANIEL: The PRT did not recommend the others, so there was not a recommendation from the PRT to support the Maryland, Virginia and – if you want to go with the PRT's recommendation, you would not have approved it.

MR. NOWALSKY: I will clarify that in saying that the PRT recommended the board consider those; so did the PRT recommend the board consider a proposal from North Carolina and did the PRT have a proposal to review from North Carolina?

CHAIRMAN DANIEL: This was not in North Carolina's plan, no. Jim.

MR. GILMORE: I have been trying to stay out of this, but let me just throw a couple of thoughts out. From my perspective and I think everybody needs to recognize we have rammed this thing through really fast because of

deadlines that had to be met based upon legislation, whatever. Now, the states that came to the table with a plan that went to the PRT and essentially came up with a recognized issue, I have sympathy for that because we all need to recognize we're going to have to adjust this thing because hopefully some time before midnight we're going to get to New York's problem, whatever, because we need some adjustment also.

I was okay with approving and supporting the other ones mainly because of that because this is tweaking that we're trying to fix in the first year of something we probably should have taken two years to do in the first place. But now if we're going into other states who are just jumping on the bandwagon, I'm not going to put in that I want to double my trip limit because I don't really see a need for that right now, and I didn't submit that. I think any of the states that are going to put up a motion that says, well, I want the same thing, I would oppose because they haven't really demonstrated that is a need that they have. This is more a reaction to what is going on today. Thank you.

CHAIRMAN DANIEL: Are there any further comments about that? Would you like for me to address that or would you like me to step down as the Chair to address that? Address it? We submitted the 6,000 pounds because that is what we thought the limit was. We didn't realize that there was going to be an opportunity to expand that.

We have the same problem in North Carolina. We will have the same problem in North Carolina that Maryland and Potomac River and Virginia have in terms of having discard mortality above and beyond 6,000 pounds. I see no difference in our request than the other three in terms of the justification.

I don't know if that justification was presented to the PRT other than what was presented here to the board, but we have the

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exact same situation where we're going to have pound nets with eight or ten thousand pounds in there and we're going to have to discard half of them. That is why I think limiting it to the pound net fishery, that would be the only really that we would have that problem with, so that is why it is limited. But, anyway, just to try to answer the question without speaking in favor or opposed to it, it is just the factual clarification, I hope. Bill Cole.

MR. COLE: Mr. Chairman, you beat me to it because I was going to try to answer Jim. North Carolina has got a long history of pound nets in our inland waters. We can have – I'm not saying we have it every day or every month, but we can – depending upon how the winds blow, we can have major problems and we will have floating fish regardless of what we do. When the wind blows right, they will all be in those nets and there is nothing we can do about it. We're asking for a little leeway here; that's all.

CHAIRMAN DANIEL: Is there any further discussion on the motion? Ritchie.

MR. WHITE: I'm going to support the motion. I have opposed all the motions previously and now we're into an area of fairness. It is not fair to North Carolina that has the same kind of problems when a number of states are now allowed to do 12,000 pounds and North Carolina not. I think we were wrong in doing what we have done and now that is water over the dam, and now it is time to fair.

MR. FOTE: It just reminds me we have to be really carefully when we make motions. I made a motion one time for a hundred pound bycatch that wound up into a thousand pound bycatch. It just brings us back to this haunting memory that we make motions at one place and all of a sudden a couple of months later we change it and now we go to people that have respected what we did and we turn it completely around and it makes a bad, bad feeling among a lot of people that supported it.

MR. ABBOTT: Mr. Chairman, in your review of the plan, did you make a different interpretation than the states of Virginia and

Maryland did in making your conclusions regarding bycatch?

CHAIRMAN DANIEL: Yes, sir. Is there any further discussion on the motion? If not, I will read the motion. Move that North Carolina be approved for a bycatch of 12,000 pounds on one vessel for two licenses each for pound nets only for 2013. Motion by Mr. Cole; second by Mr. Abbott. Roll call or regular?

(Responses of "regular")

CHAIRMAN DANIEL: All right, all those in favor raise your right hand, 15 in favor; opposed, no opposition; null votes; abstentions, two. All right, thank you very much. Bob.

MR. BALLOU: Mr. Chairman, I would like to make a motion that Rhode Island be approved for a bycatch of 12,000 pounds on one vessel for two licenses each for fish traps only for 2013. If there is a second, I will just add a quick clarifying comment. Thank you.

CHAIRMAN DANIEL: Second by Dave Simpson. Bob.

MR. BALLOU: Just for the board's edification, there are a total of seven licensed fish trap operators in Rhode Island fishing twenty traps. We have a 75,000 pound quota. That quota is based entirely on our non-directed fixed gear fishery, so we are in an identical situation to the other states that have already put this issue forward. Thank you.

CHAIRMAN DANIEL: Are there any questions for Rhode Island? Jim.

MR. GILMORE: Mr. Chairman, your suggestion a while ago about just adding all the states into one motion might be a lot more efficient than doing this, instead of us going through each one of the states. I don't want to do this, but I'm looking at the issue now if I walk back to New York and I've

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got nine states got 12,000 pound limits and I don't, I'm going to get killed at the border. **I would like to maybe suggest that we add more states onto it and add New York onto this motion.** Thank you.

CHAIRMAN DANIEL: For traps?

MR. GILMORE: Pound net, yes.

MR. STOCKWELL: You might as well add Maine, too.

CHAIRMAN DANIEL: All right, can we say stationary gear; would that cover the disparity between the traps and the pound nets and those types of things? If you wanted to modify the motion for stationary gear and add the states that want it; I think we can do that as friendly amendments to the motion. So far I've heard Rhode Island, Massachusetts, New York, Maine. Is there anyone else? This is just for 2013; stationary gears. Lynn.

MS. FEGLEY: Mr. Chairman, I was also going to suggest that in addition to "stationary" there would be the word "multispecies", because these are not supposed to be targeted.

CHAIRMAN DANIEL: As long as there is no objection from the maker and the seconder of the motion, we can add – Dave.

MR. SIMPSON: And just to be clear – I don't know that it matters – we're not talking about anchored gill nets or any other silly thing. It is pound nets, trap nets, fyke nets, things like that.

CHAIRMAN DANIEL: Correct; that was my understanding. Is everybody good with the perfection? Okay, move that Rhode Island, Massachusetts, New York and Maine be approved for a bycatch of 12,000 pounds on one vessel for two licenses each for multispecies stationary gear only for 2013. Motion by Mr. Ballou; second by Mr. Simpson. Do you need to caucus? **All right, those in favor raise your right hand; all those opposed same sign, no opposition; no null votes; abstentions, two.** It passes unanimously. Doug.

MR. GROUT: One more motion on this issue, and this motion is to attempt to get around the disconnect with next year's plans with what is stated in the plan. **I am going to move that for 2014 all states will be limited to a 6,000 pound per vessel per trip bycatch limit with only one landing event per calendar day unless the board approves an addendum to modify Section 4.2.1.7 of Amendment 2 to reflect this.**

CHAIRMAN DANIEL: Motion by Mr. Grout; second by Mr. Bellavance. Very helpful for clarification. Roy.

MR. MILLER: Mr. Chairman, I have no objection to the intent of the motion; however, I think the reason that we specified 2013 in all the previous motions was so we would have a learning event. I think it is premature to specify what we're going to do in 2014 at this point in time until we have had the benefit of learning from 2013. Thank you.

MR. TRAVELSTEAD: Just a question; if I own two vessels, can I go to my pound net and put 6,000 pounds into each vessel?

CHAIRMAN DANIEL: In this motion?

MR. TRAVELSTEAD: Yes; 6,000 pounds per vessel or does the per trip – I think it gets a little confusing.

CHAIRMAN DANIEL: I think that is something that we – I will let Doug speak to it as well, but I think that is question that we need to answer. That is the confusion that is generated around the table, which is in the definition of a trip or a person or a limit or a license, whatever. I have never heard us have these discussions before when it comes to these types of issues.

Now they have become an issue and so we need to fix that. My hope is that by pursuing an addendum to identify those characteristics of the fishery are important so that we can answer those questions more definitively. Doug.

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MR. GROUT: And just to clarify it and, hopefully this will clarify your issue, I would like to put in after “bycatch limit”, “regardless of the number of permit holders on the vessel”. Again, it is only to provide the opportunity to get this board to clarify what they intended with this particular section in the plan. From my perspective, what we have approved today in clear contradiction of what is in – is not what it allowed under the current writing of Section 4.2.1.7. If the board wants to allow this, we need to put that in a management action.

MR. SIMPSON: I agree with – I think it was Roy that said it. I appreciate what you’re trying to do, but I think it might be a little bit early. My preference would be for the states that have pound net fisheries to get together and talk about what a trip means and how are we going to deal with this issue of that passive gear that is going to be taking fish even after their quota is filled because they’re targeting other species.

I would like to hear back from them on how do we deal with this and maybe they could report back to us in August and we take it up there at that time. I see the boats go out and there is a big boat that is towing three or four little boats, and so does each of them gets – it gets silly so people who are familiar with the fishery need to talk about this and come back to us with a clearer idea of what a trip is for a pound net.

MR. FOTE: I think the reason we haven’t had this discussion of other classes where we allowed bycatch is because it was strictly bycatch. You had to bring in a certain amount of other fish to basically qualify for the bycatch. When you aggregated that rule out, when you put that rule out that you didn’t have to have pounds of other fish to bring those fish in, then you created a whole new sector, which is really not bycatch when we should be calling it a different name.

Really, it is directed allowing for a certain amount of fish to be landed when there is no other fish on board, because bycatch means there are other fish on board is the definition I’ve seen for years. This is a new definition of what we’re doing, so we need to clarify that. I

think Doug’s motion is in order because until we clarify that, we have got to follow the management plan.

We’re letting it slide this year because of legislative things. We do that occasionally when we put things in that can’t be done in the same year, but is to make sure in 2014 it is done according to the plan if we don’t otherwise state that it will have exceptions. This moves us along in the right path and puts us on a timeline to get things done right.

MR. WHITE: Mr. Chairman, I think this motion accomplishes what Dave wants. This allows for the states to see later into the fall if there is a problem with this to start an addendum to address it. Short of that, if there is no problem seen, then we’re going to live with the language that is in the amendment now. I think this clearly – it doesn’t say start an addendum now; start an addendum when we see the need.

MR. STOCKWELL: Mr. Chairman, my initial thought was that this motion was premature, but I concur with Ritchie that it provides us incentive to deal with it so we’re ready for the 2014 season.

MR. GOLDSBOROUGH: Mr. Chairman, like a lot of people, I think, have had concerns from a conservation standpoint about the way we spiraled here. I don’t think anybody saw that coming or intended that. Having said that, I think we all also realize that this is the first year of trying to apply a quota system to a fishery that has never been limited before, and in the case of these fixed gears are multispecies fisheries and present lots of challenges and not mention in addition that we’re midway through the season.

My view of it is that it is acceptable within the bounds of responsible management to take the first year with a little bit of latitude and try and sort out all these issues as long as we do plan to learn from this first year’s experience and respond to that learning for

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the second and subsequent years. I'm not sure if this allows us to do that. I think we're confused on what the letter of the FMP actually is. We've already spoken to that so how can we say that is what this would hold us to?

I just hope we can have a place a process for learning from this year and then responding to that. From a process standpoint, how long does it take us to implement an addendum? We were going to go until, when, our annual meeting and then decide to do an addendum or not, and how does that solve Jack's problem coming back with his General Assembly in January and February and making changes for next year. I'm not sure where that leaves us, Mr. Chairman.

CHAIRMAN DANIEL: I'm not completely sure either. Bill Cole.

MR. COLE: Mr. Chairman, I've got some problems with this; because in North Carolina we monitor we trip. We license the individual, but we regulate the trip, in other words, per vessel per trip.

Then we come back and we put additional restrictions to only one landing event per calendar day. What this would do is if I've got two fellows that are working a pound net and they both are properly licensed and permitted by the state; that they're only allowed half of what they would be allowed if they had taken two boats out to empty the pound net, and I'm not sure that is fair.

CHAIRMAN DANIEL: Well, I think we will have ample time to work through the specifics of this as we move forward. The point is made and taken. Jack.

MR. TRAVELSTEAD: This motion does help Virginia. It allows me to start working on legislation for next year so that we can fix Virginia's problem; and then if an addendum is done, that's fine, too, but this motion does help us.

CHAIRMAN DANIEL: All right, is there any objection to the motion? The motion is move that for 2014 all states will be limited to

a 6,000 pound per vessel per trip bycatch limit regardless of the number of permit holders on the vessel with only one landing event per calendar day unless the board approves an addendum to modify Section 4.2.1.7 of Amendment 2 to reflect this. Is there any objection to the motion? Seeing none; the motion carries.

All right, we have dealt with that, so the next issue is we're going to go through the state-specific recommendations to meet Amendment 2 requirements. It is my hope that we can get through all of this and have a blanket motion to approve the plans that are not de minimis – well, actually, no, let's do this first.

There is a recommendation from the PRT to approve de minimis status for New Hampshire, South Carolina, Georgia and Florida for 2013. Can I have a motion in that regard from Mr. Augustine.

MR. AUGUSTINE: Mr. Chairman, move to approve de minimis status for New Hampshire, South Carolina, Georgia and Florida for 2013.

CHAIRMAN DANIEL: Motion by Mr. Augustine; second by Mr. Adler. Is there discussion on that motion? Is there any objection to that motion? Seeing none; that motion carries. All right, Rhode Island, you have an issue in 4.2.1.7, prohibit the use of multiple carrier vessels per trip to offload bycatch exceeding 6,000 pounds. I don't know if that is even an issue at this point now.

MR. BALLOU: Well, to the extent that needs to be added to Rhode Island regulations, we're perfectly prepared to do that. If that is all the PRT is looking for is a commitment to add that in, I think it was inadvertently left out and we will add that in. I assume it would be, though, 12,000 pounds now instead of six.

I do have one question, though, in terms of the timing here, and I think this really is a

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broad question, but I think it is a perfect time to ask it, but I'll let you be the judge of that. We are in the process today of approving implementation plans that go into effect July 1. However, quota monitoring and quota management began January 1 as I understand it; so it is incumbent upon all the states as of today to be monitoring their quotas under Amendment 2 and to be prepared to take action to close their fisheries as soon as they have reached their quota whether or not that is before or after July 1; am I correct in that interpretation?

CHAIRMAN DANIEL: I think you would be smart in interpreting it that way. If you know that you're over the quota before July 1st, it would behoove you to close it because you would have to pay back.

MR. BALLOU: Thank you for that. A second question; Rhode Island's quota is 75,000 pounds. We have a purse seine fishery that operates in Narragansett Bay that lands in Massachusetts under their quota. If Rhode Island reaches its 75,000 pound quota because of the fish traps – that would be the reason why we would reach that irrespective of the purse seine operations – as I understand it we would not be obligated to close Rhode Island waters to commercial menhaden fishing.

Rather we would be obligated to close Rhode Island to the landing of menhaden; therefore, Rhode Island could remain open for menhaden fishing even though our quota will have been reached as long as those fish are landed in another state under their quota. Is that a correct interpretation?

CHAIRMAN DANIEL: I think that is a correct interpretation, but my understanding would be that if you catch your 75,000 pounds of quota in Rhode Island, you shut down your directed fishery and then you operate on up to 12,000 pound bycatch allowance; so you wouldn't have to close Rhode Island.

MR. BALLOU: Again, I'm trying to differentiate between our fixed gear fishery, which lands in Rhode Island, and, you're right, would now transition into a bycatch fishery, a

12,000 pound limit, landing in Rhode Island, but meanwhile we would have potentially an ongoing purse seine fishery in Rhode Island waters but with the landings in any other state potentially, but Massachusetts being the most likely under their quota, but I just wanted to make sure that is clear. I don't think it was clear in our plan or proposed regulation. As I read through them now, I just want to make sure in the interest of full transparency that is our interpretation of how we're going to be managing our fishery this year, and I just want to make sure the board concurs with that interpretation. Thank you.

DR. PIERCE: Just a clarification; in light of the decision that we made a little while ago about the 12,000 pounds which was for stationary gear, this is prohibit the use of multiple carrier vessels per trip to offload bycatch exceeding 6,000 pounds, the question arises multiple carrier vessels for what gear type?

In other words, are they carrier vessels being used for purse seines because that would then not be 12,000 pounds, so we need to be careful about that., This multiple carrier vessel per trip to offload bycatch would be specific to carrier vessels associated with stationary gear and not other types of gear.

CHAIRMAN DANIEL: Thank you for that clarification; good point. Bob.

EXECUTIVE DIRECTOR BEAL: The plan clearly says you can't use multiple carrier vessels once you have landed your state quota, so you can use carrier vessels until your quota is landed; but once that is landed, you're in this 6,000 pound bycatch mode or 12,000 pounds with two permit holders. Then you're no longer allowed to use carrier vessels at all. You can use them before you close but not after.

CHAIRMAN DANIEL: Correct. Okay, is everybody good with Rhode Island? Let's go ahead and do them as we go, so a motion

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to approve Rhode Island's plan by Mr. Augustine.

MR. AUGUSTINE: Move to approve Rhode Island's Plan as presented with the change of poundage of 12,000. Do we need to say that?

CHAIRMAN DANIEL: No; just to approve their plan and a second by Mr. Simpson. Is there any discussion on the motion? Is there any objection to the motion? Seeing none; that motion carries. Connecticut, would you like to address the issues?

MR. SIMPSON: Yes, it was an oversight when I wrote the regulation because carrier vessels and things like that just don't apply to us. I did overlook the multiple trips per day. The regulations we have in place now last for 120 days; so I would just ask, to avoid paperwork, if upon renewal I address that. That would be my intention to clarify that it is one trip per day. Our fishery is the gill nets, cast nets, snagging, stuff like that.

CHAIRMAN DANIEL: Is everybody comfortable with Connecticut taking care of that issue in their iteration of their rules? If so, I would accept a motion to approve Connecticut's plan from Mr. Augustine.

MR. AUGUSTINE: Mr. Chairman, move that the board accept the Connecticut Plan as presented.

CHAIRMAN DANIEL: Second by Mr. Himchak. You're not going to second it? All right, second by Mr. Simpson. Discussion from Pete.

MR. HIMCHAK: Yes, as we go through these state approvals, there is an overarching issue with cast netting. Look at the bullet at the top of the page. I mean, it is singled out specifically under New Jersey under bait nets, but I'm sure other states – and Jack has his cast nets included with gear other than purse seines. How are states accounting for cast nets taking menhaden and selling that; how are they monitoring these things?

CHAIRMAN DANIEL: It sounds like an issue for the addendum because I have no idea. Dave.

MR. SIMPSON: If it is sold, it is commercial and it should be accounted for. And just to add to that, cast nets is our big controversial fishery in Connecticut. There are people taking menhaden with cast nets in Connecticut. We have addressed that. We now have a 50-fish limit to conserve menhaden in Connecticut. If you have more than that, you're going to have to have a commercial license.

CHAIRMAN DANIEL: But I think it is a good question, and I would agree. If they're sold, in many states there is a trip ticket for them. The question is in the bait market but also in the live fish market.

MR. SIMPSON: Yes, I was having a little fun with it, but our issue really was that we believe there was commercial activity going on under a recreational license, and so the 50 fish was chosen – or five gallons I think is how it reads – was chosen to define what commercial fishing is and what would require a license.

CHAIRMAN DANIEL: We have a motion; is there any further discussion on the motion to approve the Connecticut's Plan? Doug.

MR. GROUT: Just a clarification; with all of these that we're addressing here under state-specific recommendations, if we could add to the motion to move the so and so plan, including the recommendations made on Page 2 of the state-specific recommendations; just so that we're clear that those things need to be implemented.

CHAIRMAN DANIEL: Okay, we have made some motions; can we make that clear on the record? Is that clear enough on the record because that –

MR. GROUT: Yes, as long as it clear on the record as we're making motions.

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CHAIRMAN DANIEL: Everybody understands that? Okay, thank you, Doug. **Okay, move to approve Connecticut's Plan. Motion by Mr. Augustine; seconded by Mr. Simpson. Is there any objection to the motion? Seeing none; the motion carries.** New York.

MR. GILMORE: This ought to be quick. The problem that we have in New York – and is in your briefing CD, the supplemental information that goes into detail so I will try to just summarize it pretty quickly – the problem we have is really with the data. When the amendment was passed in December and up until that point we were always pretty much a – we always figured we were going to be a de minimis fishery because we have 0.06 percent of the landings.

We have had reporting from our fishermen; however, since it was such a small fishery and because of staff resources we had to do some triage, so I have lots of boxes of VTRs in the basement right now that haven't been entered into anything. Unfortunately, when we decided to have a quota on a de minimis state or close to a de minimis state, essentially that took the data we had and completely underestimated our harvest; so right now with that 0.06 percent, I get about 250,000 pounds or less. The reality is based upon some pretty quick estimates on our landings and some meetings with our fishermen, we're probably somewhere between one and two million pounds.

The dilemma we face is that if we go according to the amendment right now and under the quota for 2013, I'm not going to get past July before I'll exceed my harvest and have to shut the fishery down. Now, unfortunately I also have a significant cast net fishery; so unless someone wants to tell me that is a non-directed fishery, we might be able to get out of this.

Right now I don't think I'm going to – well, if somebody wants to do that, that is great. We need some sort of a – again, I said before some kind of tweaking right now. What we're planning on doing is implementing all the requirements under the amendment. We're

putting in complete tracking of all our landings, including the cast net.

We're going to have reporting, we're going to have everything that is required to get the data that we need to manage this fishery under what the amendment says. Unfortunately, we're not going to have that data until at the earliest our best guess to the end of the year. I have put in that we needed something of an extension for one to two years.

I don't know really how to proceed on fixing this other than I can't live under a 250,000 pound quota for this year. I need some relief from that. Once we get some valid numbers, we clearly will abide by whatever our landings have been based upon history. I won't put up a motion yet. I wanted to get some maybe discussion going and some solutions for this before we go further.

MR. GROUT: Just for clarification, Jim, these were landings that were reported but not entered into the database by any New York DEC staff because of time limitations and that is going to affect what you believe your quota should be and we may have to have a changing of the quota allocations?

MR. GILMORE: Well, let me fall on my sword a bit here. It is not only DEC; there was a combination of we have been collecting data on most of the commercial guys. We did find out the for-hire sector had not been reporting, and we have already informed them that they have to start reporting now on their VTRs.

There was a significant number of the bait fishermen that weren't reporting, so we have a combination of that we were not thinking this was the most important thing we needed to enter in terms of the data we had, but there was quite a bit of data that was missing from the fishermen. We had a meeting with them and a lot of them showed up with piles of records now that they wanted entered. I think we can capture the data pretty effectively. It is just the timing of it right

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now is that we – so to answer your question, yes, we're going to have to adjust the quota, but obviously I can't even suggest what that would be right now other than a best guess.

MR. GROUT: This is to Mike. There is some opportunity for allowance of transfer of quota between states; isn't there? There is also an option in there to revisit the quota allocation scheme in three years, is it? That is the clear way that we could address this for this year, and the plan as written is to try and find a state that would be willing to transfer quota to the state of New York. It sounds like in the big scheme of things it is a relatively small amount.

If I had more than 200 pounds, I would be glad to give you some of mine, but I'm not going to. Then obviously in three years from now when you've tightened up your data collection, then we could potentially revisit. This is the type of thing that when we put this provision in that I think we were envisioning that we might need to revisit this.

MR. SIMPSON: I just say the problem is mitigated substantially by what we just did this morning because now any of your fixed gears can take 12,000 pounds and it doesn't – you know, even after your quota has been reached and any of your other, you know, cast nets and those sorts of things, you get 6,000 pounds a day, so it would only affect presumably purse seine vessels. Everyone else would be business as usual.

MR. GILMORE: I appreciate that, Doug, and I think that is probably a good solution although I would like to hear from one of the two gorillas in the room. With having zero, I think that is a great offer, but I don't think you're going to be throwing much in. If I could get some sense that the other states with more quota would be willing to do something like that, I think that would be great. Thank you.

CHAIRMAN DANIEL: They're not running to your aid, Buddy. Is there anything else from New York?

MR. GILMORE: No, other than I think I have somewhat of a comfort level, so we'll hopefully – again, we have such small landings, I'm thinking with the transfer option we should be able to rely on our friends to get through this year and something more intelligent next year.

CHAIRMAN DANIEL: We will do our best to help you. With that, I think Jim addressed the issues from the PRT. Is there a sense to approve New York's plan from Mr. Augustine with a second by Mr. Adler. Just add for 2013, to be consistent. **All right, move to approve New York's plan for 2013. Motion by Mr. Augustine; second by Mr. Adler. Is there any further discussion on the motion? Is there any objection to the motion? Seeing none; that motion carries. New Jersey.**

MR. HIMCHAK: Mr. Chairman, like Virginia, as soon as the holidays were over, we sat down with industry, our Marine Fisheries Council, and we have a bill. We hope that it overcomes its final hurdle May 30th and goes to the governor's desk May 30th. We are preparing to develop all the application forms. Every person that lands over a hundred pounds of menhaden must qualify and secure a landing license.

You have to qualify during a three-period, the same three years that were used to develop the TAC. If you're a pound netter, a gill netter, a cast netter or a trawler, you have to have threshold landings during that three-year period. You have to report electronically and we have a licensed dealer system. You have to sell to a licensed dealer.

Dealers can be bait and tackle shops or major fishing docks. If they're dealing in menhaden, they better have records. There are stiff penalties; license revocations for non-compliance. Our 42.188 million pounds, 95 percent of it is given to the purse seine fishery. We already have a limited entry program in state waters for the purse seine fishery. There are like 23 vessels in it,

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I think. When the purse seine quota is projected to be taken, that fishery will close for the year. We did not put in a prohibition on 6,000 pounds per multiple carrier vessels because in our case what is used as a carry vessel in state waters is like 60 or 70 feet long. They are not going to leave the dock for \$540, which is the value of 6,000 pounds.

So even if you've got ten carry vessels to go out, you're not going to set the net unless you're going to come back with 180 or 200,000 pounds in a day. The magnitude of this fishery is not small scale. Any carry vessel that is going out beyond three miles is probably over a hundred feet. They're not going to go out for \$540. They're not going to leave the dock.

That is the reason that we did not put a specific mention in the bill that says there will be no purse seine fishery after the season closed. That addresses one of the concerns of the PDT. I hope it addressed it adequately. We did interpret the 6,000 pound bycatch where a pound net or a gill net or a trawl, it is per vessel, and the license is issued to the vessel. There are no multiple landings of 6,000 pounds. The only other issue that the PDT brought up is cast netting.

Now, how many states have cast netting operations and are they directed fisheries? The language is if they are directing on menhaden – well, when they leave the dock, how do I know they're going to be directing on mullet for all I know. So, again, I think we all have cast netting operations.

Now, the beauty of our system is that you have to have a landing license to be a cast netter, so we will know at the end of the first year – once the 5 percent of our quota is given to all other gear types; so when we close the other gear type season and cast netters go out and get 5,000 pounds, they have to be in possession of a landing license.

They have to qualify for and have a landing license and sell to a dealer. So at the end of Year One, we would know exactly – well, pretty close – how many pounds cast netters took once the season closed. In the grand scheme of

things, how does that measure up to 41.185 million pounds?

If adjustments are needed in the second year, the 5 percent for all other gear types or the 6,000 pound trip limit, we will have regulations adopted later this year to supplant the legislation and then we can go in and do like a notice of administrative change and make a quick change on 6,000 pounds should 4,000 or it should be two. That's all I have to say. I'm waiting for a motion on approving New Jersey's plan. We're waiting for the governor to sign this thing and we're locked in for what is already written and that is what is written, essentially.

CHAIRMAN DANIEL: Are there any concerns or any motions? You can make your own motion.

MR. HIMCHAK: I move to approve New Jersey's plan for 2013.

CHAIRMAN DANIEL: Second by Bill Cole. Motion to approve New Jersey's plan for 2013. Motion by Mr. Himchak; second by Mr. Cole. Is there any objection? Doug.

MR. GROUT: Well, just to clarify, Pete, so your intention, just for the record, is that if we approve this plan, that there will be legislation for 2014 that will address these two issues that are not in compliance with the plan? You're just saying it has already gone through?

MR. HIMCHAK: Well, the multiple carrier boats in the purse seine fishery; I mean, I don't think that is an issue economically, but we could put it in the regulations that are going to follow. It seems unnecessary but we could do that.

MR. GROUT: Sort of like it is unnecessary for us to have weekly reporting in a bycatch – weekly dealer reporting in a bycatch fishery. I'm just going to put that in as wording.

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CHAIRMAN DANIEL: Is there anything else on New Jersey's proposal? Is there any objection to New Jersey's proposal? Seeing none; their proposal carries. North Carolina is next. I wanted to clarify one thing in our report. We can do real-time electronic reporting. The majority of all of our dealers that handle menhaden are very large dealers that are set up in our electronic reporting system.

We don't have mom-and-pop operations dealing with menhaden, so we can get 95 plus percent of the landings through electronic reporting, and that is what we intend to do. If there is a comfort level at a lower level of closure, then we have no problem closing it at 80 percent, 75 percent, whatever the board feels comfortable with.

My big question is to the technical committee on the utility of the pound net CPUE. Our trip tickets; we try to avoid adding anymore requests for information on our trip tickets. We could do that, but I'm very concerned about the utility of that information based on my comments earlier on how do you know what the CPUE is from an individual pound net when the individual pound net catches are not separated and monitored individually?

MR. MICAH DEAN: We have already reviewed several states' pound net and other fixed gear datasets, and that is a common element to almost all states that they don't report the catch and effort for a specific pound net.

Oft times it is for a trip where multiple pound nets are attended in that day and that to this point hasn't been ruled out as a deal breaker for the utility of those data. We're moving forward with several of those datasets that have that element to it, so I don't think that we're throwing it out because of that. We haven't gotten the point where we can find out exactly what we can do with those data yet. Does that address your question?

CHAIRMAN DANIEL: It does, and I was concerned that might be the answer because I just don't know if when we end up with the assessment if that is going to be something that is acceptable. I'm sure there are multiple pound

nets in a stand. Now, that is set different. Maybe they're so big in Maryland that they only have like one set, but I've got guys in North Carolina, for example, that have eight pound nets.

So when they go to the nets, they put everything in the boat and then they come in and land, and so you don't know what was in any specific net. Normally, these are flounder pound nets, so the majority of the fish are flounders. There may be one net full of menhaden and the rest are empty of menhaden and there may be equal distribution of menhaden, but that is rare, I think.

It just concerns me I guess – and then I'll shut up, but it just concerns me about the utility of that information, so I will be curious to see how you use that information. I can try and do my best to get the number of pounds in a particular stand fished that day on the trip ticket program. It doesn't require any legislative changes. It is a fairly easy fix, but I told my staff not to include it until I got an answer to the utility of the data. I'm still not convinced that there is utility, but we will add that if that makes everybody happy. Bill.

MR. COLE: Mr. Chairman, I already said that we roll stuff up monthly; but when we get close to the quota, we go real quick to weekly, daily and hourly monitoring of that. I don't think the table in the PRT report adequately reflects North Carolina's intensity of monitoring. I dare any other state to have more quota fisheries than North Carolina. **I would move that North Carolina's plan be approved.**

CHAIRMAN DANIEL: Second by Mr. Adler. Are there any other questions? Yes.

MR. AUGUSTINE: Mr. Chairman, a question for the technical committee; how much of a negative impact will it have if North Carolina doesn't present on a seven-day basis? That is what you were recommending, but I looked at the chart and

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it appears that North Carolina, South Carolina, Georgia and Florida, they're exempt from or in the case of North Carolina they use a single trip ticket with dealer and harvester information.

Again, based on their quota, is it really essential that they go to this seven-day reporting thing or continue what they're doing? I think that is the issue, Mr. Chairman. At least that is how I perceive it. Your explanation was that it seems like it is extra work to really isn't needed and won't accomplish much more or add much more to the data; is that correct?

CHAIRMAN DANIEL: My comment was what I plan to do is add menhaden to our electronic dealer reporting form. That way about 85 percent of our dealers are included in that, and that would include probably 99 percent of the folks that handle menhaden. We would be able to get daily reporting.

The trip ticket program is a monthly program for submittal, but we can do it much more timely than that and I can manage millions of pound quotas to 10,000 pounds. I don't have a concern about being able to monitor the quota and close it when we need to. Are there any further questions on the North Carolina proposal.

The motion is move to approve North Carolina's plan for 2013. Motion by Mr. Cole; second by Mr. Adler. Is there any objection to that plan? Seeing none; that motion carries. All right, the remaining states that just need to clarify some language that we talked about earlier in Bullet Number 2 and 3; there are really no other substantive issues associated with the plans from Maine, New Hampshire, Delaware, South Carolina and Georgia, but I would give those states the opportunity to raise any questions or any clarifications or the board to ask them any questions about their specific plans if you have them. I'm unaware of any issues associated with those plans at this time. Could we have a blanket motion to approve those five? Mr. Augustine.

MR. AUGUSTINE: Mr. Chairman, I move that we approve accepting Maine, New

Hampshire, Delaware, South Carolina and Georgia.

MR. COLE: Second.

CHAIRMAN DANIEL: Motion by Mr. Augustine; second by Bill Cole. Are there any questions of the specific states? The motion is move to approve the plans from Maine, New Hampshire, Delaware, South Carolina and Georgia for 2013. Motion by Mr. Augustine; second by Mr. Cole. Is there any further discussion? Is there any objection to the motion? Seeing none; the motion carries. All right, that takes us through the implementation plans. Thank you for your indulgence. We will now turn it over to Micah.

TECHNICAL COMMITTEE REPORT

MR. DEAN: Mr. Chairman, I will try to be as quick as I can here. As you know, there were some significant issues with the last assessment update in 2012, including a strong retrospective pattern and poor fit to each of our two abundance indices. This led to uncertainty in the current stock assessment.

Because of this, the technical committee recommended pursuing an expedited benchmark assessment ahead of the previously scheduled 2015 slot. We were successful at getting a spot on the SEDAR Schedule for the end of 2014. Recognizing this is a lot of work to do to address all the issues that were brought up in the previous assessment, we've already begun work.

We have conducted five meetings to date. Most of these are focused on exploring new data sources, but we've also had some preliminary discussions on alternative model structures. We have also developed a work plan to ensure that the assessment is complete in time for the December 2014 peer review.

We began actually last December with a brainstorming meeting. We discussed

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alternative models that could potentially address the seasonal migration and fishery selectivity concerns that may be at the root of the problems with the current assessment model. We came up with a list of potential new sources of data or old sources of data that were previously overlooked and made plans to follow up on those and for further review.

We reconvened a month later. One of the first datasets that we picked up was this historical tagging project from the late sixties and early seventies. This was identified as a key source of information for any spatially structured model that we may pursue. Unfortunately, the raw data from this project currently only exists in paper form, but we have fortunately been successful obtaining funding to resurrect this dataset and make it accessible and ready for analysis.

We also discussed sources of data that were available to create a coast-wide adult abundance index from fishery-dependent fixed gear data. We assigned people to gather more information to bring it back for further review. We discussed sampling targets for each state to ensure that we collect enough age samples to inform the assessment.

We met again a month later and continued the discussions of alternative models and data sources. We also initiated the work on the MS-VPA Model, which is what we've used in the past to estimate time and age-varying natural mortality on menhaden just to get that ball rolling to make sure that is functioning in time for the benchmark.

We also discussed the two indices included in the last assessment, the Potomac River Pound Net Index and the Juvenile Abundance Index, and tried to see if there were potential new treatments to those data. We met in person in April in Maryland and came up with a list of criteria for what constituted a suitable data source for inclusion in the benchmark assessment.

Representatives from each state that had a fixed gear fishery came prepared with descriptions of those datasets. We reviewed each and we

narrowed that down to six potential leads to be pursued further. Those included the pound net fisheries in Massachusetts, Rhode Island, Maryland, Virginia and North Carolina, as well as the gill net fishery in New Jersey.

Another outcome of that review of the fishery-dependent data was a set of desired data elements going forward that would really benefit the creation of future CPUE indices. We also reviewed some additional details from that historical tagging dataset that Joe Smith was able to pull together from the paper records that are in his office in Beaufort.

Just a couple of weeks ago we had another conference call, and we invited Kristen Anstead from Old Dominion University to share with us some of the work that she is doing on menhaden otolith microchemistry and the ability to assign or identify juvenile source areas. This looks to be a pretty promising technique and she may have some data to share with us this summer to use in the assessment.

We drafted and improved the terms of references, which I can share right after this. We have reviewed additional details and preliminary analysis of these selected fixed gear datasets; that six that we narrowed the list down to; and we assigned a subcommittee to further develop and analyze these data to be presented at the data workshop.

We came up with a plan of attack to make sure that the assessment is complete in time for the peer review. Very briefly, this is the timeline for that. We already have meetings scheduled for June and September to dive into fishery-independent and live history data as we have done to date for fishery-dependent data.

All those will be developed and analyzed to be presented at the data workshop in January of 2014, followed by an assessment workshop in June, obviously with several

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conference calls and subcommittee meetings in between to do things like select a preferred model, write the assessment document; all to be done by peer review in December of 2014. Are there any questions on the work that we have done to date or the plan going forward?

MR. TRAVELSTEAD: I just want to thank the technical committee for their very thorough update. It is exactly what I had in mind when I asked the board to require this type of report at each of our meetings. I think it is very thorough. It hits all the points that I hoped it would, and I appreciate it very much.

Having said that, I am still concerned about the timeline for the assessment. Maybe I have been correct all along, but for more than a year I thought we had talked about having this assessment done in 2014 so that based upon that we could proceed with another amendment or addendum, whatever would be appropriate, in time to make changes in the 2015 fishing year.

In other words, the current amendment would be good for two years and then ultimately replaced by something else in 2015. Now it appears that I guess the peer review will not be conducted until December of 2014, which means we would probably go through an addendum of amendment process in 2015 and you would not actually implement new rules and regulations until 2016, which is a year beyond where I thought we would be. I guess it is what it is. I would just ask why does it take sort of six-month periods between each of those steps that are listed on the end of your report? Can that be accelerated in any way? I need a little bit more information to understand why the timeframe is the way it is so that I can let the folks back home know that they're basically under Amendment 2 for three years and not two years as we originally thought.

MR. DEAN: Well, for one, the peer review is fixed. That is the spot that we were able to get on the schedule, but I think there is that amount of work that needs to be done. There were problems with the previous assessment, so this isn't just something that we kind of update what was done very simply in the past.

We're really trying to leave no stone unturned for possible new data sources. As you probably know, we have relied on just this Potomac River Pound Net Index for the adult abundance of the entire stock in the past, and we're really trying our hardest to come up with something more broad scale and encompassing to help represent and understand the dynamics of the stock.

Similarly, the model, we're looking into alternative model structures, and so there is going to be competing model types out there that each need to be developed and worked and then brought together at these workshops. I think that those six months separating those workshops is necessary and they will be chuck full of work.

DR. PIERCE: Micah, thanks to you and your colleagues who have done a real good job putting together a timeline that is reasonable and it seems to be quite comprehensive covering all the bases that need to be covered. My question is where in the timeline will there be an opportunity for the industry to sit down and discuss data and to interact with you and your colleagues to give them an opportunity to weigh in early on in this process before we get too far down the line.

I know the industry on a number of other federal assessments have had opportunities to talk about data at workshops. I guess that is my focus; will industry members be invited to the data workshop so that we don't end up after the fact finding out that industry has some other data source that needed to be looked at but wasn't looked at. We need to avoid that, so what is the plan with regards to industry?

MR. DEAN: Well, we have very healthy industry representation. They show up at most of our meetings and sit in on our conference calls, and we provide opportunity for their input at each one of those times. As far as I know, they will be involved in the workshops as well.

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MS. TONI KERNS: We're going to follow the process that we approved in the new guidelines where we send out a press release indicating when the workshops will be, giving dates of when data needs to be submitted to the commission to be considered by the group for data workshops, assessment workshops, et cetera; just as we would all of our assessments going forward.

CHAIRMAN DANIEL: Is there anything else for Micah? Excellent report; very well done; thank you so much. Are you going to do the TORs?

BENCHMARK STOCK ASSESSMENT TERMS OF REFERENCE

MR. DEAN: The technical committee just approved these a couple of weeks ago. They're based off of the generic ASMFC terms of reference, so some elements of these may seem familiar. We did make some tweaks here and there for particular relevance to menhaden. There are nine of them here; so bear with me and I will try to go through as quick as possible.

1. Review and vet all available data sources and if possible identify and prepare new data sources that would be used to inform the assessment of mortality and migration rates, commercial selectivity and a coast-wide adult or spawning stock trends.
2. Characterize the precision and accuracy of all data sources; provide descriptions of each; discuss strengths and weaknesses and their potential effects on the assessment; describe calculation of potential standardization of abundance indices; discuss trends and magnitude of uncertainty estimates.
3. Develop population assessment models that are available data to be used to estimate population parameters; explain the strengths and limitations of these models; justify the choices of CVs, effective sample sizes and likelihood

weighting schemes; describe the stability of the model; perform sensitivity analyses and conduct other model diagnostics; describe the history of the model's usage; and if it is a new model, test with simulated data; state assumptions made for all models and the likely effects of violations of these assumptions on model outputs. If multiple models were considered, justify the choice; explain differences in results.

4. Characterize the uncertainty of model estimates and reference points.
5. Perform retrospective analyses; assess the magnitude and direction of any patterns; discuss the implications for the population parameters reference points and management measures.
6. Recommend stock status as related to the current reference points; 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 model development plan and example results using preliminary model configurations if time allows. This one was put in there recognizing that we would not have ecosystem reference points fully developed and ready for 2015, but we are making progress working with the other committees and moving forward, and we would like to get peer review panel feedback on the work done to date at the peer review time. We put this in there to try to harvest that input from them to see where we are in the process.

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8. Develop a detailed short- and long-term list of research recommendations, data collection assessment methodology; recommend improvements to be made by the next benchmark; and finally
9. Recommend the timing of the next benchmark and any intermediate updates if necessary.

Are there any questions for the terms of reference that the technical committee has put forward?

CHAIRMAN DANIEL: Very thorough terms of reference. I would accept a motion. Robert.

MR. BOYLES: Mr. Chairman, I move that the board accept the terms of reference as presented by the technical committee.

CHAIRMAN DANIEL: Motion by Mr. Boyles; seconded by Mr. Augustine to accept the terms of reference as presented by the technical committee. Is there any discussion on the motion or questions for the technical committee chairman? Lynn.

MS. FEGLEY: One of the things that we've talked a lot about even at the last meeting was the use of the selectivity curves. There is so much in these terms of reference and they're so complete, but I wonder if we should have something in there more specific to selectivity. Maybe it would fall under some place like 3B where there is a term of reference to justify the use of X, Y, and Z, and we could add justify commercial selectivity to the end of that list; just a thought.

CHAIRMAN DANIEL: Without objection, that will be added. I think that is a good point. It is a big issue. Are there any further comments or questions on the technical committee report and the terms of reference? Seeing none; is there any further discussion on the motion? Seeing none; is there any objection to the motion? Seeing none; that motion carries. I've got two folks with other business. I don't know how critical that is at this point for Mr. Gilmore.

OTHER BUSINESS

MR. GILMORE: None, Mr. Chairman.

MR. TRAVELSTEAD: My item won't take five minutes. For as long as I can recall, the technical committee has always recommended as the priority research item was the development of a coast-wide index of abundance for Atlantic menhaden. About a year ago Virginia asked Dr. Rob Latour at VIMS to design such a survey, and we paid for his work to get done.

It is just about completed; I think it will be completed next month. I believe he has kept the technical committee informed of his work, and he has used some experts out on the west coast who have developed similar aerial surveys for fisheries out there. I think the work is very promising. Of course, the big question will be funding.

Once we have that in hand, I would like to start sort of marketing that plan up and down the Atlantic Coast, to the Virginia General Assembly and others to see if we can't find a way to fund that, but I don't want to start that until his work is peer reviewed. I think that is going to be a critical part of it.

I guess my purpose in adding this to today's agenda was to ask the board to either direct the staff or technical committee to expedite a peer review of Dr. Latour's work so that we know it is good and can proceed along the funding lines that I mentioned. I had mentioned this to Bob Beal and he thought staff might be able to come up with some way of getting that peer reviewed fairly quickly.

The other thing that is going on with this is – I mean, obviously, the long-term desire is to have this coast-wide survey. In the meantime, in the short term industry in Virginia is interested in seeing at least a portion of that survey in the New England area started as early as this fishing season to begin to collect those kinds of unknown data that we don't have for the New England

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area. That is another reason to get it peer reviewed as quickly as possible so that the industry is desirous they can proceed with implementing at least a portion of that coast-wide survey.

EXECUTIVE DIRECTOR BEAL: Mr. Chairman, I think we need to talk to Dr. Latour a little bit. He may have a specific peer review venue that he had in mind which may or may not be quick, and we need to figure out what his thoughts are. Peer-reviewed journals and those sorts of things, obviously those take some time. I don't know if that is where he was going. Our technical committee, using the Assessment Science Committee and those groups really aren't set up to be peer review groups, so we may have to think creatively here.

I would suggest that staff reach out to Dr. Latour and come up with some options and bring that back to the chairman and the board and we can decide what the best way to proceed is. We will try to get those done in the next couple of weeks or so, come up with some options and see what they are and what the timelines associated with those options are and get back to you and the board.

CHAIRMAN DANIEL: That sounds good. Jack and I will work together on that. Is that satisfactory, Jack?

MR. TRAVELSTEAD: Yes, I think so; it is just time is of the essence because I know industry is perhaps interested in funding some part of the survey. The sooner it is approved we can get started.

CHAIRMAN DANIEL: All right, does anybody else have anything else? I have one thing, though, that I want to say. I have been doing this almost twenty years now, which is hard for me to believe, but this has been one of the most controversial, complicated fishery management plans that I've ever dealt with. The implementation plans, I wanted to get us through the implementation plans, and I think we have done that.

ADJOURNMENT

The work that you, Mike, have put into this has been unbelievable, and I mean everybody needs to recognize the amount of work, with all of the input and all of the herding of cats that he had to do, my hat is off to you. Thank you and good job. (Applause) Very well-deserved applause and thank you very much; you did a great job. We are adjourned.

(Whereupon, the meeting was adjourned at 1:15 o'clock p.m., May 22, 2013.)

**DRAFT TERMS OF REFERENCE FOR THE
2014 ATLANTIC MENHADEN STOCK ASSESSMENT**
***Changes to ToRs are highlighted**

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, selectivity parameterization, 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 or model configurations 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 relative to biomass or abundance threshold reference points? Where is the stock relative to biomass or abundance management targets? What information supports this conclusion?
 - c. Is the stock undergoing overfishing relative to fishing mortality threshold reference points? Where is the stock relative to fishing mortality management targets? 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.



Atlantic States Marine Fisheries Commission

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MEMORANDUM

To: Atlantic Menhaden Management Board
From: Atlantic Menhaden Technical Committee
RE: Second update on 2014 Benchmark Stock Assessment Progress
Date: July 17, 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 two in-person meetings to date. This second progress report memorandum contains a summary from one meeting that occurred since the last progress report on May 7, 2013 (M#13-032). 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 since May 7, 2013. A tentative timeline for 2014 Atlantic menhaden workshops follows.

Meeting summary:

June 26th-27th, 2013 in-person meeting

- Reviewed existing state and regional datasets (Maine to Florida) collected from fishery independent surveys that have potential to be developed into relative abundance indices.
- Successfully identified 40 data sources (34 state surveys and 6 regional survey datasets) as candidates for index development. Data collection methods used on the surveys include trawl, seine, gillnet and ichthyoplankton nets targeting juveniles, adults or both.
- Assigned a subcommittee to analyze and scrutinize the candidate dataset for further development of both juvenile and adult indices.
- Reviewed details of historical tagging data publications, and began discussion on potential data analyses options for tagging data.

Tentative timeline for 2014 Atlantic menhaden workshops:

January 2014 – Data Workshop

June 2014 – Assessment Workshop

December 2014 – Peer Review Workshop (SEDAR)

A comprehensive aerial survey design: Comparing biomass estimates of Atlantic menhaden captured within and outside the normal fishery range and the implications for improved management of this resource

Dr. James Sulikowski, Dr. Alexia Morgan, and Amy Carlson^{*†}

Introduction

It is well documented that Atlantic menhaden, *Brevoortia tyrannus*, are both an environmentally (*i.e.*, prey item) and commercially valuable fish species in U.S. coastal waters (*e.g.*, ASFMC, 2011). Historically, the Atlantic menhaden commercial fishery consisted of both a reduction and bait fishery spanning from Canadian Maritimes to north Florida (ASFMC, 2001). However, over the last 19 years, the reduction fishery (historically comprising 80% or more of total landings) has contracted dramatically in terms of the geographical range over which it operates. As a result, the reduction fishery is now concentrated within the central range of the stock from approximately Cape Hatteras to northern New Jersey, although the majority of fish are caught in Virginia waters (ASFMC, 2011). Commercial landings of menhaden for bait occur in almost every coastal Atlantic state; however, landings of menhaden are regionally dominated by harvests in the Virginia portion of Chesapeake Bay, Virginia's oceanic waters, and New Jersey. A very small percentage of menhaden, (on average, less than 3% over the past three years), are caught in Narragansett Bay and, periodically, in the Gulf of Maine.

Despite the economic and ecological importance of menhaden, information that can be incorporated into stock assessments is limited and based primarily upon reduction fishery landings from the center of the fishery. In addition, there are very few landings and age samples from the northern range of the fishery (north of Long Island) where tagging studies have shown that larger and older fish tend to migrate during summer (ASFMC, 2004a). Currently no fishery-independent source of information on distribution and abundance of mature menhaden exist for specimens outside of the normal fishery range. As a result, there potentially may be a substantial, but effectively unknown, portion of the age 3+ menhaden biomass in this age-stratified, migratory stock, which is subject to insignificant fishing mortality. The Beaufort Assessment Model (the model currently used in menhaden management), however, is implemented with the assumption that all age 3+ menhaden are fully recruited to the fishery. If this assumption is violated, because, for example, older age classes are outside the range of the fishery, the assumption of domed selectivity to the fishery can potentially lead to overestimation of fishing mortality rates and underestimation of the spawning potential ratio, thus providing a biased estimate of the status of the resource. In addition, Beaufort Fisheries had conducted a winter fishery on menhaden when the stock overwintered off the Carolinas. This fishery did at times

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[†] Dr. Douglas S. Vaughan, formerly with the NMFS Beaufort Laboratory, was a reviewing consultant on this paper. The final version reflects many of Dr. Vaughan's recommendations and insights, for which the authors thank him.

catch a wide range of age classes (age-0-5+) and the impacts to the landings data once this fishery shut down are not fully understood. For example, there is the potential that some of the older fish caught in this fishery are no longer reflected in landings data. When Beaufort Fisheries shut down, older fish caught in this fishery were no longer reflected in the landings.

Without fishery-independent survey information, supplemented by biological sampling, there is no scientifically defensible means: (1) to prove whether or not the actual selectivity is domed; or (2) assuming that it is domed, to provide a scientifically robust estimate of the extent of the doming and hence the amount of menhaden biomass that exists beyond the range of the fishery (both temporally and spatially).

Improving Stock Assessments of Menhaden

Advisory bodies of the Atlantic States Fisheries Management Council (ASFMC), The National Marine Fisheries Service (NMFS), as well as the commercial fishing industry have identified the need for additional fishery-independent indices of abundance to be developed for Atlantic menhaden outside of the typical survey range. A coast wide aerial survey was first identified at a scoping meeting (May 12-13, 2008) as the most efficient and effective way to monitor adult menhaden along the Atlantic coast. Aerial survey methods have been used previously to estimate stock abundance for several surface schooling species such as sardine (Hill et al. 2007) as well as Atlantic menhaden (Churnside et al. 2011). On January 21, 2010, a survey working group met to develop a plan for moving forward with a pilot aerial survey. During the summer/fall of 2011 a pilot aerial survey was conducted by the University of New England.

As described above, the contraction of the reduction fishery over time has potentially reduced the number of older menhaden available to the commercial fishery. As the peer reviewers noted in their review of the 2010 menhaden stock assessment (ASFMC, 2011), the Beaufort Assessment Model was implemented assuming that all fish age 3+ are fully recruited to the fishery (*i.e.*, selectivity is “asymptotically flat”). However, the bulk of the fishery occurs in the mid-Atlantic during summer and early fall when older fish are not present in the region. Thus, peer reviewers suggested investigating the use of “dome-shaped” selectivity curves for the southern fishery. Accordingly, the information gained from a survey outside of the normal fishing range will help provide an empirical basis to determine the existence and extent of such “doming.”

Survey data are critically important because the inappropriate assumption of asymptotically flat selectivity to the fishery can potentially lead to severe overestimation of fishing mortality rates and underestimation of the spawning potential ratio (“SPR”), thus providing a negatively biased estimate of the status of the resource. Given that the Menhaden Board has moved toward SPR-based reference points, and has developed annual catch limits ostensibly based on these reference points, the need for these data takes on added importance. Moreover, as the Menhaden Technical Committee reported to the Board in its memorandum of February 1, 2013, it is unable to determine the status of the stock relative to the new overfished reference point without determining whether the selectivity curve is flat-topped or domed (ASMFC, 2013).

Initiation of a pilot aerial survey

Given the necessity of addressing the aforementioned stock assessment gaps, a pilot study was initiated during the summer/fall of 2011 with two specific objectives in mind: 1) to test the

feasibility of an aerial survey for menhaden in the northern range of the fishery; and 2) to gather preliminary data on the biomass and age of menhaden within this same area during the summer and fall months. In order to achieve these goals, the pilot survey utilized digital images collected by spotter airplanes to estimate menhaden school surface areas. In addition, sea sampling of menhaden schools was used to determine the relationship between menhaden school biomass and school surface area. This northern pilot survey covered waters beyond the range of the fishery, from southern Long Island, New York, to northern Gulf of Maine.

Results from the pilot study, although coarse and uncertain, suggest that the biomass of menhaden to the north of the area where the fishing takes place is at least as large as that in the fishing area, and possibly substantially larger. Though only limited ageing results were obtained for the fish in the New England area, these results confirmed existing impressions that these fish tend to be on average older than the fish available to the fishery. This older and larger fish stock may represent an enormous reproductive potential that is currently not incorporated into stock assessments.

In its last two runs, *i.e.*, during the benchmark assessment in 2008 and “turn-of-the-crank” update in 2012, the BAM estimated menhaden biomass to be low and fishing mortality on 3+ fish to be very high. These results, however, were premised on the assumption of asymptotically flat selectivity at age for (at least one component of) the fishery. An alternative explanation is that the apparent high total mortality reflected by the catch-at-age composition is instead, at least in part, a reflection of emigration of older fish to outside of the fishing area, consequently suggesting that biomass is higher and fishing mortalities are lower than indicated by this model when selectivity is assumed to be asymptotically flat. In fact, these prior two runs displayed an increasingly stark retrospective pattern that showed, since 2005, a pattern of over-estimated F and under-estimated B (with the opposite pattern in 2003 and 2004) (ASMFC, 2012).

The results from the aerial survey, though coarse, provide qualitative support for this alternative, as they suggest a much greater proportion of 3+ menhaden in the population as a whole than estimated by the BAM. Importantly the New England:South biomass ratio provides a basis to estimate the extent of doming in selectivity in the BAM by calibrating this ratio against the proportion of fish that the doming implies to be outside the fishing grounds and not available to the fishery. These data may also help explain the retrospective pattern that has developed in the years since the closure of Beaufort Fisheries.

Based on the preliminary findings of the pilot survey, a recommendation for a synoptic survey to cover both the southern fishing grounds and the regions to the north at a time corresponding to peak fishing activities was made by the ASFMC technical committee, the industry and the scientists involved in the pilot study. In addition, specific recommendations on ways to improve the pilot survey were also made at this time. These included measuring perpendicular distances to sighting (which will enable estimation of effective search half width) and careful survey trackline design (which provides equal coverage probability) within pre-defined survey regions. Together, the inclusion of these techniques in a new survey would allow for more sophisticated analyses in the future and much more robust estimation of the ratio of the biomass to the north compared to that within the fishing area, and hence provide a better basis to calibrate the extent of doming in the BAM catch selectivities. In turn this would allow much improved estimates of

biomass, fishing mortality and reference points to be made. Finally, it was noted that regular continuation of such surveys would provide a much needed fishery independent index of abundance for the Atlantic menhaden resource as a whole. Such surveys should be coupled to activities to estimate age composition by region and to calibrate observer estimates of school biomass, as well as to study the effects of the depth distribution of the fish and of environmental conditions on sight ability to shed light on the likely value of $g(0)$ and its variability.

Our objectives herein, are to expand upon the previous pilot program by increasing the sampling range, biological sampling, and improving on the aerial survey methods.

Materials and Methods

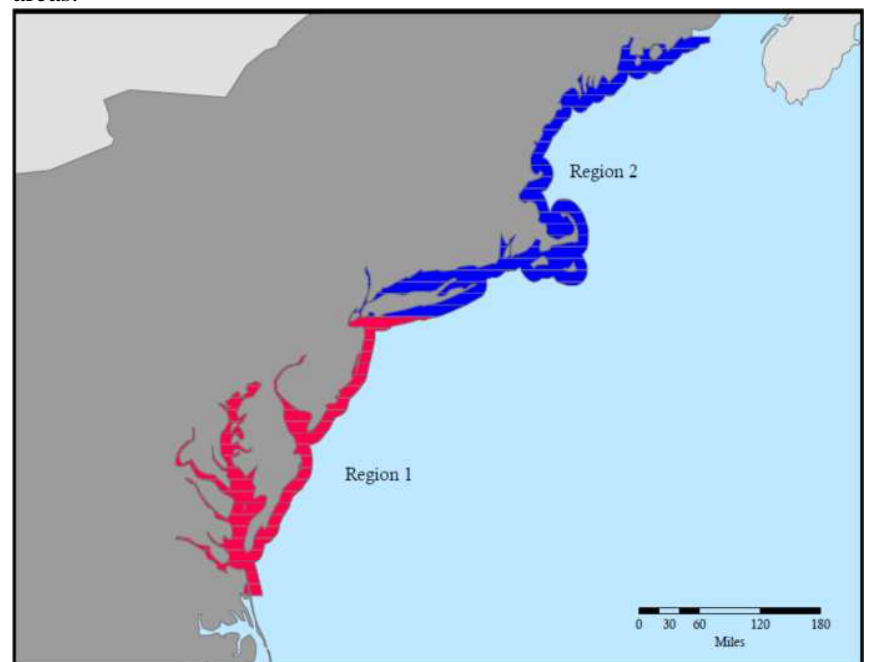
Primary participants aerial survey

The expertise of six individuals will be used in the design, development, execution, and analysis of the new survey and were all involved in implementing the original pilot survey. Dr. James Sulikowski was the lead PI. He is an associate professor at the University of New England (UNE) who's expertise is in the biology and ecology of fish. George Purmont has been involved with commercial fishing since 1967 and began fish spotting in 1972. He has fished and spotted a variety of fish species for several scientific entities. Forrest Dameron is a 3rd generation fisherman who has 11 years of experience spotting and fishing for menhaden. Vincent Balzano is a 3rd generation commercial fisherman who has been actively involved in the management of New England fisheries. He has been fishing for menhaden since 2004. Amy Carlson is the lead technician for Dr. Sulikowski. Her abilities include using the statistical program R, ArcGIS, Adobe Photoshop Lightroom 3.0 LI, and CS3 extended. In addition, Dr. Alexia Morgan provides quantitative and research related skills as an independent fisheries consultant. Dr. Douglas Vaughan is available for consultation. Prior to retirement from the NMFS Beaufort Laboratory, he had responsibility for the Atlantic menhaden stock assessments.

Aerial survey design

We will use a line-transect aerial survey design approach (Buckland et al. 2001; Everson et al. 2008; Buckland et al. 2010). Two separate regions, one inside the fishery: North Carolina to Long Island (region 1) and one outside the fishery: Long Island through the northern Gulf of Maine (region 2) will be surveyed. These two regions are of nearly equal size (5,690.28

Figure 1. Map of the southern (Region 1) and northern (Region 2) survey areas.



nm² in region 1 and 6,449.64 nm² in region 2) (Figure 1). Surveys will be conducted concurrently in each region. Each survey flight will consist of a spotter pilot and two additional spotters in the aircraft. Transects will be flown at a height of 1,000 ft. and speed of 100 knots. Flights will only be conducted on days where visibility is adequate.

The survey was designed in the program Distance version 6.0, a computer program that allows for the development and analysis of distance sampling surveys like line transects (Thomas et al. 2009a). The program was used to design a line transect survey based on systematic random sampling in both regions. The program plots the individual transect lines in each region, develops a coverage probability map, provides a list of coordinates for each sample transect line and the length of each sample so we can identify whether the survey design is possible.

Based on investigations with this program, the highest coverage probabilities, which are integral to accurate and robust abundance estimates, will occur with transect lines placed 2 nm apart, which is enough space for the spotter planes to turn around and allows for no overlap in left- and right-spotting distance from the plane windows. Along the southern coast and Chesapeake Bay there would be a total of 160 individual transect lines (8-165 nm length, 9,288 nm mean total trackline length) and have a mean coverage probability 0.713 with a coverage range of 0-100 along the coast and a mean coverage rate of 0.821 with a coverage range of 0-1 in the bay. Along the northern coast there would be 111 individual transect lines (9-413 nm length, 9,922 nm mean total trackline length) and have a mean coverage probability of 0.637 with a range of 0-1.

We anticipate two to three replicates of each line will be needed to increase the robustness of the estimates. Under this plan, a total of 46 sampling days per month (based on 200 nm possible per trip and 3 months) would be needed in the southern region (flown by one plane) and 48 sampling days per month in the northern region (flown by one plane) for three full replicates. For two full replicates, 30 sampling days per month would be needed in the southern region and 32 in the northern region. These sampling days could also be reduced by the inclusion of multiple planes flying at the same time in each region.

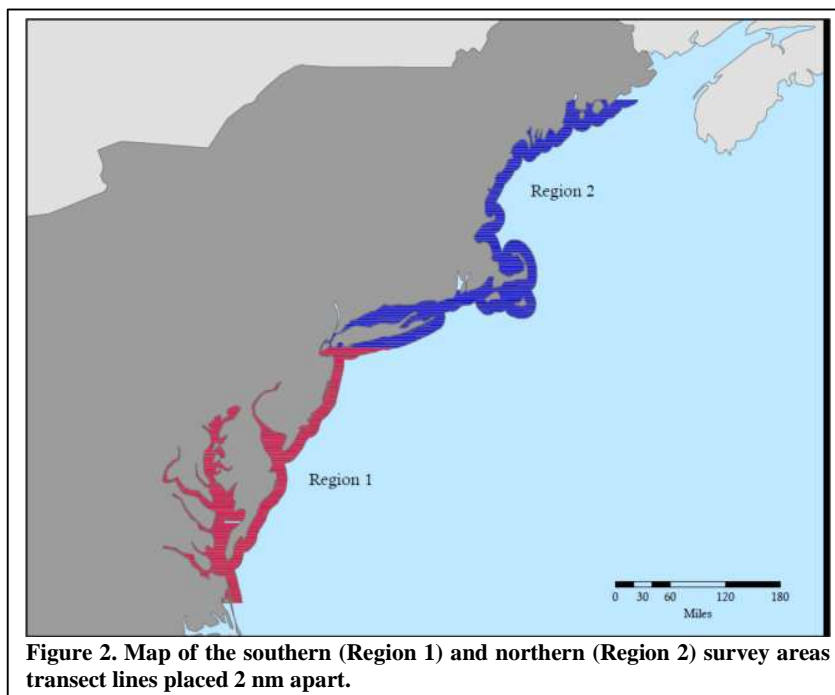


Figure 2. Map of the southern (Region 1) and northern (Region 2) survey areas transect lines placed 2 nm apart.

A second design could have transect lines placed 5 nm apart. In the southern region there would be 81 individual transect lines (1-145 nm length, 3,998 mean total trackline length) and have a mean coverage probability rate of 0.469 with a coverage probability range of 0-0.72 along the coast and a mean coverage probability rate of 0.533 (0-0.79) in the bay. In the northern region there would be 44 individual transect lines (14-393 nm in length, 4229 mean total trackline length) and have a mean coverage probability rate of 0.419, with a coverage probability range of 0-0.7. The number of sampling days needed in the southern range for three full replicates would be 20 and in the northern region 21 sampling days would be needed. For only two replicates, a total of 13 and 14 sampling days would be needed in the southern and northern regions respectively. Again, these sampling days could be reduced by the inclusion of multiple planes flying at the same time in each region.

Another alternative, transect lines could be placed 10 nm apart, resulting in potentially unequal coverage probabilities. Under this alternative, in the southern region and in the bay, there would be a total of 40 individual line transects (10-132 nm in length, 1,995 nm mean total trackline length) and have a mean coverage probability of 0.234 and a coverage range of 0-0.42 along the coast and 0.265 (0-0.39) in the bay. In the northern region there would be a total of 23 individual transect lines (9-392 nm length, 2,275 mean total trackline length), and have a mean coverage probability of 0.209, with a coverage range of 0-0.47. If this second approach is selected, we will use the Horvitz-Thompson estimator to account for unequal coverage when estimating abundances. A total of 10 sampling days per month would be needed in the southern region for 3 full replicates and 12 in the northern region. For two full replicates only 6 and 8 sampling days would be needed in the southern and northern regions respectively.

The spotter planes will travel the pre-selected transect lines. GPS waypoints of spotted schools and survey track lines will be recorded with either a Garmin Oregon 550t or a Garmin GPS map 76CSx. Observers will search the sea surface from straight in front of them to 90° on the other side of the plane along the transect line looking for surface schools of menhaden. Each observer will do this on one side of the plane, so both sides are covered. A waypoint position and time will be recorded in the GPS when a school is spotted. The plane will continue along the transect line until the sighting is 90° to the plane, at which point the plane will leave the transect line and fly directly to the school. A waypoint will be recorded over the school, after which the plane will return to the transect line at the same location it left and continue searching along that line. The perpendicular distance to sighting will be calculated to enable estimation of effective search half width, which will be used when estimating the biomass. If time permits after the first line is surveyed, the pilots will move to the second randomly selected transect line and proceed using the same methods. These steps will be repeated until the 4 hour flight time is over. Surveys will begin July 31 and run through the end of the fishing season and end on November 15, 2013. Although this survey is designed for collection of data during the 2013 fishing season, given the potential for large week-to-week variance in number/size of schools in the same or neighboring areas and the innate year to year variability, we highly recommend the survey be continued in 2014. We suggest that survey begin in March of 2014, prior to the start of the season, and be conducted through the 2014 fishing season and repeated in future years if funding permits.

Aerial survey data collection

Data from aerial surveys will be documented on spotter logs and using a hand held Canon Mark IV and a Nikon D50 high resolution camera. Each camera will be fitted with a 70-300 mm lens set to 70 mm and a polarized filter. In addition, GPS waypoints of spotted schools and survey track lines will be recorded with either a Garmin Oregon 550t (region 1) or a Garmin GPS map 76CSx (region 2). An Olympus digital voice recorder will be used to record aerial spotter plane estimates of the observed schools. Plane and camera angle, altitude, and position will be accounted for with a MicroStrain 3DM-GX3-35 AHRS with GPS attitude sensor, mounted to the cameras in use. This system is connected to a Dell Latitude E6420 ATG laptop, which records this data in real time. Communication to the at sea sampling boats will be established with Standard Horizon HX290 handheld radios. Either a Duracell Powerpack 450 or Black and Decker Electromate 400 will be used to power the equipment in flight.

Aerial survey data transfer

Images and flight log files will be downloaded and archived at the end of each survey day. At the end of each flight, scientific personnel will verify that the camera and data collection system operated properly and that images collected are acceptable for analysis.

Aerial Measurement Calibration

Each airplane will photograph football fields from an altitude of 1,000 ft. to provide the ability to ground truth the aerial estimates of menhaden. An aerial pass will be made to place the target onto the right, middle, and left portions of the digital image. The observed vs. actual sizes of the objects will be compared to evaluate photogrammetric error.

At Sea Point Set Capture

For logistical purposes (*i.e.*, limited flight time to run transects etc.), at sea sampling events will be separate from aerial survey transect sampling. This component of the study may require exempted fishing permits and/or letters of authorization in order to procure samples when fishing areas are “closed”. We will work towards acquiring these permits/letters to ensure the success of this study. At sea point sampling has two very important goals:

1) It will allow for quantifying of the menhaden spotter plane abundance estimates (see below for details; and 2) It will allow for investigating whether school size is related to age of fish (i.e., do younger fish aggregate in larger school sizes than older fish). This is especially important as menhaden schools are known to stratify by size and age.

Our goal is to conduct the at sea point set capture the day after an aerial transect has been surveyed. Here, a spotter plane will direct the fishing vessel to schools of fish that have been randomly selected from the previous day’s survey. The collection of biological samples from three primary schools sizes will be attempted and generically labeled as small, medium, and large (for consistency, the actual school sizes sampled will be assigned prior the start of the new synoptic survey). The goal of (1) above will be to encircle (wrap) and fully capture the school selected by the spotter pilot for the point set. Any schools not “fully” captured will not be considered a valid point set for analysis of school size (abundance) versus aerial area. Both the spotter pilot and the purse seine captain will independently made notes of the “percent captured” on their survey log forms for this purpose. The scientific PI will review these estimates to ensure

quality control. At sea point set capture estimates for the southern region will be obtained from industry sampling vessels and will follow the same standard protocol listed above. The periodicity of this portion of the at sea sampling will occur at the beginning, middle and end of the sampling season (August, September and October). Although we understand that there are potential limitations to this technique (*i.e.*, as schools increase in size, they also increase in surface area, depth etc. (see Castillo and Robotham 2004)), we believe the data will still provide a means to quantify and cross check the estimates from the spotter portion of the aerial survey. For goal (2), it is not necessary to fully encircle each school, rather collect a subsample of each fish at each sampling event. The sampling events associated with goal (2) will occur weekly in the southern region and opportunistically (due to area closures, availability of fish, and permitting) in the northern region (although we will aim for weekly collections).

Biological Sampling

Approximately 50 biological samples (fish) of individual point sets (for both goals both 1 and 2) will be collected either at sea or at the fish processing plants upon landing. Each point set sample will be individually bagged, identified with a sample number and frozen with other fish in the subsample, clearly identified as to point set number, vessel, and location captured. All fish captured will be shipped overnight to the NMFS Beaufort, NC laboratory where the fish will be processed using standard techniques utilized in ongoing age analysis of this species (NMFS, 1995).

Quantitative Analysis

Digital images will be analyzed to determine the number, size, and shape of menhaden schools observed on each survey. Adobe Photoshop Lightroom 3.0 LI software will be used to bring the menhaden schools into clear resolution so that measurements of menhaden school size (m²) and shape (circularity) can be calculated using Adobe Photoshop CS3-Extended.

An estimate of the biomass of menhaden schools in the survey area will be obtained from: 1) measurement of individual school surface area observed on each survey, 2) estimation of individual school biomass (from measured school surface area and estimated school density), and 3) correlations between harvested schools and observed school size.

Quantifying menhaden abundance using the point sampling data

A linear regression model and regression parameters for the surface area – biomass relationship will be used to create the following relationship (note: this regression was based off of the previous survey's results and will be updated from the proposed surveys data):

$$Wt (lbs) = -1175.94 + (634.077 * \text{surface area (m}^2\text{)})$$

Here, the surface areas of the point sampling events (goal (1); measured with Adobe Photoshop CS3-Extended) and the biomass (lbs) of menhaden from those discrete point sampling events will be used in the regression analysis. This regression model will be used to quantify individual school biomass for photographed schools observed on the survey transects. However, it must be noted that this is under the assumption that the density of mass per square meter is constant regardless of total surface area of the school. This could be affected by many factors, most notably behavior and size of the fish in the school (Castillo and Robotham 2004).

Estimating biomass

The Distance version 6.0 program will be used to analyze the data and to calculate abundances in the two regions. This program is commonly used to analyze distance sampling surveys (Thomas et al. 2009b) and is based on the methods described by Buckland et al. (2001). Data will be entered into the database after every trip and cross checked for any errors. The program allows for both Conventional Distance Sampling (CDS) and Multiple Covariates Distance Sampling Analysis (MCDS) analysis of the data. We anticipate using the CDS engine, but note the ability of the program to do additional analysis.

Dissemination of results

Our intention is to disseminate the results of this study in a logical and timely manner. We anticipate being in contact with project cooperators on a weekly (if not more) basis, providing short, biweekly progress reports. We anticipate field work to end on November 15th. A final report will be provided by February, 15th 2014. The appropriate preliminary data also will be provided to the ASFMC so that it may be directed to Atlantic Menhaden Management Board.

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2013 State Compliance Reports

Please note that some information has been removed because of data confidentiality

Maine

New Hampshire

Massachusetts

Rhode Island

Connecticut

New York

New Jersey

Delaware

Maryland

Potomac River Fisheries Commission

Virginia

North Carolina

South Carolina

Georgia

Florida

State of Maine: 2012 ASMFC Atlantic Menhaden Compliance Report

**THIS REPORT CONTAINS CONFIDENTIAL LANDING INFORMATION.
PLEASE OMIT THE YELLOW HIGHLIGHTED DEALER REPORTED
LANDINGS BELOW - THANKS**

Introduction

The State of Maine has had a long history as a stakeholder in the Atlantic menhaden fishery. Following a number of years of low landings, the 2008 landings increased significantly. However, the 2012 landings were again extremely low. All of this Atlantic menhaden was utilized for bait in the recreational and lobster fisheries. Prior to the recent decline in landings, Maine had a relatively robust fishery. In the early 1990's Maine experienced large abundances of adult Atlantic menhaden in in-shore areas. Additionally Maine had almost 2,000 mt of landings as recently as 2008

Catch & Landings

Preliminary dealer reported landings for 2012 are [REDACTED]
THESE DATA ARE CONFIDENTIAL INFORMATION and not available for release to the public. All data will be made available to the SASC during the ongoing assessment process.

Beginning in 2011, all Maine commercial harvesters are required to report Atlantic menhaden landings. A copy of this new law is attached in Appendix (I) and changes are anticipated in light of the new amendment for Atlantic Menhaden

Management

The Atlantic States Marine Fisheries Commission (ASMFC) manages the Atlantic menhaden Fishery in the Northeast Atlantic. Maine has adopted this plan and implemented all compliance criteria. In addition the State of Maine has enacted regulations on the inshore bait fishery. In brief, these regulations require gear marking, endorsement and reporting of all baitfish caught as well as a pilot program to limit the catch of Atlantic menhaden in certain areas. A copy of these regulations is attached in an Appendix (II). It should be noted that these regulations are being reviewed as Maine initiates compliance with ASMFC Amendment 2.

Monitoring

Since 1995 Maine has been using beach seine surveys to monitor many juvenile fish species. To date Atlantic menhaden have never appeared in that survey. In 2000 the State of Maine, in concert with New Hampshire, started an autumn inshore bottom trawl survey to monitor adult and juvenile fishes. In that same year large numbers of small (young of the year) Atlantic menhaden were collected (Figure 1). Atlantic menhaden were not collected in the 2001 autumn survey and reappeared in 2002. Atlantic menhaden were absent in the autumn trawl series for 2004, reappeared in 2005, absent again in 2006 and reappeared again in 2007. Atlantic menhaden were again virtually absent in 2008. Two adults were caught in the spring survey. One off Pemaquid at 28 cm and one in upper Penobscot Bay at 27 cm. No fish have been caught in the fall survey since 2007. The trawl survey length frequency distributions are provided in

Table 1 and Figure 2. The regional distribution is provided in Figure 3. The trawl survey did not catch any Atlantic menhaden since 2007 (Figure 1).

For commercial catch sampling Maine DMR has been collecting and sending samples to NMFS in Beaufort NC on a regular basis. Since 2007 Maine has sent 15 samples, 3 in 2007 (started sampling that June), 9 in 2008 (the year they came to Maine), 2 in 2009, and 1 in 2010.

Figure 1: Occurrence of Atlantic Menhaden in the Fall Inshore Bottom Trawl Survey 2000-2012

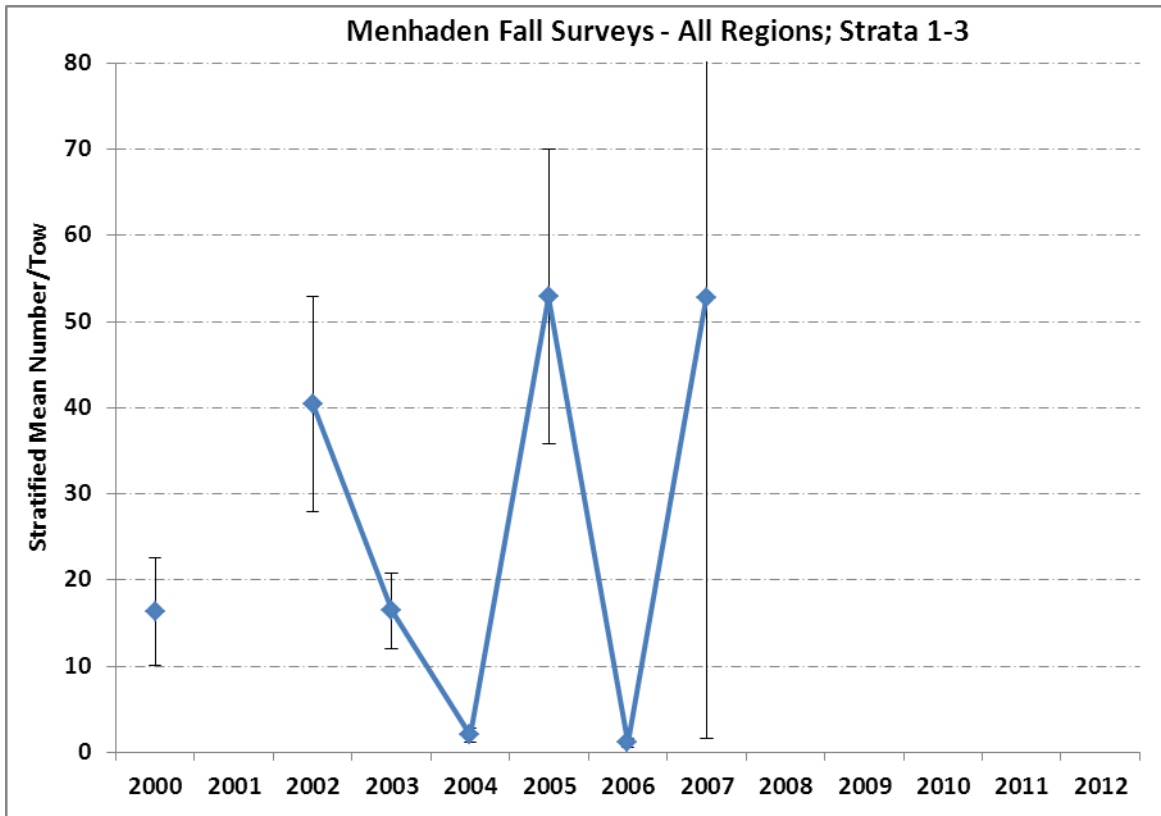


Table 1: Length Frequency Distribution By Year of Atlantic Menhaden Caught in the Fall ME/NH Inshore Trawl Survey

Lengths expanded for sub-sampling and standard towlenth

Length	Fall 2000	Fall 2001	Fall 2002	Fall 2003	Fall 2004	Fall 2005	Fall 2006	Fall 2007
1								
2								
3								
4								
5			4	98		48.67	1.111111	124.2
6	22		67	526		688.51		1600.021
7	340		142	346	3.68	1077.61	8.944444	1284.888
8	658		114	41	31.86	651.25	22.25	348.7909
9	431		57	8	75.71	259.15	7.25	72.41026
10	57		29	4	47.12	43.45		
11	11		2	2	10.51	3.58		
	1519	0	415	1025	171.1768	2772.219	39.55556	3430.31

Figure 2: Length Frequency Distribution By Year of Atlantic Menhaden Caught in the Fall ME/NH Inshore Trawl Survey

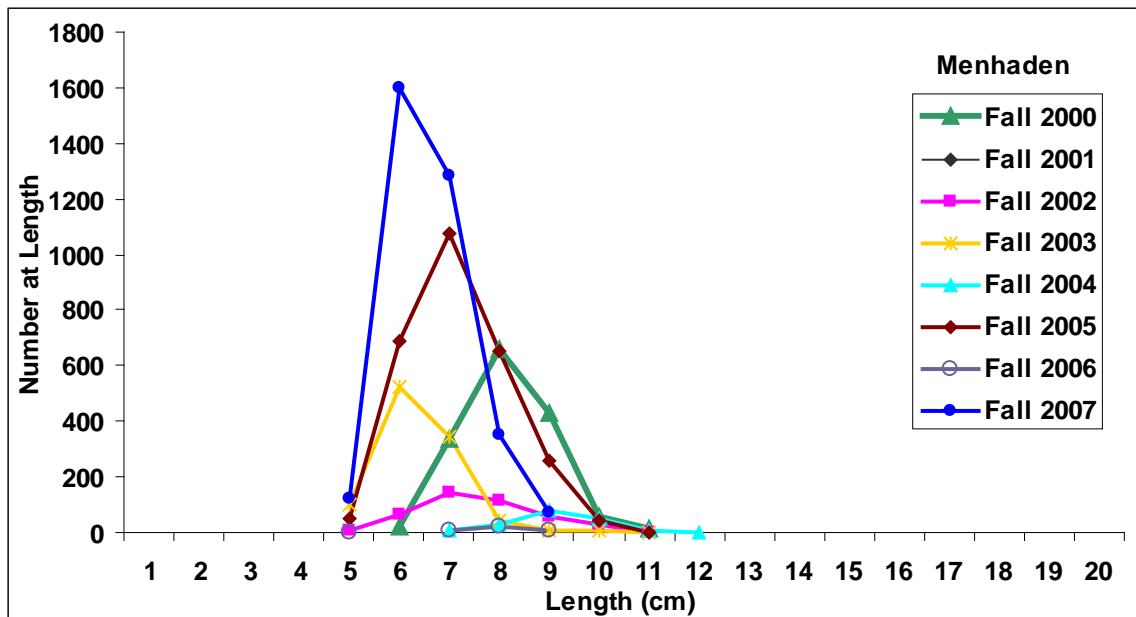
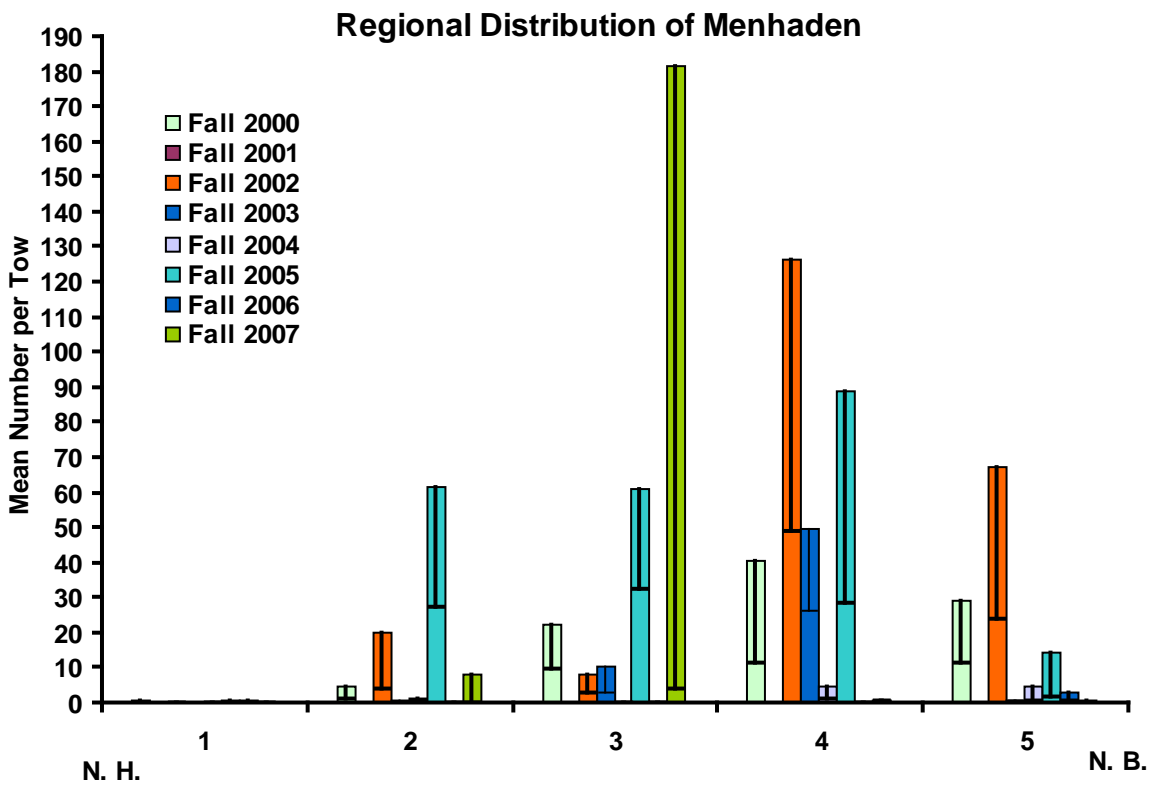


Table 2: Regional Distribution of Atlantic Menhaden



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.

Appendix II

13-188 DEPARTMENT OF MARINE RESOURCES

Chapter 55: GEAR RESTRICTIONS

55.04 Maine Gillnet Bait Fishing Regulations

- A. License and Endorsement Requirement. It shall be unlawful to gillnet bait fish without a gillnet bait fishing endorsement from the Department of Marine Resources (DMR). To obtain the endorsement commercial license-holders must contact the DMR at (207) 633-9500 to obtain an appropriate logbook and to receive instruction in logbook maintenance and reporting in accordance with Chapter 55.04(C). Upon satisfactory completion of these requirements the annual endorsement will be affixed or applied to their license by DMR personnel. No additional charge will be applied to the commercial license or recreational fishers for the endorsement.

- B. Gear and Marking Requirements. It shall be unlawful to fish more than 2000 feet of bait gillnet in territorial waters. Bait gillnet shall have less than 3.5 inches diamond or square stretch mesh throughout the entire net. Bait gillnets must be clearly marked at each end with buoy sticks at least 4 feet in length. The license-holder's name, homeport and DMR endorsement number must be clearly displayed on every marking buoy.

41.30 Atlantic Menhaden Pilot Program

1. Areas
 - A. Bald Head Cliff to Cape Arundel Shoreward and westerly of a straight line starting at the easternmost point of Bald Head Cliff, Ogunquit to the southernmost point of Cape Arundel, Kennebunkport.
 - B. Biddeford Pool to Cape Elizabeth Shoreward and westerly of the territorial sea line, as identified on National Oceanic and Atmospheric Administration nautical chart 13286, starting at the easternmost point of Biddeford Pool, Biddeford following the territorial sea line to where the line intersects the southernmost point of land in Cape Elizabeth.
 - C. All Maine territorial waters outside the areas defined in Chapter 41.30(A) & (B) Shoreward of the territorial sea line, as identified on National Oceanic and Atmospheric Administration nautical charts, except for those areas defined in Chapter 41.30(A) & (B).

2. Definitions

- A. "Daily catch limit or Daily limit" For purposes of this section (Chapter 41.30) means a maximum of 250,000 lbs of Atlantic menhaden possessed or loaded aboard from areas A and B between 00:01 AM to 11:59 PM. There is no daily catch limit or daily limit in Area C for harvester vessels.
- B. "Carrier vessel 250,000 lb capacity" For purposes of measuring 250,000 lb or capacity in a vessel hold the volumetric measure (in hogshead) of 250,000 lb of Atlantic menhaden is equivalent to ~205 hogshead. One hogshead equals 17.5 lb bushels. For consistency with 12 M.R.S. §6543 and §6544(3), multiplying 70 pounds (lb) per bushel by 17.5 bushels per hogshead equals 1225 lb. Therefore 250,000 lb divided by 1225 lb (or 17.5 hogshead) equals ~205 hogshead, which is within the 5 hogshead tolerance used in §6544(3).

3. Area Limitations

The areas in Chapter 41.30(1)(A, B & C) are restricted to the take, possession and transport of the Atlantic menhaden in accordance with the following regulations:

A. Limitations in Areas A & B

(1) Harvester and Carrier Vessel Daily Catch Limit -It shall be unlawful for harvester vessels and carrier vessels to catch and possess greater than 250,000 lbs of Atlantic menhaden per day.

B. Limitations in Area C

(1) Carrier Vessel Daily Limit -It shall be unlawful for carrier vessels to possess greater than 250,000 pounds (lb) of Atlantic menhaden per day. For purposes of this section (Chapter 55.90) "daily catch" means a maximum of 250,000 lbs of Atlantic menhaden possessed or loaded aboard from these areas between 00:01 AM to 11:59 PM.

C. Limitations in all Areas A, B & C

(1) It shall be unlawful for any harvester vessel that exceeds 50 feet in length overall to fish for, take or possess Atlantic menhaden within these restricted areas.

(2) It shall be unlawful for any carrier vessel to land more than 250,000 lbs of Atlantic menhaden per day (00:01 AM to 11:59 PM) harvested from Maine Territorial waters, which includes Areas A, B & C.

(3) A carrier vessel may transport and land Atlantic menhaden once per day at a limit of 250,000 lb capacity.

Exception: Any carrier vessel less than 70 feet length overall (LOA) is exempted from the number of landings per day limitation in Chapter 41.30(3)(C)(3).

(4) It shall be unlawful for any carrier vessel greater than 90 feet LOA to transport Atlantic menhaden harvested from Areas A, B & C. Any carrier vessel greater than 70 feet but not to exceed 90 feet LOA must be measured, plainly marked at a maximum 250,000 lb capacity or equivalent volume; or marked at the maximum vessel capacity if under 250,000 lb, and sealed* by the State Sealer of Weights and Measures.

*Sealed means receipt of the applicable Fish Carrier Calibration Report and sticker,

seal or appropriate marking affixed by the State Sealer of Weights and Measures or their designee. This documentation must be obtained prior to transporting Atlantic menhaden taken from these areas.

1 Suspension of rules The Commissioner has the authority to suspend all regulations in Chapter 55.90 in the event of a potential fish kill upon consultation with industry and Marine Patrol. Notice of rule suspension and duration shall be provided via the internet on the Department's web site and by email to industry members or telephone.

2 This regulation expires June 1, 2012.

**New Hampshire's Annual Compliance Report
for
ASMFC Atlantic Menhaden FMP
2012**

I. Introduction

Amendment 1 to the Atlantic States Marine Fisheries Commission's (ASMFC) Fisheries Management Plan for Atlantic Menhaden was adopted by the Commission in 2001. This report is submitted for compliance with Amendment 1 to the ASMFC Fishery Management Plan for Menhaden. During 2012, New Hampshire had no significant changes in monitoring, regulations or harvest.

II. Request for *de minimis*

New Hampshire requests *de minimis* status for 2013.

No Atlantic menhaden were harvested or landed in New Hampshire during 2010, 2011, and 2012 which constitutes less than one percent of the coast wide commercial landings during those years. If the *de minimis* threshold was reached, New Hampshire Fish and Game Department has the ability to close the fishery.

III. Previous Calendar Years Fisheries and Management Program

A) *Fishery Dependant Monitoring*

Commercial harvest was monitored via National Marine Fisheries Service (NMFS) dealer reporting system. Harvest via net or trap in state waters not sold to federally permitted dealers was monitored by New Hampshire's Coastal Harvest Permit logbooks. Recreational catch and harvest was monitored via the NMFS Marine Recreational Fishing Statistical Survey (MRFSS). In 2012, there were no reported landings of Atlantic menhaden in New Hampshire via dealer reports. No harvest was reported by either Coastal Harvesters or recreational harvesters (Table 2).

B) *Fishery Independent Monitoring*

New Hampshire is not required to conduct any fisheries independent monitoring for menhaden. The New Hampshire Fish and Game Department does, however, conduct an annual seine survey of its estuaries to monitor relative abundance of fish and certain crustaceans. Young-of-the-year menhaden relative abundance from this survey is presented in Table 1.

Table 1. Geometric mean catch per seine haul of Atlantic menhaden derived from monthly seine hauls at 15 stations in New Hampshire estuaries from June to November each year.

<u>Year</u>	<u>CPUE</u>	<u>STD</u>
1998	0.00	-----
1999	0.57	3.14
2000	2.15	8.45
2001	0.30	1.85
2002	1.37	7.31
2003	1.23	4.86
2004	0.19	0.97
2005	1.79	8.58
2006	1.16	4.58
2007	0.93	4.87
2008	0.09	0.65
2009	0.08	0.42
2010	0.00	-----
2011	0.02	0.15
2012	0.26	1.90

C). *Regulations*

Amendment 1 to the FMP for Atlantic menhaden requires 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.

D). *Harvest*

Table 2. Atlantic menhaden harvest (pounds) landed in New Hampshire, 1998-2012.

Year	Commercial (Dealer Reports)	Recreational (MRFSS)	Personal use via nets/traps (Harvest Reports)
1998	9*	0	0
1999	0	726 ⁺	0
2000	0	0	0
2001	0	0	0
2002	0	0	0
2003	0	0	0
2004	0	0	140 [#]
2005	0	710	273*
2006	0	0	797* [#]
2007	0	205	484* [#]
2008	0	6587	384* [#]
2009	0	0	32.5*
2010	0	0	390* [#]
2011	0	0	0
2012	0	0	0

+ - #'s of fish (no weight estimates from MRFSS for this year)

* - Gear type-sink/anchor gill net

- Gear type-cast net

E). *Progress in Implementing Habitat Recommendations*
N/A

IV. Planned Management Program for the current Calendar Year

A). *Regulation*

Regulations will be proposed in accordance with the new compliance criteria required by Amendment 2 to the FMP. These changes will be included in the implementation plan.

B). *Monitoring Programs*

All monitoring programs outlined in IIIA and IIIB will continue to be performed in the current year. New Hampshire has requested *de minimis* status and would be exempt from additional monitoring requirements.

TITLE XVIII

FISH AND GAME

CHAPTER 211

FISH, SHELLFISH, LOBSTERS AND CRABS

Salt Water Fish, Clams, etc.

Section 211:49

211:49 Cod, etc. –

I. No person shall use mobile gear, including but not limited to, otter trawls, mid-water trawls, beam trawls, pair trawls, purse seines, Scottish seines or drag seines in any form for the taking of any finfish or crustaceans in the waters under the jurisdiction of the state. The taking of all species of salmon (*Salmonidae*) and striped bass (*Morone Saxatilis*) is prohibited at any time by netting in any form. Nothing in this paragraph shall prohibit the setting of lobster traps or trawls for the taking of lobsters and crabs.

II. The executive director may open and close the waters, or parts thereof, under the jurisdiction of the state to the taking of marine species by mobile gear pursuant to RSA 541-A and consistent with sound conservation and management practices. In addition to penalties established under RSA 211:58, violation of this section may result in confiscation of all fishing gear used in such violation.

Source. RL 245:59. 1949, 289:1. RSA 211:49. 1971, 501:1. 1973, 549:1. 1975, 62:1. 1983, 219:1. 1985, 40:2, 5. 1993, 51:2, eff. June 15, 1993.

Massachusetts 2012 Compliance Report to the ASMFC for Atlantic Menhaden

[This Report Contains Confidential Data]

Prepared By:

Micah Dean

April 2013

Marine Fisheries
Commonwealth of Massachusetts



Massachusetts Division of Marine Fisheries
Annisquam River Marine Fisheries Station
30 Emerson Ave
Gloucester, MA 01930

1. Introduction and Summary of Significant Changes

Over the past seven years, 97% of the menhaden landed in Massachusetts came from large purse seine vessels that fished off New Jersey and Rhode Island, but landed their catch in Massachusetts where it was sold as lobster bait. As a result of this activity, the total Massachusetts landings can fluctuate dramatically from year to year, ranging from a high of over 14 million pounds in 2008, to 116,000 pounds in 2011. The fishermen who operate in Massachusetts waters fall into two gear categories: 1) Cast-nets / Gill-nets – sold to recreational bait shops; and 2) Small Purse Seines – sold as lobster bait. Collectively, these local water fisheries typically land between 50,000 and 300,000 lbs a year.

2. Request for *de minimis* Status

Massachusetts does not request *de minimis* status under the Interstate Fishery Management Plan for Atlantic Menhaden

3. Review of Fishery and Management Program in 2012

a. Fishery dependent monitoring

Since 2005, any Massachusetts dealer who purchases directly from fishermen has been required to report their purchases of menhaden, as well as all other marine species. These dealer-reported data provide a comprehensive account of Massachusetts landings and value of menhaden, but do not provide effort or area information (Table 1).

Beginning in 2010, all Massachusetts fishermen who do not already report their activity to the National Marine Fisheries Service (NMFS) were required to report trip-level catch and effort data to Massachusetts. When combined with Federal trip-level data (VTRs), these fishermen-reported data provide a comprehensive account of catch and effort for Massachusetts menhaden landings, including area-fished.

While both datasets are intended to encompass all menhaden landed in MA, some discrepancies do exist between the two sources. For this reason, dealer records were used to determine total landings, as the reporting program has been in operation longer and dealers generally provide more accurate landings weights.

In the past, menhaden were not routinely encountered by Massachusetts port samplers and often only one or two 10-fish samples per year were provided to NMFS Beaufort for age/size information. In 2012, a concerted effort was made to establish contacts with harvesters to be able to reliably obtain samples.

Consequently, eight 10-fish samples were collected in 2012, with the possibility of significantly more samples in future years.

b. Fishery independent monitoring

Massachusetts conducts two Resource Assessment surveys that are potential sources of an index of relative menhaden abundance: 1) a biannual bottom trawl survey that takes place in spring and fall (1978-current), and 2) an annual estuarine beach seine survey that takes place in summer (1977-current). Unfortunately, menhaden are infrequently encountered in either survey; therefore, data are likely insufficient to produce a reliable index.

c. Regulations in effect for 2012

There were no menhaden-specific regulations in place for 2012. However, there are general restrictions placed on the use of purse seines, which are primarily used to target menhaden in Massachusetts (See Appendix A).

d. Massachusetts Atlantic Menhaden Harvest

Massachusetts seafood dealers reported purchasing 1,648,695 pounds of menhaden in 2012, a 1300% increase over the previous year (Table 1). In most years, the majority of Massachusetts menhaden landings came from large purse seine vessels, which catch their fish off of New Jersey or Rhode Island but land in Massachusetts. This activity did not occur in 2011, which explains the dramatic increase in landings in 2012.

e. Progress in implementing habitat recommendations

Not applicable

4. Planned 2013 Management Program

a. Regulations

There are several regulation changes concerning menhaden that will occur in 2013 as part of the implementation plan for Amendment 2 of the FMP. However, these regulations have not yet been finalized and are subject to change, pending approval. The proposed rules include:

- A limited entry permit will be issued to qualified fishermen who reported landing at least 6000 pounds of menhaden in a single trip in 2009, 2010

or 2011. This permit will allow the holder to land menhaden in excess of 6,000 pounds. When the MADMF has determined that:

- <50% of the quota has been harvested – there will be no trip limit for these permits
- >50% and <85% of the quota has been harvested – there will be a 200,000 pound trip limit
- >85% of the quota has been harvested – there will be a 6,000 lb trip limit
- 100% of the quota has been harvested – the fishery will close
- Since holders of limited entry permits are capable of landing several hundred thousand pounds per trip (each representing a significant portion of the quota), they will be required to obtain bait dealer permits and report their menhaden transactions on a daily basis.
- All other MA fishermen will be allowed to land no more than 6,000 lbs of menhaden until the fishery closes once 100% of the quota has been harvested.
- Once the fishery closes, it will still be allowable to land a small amount of menhaden as bycatch. These landings will not exceed 1000 lbs of menhaden per trip, nor exceed 5% of the total weight of all species caught on that trip.

b. Monitoring

The Division of Marine Fisheries will continue to collect comprehensive menhaden landings and value information from dealers, as well as comprehensive catch and effort data from fishermen. Port sampling of menhaden for biological information will be made a priority in 2013 and a minimum of one 10-fish sample per 300 metric tons of landings will be collected. However, additional samples will be collected as opportunity allows.

Appendix A – Conditions Placed on Purse Seine Gears

- 1) Concentrations of fixed gear shall be avoided (MA General Laws - Chapter 130, Section 31)
- 2) Concentration of sport fishing activity shall be avoided
- 3) Only species named on the permit may be taken and retained by the permit holder. All other species shall be immediately released alive.
- 4) The Director may establish buffer zones, restrict areas or otherwise modify the areas authorized in the permit to prevent conflicts.
- 5) Catch reports may be required by the Director on an annual basis.
- 6) No dead fish shall be dumped.
- 7) The Director shall have the power to limit, suspend or revoke this Special Permit if in his judgment, significant damage or disruption to other fisheries is indicated.
- 8) As a condition of this special permit to purse seine, the permit holder agrees that the Director or his agents shall have the right to board a vessel engaged in the regulated fishery and, in addition, he or his agents shall have the power to immediately suspend fishing operations to protect other fisheries or avoid conflicts between user groups.
- 9) The Harbormasters of any of the towns or cities bordering the regulated fishing areas listed on the permit shall have the right to board and inspect purse seiners in the listed areas after consultation with the Director, may with his approval, suspend fishing operation if warranted.
- 10) Operations will be limited to one-half hour before sunrise to one-half hour after sunset.
- 11) The use of spotter planes will be allowed only after 8 A.M. away from residential areas.
- 12) Beginning in 1992, no seines larger than 600 feet (100 fathoms) may be used.
- 13) All carrier vessels must obtain a Bait Dealers permit from the Division of Marine Fisheries.
- 14) There will be no lawful purse seine activities in Boston or Salem harbor on Friday, Saturday and Sunday.

15) Restricted Areas – Beginning in 1992

- a. Hingham Bay – No vessels will be permitted inside Hull Guy and West Gut unless they fish with a hand hauled net no larger than 400' x 30'. No spotter planes.
- b. Charles River – inside a line drawn from Pier 4 in Charlestown to the easternmost Coast Guard Pier.
- c. Mystic River – above a line drawn from the end of the Massport concrete pier to the white storage tanks at the Exxon Terminal. Fishing may only be conducted above the Mystic River Bridge from ½ hour before sunrise to 8A.M. Each purse seine operation is allowed to make one successful set when fishing above the Mystic River Bridge between ½ hour before sunrise until 8A.M.
- d. The Chelsea River – shall be fished on a cooperative basis by entering and leaving as a group with approval of the pilot. No more than one set may be made at a time. Participating vessels will have loaded all fish from the first set before a second set is made.
- e. Dorchester – inside a line drawn from U Mass to the “Corita” Gas Tank.
- f. Neponset River – above the express way.
- g. Marina Bay – inside the break water
- h. Wier River – above red nun 8.
- i. Quincy Bay – no vessel will be permitted to fish in the waters west of a line drawn from the point of rocks on the east side of Squantum Neck to the easternmost end of the Merrymount designated "A Anchorage Area" in Quincy, including that anchorage area.
- i. Winthrop Harbor – no vessel will be permitted to fish waters north of a line drawn from the number 1 day marker to the southern end of Coughlin Park, Winthrop and East of line drawn from the number 1 day marker to the Cottage Park Yacht Club, Winthrop.
- j. Winthrop– the waters to the north of a line drawn from the number "1" day marker south of Snake Island to the easternmost end of the Logan Airport runway 27, and west of a line drawn from the "1" day marker to the Cottage Park Yacht Club, excluding the Winthrop designated "A Anchorage Area shall only be fished from ½ hour before sunrise to 8AM and with nets no larger than 400' x 30'.

- k. All A designated anchorage areas.
 - i. Winthrop – Pleasant Yatch Club, Stay to the west of a line drawn from the red n “10” buoy to the west shore of Bell Isle Inlet.
 - ii. South Boston
 - iii. Dorchester – Columbia Point inside closure line
 - iv. Quincy – Quincy Yacht Club – Hough’s Neck
 - v. Hingham – Crow Point, either side of channel
 - vi. Hingham – Town Pier.



Rhode Island
Department of Environmental Management

DIVISION OF FISH AND WILDLIFE

3 Fort Wetherill Rd
Jamestown, RI 02835

401 423-1920
FAX 401 423-1925

MEMORANDUM

To: Michael Waine
Atlantic States Marine Fisheries Commission

From: Jason McNamee
RI Division of Fish and Wildlife

Date: March 29, 2013

Attached is the ASMFC Atlantic Menhaden Compliance Report for Rhode Island for 2012. The report describes the commercial harvest for the 2012 Atlantic Menhaden fishery (including the requested supplemental material), as well as a summary of biological and sea sampling results. Included with the compliance report is a copy of our regulations regarding Atlantic Menhaden.

If you have any questions feel free to email me at jason.mcnamee@dem.ri.gov

2012 Menhaden Compliance Report for Rhode Island

I. Introduction:

During 2012, the Rhode Island menhaden fishery was regulated in the following manner:

The season for taking menhaden from the Narragansett Bay Menhaden Management Area by purse seine, for purposes other than fishmeal reduction shall open at sunrise on January 1 and end at sunset on December 31, annually. Purse seining for menhaden for purposes other than reduction is limited by time and area closures (see attached regulations). In 2012, bait fishery regulations were in place that implemented a possession limit of 120,000 pounds per vessel per day, and maintained regulations on having a threshold amount of biomass that is needed in the Bay to maintain an open fishery (1.5 million pounds), in addition to a cap of 50% of the "Narragansett Bay menhaden standing stock" above the previously mentioned threshold amount, after which the fishery closes. Gear restrictions, monitoring requirements, and the permanent closed areas were maintained. A closed area possession limit of 200 fish per vessel per day for recreational fishers was in place. The cap was monitored with the use of a modified depletion model for open populations (Gibson, 2007).

The taking of menhaden for reduction (fishmeal) purposes is prohibited in Rhode Island waters. A vessel will be considered in the reduction (fishmeal) business if any portion of the vessel's catch is sold for reduction.

II. Request for *de minimis* status: Not applicable

III. Year 2012 fishery and management program:

- A. Activity and results of fishery dependent monitoring (provide general results and references to technical documentation): Menhaden were sampled for aging out of the floating fish trap fishery. Over 100 samples were collected in 2012. These fish were sent to the NOAA Beaufort, NC fisheries lab for age analysis. Landings were also monitored using an observer who spent some time monitoring the population via a spotter aircraft during commercial operations. RI intended to sample the purse seine fishery; however the fishery in Narragansett Bay closed prior to the Division getting any samples from that segment of the fishery. The intent of the RI Division of Fish and Wildlife (DFW) is to continue this level of sampling in 2013 in order to get a full age sample and to monitor the fishery in the same manner as in 2012.
- B. Activity and results of fishery independent monitoring (provide general results and references to technical documentation):

During the 2012 Rhode Island Division of Fish and Wildlife seasonal trawl survey (Olszewski, 2012) the mean number per tow (fall months only) was 0.18 fish/tow. The biomass for this survey was 0.003 kg/tow. During the 2012 Rhode Island Division of Fish and Wildlife monthly trawl survey (Olszewski, 2012), the mean number per tow was 3.07 fish/tow. The biomass for this survey was 0.06 kg/tow. The data is presented in the table below.

	Narragansett Bay Monthly Trawl		Narragansett Bay Seasonal Trawl (fall only)	
	Mean # / tow	Mean kg / tow	Mean # / tow	Mean kg / tow
2006	26.14	0.16	0.02	0
2007	295.36	0.28	140.61	0.17
2008	29.66	0.30	0.69	0.03
2009	1.46	0.003	0.34	0.01
2010	0.5	0.05	0.05	0.0005
2011	0.35	0.03	0.09	0.02
2012	3.07	0.06	0.18	0.003

The abundance index of juvenile menhaden as reported for the 2012 Narragansett Bay Beach Seine Survey (McNamee, 2012) was 15.02 fish/haul. The data is presented in the table below.

Narragansett Bay Beach Seine Survey	
Year	Mean # / seine
2006	1.0
2007	91.66
2008	3.74
2009	1.36
2010	0.12
2011	0.14
2012	15.02

The abundance index of juvenile menhaden as reported for the 2012 RI Coastal Ponds Seine Survey (Lake, 2012) was 10.78 fish/haul. The data is presented in the table below.

RI Coastal Pond Beach Seine Survey	
Year	Mean # / seine
2006	18.79
2007	45.39
2008	0.16
2009	91.88
2010	11.33
2011	0.09
2012	10.78

C. Copy of regulations that were in effect, including a reference to the specific compliance criteria as mandated in the FMP:

During 2012, the Rhode Island menhaden fishery was regulated in the following manner:

The season for taking menhaden from the Narragansett Bay Menhaden Management Area by purse seine, for purposes other than fishmeal reduction shall open at sunrise on January 1 and end at sunset on December 31, annually. Purse seining for menhaden for purposes other than reduction is limited by time and area closures (see attached regulations). In 2012, bait fishery regulations were in place that implemented a possession limit of 120,000 pounds per vessel per day, and maintained regulations on having a threshold amount of biomass that is needed in the Bay to maintain an open fishery (1.5 million pounds), in addition to a cap of 50% of the “Narragansett Bay menhaden standing stock” above the previously mentioned threshold amount, after which the fishery closes. Gear restrictions, monitoring requirements, and the permanent closed areas were maintained. A closed area possession limit of 200 fish per vessel per day for recreational fishers was in place. The cap was monitored with the use of a modified depletion model for open populations (Gibson, 2007).

The taking of menhaden for reduction (fish meal) purposes is prohibited in Rhode Island waters. A vessel will be considered in the reduction (fishmeal) business if any portion of the vessel’s catch is sold for reduction.

Rhode Island has implemented mandatory seafood dealer reporting through the Standard Atlantic Fisheries Information System (SAFIS) for all dealers in Rhode Island. This captures all commercial landings of menhaden in RI and will bring RI in to full compliance with this fishery management plan provision. In addition, a requirement for a new marine licensing purse seine endorsement was implemented in order to maintain control on effort in state waters. The bait purse seine fishery is required to call in their landings on a daily basis while operating in state waters. It is important to note that the majority of bait purse seine catch, which occurs in RI state waters, is transported and landed in Massachusetts.

D. Harvest broken down by commercial (by gear type where applicable), recreational, and non-harvest losses (when available):

The data presented is 2012 SAFIS landings data. In 2012, 106,606 lbs of menhaden were landed in the state of Rhode Island. The landings were 94% from floating fish traps and 6% from gillnet, trawl, and other gear. There were no known or monitored recreational or non-harvest losses of menhaden in the state of Rhode Island in the year 2012. The data is presented in the table below.

Year	Commercial Landings (pounds)
2006	82,424
2007	8,944
2008	269,288
2009	107,819
2010	78,149
2011	83,899
2012	106,606

E. Habitat recommendations: None at present

IV. Planned management programs for current calendar year:

A. Summarize regulations that will be in effect:

Year 2013 commercial regulations will be similar to those implemented in 2012, with one major change. The season for taking menhaden from the Narragansett Bay Menhaden Management Area by purse seine, for purposes other than fishmeal reduction shall open at sunrise on January 1 and end at sunset on December 31, annually. Purse seining for menhaden for purposes other than reduction is limited by time and area closures (see attached regulations). Regulations will consist of a possession limit of 120,000 pounds per vessel per day, and a threshold amount of biomass will be needed in the Bay to maintain an open fishery (1.5 million pounds) in addition to a cap of 50% of the "Narragansett Bay menhaden standing stock" above the previously mentioned threshold amount, after which the fishery will close. Gear restrictions and monitoring requirements will also be maintained, and the permanent closed areas will be maintained. A closed area possession limit of 200 fish per vessel per day will also be in effect. The cap will be monitored with the use of a modified depletion model for open populations (Gibson, 2007). A gear restriction will also be maintained to limit nets to 100 fathoms in length and 15 fathoms in depth, and all gear will need to be certified before use in the commercial bait fishery. In addition, a threshold amount of 1.5 to 2 million pounds of menhaden will need to be reached in Narragansett Bay prior to the commencement of commercial fishing. An additional level of overflight observations will be undertaken in the state of Rhode Island's helicopter to add a fishery independent check on the spotter estimates that are currently collected. A capacity and/or vessel size restriction will be maintained in 2013.

In accordance with Amendment 2, a state waters quota will go in to effect in 2013. The new regulation will go to hearing in August of 2013, and should be promulgated in September 2013. RI has a very small quota, approximately 78,000 lbs, which is because there are not any large bait operations that land in RI. The majority of the landings of menhaden come from the floating fish traps. Even when RI attains its quota, according to Amendment 2, the floating fish trap operations will still be able to land as they are not considered a directed fishery.

The taking of menhaden for reduction (fishmeal) purposes will be prohibited in Rhode Island waters in 2013. A vessel will be considered in the reduction (fish meal) business if any portion of the vessel's catch is sold for reduction.

B. Summarize monitoring programs that will be performed:

The Rhode Island monthly and seasonal trawl surveys will be performed in 2013 as well as the Narragansett Bay beach seine survey and the Rhode Island coastal pond seine survey.

Rhode Island also intends to collect biological samples per the National Marine Fishery Service's protocol for fishery dependent menhaden sampling in 2013. We intend to aim for a minimum of 10 ten fish samples (100 individual samples) from both the purse seine fishery and the floating fish trap fishery. The DFW also intends to monitor the fishery in order to collect data to run its depletion model.

C. Highlight any changes from the previous year:

There were some major changes in the Atlantic menhaden fishery in RI in 2013. The biomass in the Bay decreased below the threshold in 2012 and the fishery was closed on June 6, 2012. The fishery reopened for a short period in 2012 after it had closed. The second opening went from June 12 through the 20th. The intent is to continue this type of management plan in 2013.

V. Plan specific requirements: Not applicable

VI. References

Gibson, M. 2007. Estimating Seasonal Menhaden Abundance in Narragansett Bay from Purse Seine Catches, Spotter Pilot Data, and Sentinel Fishery Observations. Unpublished (<http://www.dem.ri.gov/programs/bnatres/fishwild/pdf/menabnnb.pdf>)

Lake, J. 2012. Assessment of Recreationally Important Finfish Stocks in Rhode Island Waters, RI Coastal Ponds Juvenile Finfish Seine Survey - 2012 Annual Report. Project F-61-R. Unpublished.

McNamee, J. 2012. Assessment of Recreationally Important Finfish Stocks in Rhode Island Waters, Narragansett Bay Juvenile Finfish Seine Survey - 2012 Annual Report. Project F-61-R. Unpublished.

Olszewski, S. 2012. RI Coastal Fishery Resource Assessment Trawl Survey - 2012 Annual Report. Project F-61-R. Unpublished.

Attachment – RI Atlantic menhaden regulations (some changes are pending from a March 13, 2012 public hearing. The possible changes can be seen at the following link:

<http://www.dem.ri.gov/programs/bnatres/fishwild/pn031313.htm>

**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.

**State of Connecticut
Compliance Report for Atlantic Menhaden
April 25, 2013**

I. Introduction

Summary of the year highlighting any significant changes in monitoring, regulations or harvest.

No changes in Atlantic menhaden monitoring or regulations were made in the past year. Commercial landings in 2012 (26,554 lbs) were about the same as landings in 2011 and 41% less than landings in 2010. For the past two years landings have been well below the previous ten year average. The majority of reported menhaden landings in Connecticut come from vessels fishing gillnets inside state waters for lobster bait. Since 2008, gillnet landings in Connecticut have dropped by 74%.

II. Request for *de minimis*, where applicable.

Not Applicable.

III. Previous calendar year's fishery and management program.

a. Activity and results of fishery dependent monitoring.

Atlantic menhaden landings are monitored through monthly commercial fishermen logbooks, and weekly and monthly dealer reports. These reports contain daily records of fishing and dealer purchase activity including gear type and area fished. There was no commercial sea sampling or port sampling activity for Atlantic Menhaden in Connecticut during 2012. Preliminary commercial landings for 2012 totaled 26,544 pounds; only a 375 lb decrease from 2011 and 18,413 decrease from the 2010 (Table 1). Since 2000, there have been three events (2002, 2006, and 2009) that have resulted in higher total Connecticut landings. In each of these three years, landings were reported from catches occurring from outside of state waters and offloading in a Connecticut port. In April of 2013, Connecticut enacted a Menhaden implementation plan and passed a declaration (13-02) that effectively prohibits a directed fishery from occurring within the state (see Section IV a.).

Table 1. Total Connecticut Commercial Landings (pounds), 2000-2013. Source: CT Marine Fisheries Statistics Program

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012*
14,423	38,865	1,138,788	46,515	33,210	30,636	866,235	90,254	104,881	173,252	44,967	26,929	26,554

*preliminary as of April 2013.

b. Activity and results of fishery independent monitoring.

The state of Connecticut conducts the Long Island Sound Trawl Survey (LISTS) each spring (April-June) and fall (September and October). This survey provides fishery independent monitoring of important finfish species as well as other marine living resources. Atlantic

menhaden are commonly observed in LISTS fall surveys, with few fish seen during spring cruises, however, in 2012 with warmer spring water temperatures LISTS did observe more adults in the 27-31cm range. Typically LISTS has averaged about 400 menhaden per year and average abundance in the fall is 0.68 fish/tow (Table 2). Over sixty percent of LISTS menhaden catches during the fall are juveniles. Abundance was generally lower in the early part of the time series from 1984 through 1991, and then increased sharply in 1992 to record levels (2.0 fish/tow) (Figure 1). Abundance varied around the mean for the next eight years and decreased again in 2001 to 0.32 fish/tow. After three years of moderately increasing abundance during 2002 through 2004, menhaden indices dropped to the fifth lowest in 2006 (0.23 fish/tow) and rose in 2007 to 0.80 fish/tow. Abundance has varied around the mean in the last five years and was slightly above the mean in 2011 (0.74 fish/tow) and 2012 (0.94 fish/tow).

The Connecticut Marine Fisheries Division also conducts a Connecticut River Seine Survey and calculates a juvenile Atlantic menhaden index based on the lower four stations, i.e. from Glastonbury, CT to Essex, CT, near the river mouth. The Seine Survey maintains twenty-five years of menhaden data and has shown three major peaks in abundance in 1992 (19.9 fish/haul), 1998 (31.2 fish/haul), and 2003 (25.63 fish/haul) (Table 2.). Since the most recent peak in 2003, abundance fell sharply to 0.34 fish/haul in 2006 then increased modestly the following year to 8.33 fish/haul. Abundance again fell over the last few years to the lowest in the time series in 2011 (0.21 fish/haul) and increased this past season to 0.57 fish/haul (Figure 2).

Table 2. Atlantic Menhaden (geometric means)

LISTS	Long Island Sound Trawl Survey		Connecticut River Seine Survey
	Spring	Fall	
	1984	0.09	
1985	0.11	0.15	
1986	0.18	0.79	
1987	0.39	0.14	0.39
1988	0.17	0.13	1.61
1989	0.14	0.45	3.79
1990	0.10	0.66	2.77
1991	0.03	0.59	8.91
1992	0.14	2.00	19.95
1993	0.07	0.40	3.50
1994	0.05	1.02	2.95
1995	0.11	0.56	0.98
1996	0.02	0.43	6.72
1997	0.02	0.57	5.43
1998	0.00	0.73	31.21
1999	0.01	1.08	5.32
2000	0.03	0.97	7.33
2001	0.00	0.32	6.99
2002	0.13	0.76	7.95
2003	0.01	0.95	25.63
2004	0.02	1.63	9.90
2005	0.01	0.94	0.79
2006	0.04	0.23	0.34
2007	0.13	0.80	8.33
2008	0.05	0.47	0.23
2009	0.07	0.28	1.17
2010	0.05		0.45
2011	0.11	0.74	0.21
2012	0.63	0.94	0.57

Figure 1.

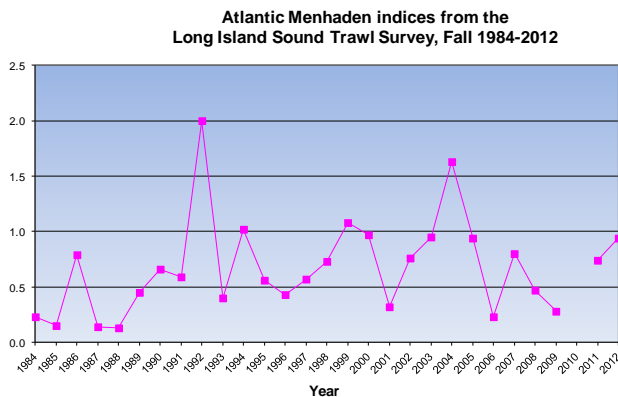
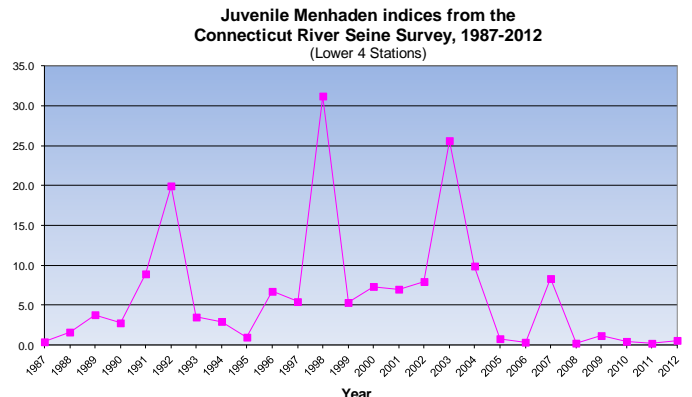


Figure 2.



c. Copy of regulations that were in effect, including a reference to the specific compliance criteria as mandated in the FMP.

The use of purse seines to take any species was prohibited by state statute effective April 25, 2000. Other regulations in effect defined menhaden as a species that can be offered for sale as bait for licensing purposes (26-142a-12), and included menhaden as a species that can be taken for personal use without a commercial fishing license while using certain gears (26-142a-15). Licensed fishermen are required to submit trip reports of their catches, which have been incorporated into the landings information provided below (26-157b-1). Finally, state statutes permit the use of a single gillnet not more than 60 ft in length in marine waters to take menhaden only, for personal use under a Personal Use Gillnet License (sec. 26-142a).

d. Harvest broken down by commercial (by gear type where applicable) and recreational, and non-harvest losses.

A total of 26,554 pounds of Atlantic menhaden were landed in Connecticut during 2012 (preliminary). The gillnet fishery typically accounts for the majority of catches in Connecticut and most menhaden are used for lobster bait. In 2012, the gillnet fishery accounted for nearly 100% of the landings. Larger than normal landings in 2009 and 2006, as well as the unusually high landings in 2002 (Table 1) were due primarily to vessels fishing outside of state waters, and Long Island Sound proper, then traveling to a Connecticut port to offload. Historically, the gillnet fishery accounted for more than three quarters of the landings while the trawl, purse seine (outside state waters), and pound net compose the remainder. Hook and line normally contributes less than 1% of what is reported annually. A small percentage of cast net landings have also been reported in Connecticut each year since 2006. Currently the 2012 recreational harvest data by personal use gillnet has not been fully entered into the Marine Fisheries database; however, the 2011 landings were 7,200 lbs. The average landings for the previous seven years (2004-2010) under this license type have been 19,368 lbs. The recreational harvest by hook (snagging) is unknown as all herring species are grouped in the MRFS Survey and a single value for all species combined is provided.

There is no information available concerning non-harvest losses.

e. Review of progress implementing habitat recommendations.

Not applicable.

IV. Planned management programs for the current calendar year.

a. Summarize regulations that will be in effect.

There are no regulations restricting the season or fish size taken in the Atlantic menhaden fishery. State statutes prohibit the use of purse seines to take any species, therefore menhaden take in state waters is essentially limited to gillnets which have produced very modest landings in recent years. Gillnets in the commercial fishery must have a 3" minimum mesh size. Since 2007, regulations concerning commercial fishing gear specifications have required that gill nets fished under the personal use gill net license be personally attended by the licensee (26-142a-6). Currently Connecticut does not have active pound nets that are authorized to be fished in state waters. Setting 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.

New Connecticut recreational regulations passed as a declaration in March of 2013 (effective 3/30/2013) enact a daily creel limit of 50 fish or 5 gallons, whichever is greater (see Declaration 13-01).

In April of 2013, Connecticut enacted a Menhaden implementation plan and passed a declaration (see declaration # 13-02) that effectively prohibits a directed fishery from occurring within the state. The declaration prohibits possessing or landing more than 6000 lbs in a single day. The declaration does provide a mechanism for out-of-state vessels wishing to land large quantities (> 6000 lb) in Connecticut provided a quota transfer from its home state is arranged in advanced.

b. Summarize monitoring programs that will be performed.

The Connecticut DEEP plans to continue collecting daily harvest information through logbooks and dealer reports submitted monthly for all species. The Long Island Sound Trawl Survey will continue to record numbers, biomass and size composition of Atlantic menhaden taken in spring and fall surveys. The Connecticut River Seine Survey will continue to provide indices of abundance for juvenile menhaden.

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 to fulfill requirements of Amendment 2.

c. Highlight any changes from the previous year.

See Section IV a. above and Declaration 13-01 and 13-02.

V. Atlantic Menhaden Plan specific requirements.

See Appendix 2 - Implementation Plan for Compliance of Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden.

VI. Law Enforcement Reporting Requirements.

Not applicable.

Appendix 1. Connecticut fishing regulations for Menhaden

State Statute prohibiting the use of purse seines in Connecticut waters.

Sec. 26-142a. Environmental tourism cruise vessel permit. Commercial fishing vessel permits. Registration of nets and areas of use. Registration of charter boats. Fishing licenses and registrations. Possession limits. Fees.

(a)...The use of a purse seine or similar device is prohibited...

The full statute is available at: <http://www.cga.ct.gov/2009/pub/chap490.htm#Sec26-142.htm>

(c) The fee for the following fishing licenses and registrations and for a commercial fishing vessel permit shall be :..(14) for a license to take menhaden from marine waters for personal use, but not for sale, by the use of a single gill net not more than sixty feet in length, fifty dollars;...

Regulations pertaining to Atlantic menhaden that were in effect during 2010.

26-142a-12. Taking and sale of bait species

(b) In addition to the bait species listed in subsection (a) of this section, the following species, if legally taken under the appropriate commercial license and meeting the minimum legal length requirements specified in section 26-142a-8a of the Regulations of Connecticut State Agencies, may be offered for sale as bait under a bait dealer's license:

- (1) menhaden (*Brevoortia tyrannus*);
- (2) alewives (*Alosa pseudoharengus*);
- (3) blueback or "glut" herring (*Alosa aestivalis*);
- (4) American eel (*Anguilla rostrata*);
- (5) butterfish (*Peprilus triacanthus*);
- (6) Atlantic mackerel (*Scomber scombrus*);
- (7) whiting (*Merluccius bilinearis*);
- (8) squid (*Loligo sp.*);
- (9) Atlantic herring (*Clupea harengus*);
- (10) hickory shad (*Alosa mediocris*);
- (11) Horseshoe crabs (*Limulus polyphemus*).

26-142a-15. When a license is not required

In the marine district a commercial fishing license is not required to take, for personal use only, menhaden, hickory shad, alewives, glut herring, sea herring, eels, lampreys and bait species by the use of:

- (1) cast nets;
- (2) minnow traps not more than twenty inches long and fifteen inches in diameter;
- (3) scoop or scap nets not more than thirty-six inches in diameter;
- (4) umbrella nets not more than four feet in length by four feet in width;
- (5) seines not more than thirty feet in length; and
- (6) not more than two eel pots.

Effective April 22, 1994. Amended 12/27/2006 added hickory shad and umbrella nets.

26-142a-6. Commercial fishing gear specifications

Commercial fishing gear shall conform to the following specifications:

(c) Gill nets

- (1) In the inland district, gill nets shall have a mesh of not less than five inches when stretched except that nets used for taking white perch, catfish species and yellow perch shall have a mesh of not less than three and one half inches when stretched.
- (2) In the marine district gill nets shall have a mesh of not less than three inches when stretched with the following exceptions:
 - (A) gill nets used for taking American shad shall have a mesh of not less than five inches when stretched;
 - (B) gill nets used for taking tomcod shall have a mesh of not less than one and one-quarter inches when stretched; and
 - (C) gill nets used for taking white perch, catfish species and yellow perch shall have a mesh of not less than three and one-half inches when stretched.
- (4) All gill nets being fished under authority of a personal use gill net license issued under section 26-142a of the Connecticut General Statutes shall be personally attended by the licensee.

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).

- (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, 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 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.

Effective May 19, 1995, amended Subsection (d) 12/19/2000, March 31, 2003 revised reporting requirements for license fishermen and seafood dealers.

Declaration of Regulation Change (13-02)

Under authority of Section 26-159a of the Connecticut General Statutes and Section 26-159a-22 of the Regulations of Connecticut State Agencies, the Commissioner of Energy and Environmental Protection is authorized to establish or adjust, by declaration, closed seasons, length limits, creel limits, trip limits and trip limit adjustment values in order to comply with interstate fishery management plans (FMP) adopted by the Atlantic States Marine Fisheries Commission (ASMFC) or the U.S. Department of Commerce (DOC).

In accordance with the aforementioned authority, the following sections of Departmental regulations are amended as specified on pages 2 through 6 of this Declaration.

Sec. 26-159a. Regulations concerning certain sport and commercial fishing in the marine district and possession of certain species.

(New Section) Atlantic Menhaden (*Brevoortia tyrannus*)

(a) Commercial Fishery Possession Limits.

- (1) Except as provided in subdivision (3) of this subsection, no person engaged in commercial fishing shall possess or land Atlantic menhaden in excess of 6,000 pounds. This possession limit shall apply to the aggregate of all persons on board the vessel.**
- (2) Landing in excess of 6,000 pounds shall be permitted provided:**
 - (A) the Commissioner receives and accepts an offer of quota transfer from another state in an amount equal to or greater than the amount of fish to be landed, and;**
 - (B) such quota transfer conforms with the requirements of the Atlantic Menhaden Fishery Management Plan of the Atlantic States Marine Fisheries Commission for quota transfers between states, and;**
 - (C) such quota transfer is completed before fish are offloaded in this state.**

Declaration of Regulation Change (13-01)

Under authority of Section 26-25 of the Connecticut General Statutes the commissioner may, when he finds that the harvest level for a species exceeds or fails to meet the harvest level for efficient management of such species, declare a closed season or extend the open season for the sport fishing of such species. In addition, under the authority of 26-159a of the Connecticut General Statutes and Section 26-159a-22 of the Regulations of Connecticut State Agencies, the Commissioner of Energy and Environmental Protection is authorized to establish or adjust, by declaration, closed seasons, length limits, creel limits, trip limits and trip limit adjustment values in order to comply with interstate fishery management plans adopted by the Atlantic States Marine Fisheries Commission or the U.S. Department of Commerce.

Under the authority of RCSA Sec. 26-159a-22 the sport fishing minimum length and creel (possession) limits are modified as follows:

RECREATIONAL FISHERY MEASURES FOR 2013

26-159a-7. Creel limits

(a) Unless otherwise specified in section 26-112-45 of the Regulations of Connecticut State Agencies, the daily creel limit for species taken by sport fishing methods, including spears of any kind, shall be as set forth in this subsection. No person, other than a person authorized to take finfish under a license or registration issued pursuant to section 26-142a of the Connecticut General Statutes, while on the waters of this state or on any parcel of land, structure, or portion of a roadway abutting tidal waters of this state shall possess or land any of the following species, regardless of where taken, in excess of the identified number.

(14) Menhaden (*Brevoortia tyrannus*): 50 fish or 5 gallons, whichever is greater;

Appendix 2. Connecticut implementation plan for compliance of Amendment 2



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	1,200
2011	127.7	44	20	480	2,000
2012	149.2	66	200	500	1,000

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 14

26-157b-1 Reports 14

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.

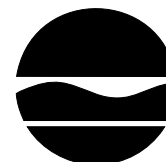
- (i) Each person or firm issued a charter boat or party boat registration shall submit a report of daily fishing activities no later than the tenth of the month following the month covered by the report.
- (j) In addition to the provisions of subsections (a) through (i), inclusive, of this section for 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

Bureau of Marine Resources
205 North Belle Mead Rd, East Setauket, NY 11733
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Joe Martens
Commissioner

May 2, 2013

New York 2012 Atlantic Menhaden Compliance Report

I. Introduction:

Historically, New York supported a large and active Atlantic menhaden processing fishery. The importance of this fishery diminished during the early to mid 1900s. The last processing plant ceased operations in 1969. Legislation passed in 1998 reduced the area in which purse seine vessels can operate, which lowered participation in this fishery. Today, menhaden are harvested on a small scale in New York, generally for bait.

The menhaden bait fishery includes Marine Bait, Lobster Bait Gillnet, Food Fish Resident and Non Resident, Food Fish Landing, and Menhaden Purse Seine permits. All of these licenses, except for the Menhaden Purse Seine permits, require mandatory reporting of landings through State fishing vessel trip reports (SVTRs) or the Atlantic Coastal Cooperative Statistic's (ACCSP) Etrips reporting system. The Food Fish Landing license started requiring mandatory reporting in 2011 and Lobster Bait Gillnet switched from a yearly recall survey to SVTRs in 2012. NY will be drafting regulations to require reporting through SVTRs for Menhaden Purse Seine permits.

Previous landings data reported to ASMFC only included Lobster Bait Gillnet permit landings and NMFS landings data. Although mandatory reporting through SVTRs was in place for most permits during 2009 – 2011, data entry and compliance monitoring was not performed during these years due to staff and funding constraints. Data entry began in 2012 and it is the only year completely entered into database. Data entry for 2009 – 2011 is still ongoing. All current commercial landings estimates are summarized in this report.

Juvenile menhaden form an important component of the Atlantic menhaden population found in New York waters. New York does not have an assessment program specific to menhaden; however limited observations are made in several fishery independent surveys conducted by the department. The results of these surveys are summarized in this report.

II. Request for *de minimus* status:

The state's current reported landings would qualify it for *de minimus* status. However, the department has received information that leads us to conclude that the reported landings data available do not represent a complete and accurate landings history. During scoping for our 2013 Amendment 2 implementation plan, the department heard testimony from fishermen and dealers that they had not been reporting menhaden landings because they were being used as bait and were therefore not covered by the requirement to report. This misunderstanding is being rectified and the department is attempting to rebuild landings history. We believe our actual landings will put us beyond *de minimus* status (<1% of coastal bait harvest) so NY is not requesting *de minimus* at this time.

III. Previous calendar year's fishery and management program:

a. Fishery Dependent Monitoring

Table 1. 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 200 GT or more	0
Menhaden Purse Seine 30 - 200 GT	2
Menhaden Purse Seine 30 GT or less	21
Grand Total	1776

Table 2. NY Preliminary Reconciled Atlantic Menhaden Landings by Year and Source

SOURCE	YEAR				
	2008*	2009*	2010*	2011*	2012*
LOBSTER BAIT GILL NET RECALL	247,200	189,480	161,900	127,230	N/A
FEDERAL VTR		30,103	30,170	39,236	57,525
STATE VTR/ ETRIPS/ DEALER	128,179	85,352	168,330	77,555	166,738
TOTAL	375,379	304,935	360,400	244,021	224,263

*Landings are still preliminary and data entry is incomplete for 2008 – 2011

TABLE 3. NY SVTR and ETRIPS Atlantic Menhaden Landings by Year and Gear

GEAR	YEAR						TOTAL	TOTAL PERCENT
	2008*#	2009*#	2010*#	2011*#	2012*	2012%		
CAST NET	12,670	2,100	3,500	22,850	69,920	42%	111,040	32%
GILL NETS	34,805	325	52,130	2,885	51,053	31%	141,198	41%
BY HAND NO DIVING GEAR				1,500	14,900	9%	16,400	5%
HOOK AND LINE					15	0%	15	0%
OTTER TRAWL BOTTOM, FISH	205					0%	205	0%
POUND NETS		11,200	5,150	820		0%	17,170	5%
POTS AND TRAPS	2,350			20,950	29,450	18%	52,750	15%
COMMON SEINE	6,200					0%	6,200	2%
DREDGE					900	1%	900	0%
STOP SEINE					500	0%	500	0%
TOTAL	56,230	13,625	60,780	49,005	166,738	100%	346,378	100%

* Landings are still preliminary and data entry is incomplete for 2008 – 2011

#Discrepancies between Table 1 and Table 2 totals are due to Dealer Reports

TABLE 4. NY SVTR and ETRIPS Landings by Year and NMFS Statistical Area

SUB AREA CODE	YEAR					2012%	TOTAL	TOTAL PERCENT
	2008*#	2009*#	2010*#	2011*#	2012*			
142	21,220				33,950	20%	55,170	16%
144	4,205				850	1%	5,055	1%

148	100				1,250	1%	1,350	0%
150					700	0%	700	0%
158		2,100	3,500	44,500	55,935	34%	106,035	31%
159					340	0%	340	0%
162	2,160		2,655	500	7,713	5%	13,028	4%
163	23,655	325	45,425	2,385	15,995	10%	87,785	25%
164			4,050		5,905	4%	9,955	3%
165	890	11,200	5,150	820	28,300	17%	46,360	13%
166	4,000					0%	4,000	1%
178				800	15,800	9%	16,600	5%
TOTAL	56,230	13,625	60,780	49,005	166,738	100%	346,378	100%

* Landings are still preliminary and data entry is incomplete for 2008 – 2011

#Discrepancies between Table 1 and Table 3 totals are due to Dealer Reports

b. Fishery Independent Monitoring

NYSDEC Peconic Bay Small Mesh Trawl Survey

Years Sampled: 1987 – 2012

Gear Type: 4.8 m semi-balloon shrimp trawl, the body has 3.8 cm mesh, the codend has 3.2 cm mesh, and the codend liner has 1.3 cm mesh. The footrope is 0.95 cm rope that is 6.4 m long, with legs extended 0.9m and wire rope thimbles spliced at each end, 0.6cm chain hung in loop style on the footrope. The net was towed for 10 minutes at approximately 2.5 knots. The vessel used was a 10.7 m lobster style workboat.

Spatial Coverage: Peconic Bay

Temporal coverage: May through October

Sample Design: Random survey based on a block grid design. The survey area was divided into 77 sampling blocks with each block measuring 1' latitude and 1' longitude.

Sample frequency and number: 16 stations were randomly chosen each week to sample

Information Collected: All finfish species are identified and counted. Environmental information (surface and bottom temperature, salinity, dissolved oxygen, and secchi disc readings) were recorded at each station.

Changes in Sample Design: From 1987 – 1990 the net was set by hand and retrieved using a hydraulic lobster pot hauler. From 1991 to the present the net was set and retrieved using hydraulic trawl winches and an A-frame. Due to vessel problems, the survey was not conducted during the following time periods: 2005 from mid-July through October, 2006 from May through mid-July, 2008 from May through mid-August, and 2010 during May.

Fig. 1

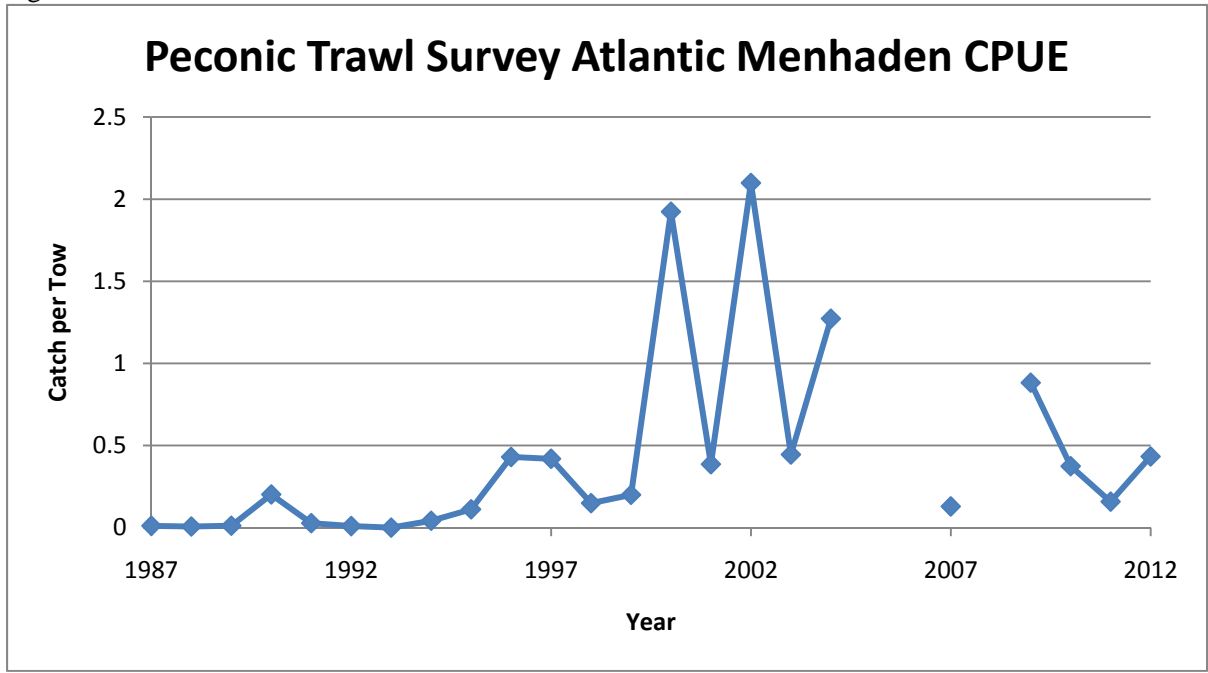
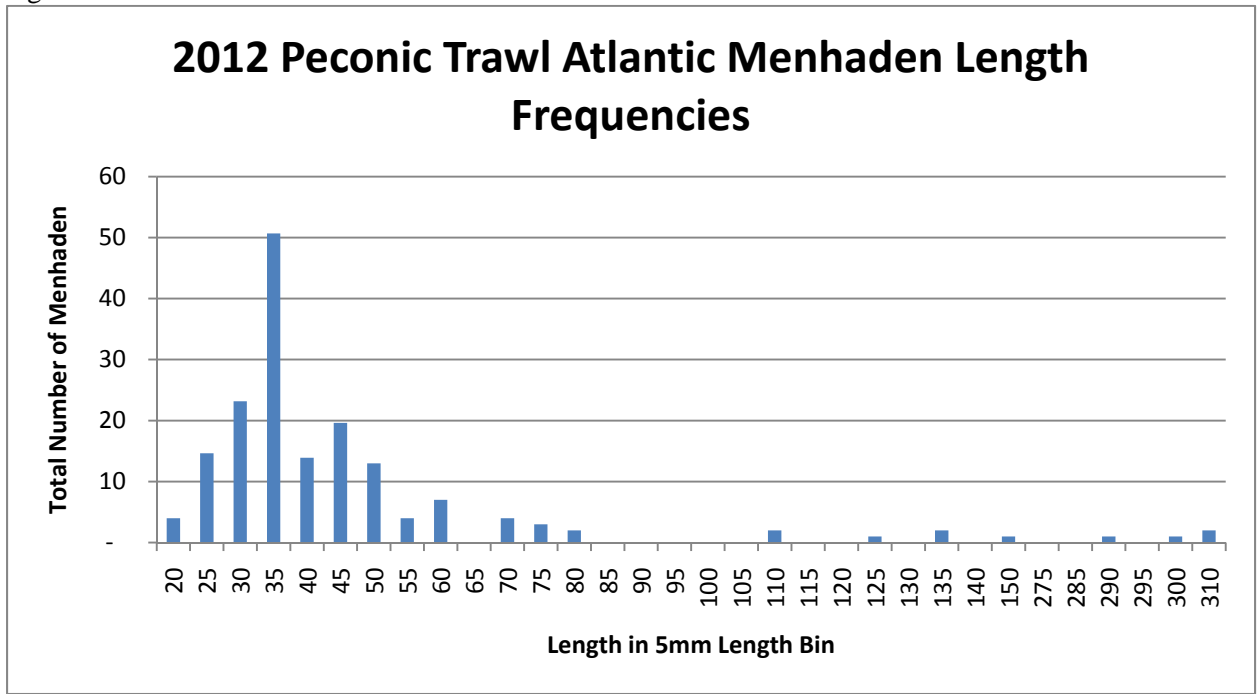


Fig. 2



NYSDEC Western Long Island Beach Seine Survey

Years Sampled: 1984 – 2012

Gear Type: 200ft x 10ft beach seine with ¼ inch square mesh in the wings, and 3/16 inch square mesh in the bunt. The seine is set by boat in a “U” shape along the beach and pulled in by hand.

Spatial Coverage: Little Neck (LNB) and Manhasset Bay (MAN) on the north shore of Long Island (WLIS), and Jamaica Bay (JAM) on the south shore. Other bays have been sampled on a shorter time frame.

Temporal Coverage: May through October. Pre 2000 sampling was conducted 2 times per month during May – June and once a month July – October. Sampling from 2000 – 2012 was conducted 2 times per month from May – October.

Sample Design: Fixed site survey. Generally 5 – 10 seine sites are sampled in each bay on each sampling trip.

Information Collected: All finfish species are identified and counted. Environmental information (air and water temperature, salinity, dissolved oxygen, tide stage, wind speed and direction, and wave height) has been recorded at each station. Bottom type, vegetation type, and percent cover have been recorded qualitatively since 1988.

Fig. 3

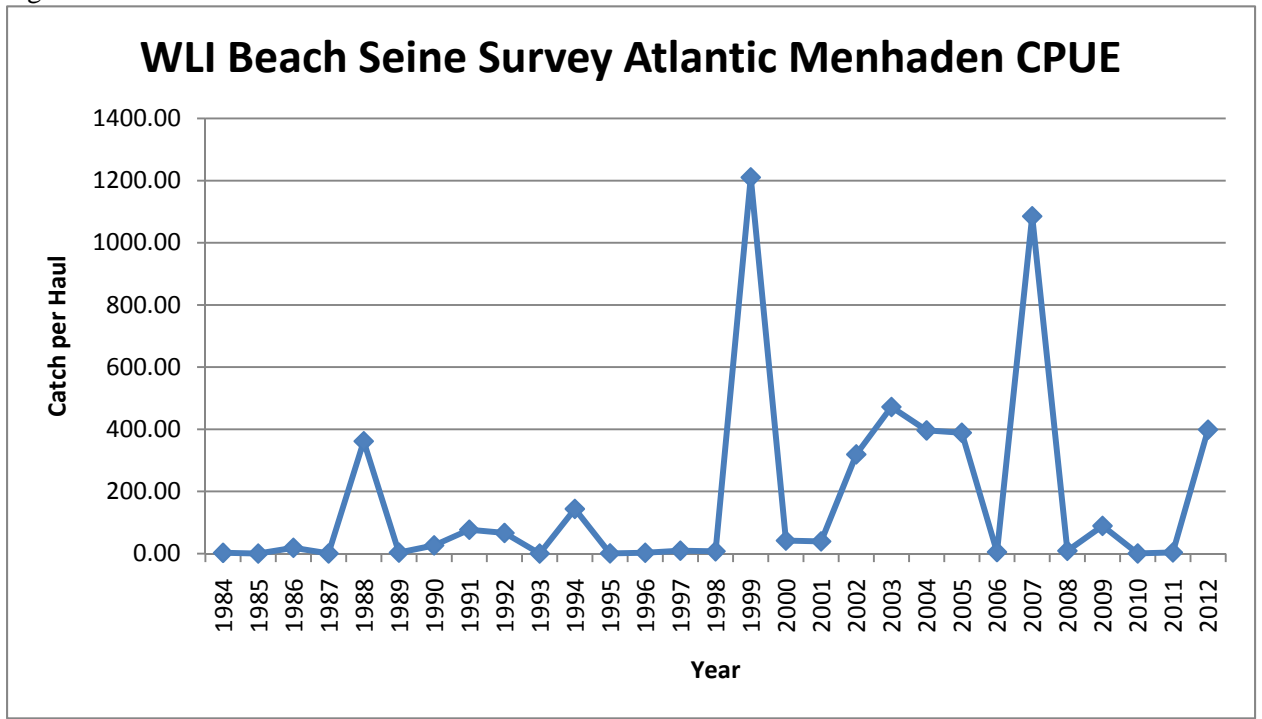
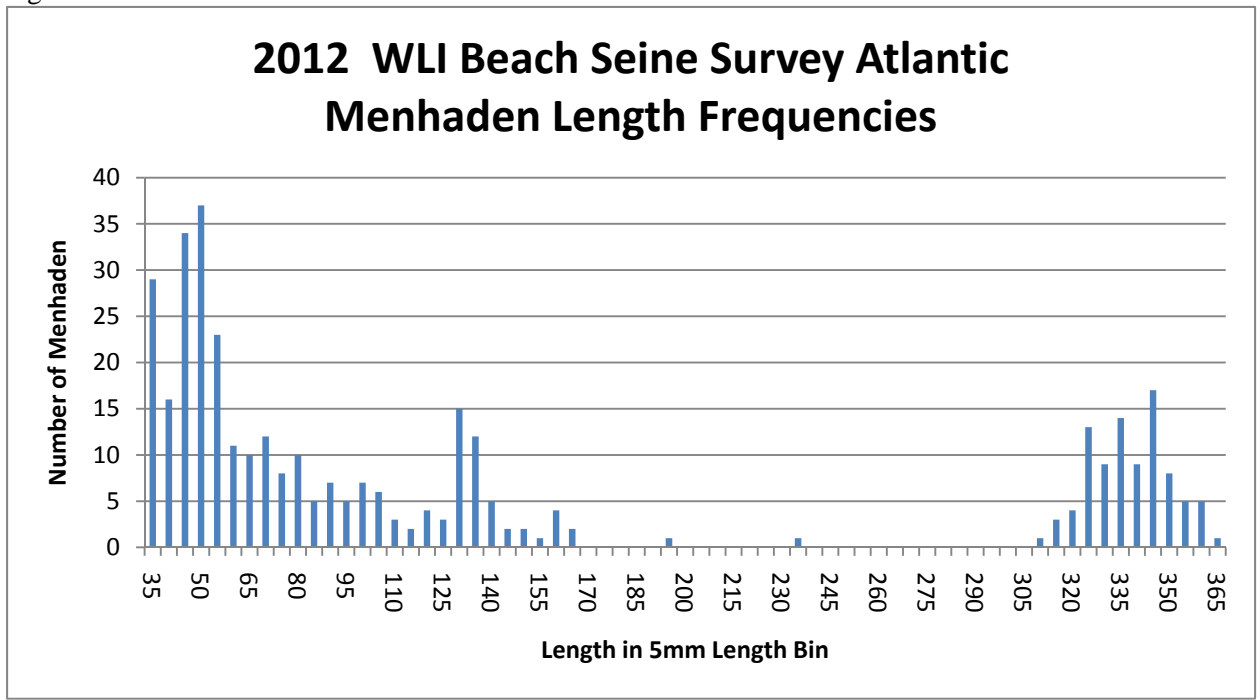


Fig. 4



NYSDEC Alosine Young of the Year Beach Seine Survey

Years Sampled: 1980 – 2012

Gear Type: 30.5m x 30m beach seine. The seine is set by boat in a “U” shape along the beach and pulled by hand.

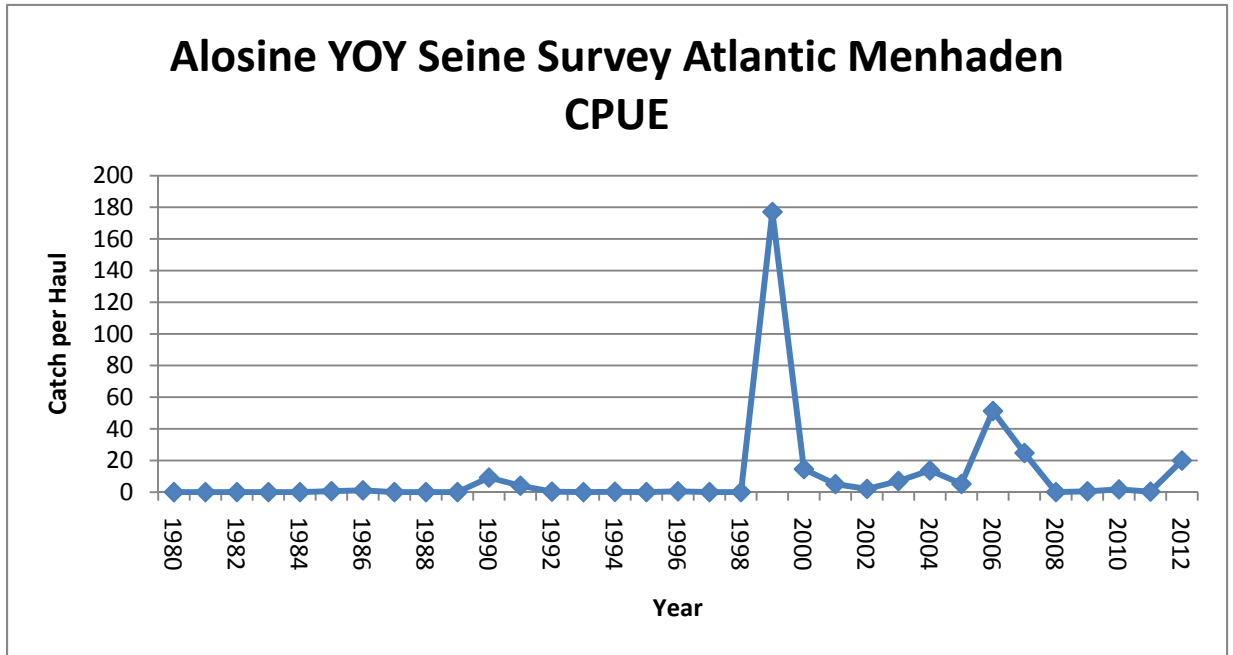
Spatial Coverage: The Hudson river estuary between river km 88 and 225.

Temporal Coverage: Sampling occurs during the day on alternate weeks from July – October.

Sample Design: 28 standard sites are located in reaches of the river bracketing known near-shore concentrations of age zero alosines.

Information Collected: All finfish species are identified and counted.

Fig. 5



NYSDEC Striped Bass Young of the Year Beach Seine Survey

Years Sampled: 1979 – 2012

Gear Type: 71m x 3m beach seine with .64mm mesh. The seine is set by boat in a “U” shape along the beach and pulled in by hand.

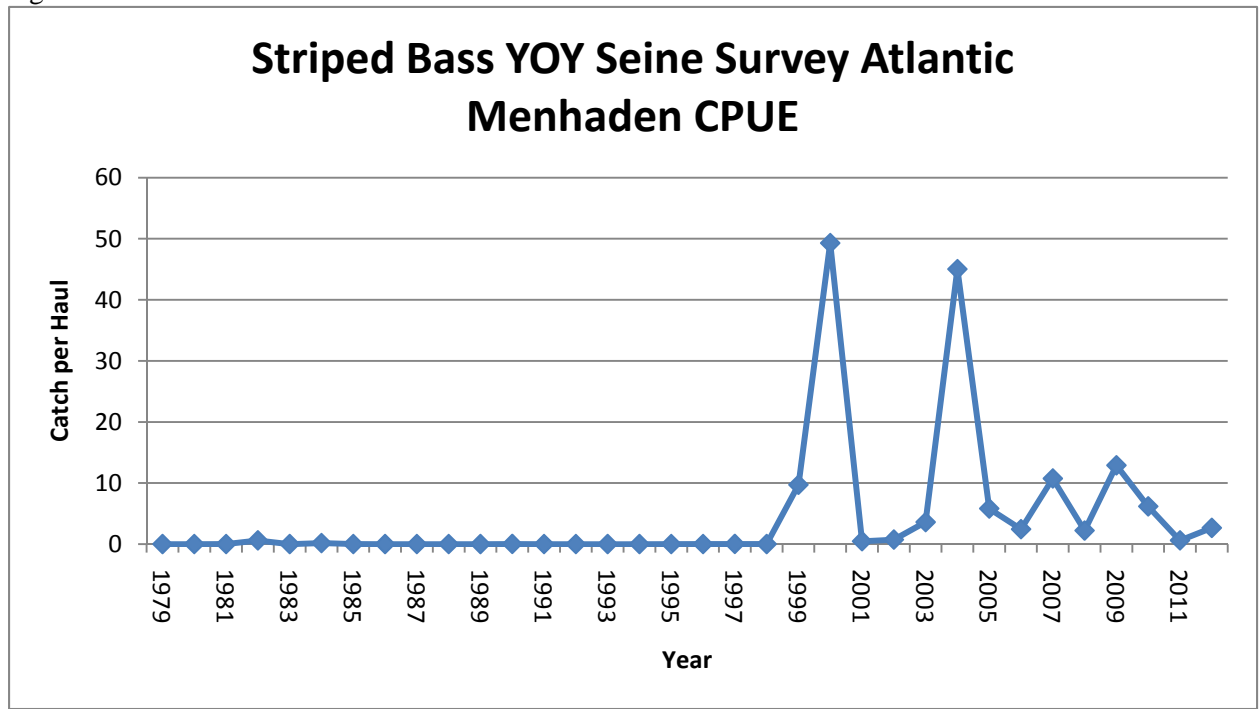
Spatial Coverage: The Hudson River in brackish water from the Tappan Zee Bridge to Haverstraw Bay. River km 35 – 63.

Temporal Coverage: Sampling occurs during the day on alternate weeks from mid July – early November.

Sample Design: Sampling occurs at 25 out of 36 fixed stations. Sites are located in reaches of the river bracketing near-shore concentrations of YOY Striped Bass.

Information Collected: All finfish were identified and counted. Lengths were collected for a subset of striped bass and several other species.

Fig. 6



c. Copy of NY Regulations

There were no changes in New York’s fishery and fishery management program for 2012. The text of New York’s current Environmental Conservation Law (ECL) is presented below:

Section 13-0333. Menhaden; license; prohibited acts.

1. Menhaden (*Brevoortia tyrannus*) from which oil or meal is made, subject to the provisions of section 13-0343, may be taken from the waters of the marine district with a purse seine provided a license is first obtained from the department.

2. Each license shall be issued to cover one vessel and pertinent equipment by which such fish are taken and shall be issued in the name of the owner, lessee or operator of each vessel so used. License fees shall be computed on the basis of gross tonnage of the vessel to be licensed as indicated in the document, certificate of award, register, registration, enrollment or license of such vessel issued by the United States or any state.

3. The license fee shall be: For each vessel:
- | | |
|--|---------------|
| 30 gross tons or less | 25 dollars |
| More than 30 gross tons and less than 200 gross tons | 500 dollars |
| More than 200 gross tons | 2,000 dollars |

All licenses issued under this section shall expire on December 31 following the date of issue.

4. For the purpose of this chapter, commercial menhaden purse seines may not be used or set:

a. in the area of Long Island Sound extending west of an imaginary line from the New York state-Connecticut boundary line (Byram River) extending easterly and southerly to buoy 13 (off Eaton’s Neck).

b. In Long Island Sound south of a straight line one-half mile seaward of a straight line between buoy 13 (off Eaton's Neck) and buoy 9 (off Sound Beach).

Distance shall be determined from straight line drawn between the designated buoys and navigational aids.

5. No person shall take menhaden by purse seining except during the period commencing on the Monday following the fourth day of July and ending on the third Friday in October. Nothing in this subdivision shall be construed as legalizing the taking of menhaden by purse seining on weekends or legal holidays during the period provided for in this subdivision.

6. The department shall, in conjunction with the menhaden industry, have the authority to require menhaden purse seine vessels to carry a department approved observer during their operation in New York State waters. Beginning July sixth, nineteen hundred ninety-eight the department shall require menhaden purse seine vessels equal to or greater than two gross tons to carry a department approved observer during their operations in New York State waters. Such observers shall independently note and record information, as directed by the department, on such items as fishing location, menhaden catch, by-catch, and any user conflicts. The license holder for the vessel for which an observer is required will be responsible for the costs of such observer. The department shall promulgate rules and regulations to establish appropriate procedures for the assessment and collection of costs for observers.

7. The operator of a menhaden purse seine vessel shall report to the department twenty- four hours prior to entering the waters of the state and shall submit to the department a regular and timely report of their total harvest. The department shall develop regulations six months from the effective date of this subdivision related to this reporting requirement.

8. The department shall, in cooperation with the Connecticut Department of Environmental Protection and consistent with the Long Island Sound Bi-State committee resolution regarding commercial menhaden fishing, undertake a water quality assessment of the effect of menhaden vessel hold waste on Long Island Sound water quality. The department shall report back within one year of the effective date of this subdivision thereon to the governor, the temporary president of the senate, the speaker of the assembly and the chairman of the senate and assembly conservation committees with its findings and recommendations for reducing or eliminating the adverse aesthetic, ecological, and water quality impacts of said discharge.

9. Licensees shall be legally and financially responsible for the clean up of fish lost during any fishing or fish handling operations. The department shall establish regulations to enforce this subdivision.

10. The department shall adopt regulations to prohibit or further limit menhaden fishing when required by, and consistent with, the Interstate Fishery Management Plan for Atlantic Menhaden adopted pursuant to the Fishery Conservation and Management Act (16 USC 1800 et seq) and adopted by the Atlantic States Marine Fisheries Commission.

11. The department, in cooperation with the Connecticut Department of Environmental Protection and consistent with the Long Island Sound Bi-state committee resolution regarding commercial menhaden fishing, shall evaluate the appropriateness and effectiveness of establishing a limit on the number of purse seine vessels that may be allowed to fish on Long Island Sound. The department shall, in cooperation with the Connecticut Department of Environmental Protection and consistent with the Long Island Sound Bi-state committee resolution regarding commercial menhaden fishing, evaluate the benefits and benefits and effectiveness of establishing a cap on the quantity of menhaden that can be harvested from Long Island Sound in one year. The department shall, in consultation with the menhaden

fishing industry, investigate means of regulating the depth at which menhaden purse seines are set with respect to the depth of the water in their respective locations. The department shall, in cooperation with the Connecticut Department of Environmental Protection and consistent with the Long Island Sound Bi-state committee resolution regarding menhaden fishing, provide a report of its findings and recommendations thereon to the governor, the temporary president of the senate, the speaker of the assembly, and the chairmen of the senate and assembly environmental conservation committees within one year of the effective date of this subdivision.

There are several actions described in the above legislation which were never implemented, primarily because the menhaden purse seine reduction vessels have not returned to New York waters since the enactment of this law. Since the enactment of this law the menhaden purse seine vessels in the more than 200 gross ton category have stopped fishing in New York. The table 1 presents our license sales since 1999.

Table 5. Menhaden purse seine license sales by vessel category.

Year	<30 gross tons	30 to 200 gross tons	> 200 gross tons
1999	13	21	0
2000	22	1	0
2001	19	1	0
2002	23	3	0
2003	21	3	0
2004	17	3	0
2005	15	3	0
2006	20	2	0
2007	19	1	0
2008	19	1	0
2009	19	2	0
2010	21	2	0
2011	21	2	0
2012	21	2	0

Other laws which impact the harvest of Atlantic menhaden include:

Section 13-0329. Lobster; permits to take; prohibited acts. This section of New York’s ECL authorizes under subdivision 10 that “A holder of a commercial lobster license may apply for a permit to fish a gill net as permitted in paragraph (c) of subdivision fifteen of section 13-0343 of this chapter. This permit is to be used for the purposes of obtaining bait fish to be used solely by the permittee to pursue his lobster fishery. Bait so taken shall not be sold.”

Section 13-0343 (15) states, “a. Nets shall not be used in Long Island Sound west of an imaginary line from the New York-Connecticut boundary shore line extending easterly and southerly to Eaton’s Point Neck on Long Island from April 1 to November 1, nor at any time in the waters of Huntington Bay, Lloyd Harbor, Northport Bay, or Coldspring Harbor; provided, however, that hand nets not more than forty feet long and four feet in width may be used to take minnows and shrimp for bait, at any time.” “b. Gill nets shall not be used in Long Island Sound or in harbors, bays or other waters adjacent thereto west of an imaginary line extending north from the easterly boundary of the town of Brookhaven on the north shore of Long Island in the county of Suffolk. However, as permitted under subdivision ten of section 13-0329 of this chapter, a holder of a commercial lobster license may use no more than one gill net not longer than three hundred feet with a stretched mesh size between three and one-half inches and four and one-quarter inches to take bait fish between April 1 and November 15 during each weekly period beginning 6:00 p.m., Sunday through 9:00 a.m., Friday, providing that each net will be buoyed on each end and identified with the permittee’s commercial lobster license number. The net shall be fished with the top not less than four feet below the surface of the water.”

d. Non-harvest Losses

Non-harvest losses are difficult to quantify. One source of non-harvest mortality on Atlantic menhaden juveniles and adults is from fish kills. The department receives reports every year of menhaden kills. Typically these kills occur during July, August and early September. The kills in the earlier part of the year involve adult menhaden, while the kills in late summer and fall are generally, juveniles. The kills typically occur when schools of menhaden are trapped or pursued into tidal streams, bays, marinas or other restricted spaces and encounter elevated water temperatures and/or depressed or low dissolved oxygen levels. In 2012, the department received no reports of fish kills involving menhaden. Most fish kills generally involve menhaden, but others have involved more than one species of fish or crabs.

Another important source of non-harvest loss is impingement and entrainment at local Electric Power Stations. Utility reports from Long Island Power Stations indicate that they entrain or impinge nearly 1.6 billion eggs, larvae and juvenile menhaden (Tables 6 & 7).

Table 6. Atlantic Menhaden Entrainment at Long Island Power Stations.

Facility	Sampling Year	Eggs	Yolk Sac Larvae	Post Yolk Sac Larvae	Juveniles
Northport	2002-2003	891,464,043	1,776,086	332,155,819	1,098,017
Northport	2007-2008	243,387,555	44,393,802	266,310,950	0
EF Barrett	2003-2004	33,572,022	31,189	1,878,846	115,572
Port Jefferson	2003-2004	20,188,200	51,353	304,440,162	676,316
	2008-2009	12,688,757	18,431	1,367,609	56,942
Astoria	1993	982,865	0	0	0
	2006-2007	55,203,107	0	0	0
Arthur Kill	1991-1992	7,106	0	83,160	16,187
	2006-2007	4,212,638	0	1,983,647	0

Brooklyn Navy Yard	1997	387,978	0	0	0
East River	1993	221,305	0	0	0
	2005-2006	121,983,235	5,905,331	7,841,110	139,739
Ravenswood	1991-1992	5,052,334	0	73,504	0
	1993-1994	2,030,351	0	7,533	0
	2005-2006	22,476,048	290,458	4,894,584	0
Glenwood	2004-2005	14,960,213	0	4,464,637	511,176
Far Rockaway	2005-2006	872,171	0	4,033,272	0

Table 7. Atlantic Menhaden Impingement at Long Island Power Stations.

Facility	Sampling Year	Juveniles Impinged	Yearlings Impinged
Northport	2002-2003	71,661	2,405
Northport	2007-2008	42,790	35,297
EF Barrett	2003-2004	28,449	35,728
Port Jefferson	2003-2004	8,002	47,677
	2008-2009	108	89
Arthur Kill	1991-1992	76,462	
	2006-2007	1,146,937	
Astoria	1993	1,575	
	2006-2007	137,416	
East River	1993	112	
	2005-2006	40,362	
Ravenswood	1991-1994	710	
	2005-2006	899	234
Glenwood	2004-2005	400	212
Far Rockaway	2005-2006	670	13

IV. Planned Management Programs for the Current Year:

New York will implement the requirements of Amendment 2 by the deadline of July 1, 2013, with the exception that we cannot manage under the quota assigned due to the aforementioned problem with our landings history. Please see our Implementation Plan for details.

NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF FISH AND WILDLIFE
MARINE FISHERIES ADMINISTRATION

**NEW JERSEY ATLANTIC MENHADEN FISHERIES, 2012
MANAGEMENT MEASURES, HARVEST, AND RESOURCE
MONITORING**

**NEW JERSEY ATLANTIC MENHADEN
MANAGEMENT PROGRAM, 2013**

Submitted to
Atlantic States Marine Fisheries Commission
as a requirement of
Amendment 1 to the Atlantic Menhaden Fisheries Management Plan

Jeffrey Brust
April 16, 2013

I. SUMMARY OF ATLANTIC MENHADEN FISHERY AND RESOURCE MONITORING IN NEW JERSEY

The taking of Atlantic menhaden by any means for purpose of fishmeal reduction was prohibited in New Jersey marine waters throughout 2012 by legislation implemented January 6, 2002. This law, however, continued to allow for the licensed taking of Atlantic menhaden in New Jersey marine waters for use as bait for commercial and recreational purposes. The New Jersey Atlantic menhaden bait fishery was successfully sampled by the NJ Bureau of Marine Fisheries (Bureau) in 2012. Personnel were able to collect 890 Atlantic menhaden biological samples from three different fishing ports from the commercial bait fishery throughout the 2012 fishing season. These samples were sent to the National Marine Fisheries Service (NMFS) for processing and ageing. The Bureau also continued the Delaware River Young-of-Year Survey used to develop the 2012 estimate of juvenile Atlantic menhaden abundance in the mid-Atlantic region. The 2012 index of juvenile abundance is the second lowest value in the time series.

II. REQUEST FOR *DE MINIMUS* STATUS

New Jersey does not request *de minimus* status under Amendment 1 to the Interstate Fishery Management Plan for Atlantic Menhaden.

III. NEW JERSEY ATLANTIC MENHADEN FISHERY AND MANAGEMENT PROGRAM 2012

A. Fishery Dependent Monitoring

Bureau personnel were able to collect 890 Atlantic menhaden biological samples (individual length and weight measurements and scales) from the commercial purse seine and pound net fisheries in 2012. Samples of 10 fish each were collected from June 18 through October 12, 2012 from three ports throughout the state (Cape May, Point Pleasant and Sandy Hook). Scales and corresponding length and weight measurements, as well as the vessel name and fishing location, were sent to the NMFS Population Dynamics Team, NOAA Fisheries, Beaufort, NC for processing and ageing. New Jersey menhaden bait landings were comprised of age 2 through 6 year old menhaden, with ages 2 and 3 making up more than 85% of the harvest (Figure 1).

B. Fishery Independent Monitoring

1. Delaware River Young-of-Year Survey

Since 1980, Bureau personnel have conducted a striped bass young-of-year seine survey in the Delaware River. This survey catches a variety of other species of fish and invertebrates, including significant numbers of Atlantic menhaden. The survey area extends from river mile 53.5 to 126 (Salem Nuclear Plant to Trenton), and is divided into three regions based on salinity. Stations are sampled twice per month using a 100-foot bagged seine with 0.25" mesh. Survey

methodology has changed considerable since the survey began in 1980. Modifications include changes to station selection, distribution of stations among regions, single/replicate tows, and months sampled. Standardized methodology employed since 1998 includes sampling 32 fixed stations twice per month from June to November. Data collected for menhaden includes number per tow and up to 30 lengths per tow. Prior to 2001, length data consisted of only minimum and maximum length per tow. Other information collected includes tide, water temperature, salinity, and dissolved oxygen.

In prior years, the menhaden index was calculated based on all tows conducted in the lower two regions. Stations furthest up river, in the tidal fresh portion of the survey area, were excluded from the index calculation because very few (less than 0.1%) of the menhaden caught were from this region. However, significant changes in sampling methodology over the time series suggest that the data should be further subset to exclude observations collected using methods that were “substantially” different from current methods. For example, station selection was relatively haphazard for the years 1980-1985, so these years were removed. Also, replicate tows were conducted at each station for a number of years. For these years, only the first set at each station was included. Finally, after many changes to station selection, a fixed set of stations was developed in 1998 and have been used consistently since. Although not all of these stations have been sampled over the entire survey time period, only data from these stations were used in the analysis.

Not all menhaden collected in the seine survey are considered young of year fish. The Atlantic Menhaden Technical Committee generally considers fish less than 150 mm in August through November to be Age 0. The annual geometric mean number of fish per tow was multiplied by the annual ratio of young of year fish (N_{yoy} / N_{tot}) to develop the young of year index for years 2001 to 2012. For years prior to 2001, the overall young of year ratio (all years combined) was applied to the geometric mean to estimate young of year abundance.

A total of 181 menhaden were captured during 92 tows conducted between August and September 2012 (appropriate stations and regions as described above). The geometric mean catch per tow of Age 0 menhaden was 0.40 (Table 1, Figure 2), which is the second lowest value of the time series and significantly below the long-term mean of 2.88.

2. New Jersey Ocean Trawl Survey

New Jersey has conducted a seasonal trawl survey of nearshore ocean waters since 1988. Since 1990, five cruises occur each year during January/February, April, June, August, and October. Menhaden are occasionally captured during the survey, and attempts were made to develop a fishery independent index of abundance for age 1+ menhaden. Unfortunately, the incidence of menhaden in the survey were too sporadic to develop an index. Staff may investigate this issue again if the incidence of menhaden in the survey becomes more regular.

C. **New Jersey Regulations on Atlantic Menhaden in 2012**

In 2012, New Jersey regulations at N.J.A.C 7:25-22.3 through 7:25-22.4 (Attachment 1) governed the taking of Atlantic menhaden by purse seine for bait. N. J. A. C. 7:25-22.3a (1) specifies the reporting requirements that “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.” This New Jersey regulatory requirement satisfies the reporting requirement of Amendment 1 stated in Section 5. Compliance, *5.1.1.2 Monitoring Requirements (fishery-dependent measures)*, “States should maintain at least their current reporting and data collection programs and are encouraged to adopt the recommendations forwarded from the ACCSP. States are encouraged to assist the NMFS in the collection of biological data from their respective menhaden fisheries. In particular, states that have significant menhaden bait fisheries should work closely with NMFS personnel to ensure adequate sampling of those fisheries.”

The taking of Atlantic menhaden commercially for bait by other gear types, such as pound net, gill net, trawl, etc. is governed by regulations specific to those gear types pertaining to licensing, seasons, and gear restrictions. The taking of Atlantic menhaden recreationally for personal bait is governed by gear restrictions for seine, cast net, dip net, and lift or umbrella net.

D. New Jersey Atlantic Menhaden Harvest in 2012

Atlantic menhaden commercial bait harvests are obtained cooperatively by Bureau (purse seine) and the NMFS personnel (all other gears). The harvest of Atlantic menhaden off the New Jersey coast (beyond 3 nautical miles) for the reduction fishery is calculated by the NMFS from the Captains Daily Fishing Reports and presented at the annual stock assessment.

Atlantic menhaden bait landings in New Jersey for 2012 totaled 85,457,890 pounds (38,774 MT), which is an increase of more than 14.98% relative to 2011 landings (Figure 3).

Landings increased for all gears. The largest percentage increase occurred in gill nets, while the largest poundage increase occurred in purse seines. For landings that are coded by gear, purse seine still account for more than 80%. Confidentiality concerns at the harvester and dealer level prohibit providing additional information in this report, but details are available from staff on request.

The harvest of Atlantic menhaden taken recreationally for bait is not reported. The Division of Fish & Wildlife presently estimates that the level of this recreational harvest for bait is relatively small when compared to the commercial harvest.

There is no current estimate of non-harvest losses of Atlantic menhaden in New Jersey.

E. Amendment 1 Habitat Recommendations

No mandatory measures related to habitat or habitat protection is implemented through this amendment.

IV. NEW JERSEY ATLANTIC MENHADEN FISHERY AND MANAGEMENT PROGRAM FOR 2013

A. New Jersey Statute and Regulations for Atlantic Menhaden in 2013

Regulations for the New Jersey menhaden purse seine fishery changed in 2011 relative to previous years. The New Jersey Legislature passed identical bills implementing a limited entry program for menhaden purse seining. These regulations for purse seine harvest remained in place for 2012. New Jersey regulations specific to other gear types allowed for harvesting Atlantic menhaden, either commercially or recreationally, remain unchanged for 2012. Finally, legislation implemented January 6, 2002 prohibiting the harvest of menhaden for reduction in New Jersey marine waters remain in effect.

B. Atlantic Menhaden Monitoring Program for 2013

With the continued cooperation of the Atlantic menhaden commercial bait fishery, from all major ports, Bureau personnel again plan to obtain the target sample size of 350 samples obtained throughout the bait fishing season. Whole fish will be collected and then measured. The size data (individual lengths and weights) and scale samples will be provided to the NMFS – Beaufort Laboratory for ageing.

Bureau personnel will also continue the Delaware River Young-of-Year Survey. All Atlantic menhaden will be counted and a sub-sample of length measurements will be collected after each seine haul. An age-0 geometric mean index will be calculated to continue the timeseries of menhaden recruitment in the Delaware Estuary for future use in the coastwide recruitment index.

C. Significant Changes in Management and/or Monitoring of Atlantic Menhaden in 2013

Amendment 2 to the Menhaden FMP was approved in December 2012 and will take effect in July 2013. Marine Fisheries staff have met several times with the commercial industry to develop management measures that achieve Amendment 2 requirements without jeopardizing the stability of the industry. Proposed regulatory changes include mandatory landing licenses, mandatory dealer licenses, and mandatory harvester and dealer reporting to allow quota monitoring. An implementation plan with specific management measures is in development and will be submitted to ASMFC by the April 15, 2013 deadline.

V. PLAN SPECIFIC REQUIREMENTS

N. J. A. C. 7:25-22.3a(1) specifies the reporting requirement that “All persons licensed to take Atlantic menhaden for bait purposes only shall keep, on forms supplied by the Division’s Bureau of Marine Fisheries, accurate records of the amount and location of Atlantic menhaden

harvested.” This New Jersey regulatory requirement for the purse seine bait fishery satisfies the reporting requirement of Amendment 1 stated in Section 5. Compliance, *5.1.1.2 Monitoring Requirements (fishery-dependent measures)*, “States should maintain at least their current reporting and data collection programs and are encouraged to adopt the recommendations forwarded from the ACCSP. States are encouraged to assist the NMFS in the collection of biological data from their respective menhaden fisheries. In particular, states that have significant menhaden bait fisheries should work closely with NMFS personnel to ensure adequate sampling of those fisheries.” See MENHADEN BAIT REPORT and FISHING ZONES forms (Attachments 2 and 3).

VI. LAW ENFORCEMENT REPORTING REQUIREMENTS

There are no plan specific law enforcement requirements in Amendment 1. However, New Jersey regulations at N. J. A. C. 7:25-22.3 (b) 13 state “Any vessel operating under a permit 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, Bureau of Law Enforcement at (609) 748-2050, prior to fishing in State waters and prior to change of location.” The Bureau of Law Enforcement maintains these daily call-in records.

Table 1. Time series of Atlantic menhaden age-0 catches and CPUEs (+/- 95% CIs) in New Jersey's Delaware River Seine Survey.

Year	Menhaden	Stations	YOY mean	Lo 95 CI	Hi 95 CI
1985	1,923	18	10.94	3.21	32.90
1986	1,280	15	1.75	-0.16	8.01
1987	345	36	1.24	0.39	2.61
1988	5,588	36	3.17	1.00	7.69
1989	3,951	36	3.94	1.32	9.50
1990	10,807	36	6.38	2.29	15.56
1991	1,042	57	2.63	1.33	4.66
1992	3,428	61	3.16	1.48	5.98
1993	864	53	1.06	0.38	2.06
1994	2,116	55	2.98	1.34	5.78
1995	4,821	60	5.39	2.70	10.03
1996	942	55	2.07	0.98	3.76
1997	6,808	60	3.89	1.77	7.65
1998	536	79	1.49	0.86	2.33
1999	33,136	92	16.13	8.77	29.02
2000	620	92	1.34	0.80	2.06
2001	183	92	0.41	0.19	0.68
2002	1,086	92	0.82	0.38	1.39
2003	340	92	0.48	0.20	0.82
2004	174	92	0.28	0.10	0.49
2005	5,242	95	2.40	1.28	4.06
2006	1,173	96	1.13	0.65	1.74
2007	747	96	0.88	0.49	1.38
2008	482	96	0.73	0.38	1.17
2009	479	96	0.57	0.27	0.93
2010	8,352	96	4.58	2.54	7.79
2011	756	77	0.41	0.10	0.80
2012	181	92	0.40	0.17	0.66

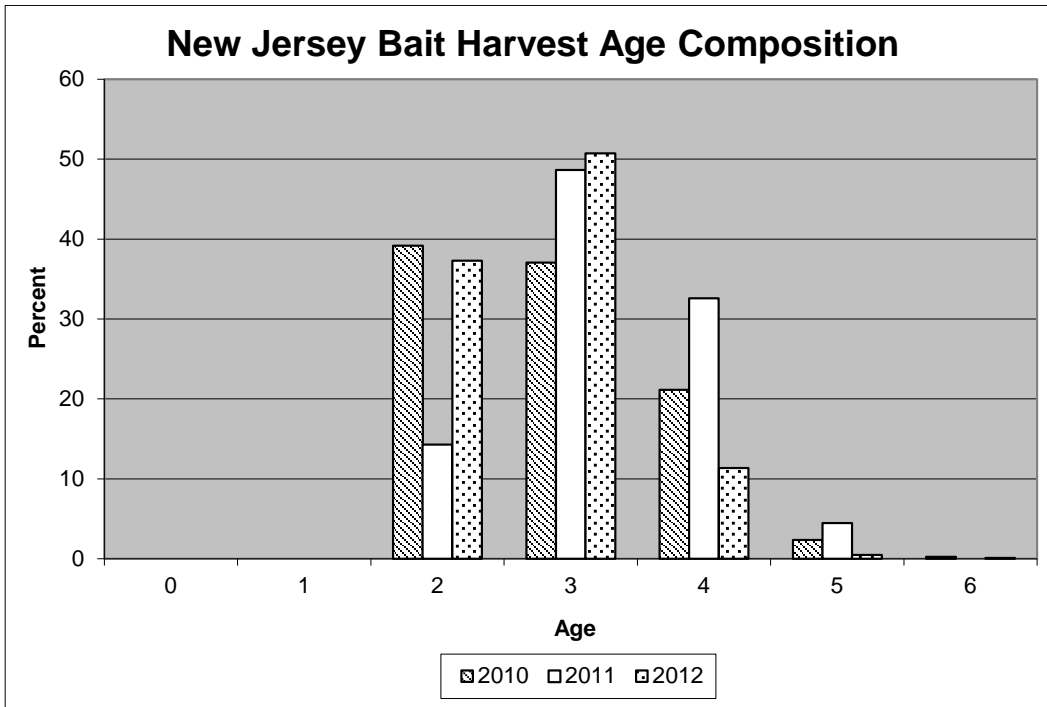


Figure 1. Age composition of New Jersey’s commercial menhaden bait landings.

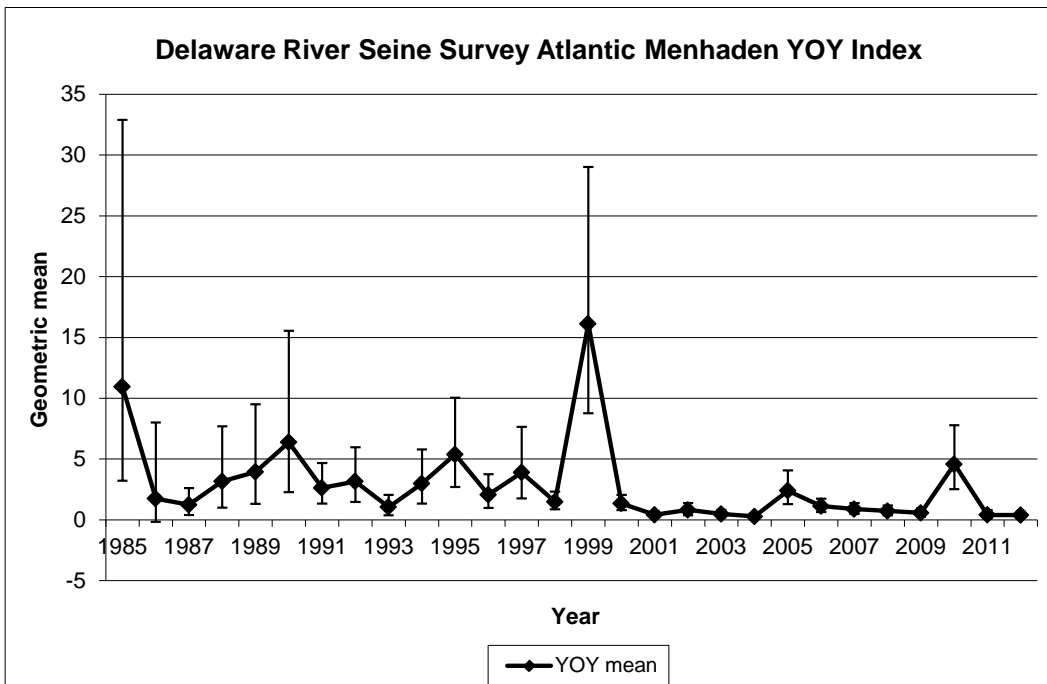


Figure 2. Geometric mean index of YOY menhaden from New Jersey’s Delaware River Seine Survey.

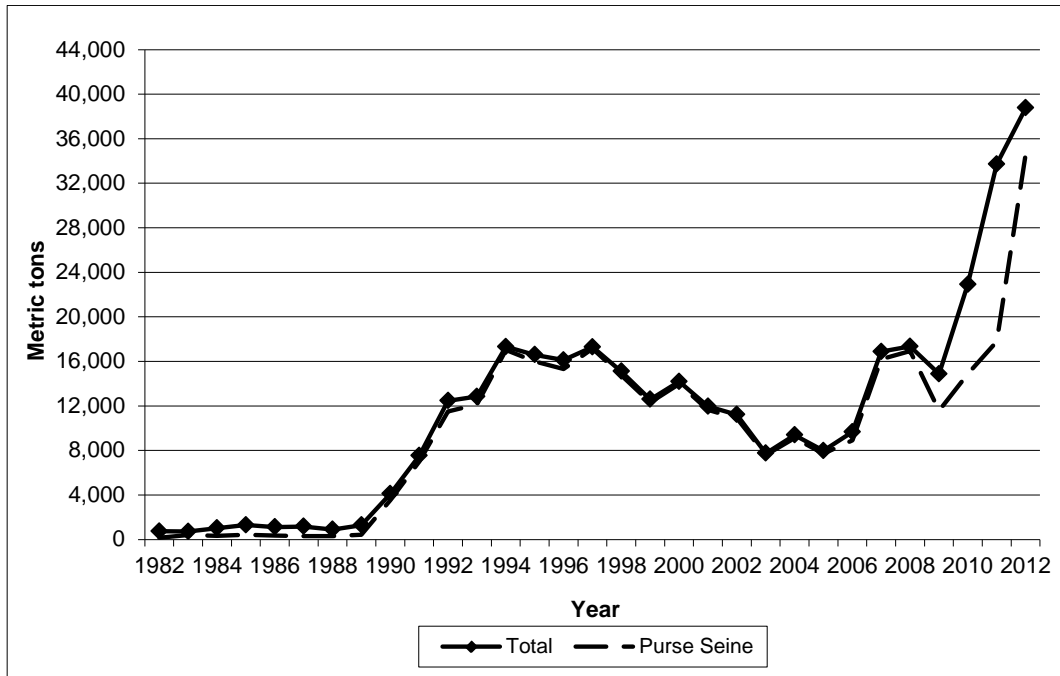


Figure 3. Atlantic menhaden commercial bait landings (mt) for all gears combined and the purse seine fishery only in New Jersey.

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

The taking of Atlantic menhaden (*Brevoortia tyrannus*) from the marine waters of the State of New Jersey by any means for fish meal reduction is prohibited. This prohibition does not apply to the taking of menhaden for bait which is regulated under N.J.A.C. 7:25-22.3.

Amended by R.1989 d.394, effective July 17, 1989.
See: 21 N.J.R. 107(a), 21 N.J.R. 2035(a).

Reference to Atlantic menhaden specifically and latin name (*Brevoortia tyrannus*) added for clarity.

Amended by R.2005 d.413, effective November 21, 2005.

See: 37 N.J.R. 742(a), 37 N.J.R. 4408(a).

Section was "Menhaden season"; rewrote the section.

Case Notes

Commercial fishing organization had no rights, under the privileges and immunities clause of the Constitution, which could be violated as a result of state regulations prohibiting fishing. *Ampro Fisheries, Inc. v. Yaskin*, 247 N.J.Super. 111, 588 A.2d 879 (A.D.1991), certification granted 126 N.J. 340, 598 A.2d 896, affirmed in part, reversed in part 127 N.J. 602, 606 A.2d 1099, certiorari denied 113 S.Ct. 409, 506 U.S. 954, 121 L.Ed.2d 333.

State regulation prohibiting fishing was within the scope of statute permitting regulation of fish and game. *Ampro Fisheries, Inc. v. Yaskin*, 247 N.J.Super. 111, 588 A.2d 879 (A.D.1991), certification granted 126 N.J. 340, 598 A.2d 896, affirmed in part, reversed in part 127 N.J. 602, 606 A.2d 1099, certiorari denied 113 S.Ct. 409, 506 U.S. 954, 121 L.Ed.2d 333.

State regulation prohibiting fishing did not constitute impermissible disparate treatment. *Ampro Fisheries, Inc. v. Yaskin*, 247 N.J.Super. 111, 588 A.2d 879 (A.D.1991), certification granted 126 N.J. 340, 598 A.2d 896, affirmed in part, reversed in part 127 N.J. 602, 606 A.2d 1099, certiorari denied 113 S.Ct. 409, 506 U.S. 954, 121 L.Ed.2d 333.

State regulation prohibiting fishing did not constitute impermissible use of "police power". *Ampro Fisheries, Inc. v. Yaskin*, 247 N.J.Super. 111, 588 A.2d 879 (A.D.1991), certification granted 126 N.J. 340, 598 A.2d 896, affirmed in part, reversed in part 127 N.J. 602, 606 A.2d 1099, certiorari denied 113 S.Ct. 409, 506 U.S. 954, 121 L.Ed.2d 333.

State regulation prohibiting fishing did not violate commercial fishing organization's rights under the commerce clause. *Ampro Fisheries, Inc. v. Yaskin*, 247 N.J.Super. 111, 588 A.2d 879 (A.D.1991), certification granted 126 N.J. 340, 598 A.2d 896, affirmed in part, reversed in part 127 N.J. 602, 606 A.2d 1099, certiorari denied 113 S.Ct. 409, 506 U.S. 954, 121 L.Ed.2d 333.

State regulation prohibiting fishing was valid under supremacy clause. *Ampro Fisheries, Inc. v. Yaskin*, 247 N.J.Super. 111, 588 A.2d 879 (A.D.1991), certification granted 126 N.J. 340, 598 A.2d 896, affirmed in part, reversed in part 127 N.J. 602, 606 A.2d 1099, certiorari denied 113 S.Ct. 409, 506 U.S. 954, 121 L.Ed.2d 333.

State regulation purporting to regulate fishing within Delaware Bay was severable from other regulations. *Ampro Fisheries, Inc. v. Yaskin*, 247 N.J.Super. 111, 588 A.2d 879 (A.D.1991), certification granted 126 N.J. 340, 598 A.2d 896, affirmed in part, reversed in part 127 N.J. 602, 606 A.2d 1099, certiorari denied 113 S.Ct. 409, 506 U.S. 954, 121 L.Ed.2d 333.

7:25-22.2 (Reserved)

Repealed by R.2005 d.413, effective November 21, 2005.

See: 37 N.J.R. 742(a), 37 N.J.R. 4408(a).

Section was "Purse seine fishing of Atlantic menhaden."

7:25-22.3 Taking of Atlantic menhaden for bait

(a) Persons licensed 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 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.

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

1. Fishing, for the purpose of this section, shall be defined as having a purse seine in the marine waters of this State.

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, and in Raritan Bay and Sandy Hook Bay. It will be 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 subchapter.

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 to October 31 each year.
 - iii. If the duration of a 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 permit suspension 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. The maximum length overall of any vessel fishing under the provisions of this section shall be 90 feet.
 4. Purse seine or shirred nets shall not exceed 150 fathoms in length.
 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. Fishing shall be conducted only during the hours between sunrise and sunset.
 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 for the purpose of taking Atlantic menhaden for bait purposes.
 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 for bait 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 or any vessel conducting menhaden fishing operations, shall constitute prima facie evidence of the violation of this subchapter.
 9. No refuse, litter or garbage of any kind, or any quantity of dead fish shall be thrown overboard or released from the vessel or its net(s).
 10. 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 shall include, but not be limited to, the marine and estuarine waters of the State and adjacent beaches, shorelines and marshes.
 11. No stakes, markers, or buoys designating channels, crab pots, lobster pots, fish pots, or traps, or staked leased shellfish grounds, shall be disturbed by the act of fishing.
 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. Any vessel operating under a permit 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, Bureau of Law Enforcement at (609) 748-2050, prior to fishing in State waters and prior to change of location.
 14. No vessel or person shall fish or utilize any other gear type in the same day it has called in and declared that it is fishing for menhaden for bait purposes.
 15. The annual purse seine quota for the purpose of taking menhaden for bait shall be unlimited.
- (c) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the annual quota or seasons 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.

R.1989 d.394, effective July 17, 1989.
See: 21 N.J.R. 107(a), 21 N.J.R. 2035(a).
Amended by R.1996 d.587, effective December 16, 1996 (operative January 1, 1997).
See: 28 N.J.R. 3998(a), 28 N.J.R. 5231(a).
Inserted (b)2i through (b)2iv, in (b)7 added provision relating to fish pumps, and added (b)13 and (b)14.
Amended by R.2000 d.10, effective January 3, 2000.
See: 31 N.J.R. 2555(a), 32 N.J.R. 48(a).

In (b), rewrote the first sentence of the introductory paragraph in 2, and added 15; and added (c).
Amended by R.2001 d.73, effective March 5, 2001.
See: 32 N.J.R. 4435(a), 33 N.J.R. 874(a).
Amended by R.2008 d.15, effective January 7, 2008.
See: 39 N.J.R. 143(a), 40 N.J.R. 126(a).

In (c), inserted "or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service", and inserted the second and third sentences.

Case Notes

State regulation prohibiting fishing did not violate commercial fishing organization's rights under the commerce clause. *Ampro Fisheries, Inc. v. Yaskin*, 247 N.J.Super. 111, 588 A.2d 879 (A.D.1991), certification granted 126 N.J. 340, 598 A.2d 896, affirmed in part, reversed in part 127 N.J. 602, 606 A.2d 1099, certiorari denied 113 S.Ct. 409, 506 U.S. 954, 121 L.Ed.2d 333.

Commercial fishing organization had no rights, under the privileges and immunities clause of the Constitution, which could be violated as a result of state regulations prohibiting fishing. *Ampro Fisheries, Inc. v. Yaskin*, 247 N.J.Super. 111, 588 A.2d 879 (A.D.1991), certification granted 126 N.J. 340, 598 A.2d 896, affirmed in part, reversed in part 127 N.J. 602, 606 A.2d 1099, certiorari denied 113 S.Ct. 409, 506 U.S. 954, 121 L.Ed.2d 333.

State regulation prohibiting fishing did not constitute impermissible disparate treatment. *Ampro Fisheries, Inc. v. Yaskin*, 247 N.J.Super. 111, 588 A.2d 879 (A.D.1991), certification granted 126 N.J. 340, 598 A.2d 896, affirmed in part, reversed in part 127 N.J. 602, 606 A.2d 1099, certiorari denied 113 S.Ct. 409, 506 U.S. 954, 121 L.Ed.2d 333.

State regulation prohibiting fishing did not constitute impermissible use of "police power". *Ampro Fisheries, Inc. v. Yaskin*, 247 N.J.Super. 111, 588 A.2d 879 (A.D.1991), certification granted 126 N.J. 340, 598 A.2d 896, affirmed in part, reversed in part 127 N.J. 602, 606 A.2d 1099, certiorari denied 113 S.Ct. 409, 506 U.S. 954, 121 L.Ed.2d 333.

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State regulation purporting to regulate fishing within Delaware Bay was severable from other regulations. *Ampro Fisheries, Inc. v. Yaskin*, 247 N.J.Super. 111, 588 A.2d 879 (A.D.1991), certification granted 126 N.J. 340, 598 A.2d 896, affirmed in part, reversed in part 127 N.J. 602, 606 A.2d 1099, certiorari denied 113 S.Ct. 409, 506 U.S. 954, 121 L.Ed.2d 333.

7:25-22.4 Vessel boarding

The operator of, or any other person on board, a fishing vessel subject to this subchapter, shall immediately comply with instructions and signals issued by any law enforcement officer and facilitate a safe boarding and inspection of the vessel, its gear, equipment, catch, and any area where fish may be stored, for the purpose of enforcement of this subchapter.

R.1989 d.394, effective July 17, 1989.
See: 21 N.J.R. 107(a), 21 N.J.R. 2035(a).

Case Notes

State regulation prohibiting fishing did not violate commercial fishing organization's rights under the commerce clause. *Ampro Fisheries, Inc. v. Yaskin*, 247 N.J.Super. 111, 588 A.2d 879 (A.D.1991), certification granted 126 N.J. 340, 598 A.2d 896, affirmed in part, reversed in part 127 N.J. 602, 606 A.2d 1099, certiorari denied 113 S.Ct. 409, 506 U.S. 954, 121 L.Ed.2d 333.

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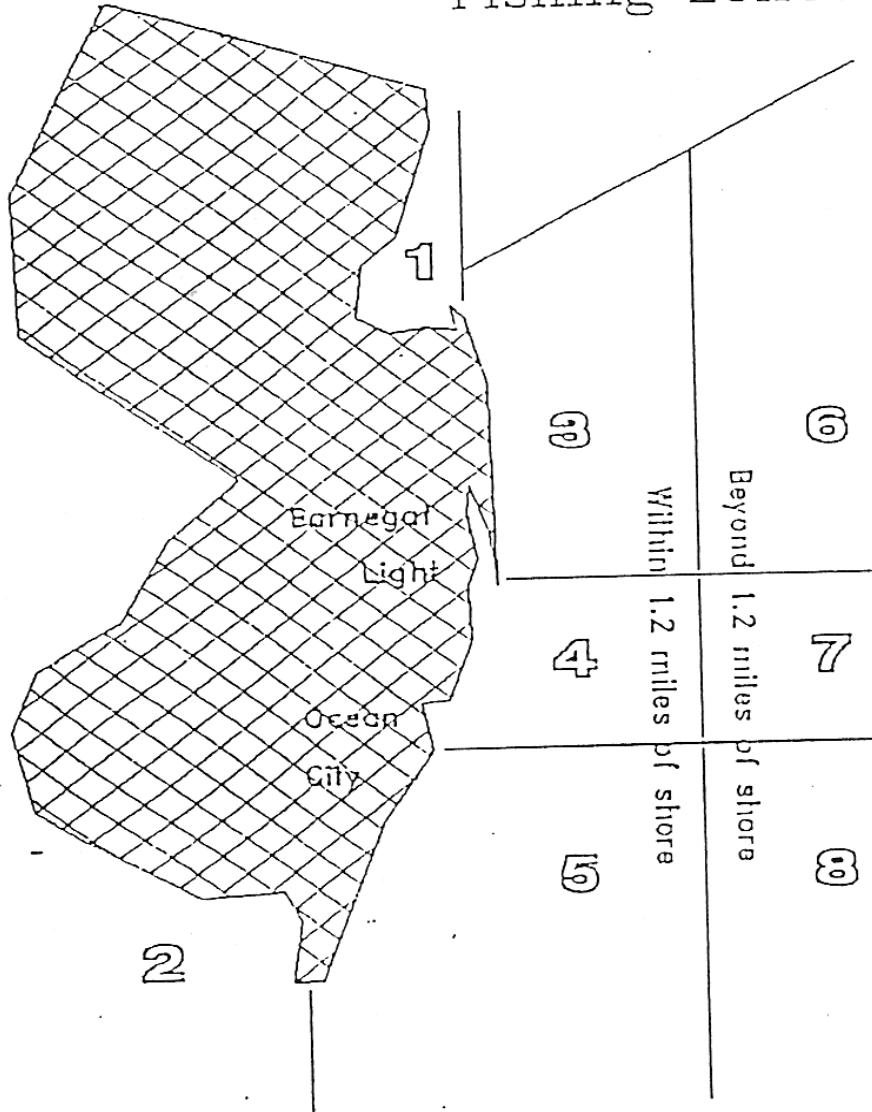
Attachment 2

Menhaden Bait Report					
Name:					
Vessel Name:					
Month:			Year:		
Day	Harvested Pounds	Fishing Zone(s)	Day	Harvested Pounds	Fishing Zone(s)
1			17		
2			18		
3			19		
4			20		
5			21		
6			22		
7			23		
8			24		
9			25		
10			26		
11			27		
12			28		
13			29		
14			30		
15			31		
16					

Attachment 3

ATTACHMENT 5

Fishing Zones



MEMORANDUM

STATE OF DELAWARE

DEPARTMENT OF NATURAL RESOURCES

& ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

TO: Mike Waine, ASMFC Menhaden FMP Coordinator

FROM: John Clark, Fisheries Administrator

SUBJECT: Atlantic Menhaden Compliance Report for Delaware – 2012

DATE: April 4, 2013

I. **Introduction**

Delaware's landings of Atlantic menhaden for 2012 were entirely from the fixed and drift gill net fisheries, primarily in Delaware Bay. Atlantic menhaden landings were mostly sold in state as bait for blue crabs, lobster and striped bass.

II. **The 2012 Menhaden Fishery in Delaware**

A. Landings

Menhaden landings reported by licensed gill netters in 2012 were 130,725 lbs.; these were Delaware's highest menhaden landings since 1993 (Table 1). The 2012 landings were 102% higher than the 2011 landings (64,566 lbs). The dockside value was \$11,080. Menhaden ranked second by weight of Delaware fin fish landings and made up 21% of the total commercial catch. The 2012 landings were about 40% above the long-term average harvest of 95,246 lbs.

B. Monitoring

Delaware conducts a fishery independent 30' trawl survey and a 17' juvenile trawl survey in Delaware Bay. The abundance of young-of-the-year Atlantic menhaden caught in the 2012 juvenile survey increased relative to 2011, but remained below the time-series average (Figure 1). The 2012 Atlantic menhaden catch (4.54 fish/nautical mile) in the 30' trawl survey was above the long – term mean of the time series (2.55) and the highest level since 2005 (Figure 2).

Delaware also conducts a fishery independent survey of young-of-the-year Atlantic menhaden in Indian River and Rehoboth Bays,

and their tidal tributaries. This survey was designed to explore the relationship between Atlantic menhaden year class strength and fish kills. Sampling for this survey was done with a 10' mid-water trawl at 10 stations. The 2012 geometric mean catch per minute for all stations combined was 0.38; this was fifth highest in the ten-year time series and 322% higher than the 2011 geometric mean catch per minute.

C. Regulations

Commercial purse seine vessels were banned from harvesting in state water through legislation passed in 1992. No management measures regulate menhaden harvest by gill netters.

D. Effort and Harvest by Gear Type

In 2012, the CPUE was above the long-term mean for the drift net fishery and above the long-term mean for the fixed net fishery (Table 2). Total CPUE was above the long-term mean. Most Atlantic menhaden landings occurred in the drift gill net fishery (Table 3).

E. Seasonality of Harvest

Atlantic menhaden landings in 2012 peaked in the 1st and 2nd quarters (Jan – Jun). The peak period occurred during the fixed and drift gill netting spring striped bass season as menhaden were frequently taken by-catch in striped bass fishery (Table 4).

F. Fisheries Habitat

Total Maximum Daily load (TMDL) nutrient thresholds have been determined for all watersheds in the Delaware Inland Bays system. Delaware's Nutrient Management Commission has mandated nutrient management plans for farms in the coastal Inland Bays watershed. This coastal system is an important nursery area for age 0 menhaden and eutrophication has been identified as a primary problem conflicting with the Essential Fish Habitat function of these water bodies. In 2000, over 5 million age 0 menhaden were killed due to low dissolved oxygen levels.

III. Planned Management for 2013 Season

Delaware's legislated restriction on purse seining in state waters will remain in effect during 2013. Delaware expects to enact regulations to come into compliance with Amendment 2 of the Fisheries Management Plan. Fishery independent monitoring surveys will continue.

Table 1. Commercial landings of Atlantic Menhaden in Delaware from 1985 to 2012 as reported through fisherman logbooks.

<u>Year</u>	<u>Pounds</u>
1985	176,135
1986	20,081
1987	22,034
1988	127,713
1989	104,382
1990	167,116
1991	278,774
1992	130,833
1993	164,046
1994	78,672
1995	101,388
1996	100,063
1997	55,733
1998	58,048
1999	78,551
2000	47,980
2001	53,257
2002	80,261
2003	42,593
2004	75,635
2005	120,658
2006	111,405
2007	81,850
2008	72,970
2009	69,476
2010	51,933
2011	64,566
2012	130,725
Mean:	95,246

Table 2. Catch per Unit Effort (Lb./Yd. of Net) for Atlantic Menhaden in Delaware with long-term average.

	<u>Drift Net</u>	<u>Fixed Net</u>	<u>Total</u>
2012	0.574	0.714	0.596
Long-term Average (1994-2012)	0.399	0.434	0.418

Table 3. Commercial Landings for Atlantic Menhaden for 2012 by gear type.

Geartype	Pounds
Anchor Gill Net	24,866
Drift Gill Net	105,845

Table 4. Commercial Landings for Atlantic Menhaden for 2012 by quarter.

Quarter	Lbs	% of Harvest	Cumulative %
1 st	27,707	0.21	0.21
2 nd	76,595	0.59	0.59
3 rd	10,770	0.08	0.88
4 th	15,653	0.12	1.00

Total: 130,725

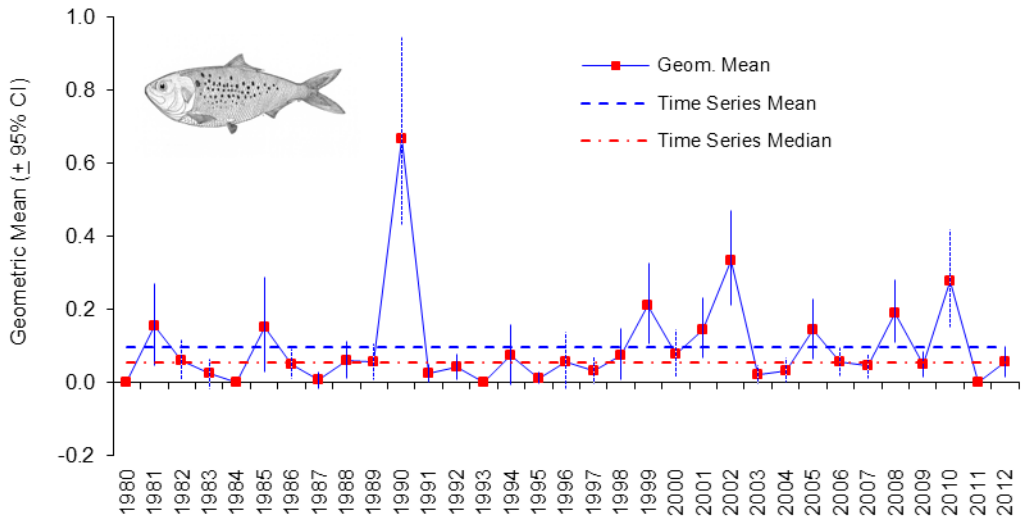


Figure 1. Index of young-of-the-year Atlantic menhaden abundance, time series (1990 – 2012) mean and time series median as measured by 16-foot trawl sampling in the Delaware estuary.

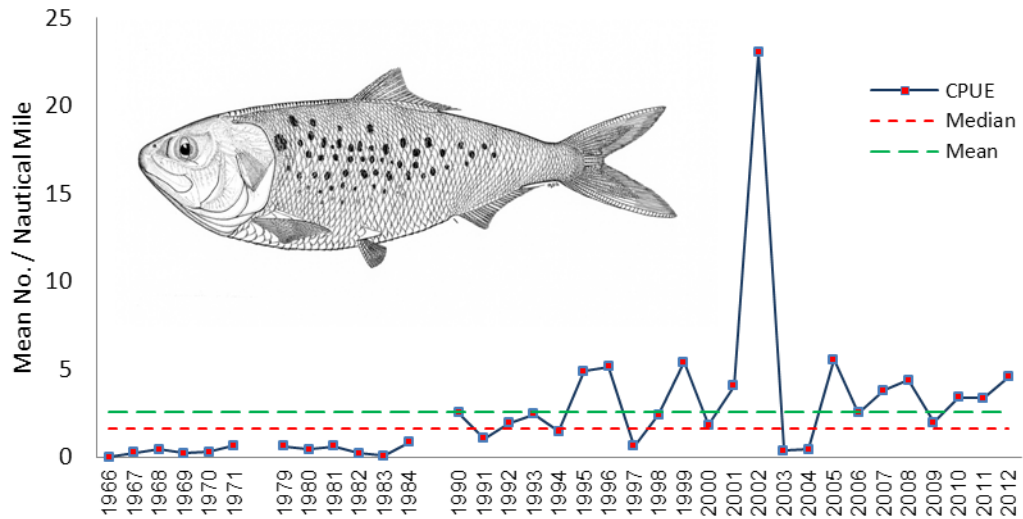


Figure 2. Atlantic menhaden relative abundance (mean number per nautical mile), time series (1966 – 2012) mean and median as measured in 30-foot trawl sampling in the Delaware Bay.

Maryland Department of Natural Resources
Fisheries Service

**MARYLAND ATLANTIC MENHADEN FISHERIES, 2012
MANAGEMENT MEASURES, HARVEST, AND
RESOURCE MONITORING**

Report by: Alexei F Sharov

April 1, 2013

Submitted to the Atlantic States Marine Fisheries Commission as a
requirement to Amendment 1 to the Intestate Fisheries
Management for Atlantic Menhaden.

I. SUMMARY OF ATLANTIC MENHADEN FISHERY AND RESOURCE MONITORING IN MARYLAND

Maryland commercial fishermen harvested 13,545,600 pounds of Atlantic menhaden for bait purposes in 2012. Purse seining for Atlantic menhaden is not allowed in Maryland waters. Commercial catches were regularly sampled for biological characteristics by the Maryland Department of Natural Resources (MD DNR) personnel. Relative abundance of the young of the year menhaden was monitored through the Maryland Juvenile Finfish Beach Seine Survey at a number of sites in Chesapeake Bay. No significant changes occurred in monitoring or regulations of Atlantic menhaden in Maryland in 2012.

II. REQUEST FOR *DE MINIMUS* STATUS

Maryland does not request *de minimus* status under Amendment 1 to the Interstate Fishery Management Plan for Atlantic Menhaden (Amendment 1).

II. MARYLAND ATLANTIC MENHADEN FISHERY AND MANAGEMENT PROGRAM IN 2012

A. Fishery Dependent Monitoring

Biological samples were taken monthly from May through October by Maryland DNR biologists. A total of 755 fish were measured for length frequency distribution and 355 samples of scales aged. Fork length of the fish in the sample ranged from 170 to 356 mm with the mean of 243 mm (Figure 1). Menhaden of 2 (2010 year class) strongly dominated in the harvest with 57% of the catch (Figure 2), followed by age 3 (21%). Fish of age 5 and older comprised only 3.0% of the harvest.

B. Fishery Independent Monitoring

The young of the year menhaden are caught regularly in the Maryland Chesapeake Bay Juvenile Beach Seine Survey. Menhaden recruitment has been poor in Maryland since 1992. The index of age 0 menhaden in 2012 remained to be significantly below the time series average (Figure 3).

C. Maryland Regulations on Atlantic Menhaden in 2012

There are no menhaden specific regulations in Maryland, However, Maryland law prohibits the use of purse seine: "A person may not catch finfish for any purpose in the tidal waters of the State by use of any gig, gig iron, purse net, beam trawl, otter trawl, trammel net, troll net or drag net" (Annotated Code of Maryland, §4-710. Prohibitions and restrictions on methods of fishing generally). Thus purse seining for Atlantic menhaden for fish meal reduction can not be prosecuted in Maryland.

D. Maryland Atlantic Menhaden Harvest

Atlantic menhaden commercial bait harvest is reported monthly by the fishermen to the MD DNR. Atlantic menhaden bait landings totaled 13,545,600 pounds in 2012. Most of the fish were caught in the Chesapeake Bay, primarily with pound nets. Small amounts were also caught in coastal bays and in the ocean. Distribution of landings by gear is presented in Table 2.

Table 2. MD Commercial menhaden landings by gear type in 2012.

Gear	Harvest, pounds
Otter trawl	9
Poundnet	12,943,111
Fykenet	38,239
Anchor gillnet	150,828
Drift gillnet	406255
Stake gillnet	493
other	6665
TOTAL	13,545,600

The harvest of Atlantic menhaden taken recreationally for bait is not known, but is assumed to be small when compared to the commercial harvest. There is no current estimate of non-harvest losses of Atlantic menhaden. Time series of historical menhaden landings by gear are presented in Table 3.

E. Amendment 1 Habitat Recommendations

No mandatory measures related to habitat or habitat protection are implemented through this amendment.

IV. MARYLAND ATLANTIC MENHADEN FISHERY AND MANAGEMENT PROGRAM FOR 2013

A. Maryland Statute and Regulations on Atlantic Menhaden in 2013.

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.

08.02.055.07

.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.

B. Atlantic Menhaden Monitoring Program for 2013.

Regular sampling of menhaden in commercial gears will be conducted by staff of the Maryland Department of Natural Resources. Harvest will be monitored based on the daily fishing reports.

C. Significant Changes in Management and/or Monitoring of Atlantic Menhaden in 2013

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, they will apply to 2013 only. Maryland will evaluate the effectiveness of these provisions and submit a revised plan for the 2014 season.

Commercial Fishery Management Measures

a)

Maryland's regulation 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)

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 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:

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 'dual 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:

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.

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.

V. PLAN SPECIFIC REQUIREMENTS

There is large number of the implementation requirements for Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden. States must submit implementation plans by April 15, 2013. Once the implementation plan is submitted Maryland compliance report will be updated accordingly.

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.

Harvesters are, and will be, required to submit reports. 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.

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.

One 10-fish sample (age and length) per 200 metric tons landed for bait purposes will be taken. Maryland DNR will collect the mandatory data elements - total pounds (lbs) landed per day, number of pound nets fished per day.

VI. LAW ENFORCEMENT REPORTING REQUIREMENTS

There are no plan specific law enforcement requirements in Amendment 2. Every licensed fisherman is required to report monthly landings by species, including menhaden to MD DNR.

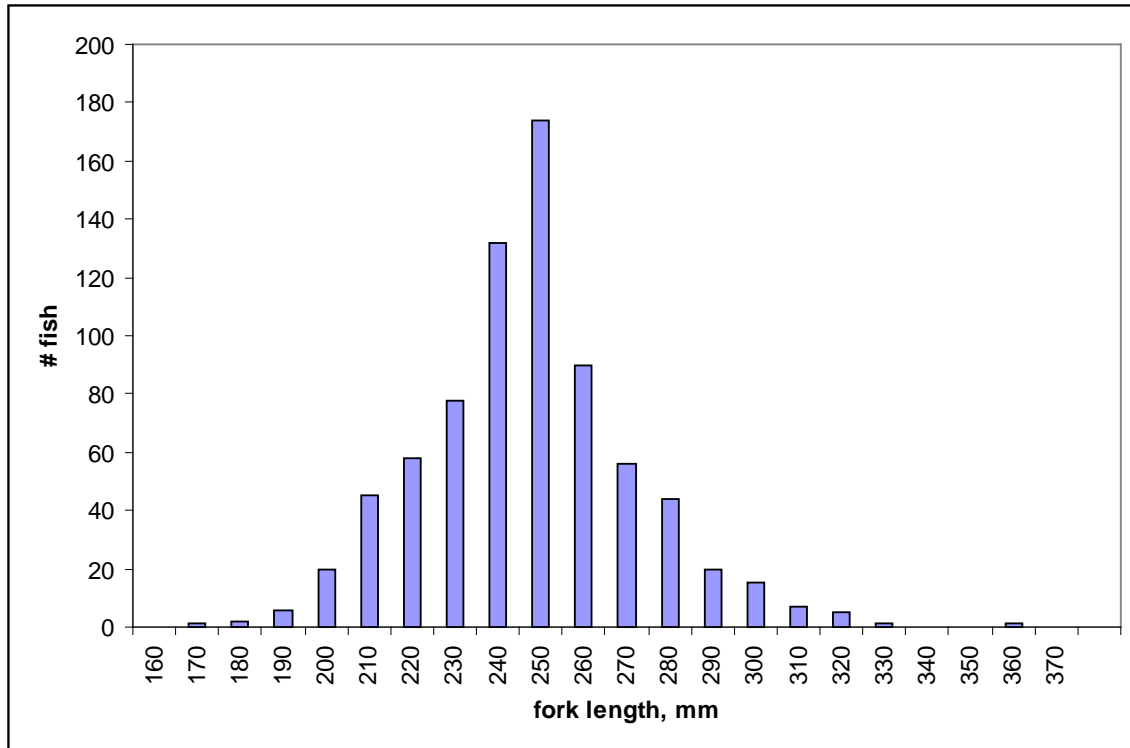


Figure 1. Menhaden length frequency distributions from onboard pound net sampling in 2012.

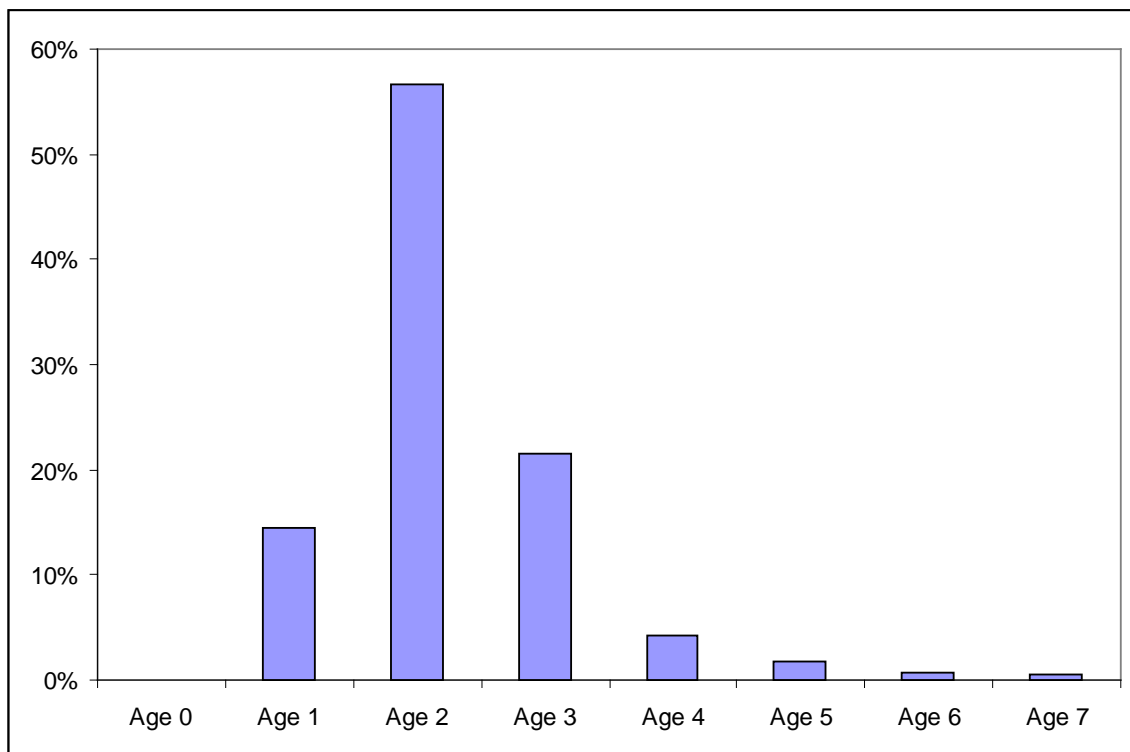


Figure 2. Age structure of menhaden catch in Maryland poundnets in 2012 (N=355).

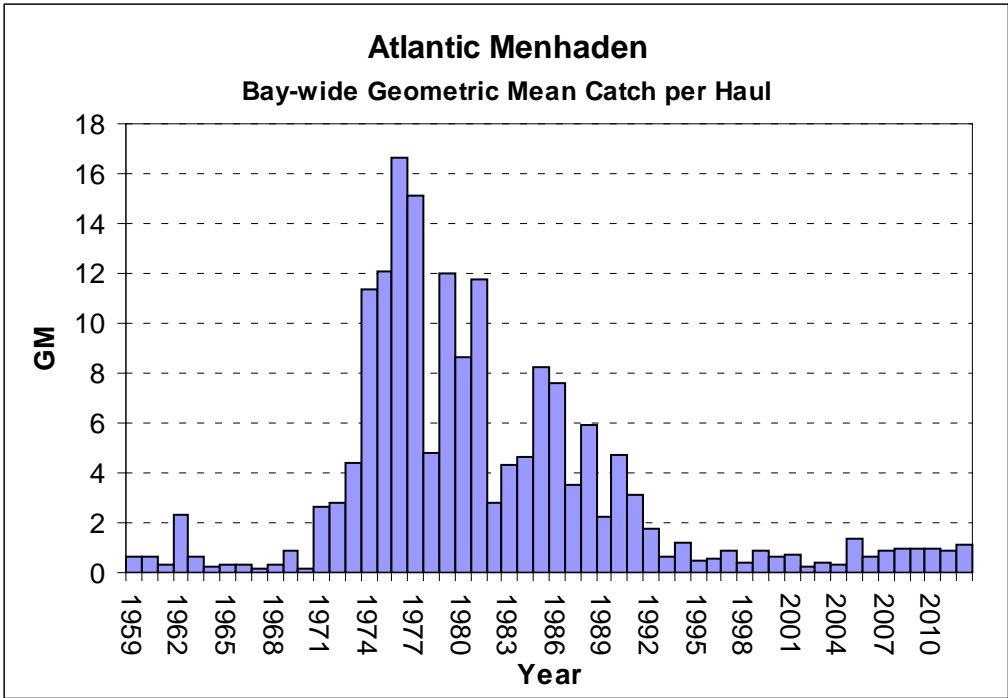


Figure 3. Geometric mean catch per haul of menhaden juveniles in Maryland portion of the Chesapeake Bay.

Table 3. Menhaden bait landings (pounds) in Maryland by gear, 1935- 2012.

YEAR	Total	poundnet	gillnets	fyke net	seine	other
1935	7,000					7,000
1936	43,400					43,400
1937	15,000					15,000
1938	62,800					62,800
1939	16,000					16,000
1940	104,000					104,000
1941	138,000					138,000
1942	175,200					175,200
1944	183,232	182,812		420		
1945	40,584	39,684	900			
1946	394,313	362,534	21,200		10,579	
1947	125,444	89,469	425		550	35,000
1948	564,471	543,221	0		950	20,300
1949	1,680,233	1,551,865	8,800	200	119,368	
1950	1,096,887	1,008,669	54,118		34,000	100
1951	430,927	346,085	55,444		27,798	1,600
1952	1,444,296	1,416,171	20,845	615	6,665	
1953	2,151,000	2,081,517	46,128	4,310	18,845	200
1954	3,883,103	3,827,744	50,859		4,500	
1955	1,939,953	1,858,038	2,408		79,507	
1956	1,375,315	1,359,405	2,675	150	13,085	
1957	2,398,628	2,291,790	15,958		90,880	
1958	2,273,739	2,186,871	7,945		78,923	
1959	2,203,897	2,169,987	8,571	10,610	14,729	
1960	2,903,875	2,882,855	4,940	0	16,080	
1961	3,577,743	1,186,531	27,704	500	42,208	2,320,800
1962	4,316,100	1,805,500	27,900		16,700	2,466,000
1963	3,292,900	1,380,000			3,400	1,909,500
1964	5,706,300	1,299,900	32,100	700	11,300	4,362,300
1965	8,332,800	2,991,700	28,900		1,700	5,310,500
1966	5,504,500	2,606,000	31,500		12,000	2,855,000
1967	3,000,500	2,897,200	79,200		24,100	
1968	4,360,300	3,962,300	383,400		14,600	
1969	3,456,400	3,257,500	195,300		3,600	
1970	3,836,900	3,446,500	344,500	200	45,700	
1971	5,957,600	5,650,200	276,700		30,700	
1972	7,104,300	6,040,600	1,043,900		18,400	1,400
1973	9,657,300	9,472,500	182,500		2,300	
1974	5,523,100	5,330,400	181,700	6,800	4,200	
1975	6,105,900	5,842,500	241,900	1,600	18,600	1,300
1976	5,379,700	5,174,500	183,000	2,900	19,200	100
1977	8,381,100	8,228,900	147,200	100	4,600	300
1978	7,115,900	7,001,900	112,400	400	0	1,200
1979	5,608,100	5,471,200	129,700	200	3,000	4,000
1980	8,715,266	8,536,396	126,390	287	51,205	988
1981	10,701,070	10,609,060	82,728	12	8,970	300

1982	8,946,683	8,794,518	150,788	1,377			
1983	6,605,705	6,431,147	167,710	2,563	50	4,235	
1984	5,363,823	5,038,318	235,845	20,420	69,140	100	
1985	5,372,193	5,279,976	84,716	7,501			
1986	5,449,350	5,361,061	85,121	3,146		22	
1987	5,793,683	5,655,934	58,771	16,651		62,327	
1988	6,430,164	6,228,125	147,589	15,626		38,824	
1989	6,166,236	6,098,520	60,006	2,630		5,080	
1990	1,662,275	1,602,438	59,182	655			
1991	3,540,179	3,387,725	131,013	636		20,805	
1992	1,777,088	1,624,533	72,056	80,089		410	
1993	2,326,613	2,252,894	69,944	1,475		2,300	
1994	2,369,071	2,144,891	172,429	41,830		9,921	
1995	4,264,754	4,070,791	185,657	5,706		2,600	
1996	3,906,808	3,713,620	189,726	2,502	50	910	
1997	3,457,237	3,297,418	155,649	4,170			
1998	2,933,818	2,750,801	175,351	2,290		5,376	
1999	4,460,534	4,322,063	126,429	1,840		10,202	
2000	3,935,307	3,778,100	136,429	20,664		114	
2001	3,970,243	3,810,860	149,143	10,240		0	
2002	4,023,389	3,869,847	132,227	21,225		90	
2003	3,163,252	2,917,925	241,336	2,996		995	
2004	5,369,952	5,141,842	226,421	1,670		19	
2005	10,635,776	10,406,224	202,105	5,921	506	21,020	
2006	6,841,296	6,656,846	171,768	4,170	15	8,497	
2007	11,370,064	10,095,686	1,265,717	5,546	1,975	1,140	
2008	8,153,008	7,956,418	184,839	10,934	0	817	
2009	7,756,192	7,406,050	341,265	7,730	145	1,002	
2010	6,903,300	6,192,220	592,440	97,040		21,600	
2011	6,506,430	5,937,637	511,890	56,699		204	
2012	13,653,031	13,056,835	551,162	38,360	904	5,770	

Table 4. Age structure of menhaden catch in MD Chesapeake Bay poundnets.

Year	Age 0	Age 1	Age 2	Age 3	Age 4	Age 5	Age 6	# Aged	# Measured
2005		2.74	25.86	42.61	25.64	3.15		345	1,061
2006		40.44	28.27	18.36	9.70	2.62	0.60	289	826
2007		22.64	37.44	24.70	10.72	3.95	0.55	379	854
2008		16.60	44.55	29.36	7.27	1.94	0.28	385	826
2009	0.40	16.79	24.92	38.04	17.15	2.72		258	512
2010		42.98	30.61	14.93	8.26	2.50	0.60	388	836
2011		38.03	31.41	19.88	9.12	1.57		392	773
2012	0.00	14.51	56.74	21.45	4.26	1.80	0.77	355	755



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Menhaden
2012 Annual State Report
April 1, 2013

I. Introduction

A. Summary of the year

Commercial harvest of Atlantic menhaden in the Potomac River in 2012 was more than double the 2011 value (Figure 1). Effort (number of pound net fishing days) in 2012 was comparable to the 2007 level, reversing a downward trend since 2005 (Table 2). Pound net CPUE (lbs/PN net-days fished) has been on a generally increasing trend since 1990. The 2012 CPUE value increased from the 2011 value (Figure 2) and the trend is approaching values seen in the late 70's and early 80's, when harvest was four to five times that of recent years.

II. Request *de minimis*, where applicable – N/A

III. Previous calendar year's fishery and management program

A. Fishery Dependent Monitoring

i. Commercial Fishery

(1) Characterization of Fishery

The menhaden fishery is almost exclusively a pound net fishery. Pound nets have a season of February 15th through December 15th each year. All trawl and purse nets are prohibited. Gill nets are restricted to a 5" minimum mesh and this season runs from November 15 through March 25.

(2) Characterization of Directed Harvest

(a)(1) Harvest and Method of Estimation

Menhaden harvest in 2012 totaled 5,892,228 pounds (Table 1). This estimate is from the PRFC's mandatory commercial daily harvest reporting system. Landings by state are shown in Table 4, and harvest is broken down by gear type.

<u>Harvest (lbs.)</u>	<u>Gear</u>	<u>Effort</u>
5,852,421	Pound Net	1,989 PN fishing days
15,460	Gill Net	41,880 GN yards fished
22,240	Haul Seine	39 hauls
2,089	Fyke Net	23 FN fishing days

(a)(2) Estimated Pounds Released

<u>Gear</u>	<u>No Market</u>	<u>Too Small</u>	<u>Total</u>
Pound net	87,825	4,500	92,325
Haul seine	325	1,100	1,425
Fyke net	<u>25</u>	<u>120</u>	<u>145</u>
	88,175	5,720	93,895

(b) Catch Composition

The PRFC has collected bait samples from pound nets and provided menhaden to the NMFS Beaufort, NC lab for biological analyses since 2010. In 2012, samples (ten fish) were obtained on a monthly basis from May through December. Results of the 2012 sample analyses are not available yet.

(c) Estimate of Effort

A 'PN fishing day' is one pound net fished one time (net-days fished), 'GN yards fished' is the total number of yards of net fished, a 'FN fishing day' is one fyke net fished one time (net-days fished), and a 'haul' is one fishing of the haul seine.

(3) Characterization of Other Losses

(a) Estimate and Method

No by-catch of menhaden from other fisheries is available.

ii. Recreational Fishery

(1) Characterization of Fishery

The Potomac River has no recreational fishery for menhaden.

(2) Characterization of Directed Harvest

We know of no directed recreational harvest of menhaden.

(3) Characterization of Other Losses

No estimate available.

B. Fishery Independent Monitoring

Maryland DNR personnel have conducted an annual juvenile abundance survey since 1954. Atlantic menhaden data for the Potomac River dates from 1959 to present (Figure 4). Fixed stations and some auxiliary stations are used each year for a beach haul seine survey in which the juveniles of all species encountered are identified and recorded. Refer to the MD DNR web site <http://www.dnr.state.md.us/fisheries/juvindex/index.html>. The geometric mean catch per haul declined from 0.34 in 2011 to 0.06 in 2012.

C. Tables and Figures

Table 1 shows the annual Potomac River commercial harvest of menhaden from 1964 through the reporting year, including the percentage harvested by pound nets.

Table 2 shows the annual pound net license sales from 1964 through the reporting year. Note that since 1994, the pound net licenses have been capped at 100. This table also shows pound net effort (net-days fished) and CPUE (PN lbs/PN net-days fished) from 1976 through 1980 and from 1988 through the reporting year.

Table 3 shows the Potomac River Atlantic menhaden age composition from pound net samples, as determined by the NMFS Beaufort, NC lab for 2010 and 2011.

Table 4 shows the annual commercial harvest of Atlantic menhaden for the Potomac River by gear type and the landings by state, since 1976.

Table 5 shows the Potomac River Atlantic menhaden commercial harvest by month.

Figure 1 shows the Potomac River Atlantic menhaden commercial harvest (1964 – 2012).

Figure 2 shows the Potomac River menhaden commercial harvest and pound net CPUE.

Figure 3 shows percent commercial harvest by month (current vs. average).

Figure 4 shows the juvenile index (geometric mean) since 1959.

D. Protected Species

The protected species of note within the Potomac River are the Atlantic sturgeon, shortnose sturgeon and river herring (Blueback and Alewife). None of these species were landed from the Potomac River in 2012, and no reports of any other protected species were received.

IV. Planned management programs for the current calendar year

A. Summarize regulations that will be in effect –

The pound net fishery is a limited entry fishery, with a maximum of 100 licenses on a river-wide basis. A pound net is defined as a fixed fishing device with one head, trap or pound measuring not less than 20 feet square at the surface of the water on the channel end and only one leader or hedging not less than 300 feet in length. Effective Jan. 1, 2011 - all pounds nets in the Potomac River must have at least six PRFC approved fish cull panels properly installed in each pound net to help release undersize fish. In 2013, the catch limit set by the ASMFC for the Potomac River is 1,049.69 MT, and all commercial fishing for menhaden will be closed when this catch limit is reached. The ASMFC approved a 6,000 pound daily bycatch allowance per vessel for the pound net fishery, once the catch limit is reached, will be allowed.

B. Summarize monitoring programs that will be performed –

We expect MD will continue the annual juvenile abundance survey. We will continue mandatory daily harvest reports and biological sampling. A weekly call-in system will be initiated for the pound net fishery when staff projects that 70 percent of the catch limit is reached, and it will be in effect until the catch limit is reached.

C. Highlight any changes from the previous year – None

Table 1

Potomac River Commercial Menhaden Harvest

Harvest in Pounds and Metric Tons, with Percent of Harvest by Pound Nets

Year	Total Pounds	Total MT	% by PN	Year	Total Pounds	Total MT	% by PN
1964	6,781,993	3,076.3		1989	8,334,174	3,780.3	100.0%
1965	7,235,827	3,282.1		1990	4,523,776	2,052.0	100.0%
1966	5,776,200	2,620.0		1991	5,376,264	2,438.6	100.0%
1967	2,955,967	1,340.8		1992	5,061,565	2,295.9	100.0%
1968	2,622,760	1,189.7		1993	7,884,001	3,576.1	99.8%
1969	2,098,808	952.0		1994	6,680,937	3,030.4	100.0%
1970	4,290,459	1,946.1		1995	7,002,818	3,176.4	100.0%
1971	3,542,921	1,607.0		1996	5,111,423	2,318.5	100.0%
1972	6,156,529	2,792.6		1997	5,757,370	2,611.5	100.0%
1973	11,162,850	5,063.4		1998	3,980,738	1,805.6	99.4%
1974	9,831,072	4,459.3		1999	4,860,883	2,204.9	99.9%
1975	10,542,082	4,781.8		2000	5,023,374	2,278.6	99.7%
1976	11,817,553	5,360.4	91.6%	2001	3,329,035	1,510.0	99.7%
1977	19,969,104	9,057.8	91.9%	2002	3,122,050	1,416.1	99.7%
1978	17,298,486	7,846.5	98.7%	2003	2,438,790	1,106.2	99.0%
1979	14,436,804	6,548.4	96.2%	2004	5,411,043	2,454.4	99.8%
1980	18,721,387	8,491.9	100.0%	2005	4,759,905	2,159.1	99.8%
1981	20,366,865	9,238.3	100.0%	2006	3,413,517	1,548.3	99.9%
1982	17,989,434	8,159.9	100.0%	2007	5,036,906	2,284.7	99.9%
1983	20,820,945	9,444.2	100.0%	2008	4,820,645	2,186.6	99.9%
1984	13,121,597	5,951.9	99.9%	2009	3,191,905	1,447.8	99.7%
1985	16,768,889	7,606.2	100.0%	2010	2,790,728	1,265.9	99.7%
1986	10,971,973	4,976.8	99.8%	2011	2,759,597	1,251.7	99.7%
1987	13,120,698	5,951.5	100.0%	2012	5,892,228	2,672.7	99.3%
1988	13,231,368	6,001.7	100.0%				

Table 2

Potomac River Pound Net Licenses, Effort Data and CPUE (lbs/net-days fished)

Year	Number of			Year	Number of:		
	Licenses	PN net-days fished	CPUE		Licenses	PN net-days fished	CPUE
1964	138			1990	86	4,585	987
1965	144			1991	85	4,683	1,148
1966	157			1992	76	3,848	1,315
1967	149			1993	72	4,601	1,710
1968	136			1994	99	4,389	1,525
1969	181			1995	100	4,553	1,538
1970	112			1996	100	3,483	1,468
1971	99			1997	100	3,975	1,448
1972	85			1998	100	3,456	1,145
1973	81			1999	100	2,986	1,626
1974	69			2000	100	2,713	1,846
1975	93			2001	100	2,599	1,278
1976	119	4,668	2,320	2002	100	2,778	1,121
1977	134	5,254	3,494	2003	100	2,288	1,056
1978	119	5,046	3,385	2004	100	2,448	2,205
1979	134	5,620	2,471	2005	100	2,538	1,873
1980	127	5,914	3,165	2006	100	2,075	1,644
1981	123			2007	100	1,985	2,535
1982	114			2008	100	1,819	2,647
1983	119			2009	100	1,585	2,009
1984	124			2010	100	1,218	2,284
1985	144			2011	100	1,101	2,499
1986	130			2012	100	1,989	2,942
1987	84						
1988	93	5,367	2,465				
1989	96	4,924	1,693				

Table 3

Potomac River Menhaden Age Composition						
Age	2010		2011		2012*	
	# of fish	% at Age	# of fish	% at Age	# of fish	% at Age
1	15	56	29	49		
2	7	26	19	32		
3	2	7	2	3		
4	3	11	6	10		
5			3	5		
Total	27	100	59	100		

* 2012 fish samples were delivered, data still being compiled.

Analyses of menhaden samples were conducted by the NMFS at the Beaufort Lab in North Carolina.

Table 4

Potomac River Menhaden Harvest by Gear and Landings by State

Year	Pound Net	Gill Net	Haul Seine	Fyke Net	Misc.	Landed in		Total	
						MD	VA	(lbs.)	(mt)
1964					6,781,993	6,628	6,775,365	6,781,993	3,076.31
1965					7,235,827	41,363	7,194,464	7,235,827	3,282.17
1966					5,776,200	3,309	5,772,891	5,776,200	2,620.08
1967					2,955,967	67,350	2,888,617	2,955,967	1,340.83
1968					2,622,760	8,490	2,614,270	2,622,760	1,189.68
1969					2,098,808	13,904	2,084,904	2,098,808	952.02
1970					4,290,459	126,606	4,163,853	4,290,459	1,946.15
1971					3,542,921	146,813	3,396,108	3,542,921	1,607.07
1972					6,156,529	196,150	5,960,379	6,156,529	2,792.60
1973					11,162,850	428,146	10,734,704	11,162,850	5,063.47
1974					9,831,072	446,931	9,384,141	9,831,072	4,459.37
1975					10,542,082	623,011	9,919,071	10,542,082	4,781.89
1976	10,830,138	6,312	500		980,603	1,495,308	10,322,245	11,817,553	5,360.44
1977	18,356,820	6,595	3,900		1,601,789	1,987,066	17,982,038	19,969,104	9,057.99
1978	17,078,890	5,056	100		214,440	2,859,690	14,438,796	17,298,486	7,846.59
1979	13,886,417	7,643	21,005		521,739	2,302,895	12,133,909	14,436,804	6,548.53
1980	18,716,443	4,944				3,272,842	15,448,545	18,721,387	8,492.02
1981	20,359,817	7,048				4,150,488	16,216,377	20,366,865	9,238.41
1982	17,988,067	1,367				3,764,705	14,224,729	17,989,434	8,160.01
1983	20,820,224	721				2,857,187	17,963,758	20,820,945	9,444.38
1984	13,111,057	840	9,700			3,244,254	9,877,343	13,121,597	5,951.96
1985	16,768,303	586				3,213,502	13,555,387	16,768,889	7,606.37
1986	10,946,547	25,426				2,548,105	8,423,868	10,971,973	4,976.89
1987	13,119,905	590		203		3,381,526	9,739,172	13,120,698	5,951.55
1988	13,231,030	338				4,342,213	8,889,155	13,231,368	6,001.75
1989	8,333,994		180			2,072,144	6,262,030	8,334,174	3,780.38
1990	4,523,776					903,355	3,620,421	4,523,776	2,051.98
1991	5,376,223			41		1,361,026	4,015,238	5,376,264	2,438.67
1992	5,061,295	270				732,886	4,328,679	5,061,565	2,295.93
1993	7,868,456	5	15,540			1,233,258	6,650,743	7,884,001	3,576.18
1994	6,680,785	26		126		1,179,623	5,501,314	6,680,937	3,030.47
1995	7,002,818					1,671,619	5,331,199	7,002,818	3,176.48

Table 4 continued

Potomac River Menhaden Harvest by Gear and Landings by State

Year	Pound Net	Gill Net	Haul Seine	Fyke Net	Misc.	Landed in		Total	
						MD	VA	(lbs.)	(mt)
1996	5,111,370			53		1,844,756	3,266,667	5,111,423	2,318.54
1997	5,757,060	70	22	218		1,715,759	4,041,611	5,757,370	2,611.54
1998	3,956,806	3,029	20,683	220		1,117,865	2,862,873	3,980,738	1,805.66
1999	4,855,463	2,489	1,380	1,551		1,372,713	3,488,170	4,860,883	2,204.90
2000	5,006,982	10,275	4,020	2,097		934,364	4,089,010	5,023,374	2,278.60
2001	3,320,627		416	7,992		699,016	2,630,019	3,329,035	1,510.05
2002	3,113,585	1,145	2,687	4,633		804,480	2,317,570	3,122,050	1,416.16
2003	2,415,194		774	22,822		1,017,965	1,420,825	2,438,790	1,106.24
2004	5,398,476		112	12,455		1,752,941	3,658,102	5,411,043	2,454.45
2005	4,752,541		260	7,104		2,701,830	2,058,075	4,759,905	2,159.09
2006	3,410,520		210	2,787		1,573,249	1,840,268	3,413,517	1,548.37
2007	5,031,881	2,930	371	1,724		2,215,826	2,821,080	5,036,906	2,284.74
2008	4,814,441	990	4,088	1,126		1,630,870	3,189,775	4,820,645	2,186.64
2009	3,183,688	7610	596	11		1,794,124	1,397,781	3,191,905	1,447.85
2010	2,781,589	1203	4,835	2,791	310	754,191	2,036,537	2,790,728	1,265.87
2011	2,751,283	3360	3,645	1,309		1,295,893	1,463,704	2,759,597	1,251.75
2012	5,852,421	15,460	22,240	2,089	18	2,656,233	3,235,995	5,892,228	2,672.71

PRFC
 2012 Annual Report for Menhaden
 April 1, 2013

Table 5

POTOMAC RIVER MENHADEN HARVEST BY MONTH

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1976		170	176,355	569,898	1,261,507	1,388,559	2,622,855	2,052,657	1,296,537	1,149,640	264,892	53,880
1977			163,713	1,488,765	2,989,970	2,588,511	3,930,932	3,857,497	2,225,838	822,923	285,805	13,361
1978			1,139	532,508	823,414	3,090,837	3,853,719	4,402,645	2,423,618	1,261,241	599,112	95,813
1979			117,274	451,028	2,215,789	2,869,383	3,127,841	2,876,332	1,130,860	795,535	318,003	13,020
1980			23,143	1,000,373	3,305,686	4,143,888	3,803,990	3,542,094	1,595,920	908,910	392,728	2,135
1981			74,621	852,671	2,931,801	3,476,746	5,408,071	4,892,555	1,761,300	821,810	141,418	5,872
1982			120,488	820,916	3,708,383	3,309,049	2,651,953	3,747,325	2,168,491	1,319,890	132,749	10,190
1983			68,513	377,700	2,846,374	4,040,717	2,723,851	4,841,259	4,362,690	1,104,815	454,930	96
1984			490	279,680	1,622,241	3,282,211	3,027,117	1,924,575	1,283,327	1,041,011	543,030	117,915
1985			64,125	1,288,501	4,193,965	2,585,674	2,813,170	3,307,300	1,464,338	821,220	228,874	1,722
1986			225,115	519,366	1,626,923	2,980,497	2,283,243	2,194,032	473,040	394,965	269,590	5,100
1987		5	66,480	834,115	2,116,384	1,933,542	2,199,820	2,798,464	1,909,883	1,072,940	189,005	60
1988			159,546	1,064,670	2,640,118	2,177,823	2,157,784	2,321,006	1,592,925	813,176	250,195	54,125
1989			53,122	673,072	1,515,535	1,294,691	1,363,921	1,223,765	1,050,974	1,128,395	30,089	610
1990		13,180	117,932	233,618	676,275	595,805	1,074,268	820,106	581,920	285,430	100,180	25,062
1991			126,282	481,544	610,834	759,940	1,266,410	1,151,589	457,060	442,005	79,580	1,020
1992		9,370	40,170	414,699	870,150	579,471	1,522,880	892,472	331,801	222,636	133,246	44,670
1993			17,775	532,590	1,197,123	858,356	1,291,045	1,744,715	1,443,989	765,865	32,418	125
1994			15,490	735,226	658,152	1,233,272	1,414,510	1,563,892	694,603	145,207	175,030	45,555
1995		1,830	155,320	823,491	1,252,535	993,416	1,370,856	1,048,700	937,050	335,320	81,060	3,240
1996			38	566,370	1,329,435	917,890	590,556	818,318	629,026	283,460	21,330	0
1997		450	197,860	662,780	1,444,610	506,259	1,107,517	1,050,638	630,113	131,480	24,438	1,225
1998			88,486	783,437	1,015,753	372,584	442,122	596,900	428,258	138,251	85,538	29,409
1999			5,372	408,063	1,290,570	596,009	1,063,177	738,163	420,408	220,669	95,117	23,335
2000		1,800	441,205	662,087	694,935	589,587	1,014,678	431,092	970,085	184,660	47,615	3,630
2001			92,127	432,989	772,043	537,785	390,739	521,584	405,377	112,800	53,121	10,470
2002		1,675	435,075	161,201	460,713	379,245	343,998	757,293	372,455	99,585	108,900	1,910
2003			30,740	297,360	553,899	461,897	470,771	284,099	173,515	78,568	84,491	3,450
2004			47,095	533,731	466,120	276,471	821,136	1,851,600	828,208	474,787	88,016	23,879
2005			128,135	718,140	679,676	433,695	881,860	958,795	605,343	238,250	113,535	2,476
2006			84,226	423,824	540,658	431,718	770,573	774,718	97,180	125,060	124,550	41,010
2007	2,690		340,320	576,639	404,875	723,593	647,178	805,550	909,058	303,640	199,941	123,422
2008		60	134,430	299,855	544,974	560,458	730,807	1,495,503	541,598	295,685	188,610	28,665
2009			167,414	303,298	548,405	478,219	335,740	488,110	518,373	321,811	22,486	8,049
2010			47,080	326,300	191,760	339,969	376,025	748,774	483,450	221,726	47,729	7,915
2011		10,980	63,510	237,521	477,342	592,556	309,050	542,121	247,711	192,526	62,350	23,930
2012	660	22,055	495,102	590,338	1,111,851	621,080	878,408	765,563	716,761	542,360	112,060	35,990

Figure 1

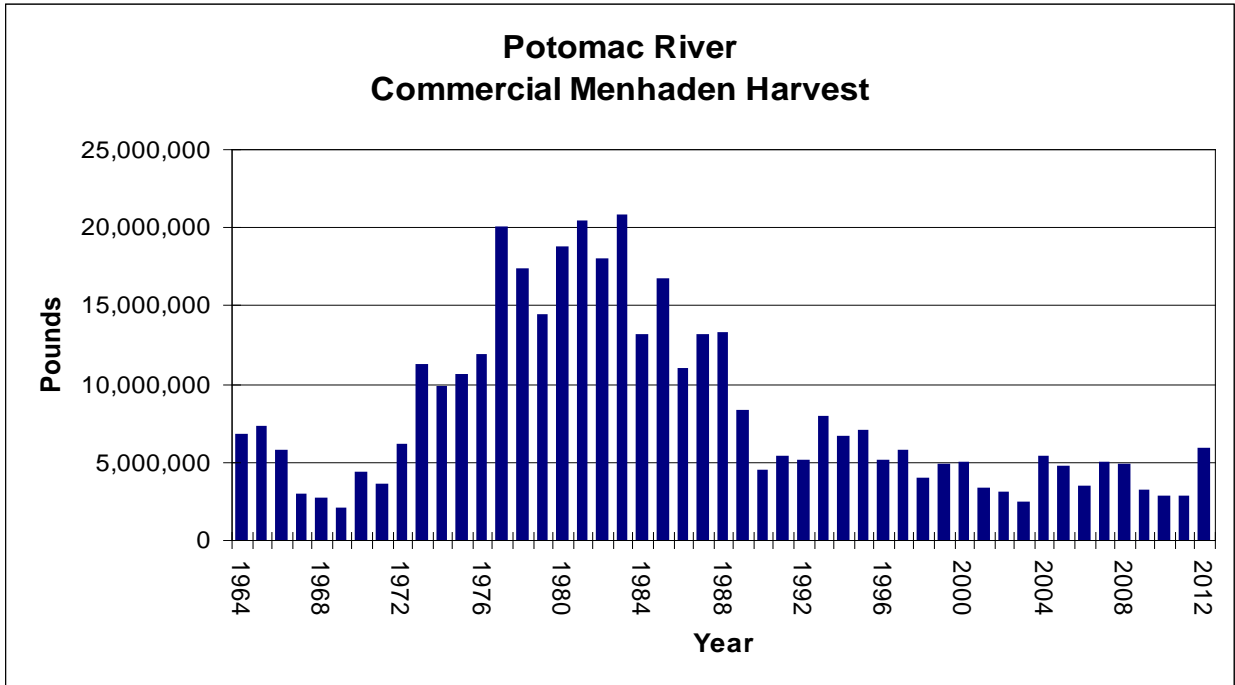


Figure 2

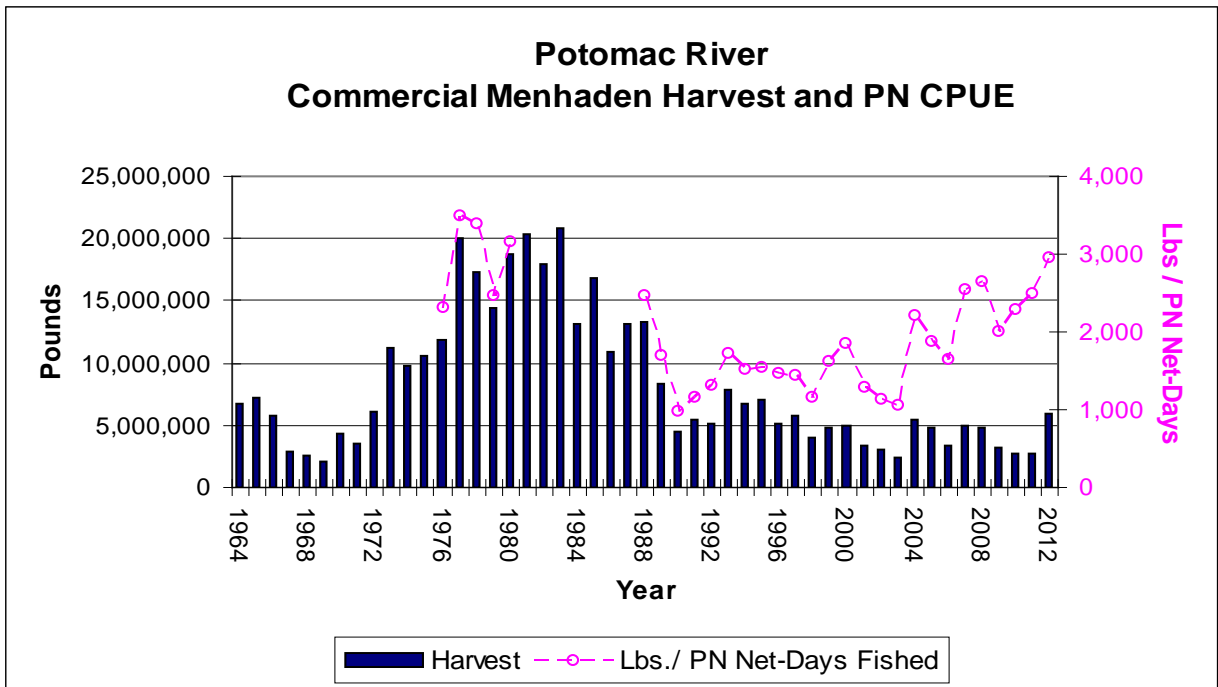


Figure 3

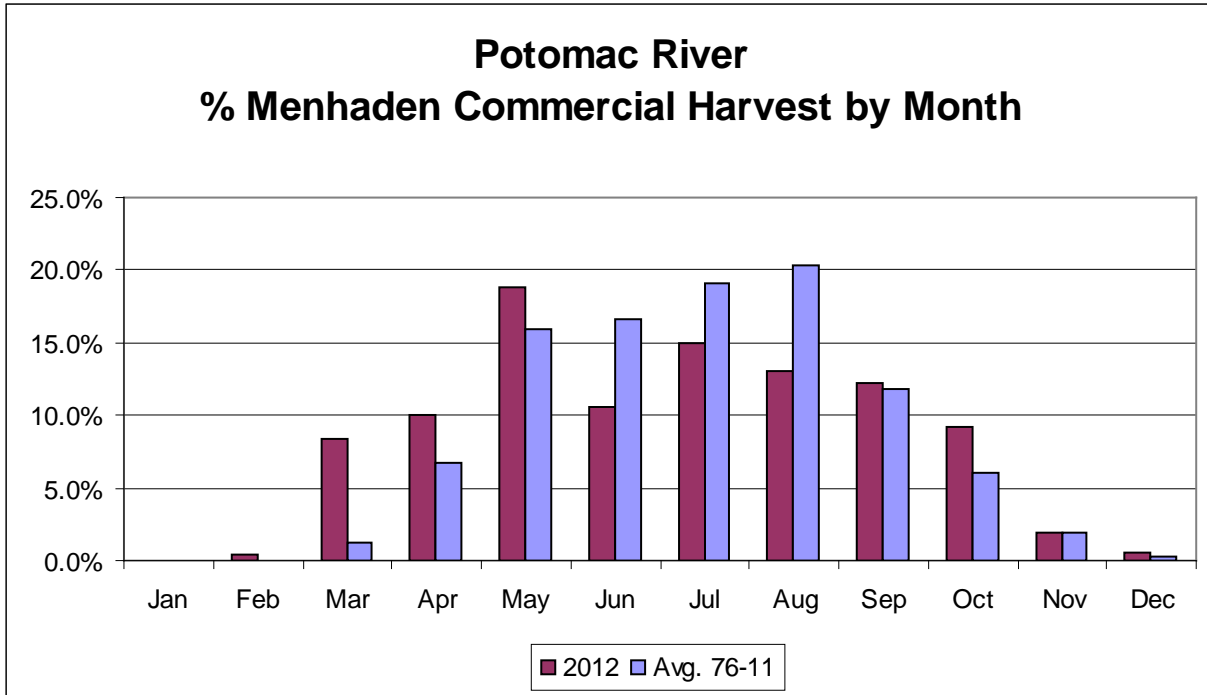
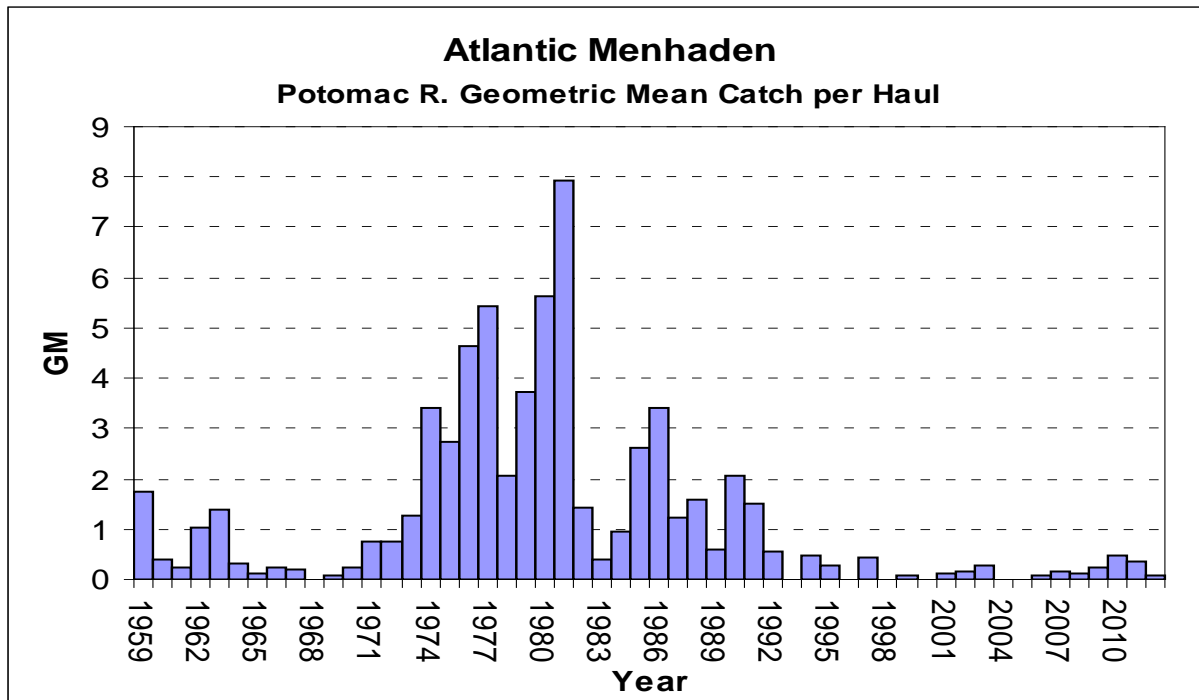


Figure 4



**ATLANTIC MENHADEN COMPLIANCE REPORT
For VIRGINIA**

A Report to the Atlantic States Marine Fisheries Commission

April 1, 2013

Updated April 24, 2013

Fisheries Management Division
Virginia Marine Resources Commission
2600 Washington Avenue
Newport News, VA 23607

I. Introduction

Preliminary harvest data for Atlantic menhaden in 2012, for bait purposes, was 32,337,742 pounds. Snapper rigs accounted for 85% of the harvest, or 27,497,470 pounds, with gill nets and pound nets accounting for the bulk of the remaining landings (Table 1). The 2012 allowable harvest in the Chesapeake Bay was 122,740 metric tons, and this quota was not approached in 2012.

II. Request for *de minimus*.

Virginia does not request *de minimus* status.

III. Virginia Atlantic Menhaden Fishery and Management in 2012

A. Fishery-Dependent Monitoring

National Marine Fisheries Service (NMFS) personnel sampled a total of 31 samples (10-fish per sample) of Atlantic menhaden from the snapper rig baitfish fishery and 263 port samples (10-fish per sample) from the reduction fishery in 2012. The samples are processed, and the data are maintained, by the NMFS Beaufort Laboratory.

B. Fishery-Independent Monitoring

Virginia Institute of Marine Science (VIMS) personnel have conducted an Annual Juvenile Striped Bass Seine Survey that is used to determine a Juvenile Atlantic Menhaden Index, since 1968. The yearly index values are used in the stock assessment of Atlantic menhaden by ASMFC. The index (geometric mean) value for 2012 was 0.24 which is lower than the 2011 index value of 0.82 and lower than the historical average (entire time series) of 1.49 (Table 2).

C. 2012 Virginia Laws and Regulations Pertaining to Atlantic Menhaden

The 2012 Virginia Statutory Laws pertaining to Atlantic menhaden are provided in Appendix I, and the Virginia Administrative Codes pertaining to Atlantic menhaden are provided in Appendix II.

D. Virginia Atlantic Menhaden Harvest

Annual commercial bait landings of Atlantic menhaden, in Virginia, are presented in Table 1. Recreational harvest of Atlantic menhaden is not reported. There is no information pertaining to non-harvest losses at this time.

E. Amendment 2 Habitat Recommendations

No mandatory measures pertaining to habitat are implemented through this amendment.

IV. Virginia Atlantic Menhaden Management Program for 2013.

A. Virginia Laws and Regulations Pertaining to Atlantic Menhaden

The Virginia General Assembly amended Sections 2.2-4002, 28.2-204.1, 28.2-402, 28.2-403, and 28.2-1000.2 of the Code of Virginia and added Sections 28.2-400.1 through 28.2-400.6 of the Code of Virginia, relating to management of the menhaden fishery to comply with Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden (Appendix III).

The Virginia Marine Resources Commission established Chapter 4 VAC 20-1270-10 et seq. "Pertaining to Atlantic Menhaden", adopting Commission specific responsibilities as provided by the Virginia General Assembly (Appendix IV).

B. Atlantic Menhaden Monitoring Program for 2013

The NMFS Beaufort Laboratory will continue its stock assessment sampling program. The Virginia Marine Resources Commission will provide additional biological sampling effort to comply with Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden.

Personnel at VIMS will continue their Juvenile Atlantic Menhaden Index Survey.

C. Changes in Monitoring Programs for 2013.

No changes from the previous year.

D. An assessment on the social and economic importance of menhaden in the Chesapeake Bay Region was published in 2011 by the late Dr. James E. Kirkley of the Virginia Institute of Marine Science. Dr. Kirkley's report details the contribution of the menhaden fishery to the multi-cultural, ethnic, and racial communities bordering the Chesapeake Bay. The report also makes note of potential regional quota impacts to the economy, and the lack of empirical evidence that reductions in landings of the commercial fishing industry will lead to an increase in the economic impact derived from the recreational fishery for game fish species that prey upon menhaden.

V. Plan specific requirements

An implementation plan for Amendment 2 of the Interstate Fishery Management Plan for Atlantic Menhaden will be provided to ASMFC by April 15, 2013 detailing the current status of plan specific requirements specific to Amendment 2.

Table 2. Virginia Institute of Marine Science Atlantic menhaden seine survey index from Virginia's rivers (1968 through 2012).

Year Class	Number of Index Stations	Number Caught at Index Stations	Number of Index Stations Where Caught	Number of Stations Where Caught	Total Number of Stations Sampled	Total Number Caught at All Stations	Total Number Caught at Non-Index	Arithmetic Average Catch/Haul	Lower CL Geometric Mean	Index Geometric Mean Catch/Haul	Upper CL Geometric Mean	Standard Deviation
1968	55	655	12	15	168	713	58	11.91	0.25	0.79	1.57	1.34355
1969	60	935	17	21	177	1716	781	15.58	0.30	0.82	1.55	1.29465
1970	66	157	4	9	183	170	13	2.38	-0.02	0.20	0.46	0.80773
1971	70	1799	13	17	183	4504	2705	25.70	0.25	0.79	1.58	1.52451
1972	110	8294	39	54	272	9740	1446	75.40	1.09	2.02	3.36	1.92357
1973	65	20837	26	49	186	29091	8254	320.57	1.70	4.10	8.65	2.56905
1980	61	7767	22	34	176	10865	3098	127.33	1.27	3.13	6.51	2.34021
1981	48	2303	20	57	210	5594	3291	47.98	1.65	4.02	8.48	2.20665
1982	53	8811	31	40	113	9003	192	166.25	4.08	9.01	18.73	2.47122
1983	38	3343	15	28	102	3464	121	87.97	1.30	3.86	9.27	2.30898
1984	40	2907	12	28	106	5627	2720	72.68	0.55	2.08	5.12	2.16739
1985	78	9721	45	57	142	13974	4253	124.63	2.64	5.13	9.34	2.30593
1986	54	13269	29	52	144	14158	889	245.72	2.14	5.05	10.67	2.41232
1987	68	2491	20	31	144	2853	362	36.63	0.39	1.01	1.91	1.52439
1988	82	2067	28	39	181	2128	61	25.21	0.77	1.55	2.67	1.65034
1989	100	5437	31	42	285	5662	225	54.37	1.05	2.03	3.47	1.95270
1990	100	5544	28	43	287	7120	1576	55.44	0.68	1.44	2.55	1.86952
1991	119	9904	37	50	278	10145	241	83.23	1.17	2.14	3.52	1.99804
1992	116	1458	22	23	287	1483	25	12.57	0.29	0.63	1.05	1.23315
1993	123	892	19	19	279	892	0	7.25	0.22	0.50	0.84	1.15137
1994	125	520	17	19	284	531	11	4.16	0.18	0.41	0.68	1.00199
1995	124	544	20	21	284	545	1	4.39	0.18	0.41	0.69	1.00029
1996	124	1852	18	23	318	1877	25	14.94	0.17	0.43	0.74	1.10026
1997	124	1332	25	27	287	2859	1527	10.74	0.29	0.60	1.00	1.22080
1998	124	1408	16	28	332	7394	5986	11.35	0.18	0.46	0.81	1.19910
1999	121	60	13	13	282	60	0	0.50	0.06	0.16	0.27	0.49192
2000	118	108	13	15	280	120	12	0.92	0.08	0.22	0.38	0.64501
2001	128	302	26	29	285	1829	1527	2.36	0.20	0.38	0.59	0.80557
2002	124	205	18	29	283	249	44	1.65	0.10	0.24	0.40	0.67295
2003	122	178	19	21	282	194	16	1.46	0.16	0.34	0.53	0.75951
2004	125	418	20	25	278	753	335	3.34	0.14	0.31	0.51	0.80440
2005	127	4555	34	44	276	7516	2961	35.87	0.42	0.79	1.25	1.29198

Table 2. (Continued)

2006	129	453	22	23	276	455	2	3.51	0.20	0.42	0.68	0.95882
2007	123	1226	19	20	269	1226	1	9.96	0.17	0.40	0.68	1.02083
2008	129	377	32	33	284	378	1	2.92	0.29	0.52	0.78	0.91877
2009	129	1964	28	30	281	1971	7	15.22	0.41	0.79	1.28	1.35219
2010	129	7687	52	64	280	8345	658	59.59	1.33	2.25	3.53	1.89081
2011	126	1233	32	34	274	1244	11	9.79	0.44	0.82	1.30	1.30972
2012	127	154	18	19	279	157	3	1.21	0.10	0.24	0.40	0.68770

The historic average (Geometric Mean) is 1.49.

Code of Virginia

Title 28.2 - FISHERIES AND HABITAT OF THE TIDAL WATERS.

Chapter 4 - Use of Purse Nets for Taking Menhaden

§ 28.2-400. Application for license for resident or nonresident to catch menhaden.

A. Any nonresident owning or holding by lease or charter a purse net, seine, or vessel of any description used in the waters of this Commonwealth, or waters within the jurisdiction of this Commonwealth, to catch menhaden shall apply to the Commissioner for a license. A resident shall apply for a license to the Commissioner through the officer assigned to the district in which the fish processing factory is located, or in which the applicant resides or has its principal office.

B. If the applicant for a license is a corporation, the application shall be made by an officer or one of the directors of the corporation; if the applicant is a partnership, the application shall be made by a general partner; if the applicant is a joint venture or other firm, by a member thereof; and if the applicant is an individual, by such individual.

C. The application shall be in writing and sworn to by the applicant before a notary public or other person authorized to administer oaths and shall disclose:

1. The true name of the person, firm, or corporation owning the purse net, seine, or vessel, and all the related apparatus, and the true name of any persons, firms, or corporations holding the same by lease or charter, for which the license is desired; if it is a firm, the true names of all the members of the firm; and, if it is a corporation, whether it is a domestic or foreign corporation and the location of its principal office.

2. The name of each vessel for which such a license is desired.

3. The location of the factory which is to process the menhaden so taken and caught.

4. That, during the period of this license, the applicant will not violate any of the laws of the Commonwealth in regard to the taking and catching of fish.

(Code 1950, § 28-63; 1962, c. 406, § 28.1-61; 1966, c. 684; 1978, c. 347; 1992, c. 836.)

§ 28.2-401. Service of process for nonresident individuals, foreign corporations, general and limited partnerships.

A. A nonresident applicant who is an individual shall by written power of attorney appoint the Secretary of the Commonwealth his agent, upon whom shall be served all lawful process against or notice to such licensee, and who shall be authorized to enter an appearance in his behalf. The

APPENDIX I : 2012 VIRGINIA STATUTORY LAW

service shall only be made in duplicate upon the Secretary of the Commonwealth. The power of attorney shall be filed with the Secretary of the Commonwealth, and copies certified by him shall be received as evidence in all the courts of this Commonwealth. No judgment shall be entered against the licensee until after the process has been served for at least ten days.

Whenever lawful process against, or notice to, any such individual is served, the Secretary of the Commonwealth shall immediately mail a copy of such process or notice to such individual. The Secretary of the Commonwealth shall collect the fee prescribed in § 2.2-409 for the service of process or notice, which shall be paid by the plaintiff at the time of such service. The costs shall be recoverable by the plaintiff as a part of the taxable costs if he prevails in the suit or action.

A judgment, decree or order of the court entered or made against any such individual shall be as valid and binding on such individual as if he had been a resident and served with process or notice.

B. The service of process on (i) a nonresident firm or corporation shall be as provided in § 13.1-766, (ii) a general partnership shall be as provided in § 8.01-304 and (iii) a limited partnership shall be as provided in § 50-73.7.

(Code 1950, § 28-62; 1962, c. 406, § 28.1-60; 1976, c. 384; 1978, c. 347; 1992, c. 836.)

§ 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 gross tons fishing with purse net, \$3 per gross ton, but not more than \$150.
2. On each vessel over seventy gross tons fishing with purse net, \$5 per gross ton, provided the maximum license fee for such vessels shall not be more than \$600.

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.

(Code 1950, § 28-61; 1960, c. 517; 1962, c. 406, § 28.1-59; 1966, c. 695; 1974, c. 313; 1978, cc. 347, 358; 1979, c. 274; 1980, c. 605; 1982, c. 461; 1988, c. 710; 1992, c. 836; 2009, c. 9.)

§ 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, and upon

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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.

(Code 1950, §§ 28-64, 28-65; 1962, c. 406, § 28.1-62; 1992, c. 836.)

§ 28.2-404. Appeals from actions of Commissioner.

Any person aggrieved by any action of the Commissioner taken under the provisions of § 28.2-403 shall have the right to petition the circuit court of the county or city in which the factory where the fish were to be processed is located, or in which the applicant resides or has his principal office, for a review and correction of the ruling of the Commissioner as provided in Article 3 (§ 28.2-216 et seq.) of Chapter 2 of this subtitle.

(Code 1950, § 28-64; 1962, c. 406, § 28.1-63; 1992, c. 836.)

§ 28.2-405. Carrying patent tongs, etc., while fishing for menhaden; penalty.

It shall be unlawful for any captain or owner to carry or permit to be carried aboard his vessel, when fishing for menhaden, any scrape, dredge, or patent tongs.

A violation of this section is a Class 1 misdemeanor.

(Code 1950, § 28-49; 1962, c. 406, § 28.1-54; 1992, c. 836.)

§ 28.2-406.

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Reserved.

§ 28.2-407. Forfeiture of fishing gear.

Any net, pot, or other fishing device or gear used in violation of any of the provisions of this article shall be seized and forfeited to the Commonwealth. The forfeiture shall be enforced as provided in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2. The officer or other person seizing the property shall immediately give notice to the attorney for the Commonwealth.

(Code 1950, § 28-66; 1962, c. 406, § 28.1-64; 1981, c. 525; 1992, c. 836; 2012, cc. 283, 756.)

§ 28.2-408. Food fish not to be taken, bought, or sold; percentage allowable; penalty.

A. It is unlawful to take, catch or round up with purse net, for any purpose, food fish in an amount greater than one percent of the whole catch. If food fish represent more than one percent of the whole catch, the net shall be opened immediately and the food fish released while alive.

B. It is unlawful for any vessel licensed for the purpose of menhaden fishing to catch any food fish for the purpose of marketing; for any person to have in his possession food fish in an amount greater than one percent of the bulk for the purpose of manufacturing them into fertilizer, fish meal, or oil; or for any person to use in any manner any food fish, in an amount greater than one percent of the bulk for the purpose of fertilizing or improving the soil.

C. Any person violating any provision of this section is guilty of a Class 1 misdemeanor, and the license on such person's boat or net shall be revoked by court order for the remainder of the season.

(Code 1950, § 28-60; 1962, c. 406, § 28.1-58; 1964, c. 393; 1966, c. 696; 1992, c. 836.)

§ 28.2-409. Menhaden fishing prohibited in certain areas; exception.

A. Except as provided in subsection B of this section, it shall be unlawful to take or catch menhaden with purse nets in the following waters:

1. In the Piankatank River and its tributaries above and west of a line beginning at the northernmost, as measured from the low-water mark, edge of land known as Gwynn's Island at or near the mouth of Kibble Pond, thence in a northerly direction in a straight line to the easternmost edge of high land on Stingray Point;

2. In the Rappahannock River and its tributaries above and west of the R.O. Norris, Jr., Bridge;

3. In the York River and its tributaries above and west of a line extending northwardly from the western line of Goodwin Islands through the western line of Ellen Island to the northern bank of the York;

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4. In the East, North, Ware and Severn Rivers and their tributaries; and

5. In Cape Charles harbor eastward of a line from the western tip of the jetty on the southern side of the channel to the westernmost tip of the jetty on the northern side of the channel; in Kings Creek and Cherrystone inlet eastward of a line from the western end of the jetty on the north side of Cape Charles harbor to the southern end of Wescoat Point; in Mattawoman and Hungars Creek eastward of a line from the northwesternmost tip of land in Old Town Neck to Great Neck Point; in Nassawadox Creek eastward of a line from Shooting Point to Nassawadox Point; in Occohannock Creek eastward of a line from Sparrow Point to the southernmost tip of Powells Bluff; in Nandua Creek eastward of a line from the northernmost point of Milbys Point to the southwesternmost point of land in Hacks Neck, said line having a true bearing of 027°; in Pungoteague Creek eastward of a line from Bluff Point to the southeasternmost point of Finneys Island; in Onancock Creek eastward of a line from Thicket Point to Ware Point; in Chesconessex Creek eastward of a line from the northernmost point of Sound Beach to the northwesternmost point of Beach Island; in Deep Creek, Hunting Creek and Guilford Creek eastward of a line from the easternmost tip of Russel Island to Halfmoon Point to Peters Point to Simpson Point to Flood Point to Ebb Point to the mouth of Great Gut; in Messongo Creek eastward of a line from South Point to North Point in the Virginia portion of the Pocomoke River northeast of a line from Long Point to Virginia-Maryland spar buoy "A"; in the Great Wicomico River from the mouth of Whay's Creek to Sandy Point; in Dividing Creek, Prentice Creek and Jarvis Creek westward of a line from Hughlett Point to Jarvis Point; in Indian Creek and Henrys Creek westward of a line from the southeasternmost point of land on the eastern side of the mouth of Henrys Creek to the easternmost point of Fleets Bay Neck; in Dymers Creek westward of a line from the southernmost point of Grog Island to the easternmost point of Poplar Neck; in Tabbs Creek westward of the line across the mouth of the creek at its narrowest point; in Horn Harbor and Dyer Creek westward of a line from the southernmost tip of Beach Point to the northernmost point on the south side of the mouth of Dyer Creek; in Back Creek, Clarkston Creek, Chisman Creek, Poquoson River, Bennett Creek, and adjacent waters westward of a line from the southeasternmost point of Goodwin Islands to the westernmost point of Cow Island; in Back River westward of a line from Plumtree Point to the westernmost point of Northend Point; in Little Creek southward of a line from the north point of the west jetty to the north point of the east jetty; in Lynnhaven Bay southward of the Lynnhaven Inlet Bridge on U. S. Route 60.

B. During the period from the first Monday in May through the third Friday in November, vessels under seventy gross tons which are licensed in accordance with subdivision 1 of § 28.2-402 are authorized to take or catch menhaden in the following waters: in the Rappahannock River eastward and southward from a line extending from Towles Point to Burnham Wharf and from Orchard Point to Towles Point; in Dividing Creek eastward from a line extending from Jarvis Point to Ditchley Pump House; in Indian Creek eastward from a line directly across the creek at Rappahannock Oyster Company; in Dymers Creek eastward from a line directly across the creek at the eastern end of Standard Products dock.

(Code 1950, § 28-61; 1960, c. 517; 1962, c. 406, § 28.1-59; 1966, c. 695; 1974, c. 313; 1978, cc. 347, 358; 1979, c. 274; 1980, c. 605; 1982, c. 461; 1988, c. 710; 1992, c. 836.)

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§ 28.2-410. Closed season for menhaden fishing; forbidden nets; penalty.

Except as provided in § 28.2-409, it is unlawful for any person to take or catch with a purse net in the waters of this Commonwealth, or waters within its jurisdiction, menhaden between the Saturday following the third Friday in November and the Sunday preceding the first Monday in May. However, in the waters east of the Chesapeake Bay Bridge Tunnel within the three-mile limit of the Virginia shoreline such prohibition shall be between the Friday before Christmas and the Sunday preceding the first Monday in May. It is also unlawful for any person to use any purse net or other net having a stretched mesh of less than 1 3/4 inches. Any person violating any of the provisions of this section is guilty of a Class 1 misdemeanor.

(Code 1950, §§ 28-64, 28-67; 1962, c. 406, § 28.1-65; 1966, c. 684; 1972, c. 424; 1976, c. 384; 1978, c. 347; 1982, c. 461; 1988, c. 710; 1992, c. 836.)

§ 28.2-411. Season for vessels of less than seventy gross tons; penalty.

Except from the first Monday in March to, but not including, the first Monday in May, it is unlawful for vessels with a gross weight of less than seventy tons to use purse nets to take or catch menhaden for purposes other than use as fish meal or oil.

A violation of this section is a Class 1 misdemeanor.

(1982, c. 461, § 28.1-65.1; 1988, c. 710; 1992, c. 836.)

Chapter 10 - Compacts and Joint Laws with Other States

§ 28.2-1000.1. Authority of Governor to implement menhaden management measures.

A. The Governor may by proclamation implement any menhaden fisheries management measures, as defined in 16 U.S.C. § 5102(1)(B), whenever the Atlantic States Marine Fisheries Commission requires the Commonwealth to adopt such measures, under the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. § 5101 et seq.), by a date certain and the General Assembly is neither in session nor is scheduled to be in session to adopt such measures by statute on or before such date. However, the Governor shall not issue a proclamation to implement any measure that has been adopted by the Atlantic States Marine Fisheries Commission within 30 days of the start of the menhaden fishing season, as specified in § 28.2-410.

B. Prior to issuing such proclamation, the Governor, in consultation with the Secretary of Natural Resources and the Commissioner, shall, in writing:

1. Determine whether the measures are necessary for the conservation of the Atlantic menhaden fishery, and if so;

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2. Determine whether the measures are in accordance with scientific, biological, economic, and social data and information.

If a determination is made that the conditions of subdivisions B 1 and B 2 have not been satisfied, then the Governor shall not issue a proclamation.

C. Except as provided in subsection D, the proclamation shall remain in effect unless and until superseded by subsequent law. Any measures implemented by proclamation pursuant to this section shall be subject to legislative review under § 2.2-4014, as if these measures were final regulations.

D. No management measures implemented by proclamation shall remain in effect beyond the scheduled date of termination of the regular session of the General Assembly following their implementation.

(2005, c. 123.)

§ 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 the purse seine fishery for Atlantic menhaden meets the annual menhaden harvest cap in the Chesapeake Bay, the Secretary of Natural Resources shall promptly publish a notice in the Virginia Register announcing the date of closure. The Secretary of Natural Resources 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 reports submitted to the National Marine Fisheries Service 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 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 metric tons in any one year.

D. If the harvest of the purse seine fishery for Atlantic menhaden does not exceed 109,020 metric tons in any year to which the harvest cap applies, then the difference between the actual harvest

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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.

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.

(2007, c. 41; 2010, cc. 178, 728.)

APPENDIX II : 2012 VIRGINIA REGULATORY CODE

**PERTAINING TO COMMERCIAL FISHING AND MANDATORY HARVEST REPORTING
CHAPTER 4VAC20-610-10 ET SEQ.**

4VAC20-610-60. 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.

**PROCEDURE FOR MEASURING THE STRETCHED MESH OF MENHADEN NETS
REGULATION 4 VAC 20-190-10 ET SEQ.**

PREAMBLE

This chapter establishes the procedure for measuring the stretched mesh of menhaden nets.

This chapter is promulgated pursuant to authority contained in §28.2-201 of the Code of Virginia. This chapter amends and re-adopts previous Chapter 450-01-0025, which was adopted December 15, 1980 and was effective February 2, 1981. The effective date of this chapter is August 1, 1995. (August 3, 1995-register effdate)

4 VAC 20-190-10. PURPOSE.

The purpose of this chapter is to set forth the procedure that will be used for determining compliance with §28.2-410 of the Code of Virginia. This section sets forth in part: "It is also unlawful for any person to use any purse net or other net having a stretched mesh of less than 1 3/4 inches." Since the law does not specify how the stretched mesh (mesh size) will be determined, this chapter shall serve to clarify the term stretched mesh and establish a technique for determining the size of the stretched mesh.

4 VAC 20-190-20. DEFINITIONS.

The following words and terms, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Bunt" means the section of the net where the fish are concentrated during pumping operations.

"Cork line" means the line containing floats or corks attached to the top of the net as it hangs in the water.

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"Ring line" means the line passed through the rings attached to the bottom of the net as it hangs in the water.

"Selvedge" means the reinforced edge of the net required for mounting of the net on the ring line and cork line.

"Stretched mesh" or "mesh size" means the inside distance between two knots or joints on opposite sides of the mesh.

4 VAC 20-190-30. PROCEDURE.

- A. The nets shall be wet when measured.
- B. A measurement shall consist of the inside stretched distance of one mesh.
- C. Fifty individual measurements shall be taken from the net in a location other than the bunt, at least 10 meshes below the selvedge, and from meshes that are not part of a seam.
- D. The measuring device shall be inserted into the mesh in a vertical direction as the net is oriented between the ring line and cork line.
- E. A force of 8.8 pounds (4 kilograms) shall be applied in taking the measurements.

4 VAC 20-190-40. COMPLIANCE.

The stretched mesh will be determined by computing the average of the 50 measurements which will yield the average stretched mesh measurement and this average shall be equal to or greater than 1 $\frac{3}{4}$ inches (44.45 millimeters).

4 VAC 20-190-50. PENALTY.

As set forth in §28.2-410 of the Code of Virginia, any person using any purse seine or other net having a stretched mesh of less than 1 $\frac{3}{4}$ inches to catch menhaden shall be guilty of a Class 1 misdemeanor.

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.
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

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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.

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.

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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 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.

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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.

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.

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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

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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.~~

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.

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- 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.**

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For 2013 the regulatory code, as provided in Appendix 2, is still in effect. In addition, the following regulatory code has been added:

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 and 28.2-204.1 and §§ 28.2-400.1 through 28.2-405 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

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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.

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.

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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) by cast net: 1,930 pounds;
- 2) by dredge: 3,069 pounds;
- 3) by fyke net: 2,115 pounds;
- 4) by gill net: 1,521,108 pounds;
- 5) by hook and line: 234 pounds;
- 6) by pot gear: 2,064 pounds;
- 7) by pound net: 3,412,019 pounds;
- 8) by seines: 20,103 pounds;
- 9) by trawl: 58,847 pounds; and,
- 10) by trot line: 39 pounds

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.

4VAC20-1270-60. Reporting requirements by menhaden fishery sector.

A. Any licensee of any purse seine vessel that harvests menhaden shall submit, to the Commission, the Captain's Daily Fishing Report that provides preliminary estimates of harvest and is produced by the National Marine Fisheries Service, on each non-weekend or non-holiday day that either sector is open for harvest. Pursuant to § 28.204 of the Code of Virginia 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. Once ninety-seven percent of either purse seine sector's quota is projected and announced to have been met, any

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licensee of that purse seine sector shall be required to 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, at a minimum, to report his previous 10 days of landings to the Commission's Interactive Voice Recording System, and every 10 days after the date of the announcement. 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.

NORTH CAROLINA REPORT FOR THE ATLANTIC MENHADEN PLAN REVIEW TEAM

April 1, 2013

Introduction

The North Carolina menhaden fishery consisted of several seafood dealers that recorded menhaden bait landings for 2012. A total of 524,131 lbs. of menhaden was landed in North Carolina in 2012. Menhaden landings are down from 3,529,967 lbs. in 2011 because of the inability of the fly net fishery and the flounder trawl fishery to land in North Carolina because of excessive shoaling in Oregon Inlet. There were no changes in either the independent monitoring or the collection of commercial fisheries landing data by the North Carolina Division of Marine Fisheries (DMF).

Proclamations M-25-12 issued May 21, 2012, M-29-2012 issued June 22, 2012, M-34-2012 issued August 24, 2012, and M-55-2012 issued November 14, 2012 modified by suspension, the North Carolina Fisheries Rule 15A MCAC 03J .0105 (b)(1)(A)(b)(2)(B), the words “the Atlantic Ocean within one mile of shore and” in (b)(5), and (c). Rule 15A NCAC 03R .0111 was also suspended through these proclamations. The suspension of these rules made it unlawful to use purse seine vessels deployed by a mothership for the harvest of menhaden within three (3) nautical miles of the Atlantic Ocean shoreline along the North Carolina coastline from Virginia to South Carolina. The intent of these proclamations was to address user conflict and bycatch issues in the Atlantic Ocean purse seine fishery. The North Carolina General Assembly passed Session Law 2012-190 that permanently eliminates purse seine vessels deployed by a mothership for the harvest of menhaden within three miles of the ocean shoreline along from Virginia to South Carolina beginning January 1, 2013.

Request for *de minimis*

North Carolina does not request *de minimis*.

2012 Fishery and Management Program

Activity and Results of Fishery Dependent Monitoring

There are several fishery dependent monitoring programs that sample Atlantic menhaden (DMF program numbers shown in parentheses). These programs are the sink net fishery (434), the winter trawl fishery (433), the estuarine gill net fishery (461) and the sciaenid pound net fishery (431). However, no menhaden data have been analyzed. The DMF monitors the commercial landings of Atlantic menhaden through the commercial statistics trip ticket program. There were 524,131lbs. of menhaden landed in North Carolina for 2012. These landings are from the bait fishery and are reported below (Table 1).

Table 1. NC Bait Landings of Menhaden for 2012

Month	Pounds
January	24,417
February	50,191
March	110,942
April	91,880
May	42,285
June	45,391
July	24,192
August	22,361
September	23,245
October	44,508
November	42,293
December	2,426
Total	524,131

Activity and Results of Fishery Independent Monitoring

There are several independent monitoring programs that are conducted by the DMF. These are the estuarine trawl survey, conducted in May and June at 105 fixed stations statewide; the Pamlico Sound trawl survey conducted in June and September at 50-52 random grid locations in Pamlico Sound and Pamlico and Neuse rivers; the striped bass nursery trawl survey in Albemarle Sound, conducted in July through October with ~19 fixed stations and the Alosid seine survey in Albemarle Sound, which samples in June through October with ~31 fixed stations.

The Estuarine Trawl Survey

The estuarine trawl survey is conducted during May and June in primary nursery areas throughout the state. One two-seam otter trawl with a 3.2 m headrope, 6.4 mm bar mesh wings and body, and a 3.2 mm bar mesh codend, with a 1.8 m bridle and 0.46 m by 0.76 m doors is towed for one minute by a small outboard boat at approximately 69 m per minute. Boat towing speeds are calibrated prior to each sampling season. All species are identified and counted. All economically important species including menhaden are counted and a random subsample of 30-60 individuals of each size group is measured to the nearest mm. The remaining species are identified and counted. The bottom type, depth, bottom and surface temperature, salinity and dissolved oxygen are recorded at each station. The presence of submerged aquatic vegetation is also noted and the species of grasses identified. Results from 2002 to 2011 are presented in Table 2. Analysis results may differ from previous compliance reports because size ranges defining juveniles were changed from <70 mm to <90 mm for samples taken during the month of May and from <100 mm to <110 mm for the month of June.

Table 2. Atlantic Menhaden Catch Per Unit Effort, Standard Error, Geometric Mean and Geometric Mean Standard Error from NC Estuarine Trawl Survey (2003-2012)

YEAR	N	CPUE	SE	GEO MEAN	GEO SE
2003	208	14.6801	3.9595	2.480	0.40676
2004	208	17.2115	3.4862	2.381	0.41202
2005	208	45.6058	20.5188	3.751	0.41763
2006	208	2.6635	0.6951	0.650	0.39264
2007	208	11.9567	5.9460	1.079	0.40121
2008	208	7.9087	1.3917	1.551	0.40415
2009	208	6.7067	2.1191	1.003	0.40000
2010	208	24.0817	7.8586	2.372	0.41232
2011	208	12.3462	2.1979	1.928	0.40970
2012	208	1.5288	0.4074	0.382	0.05424

Pamlico Sound Survey

The Pamlico Sound survey is conducted aboard the R/V Carolina Coast, a 13.4 m double-rigged trawler, during the first three weeks in June and September. Two 9.1 meter mongoose trawls with 60.9 cm by 71.1 cm doors, 22.2 mm bar mesh body, and 19.1 mm bar mesh cod ends are towed for 20 minutes (2.5 knots) at 50 to 53 randomly selected one minute grids. There are seven strata based on depth located in the Neuse, Pungo, and Pamlico rivers, Pamlico Sound west (shallow (<3.7 m) and deep (≥ 3.7 m)) and Pamlico Sound east (shallow and deep). Each stratum has no less than three stations. Menhaden captured in this trawl survey are counted, weighed, and measured. Results from 2002 to 2011 are presented in Table 3. Analysis results may differ from previous compliance reports because size ranges defining juveniles were changed from <110 mm to <150 mm for the month of September.

Table 3. Atlantic Menhaden Catch Per Unit Effort, Standard Error, Geometric Mean and Geometric Mean Standard Error from NC Pamlico Sound Trawl Survey (2003-2012).

YEAR	N	CPUE	SE	GEO MEAN	GEO SE
2003	100	6.13	4.28	0.46	0.39063
2004	101	9.96	3.37	0.59	0.39852
2005	98	1.70	0.72	0.30	0.39852
2006	102	0.32	0.12	0.11	0.37908
2007	99	1.02	0.57	0.10	0.38289
2008	102	35.43	22.24	0.43	0.39852
2009	102	2.74	1.50	0.24	0.39455
2010	102	25.02	8.89	0.89	0.41066
2011	102	0.47	0.21	0.15	0.38289
2012	102	3.46	1.59	0.27	0.39455

Striped Bass Nursery Trawl Survey (Albemarle Sound)

Bi-weekly trawl samples are conducted at seven established locations in the western Albemarle Sound area and 12 established locations in the central Albemarle Sound area from mid-July through October. These stations are sampled once every two weeks with a 5.5 m semi-balloon trawl with a body mesh size 19.0 mm bar mesh, and a 6.4 bar mm mesh tail bag towed for 15 minutes. Additional historical stations were added in 2004 in order to provide additional data for other species. Samples were sorted by species, counted and measured. Water temperature, salinity, depth and bottom type were noted for each sample. Results from 2002 to 2011 are presented in Table 4. Analysis results may differ from previous compliance reports because size ranges defining juveniles were changed to include juveniles <90mm in May, <110 mm in June, <125 mm in July and August, and <150 mm in September and October.

Table 4. Atlantic Menhaden Catch Per Unit Effort, Standard Error, Geometric Mean and Geometric Mean Standard Error from Striped Bass Nursery Trawl Survey (2003-2012).

YEAR	N	CPUE	SE	GEO MEAN	GEO SE
2003	140	1.03571	0.36333	0.28812	0.38921
2004	377	2.50698	0.85169	0.30168	0.38288
2005	304	6.67105	1.36297	0.81076	0.39486
2006	359	1.27019	0.55440	0.16663	0.37942
2007	360	0.57222	0.21899	0.17675	0.37729
2008	359	7.89136	4.51306	0.42184	0.38645
2009	360	3.49167	2.23995	0.40505	0.38306
2010	359	0.48189	0.14780	0.15083	0.37714
2011	360	4.05556	0.87801	0.55334	0.38828
2012	360	1.28056	0.45421	0.19000	0.38058

Anadromous Seine Survey (Albemarle Sound)

Eleven seine stations are sampled monthly using a 18.3 m bag seine with a 6.35 mm bar mesh in the body and 3.18 mm bar mesh in the bag during June - October, for juvenile alosids in Albemarle Sound. During September, an additional 13 stations are sampled throughout the Albemarle Sound area to determine distribution and annual variations in the nursery area. Additional historical stations were added in 2004 in order to provide additional data for other species.

Samples are sorted to species and 30 randomly selected individuals of each alosid species present are measured (mm, FL). If less than 30 are present, then all are measured. Results from 2002 to 2011 are presented in Table 5. Analysis results may differ from previous compliance reports because size ranges defining juveniles were changed to include juveniles <90mm in May, <110 mm in June, <125 mm in July and August, and <150 mm in September and October.

Table 5. Atlantic Menhaden Catch Per Unit Effort, Standard Error, Geometric Mean and Geometric Mean Standard Error from Anadromous Seine Survey (2003-2012)

YEAR	N	CPUE	SE	GEO MEAN	GEO SE
2003	133	21.3083	10.8796	0.53133	0.41276
2004	202	8.5000	5.0239	0.24618	0.39337
2005	163	19.8957	10.7151	0.51239	0.40586
2006	186	0.0376	0.0233	0.02003	0.37185
2007	185	24.4649	12.8644	0.36986	0.40238
2008	541	5.4658	3.4626	0.17275	0.37955
2009	301	9.8140	6.2042	0.24656	0.38694
2010	301	9.2126	6.1672	0.11476	0.38324
2011	291	66.5828	57.4209	0.32758	0.39264
2012	301	2.2990	1.4527	0.14381	0.38143

Regulations in Effect in 2012

15A NCAC 03J .0105 PURSE SEINES

(a) It is unlawful to use purse seines except for the taking of menhaden, Atlantic thread herring, gizzard shad or pinfish, as further restricted by (b) and (c) of this rule.

(b) It is unlawful to take menhaden, Atlantic thread herring, gizzard shad or pinfish with a purse seine in violation of any of the following limitations:

- (1) In the Atlantic Ocean during the periods and within an area described:
 - (A) In 15A NCAC 03R .0111, and
 - (B) By Session Law 2007-320.
- (2) Except as provided in Subparagraph (5), between January 16 and May 14 in:
 - (A) Internal waters, and
 - (B) Atlantic Ocean within one mile of shore.
- (3) Between January 16 and March 31 in Core Sound.
- (4) In internal waters except in:
 - (A) Pamlico Sound,
 - (B) Pamlico River east of a line from Wades Point to Intracoastal Waterway Marker No. 1 at the mouth of Goose Creek,
 - (C) Neuse River east of a line from Wilkinson Point to Cherry Point,
 - (D) Adams Creek,
 - (E) Core Sound and its tributaries,
 - (F) Back Sound, the Straits, and North river,
 - (G) Newport River,
 - (H) North River, and
 - (I) Bogue Sound.
- (5) The Fisheries Director may, by proclamation, open the Atlantic Ocean within one mile of shore and the internal waters specified in Subparagraph (4) of this Rule between April 1 and May 14, and may impose any or all of the following restrictions:
 - (A) Specify means and methods by area which may be employed in the taking;
 - (B) Limit the quantity; and
 - (C) Require submission of statistical and biological data.

(c) Menhaden, Atlantic thread herring, gizzard shad or pinfish may be taken at any time with a purse seine from beyond one mile of shore in the Atlantic Ocean and transported to port except as specified by Session Law 2007-320 and except as prohibited below:

- (1) It is unlawful to take menhaden, Atlantic thread herring, gizzard shad or pinfish by use of a purse seine between sunset on any Friday and sunrise of the following Monday from the Friday of the Memorial Day weekend through sunset on Labor Day each year.
- (2) It is unlawful to take menhaden, Atlantic thread herring, gizzard shad or pinfish by use of a purse seine between the hours of sunrise and sunset on the following holidays:
 - (A) Memorial Day;
 - (B) Fourth of July, when the Fourth of July falls on any calendar day Friday through Monday; and
 - (C) Labor Day.
- (d) It is unlawful for the responsible party to fail to carry out the following requirements when a fish spill from a purse seine occurs:
 - (1) Immediately notify the office of the Fisheries Director of the North Carolina Division of Marine Fisheries of such spill; and
 - (2) Report to the Fisheries Director of the North Carolina Division of Marine Fisheries in writing within 30 days of the completion of spill clean-up on the circumstances associated with each spill and costs of its clean-up.

*History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008.*

15A NCAC 03M .0102 UNMARKETABLE FINFISH

- (a) It is unlawful to land finfish if in violation of minimum size or possession limits established by rule or proclamation.
- (b) It is unlawful to land finfish taken in connection with commercial fishing operations which are unmarketable as individual finfish by reason of size, except a quantity not exceeding 5,000 pounds per vessel per day may be sold to a dealer that is licensed under G.S. 113-169.3 (f) (6), (7) and (8).
- (c) Menhaden, Atlantic thread herring, gizzard shad, and pinfish are exempt from this Rule.

*History Note: Authority G.S. 113-134; 113-185; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008.*

PROCLAMATION**RE: PURSE SEINES: ATLANTIC OCEAN**

Dr. Louis B. Daniel III, Director, Division of Marine Fisheries, hereby announces that effective at **12:01 A.M., Thursday, May 24, 2012** the following restrictions will apply to the use of purse seines in the Atlantic Ocean waters of North Carolina:

I. TEMPORARY SUSPENSION

North Carolina Marine Fisheries Rules 15A NCAC 03J .0105 is modified by the suspension of (b)(1) (A), (b)(2)(B), the words "the Atlantic Ocean within one mile of shore and" in (b)(5), and (c). Rule 15A NCAC 03R .0111 is also suspended.

II. HARVEST RESTRICTIONS**A. NORTH CAROLINA-VIRGINIA BORDER TO BRUNSWICK COUNTY**

It is unlawful to use **purse seine vessels deployed by a mothership** for the harvest of menhaden within three (3) nautical miles of the Atlantic Ocean shoreline in the area south of a line at the North Carolina-Virginia border and north and east of a line beginning at a point onshore at the border between Brunswick County and New Hanover County at 33° 55.8833'N - 77° 56.2000'W; then running southeasterly three (3) nautical miles to a point offshore at 33° 54.5735'N - 77° 52.7184'W.

B. BRUNSWICK COUNTY TO NORTH CAROLINA-SOUTH CAROLINA BORDER

It is unlawful to use **purse seine vessels deployed by a mothership** for the harvest of menhaden within three (3) nautical miles of the Atlantic Ocean shoreline east of a line beginning at a point onshore at the border between North Carolina and South Carolina at 33° 51.0667'N – 78° 32.5833'W; running southeasterly to a point offshore at 33° 48.8342'N – 78° 29.8494'W; and south of a line beginning at a point onshore at the border between Brunswick County and New Hanover County at 33° 55.8833'N - 77° 56.2000'W; then running southeasterly three (3) nautical miles to a point offshore at 33° 54.5735'N - 77° 52.7184'W **from November 1 through April 30.**

III. GENERAL INFORMATION

- A. This proclamation is issued under the authority of N.C.G.S. 113-170.4; 170.5; 113-182; 113-221.1; 143B-289.52; and N.C. Marine Fisheries Rules 15A NCAC 03H .0103; 03I .0102, and 03J .0103.
- B. It is unlawful to violate the provisions of any proclamation issued by the Director under his delegated authority pursuant to N.C. Marine Fisheries Rule 15A NCAC 03H .0103.
- C. The intent of this proclamation is to address user conflict and bycatch issues in the Atlantic Ocean purse seine fishery. **Menhaden harvest in the ocean waters off Brunswick County is regulated by Session Law 2007-320. It states in part that "It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from May 1 through October 31 of each year within three nautical miles of the Atlantic shoreline"** of Brunswick County.
- D. The waters of the Atlantic Ocean, as applicable to this proclamation are defined as waters seaward of the high water mark on the Atlantic Ocean shoreline and COLREGS Demarcation Lines as indicated on National Ocean Service navigation charts for the areas to which this proclamation applies.
- E. Purse seines may be used at any time beyond three miles offshore.
- F. This proclamation supersedes Proclamation M-41-2011, dated December 20, 2011.

BY: _____
 Louis B. Daniel III, Director
 DIVISION OF MARINE FISHERIES

May 21, 2012
 11:30 A.M.
 M-25-2012
 /sab

PROCLAMATION

RE: PURSE SEINES: ATLANTIC OCEAN

Dr. Louis B. Daniel III, Director, Division of Marine Fisheries, hereby announces that effective at **12:01 A.M., Monday, June 25, 2012** the following restrictions will apply to the use of purse seines in the Atlantic Ocean waters of North Carolina:

I. TEMPORARY SUSPENSION

North Carolina Marine Fisheries Rules 15A NCAC 03J .0105 is modified by the suspension of (b)(1) (A), (b)(2)(B), the words "the Atlantic Ocean within one mile of shore and" in (b)(5), and (c). Rule 15A NCAC 03R .0111 is also suspended.

II. HARVEST RESTRICTIONS

A. NORTH CAROLINA-VIRGINIA BORDER TO BRUNSWICK COUNTY

It is unlawful to use **purse seine vessels deployed by a mothership** for the harvest of menhaden within three (3) nautical miles of the Atlantic Ocean shoreline in the area south of a line at the North Carolina-Virginia border and north and east of a line beginning at a point onshore at the border between Brunswick County and New Hanover County at 33° 55.8833'N - 77° 56.2000'W; then running southeasterly three (3) nautical miles to a point offshore at 33° 54.5735'N - 77° 52.7184'W.

B. BRUNSWICK COUNTY TO NORTH CAROLINA-SOUTH CAROLINA BORDER

It is unlawful to use **purse seine vessels deployed by a mothership** for the harvest of menhaden within three (3) nautical miles of the Atlantic Ocean shoreline east of a line beginning at a point onshore at the border between North Carolina and South Carolina at 33° 51.0667'N – 78° 32.5833'W; running southeasterly to a point offshore at 33° 48.8342'N – 78° 29.8494'W; and south of a line beginning at a point onshore at the border between Brunswick County and New Hanover County at 33° 55.8833'N - 77° 56.2000'W; then running southeasterly three (3) nautical miles to a point offshore at 33° 54.5735'N - 77° 52.7184'W **from November 1 through April 30.**

III. GENERAL INFORMATION

- A. This proclamation is issued under the authority of N.C.G.S. 113-170.4; 170.5; 113-182; 113-221.1; 143B-289.52; and N.C. Marine Fisheries Rules 15A NCAC 03H .0103; 03I .0102, and 03J .0103.
- B. It is unlawful to violate the provisions of any proclamation issued by the Director under his delegated authority pursuant to N.C. Marine Fisheries Rule 15A NCAC 03H .0103.
- C. The intent of this proclamation is to address user conflict and bycatch issues in the Atlantic Ocean purse seine fishery. **Menhaden harvest in the ocean waters off Brunswick County is regulated by Session Law 2007-320. It states in part that "It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from May 1 through October 31 of each year within three nautical miles of the Atlantic shoreline"** of Brunswick County.
- D. The waters of the Atlantic Ocean, as applicable to this proclamation are defined as waters seaward of the high water mark on the Atlantic Ocean shoreline and COLREGS Demarcation Lines as indicated on National Ocean Service navigation charts for the areas to which this proclamation applies.
- E. Purse seines may be used at any time beyond three miles offshore.
- F. This proclamation supersedes Proclamation M-25-2012, dated May 21, 2012.

BY: _____
Louis B. Daniel III, Director
DIVISION OF MARINE FISHERIES

June 22, 2012
10:30 A.M.
M-29-2012
/sab

PROCLAMATION**RE: PURSE SEINES: ATLANTIC OCEAN**

Dr. Louis B. Daniel III, Director, Division of Marine Fisheries, hereby announces that effective at **12:00 P.M., Sunday, August 26, 2012** the following restrictions will apply to the use of purse seines in the Atlantic Ocean waters of North Carolina:

I. TEMPORARY SUSPENSION

North Carolina Marine Fisheries Rules 15A NCAC 03J .0105 is modified by the suspension of (b)(1) (A), (b)(2)(B), the words "the Atlantic Ocean within one mile of shore and" in (b)(5), and (c). Rule 15A NCAC 03R .0111 is also suspended.

II. HARVEST RESTRICTIONS**A. NORTH CAROLINA-VIRGINIA BORDER TO BRUNSWICK COUNTY**

It is unlawful to use **purse seine vessels deployed by a mothership** for the harvest of menhaden within three (3) nautical miles of the Atlantic Ocean shoreline in the area south of a line at the North Carolina-Virginia border and north and east of a line beginning at a point onshore at the border between Brunswick County and New Hanover County at 33° 55.8833'N - 77° 56.2000'W; then running southeasterly three (3) nautical miles to a point offshore at 33° 54.5735'N - 77° 52.7184'W.

B. BRUNSWICK COUNTY TO NORTH CAROLINA-SOUTH CAROLINA BORDER

It is unlawful to use **purse seine vessels deployed by a mothership** for the harvest of menhaden within three (3) nautical miles of the Atlantic Ocean shoreline east of a line beginning at a point onshore at the border between North Carolina and South Carolina at 33° 51.0667'N – 78° 32.5833'W; running southeasterly to a point offshore at 33° 48.8342'N – 78° 29.8494'W; and south of a line beginning at a point onshore at the border between Brunswick County and New Hanover County at 33° 55.8833'N - 77° 56.2000'W; then running southeasterly three (3) nautical miles to a point offshore at 33° 54.5735'N - 77° 52.7184'W **from November 1 through April 30.**

III. GENERAL INFORMATION

- A. This proclamation is issued under the authority of N.C.G.S. 113-170.4; 170.5; 113-182; 113-221.1; 143B-289.52; and N.C. Marine Fisheries Rules 15A NCAC 03H .0103; 03I .0102, and 03J .0103.
- B. It is unlawful to violate the provisions of any proclamation issued by the Director under his delegated authority pursuant to N.C. Marine Fisheries Rule 15A NCAC 03H .0103.
- C. The intent of this proclamation is to address user conflict and bycatch issues in the Atlantic Ocean purse seine fishery. **Menhaden harvest in the ocean waters off Brunswick County is regulated by Session Law 2007-320. It states in part that "It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from May 1 through October 31 of each year within three nautical miles of the Atlantic shoreline"** of Brunswick County.
- D. The waters of the Atlantic Ocean, as applicable to this proclamation are defined as waters seaward of the high water mark on the Atlantic Ocean shoreline and COLREGS Demarcation Lines as indicated on National Ocean Service navigation charts for the areas to which this proclamation applies.
- E. Purse seines may be used at any time beyond three miles offshore.
- F. This proclamation supersedes Proclamation M-29-2012, dated June 22, 2012.

BY: _____
Louis B. Daniel III, Director
DIVISION OF MARINE FISHERIES

August 24, 2012
12:00 P.M.
M-34-2012
/sab

PROCLAMATION**RE: PURSE SEINES: ATLANTIC OCEAN**

Dr. Louis B. Daniel III, Director, Division of Marine Fisheries, hereby announces that effective at **12:00 P.M., Thursday, November 15, 2012** the following restrictions will apply to the use of purse seines in the Atlantic Ocean waters of North Carolina:

I. TEMPORARY SUSPENSION

North Carolina Marine Fisheries Rules 15A NCAC 03J .0105 is modified by the suspension of (b)(1) (A), (b)(2)(B), the words "the Atlantic Ocean within one mile of shore and" in (b)(5), and (c). Rule 15A NCAC 03R .0111 is also suspended.

II. HARVEST RESTRICTIONS**A. NORTH CAROLINA-VIRGINIA BORDER TO BRUNSWICK COUNTY**

It is unlawful to use **purse seine vessels deployed by a mothership** for the harvest of menhaden within three (3) nautical miles of the Atlantic Ocean shoreline in the area south of a line at the North Carolina-Virginia border and north and east of a line beginning at a point onshore at the border between Brunswick County and New Hanover County at 33° 55.8833'N - 77° 56.2000'W; then running southeasterly three (3) nautical miles to a point offshore at 33° 54.5735'N - 77° 52.7184'W.

B. BRUNSWICK COUNTY TO NORTH CAROLINA-SOUTH CAROLINA BORDER

It is unlawful to use **purse seine vessels deployed by a mothership** for the harvest of menhaden within three (3) nautical miles of the Atlantic Ocean shoreline east of a line beginning at a point onshore at the border between North Carolina and South Carolina at 33° 51.0667'N – 78° 32.5833'W; running southeasterly to a point offshore at 33° 48.8342'N – 78° 29.8494'W; and south of a line beginning at a point onshore at the border between Brunswick County and New Hanover County at 33° 55.8833'N - 77° 56.2000'W; then running southeasterly three (3) nautical miles to a point offshore at 33° 54.5735'N - 77° 52.7184'W **from November 1 through April 30.**

III. GENERAL INFORMATION

- A. This proclamation is issued under the authority of N.C.G.S. 113-170.4; 170.5; 113-182; 113-221.1; 143B-289.52; and N.C. Marine Fisheries Rules 15A NCAC 03H .0103; 03I .0102, and 03J .0103.
- B. It is unlawful to violate the provisions of any proclamation issued by the Director under his delegated authority pursuant to N.C. Marine Fisheries Rule 15A NCAC 03H .0103.
- C. The intent of this proclamation is to address user conflict and bycatch issues in the Atlantic Ocean purse seine fishery. **Menhaden harvest in the ocean waters off Brunswick County is regulated by Session Law 2007-320. It states in part that "It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from May 1 through October 31 of each year within three nautical miles of the Atlantic shoreline"** of Brunswick County.
- D. The waters of the Atlantic Ocean, as applicable to this proclamation are defined as waters seaward of the high water mark on the Atlantic Ocean shoreline and COLREGS Demarcation Lines as indicated on National Ocean Service navigation charts for the areas to which this proclamation applies.
- E. Purse seines may be used at any time beyond three miles offshore.
- F. This proclamation supersedes Proclamation M-34-2012, dated August 24, 2012.

BY: _____
Louis B. Daniel III, Director
DIVISION OF MARINE FISHERIES

November 13, 2012
9:40 A.M.
M-55-2012
/sab

Table 7. Commercial Landings 2003-2012

Year	Landings
2003	48,936,502
2004	50,577,983
2005	13,386,245
2006	962,648
2007	1,134,167
2008	645,231
2009	2,124,733
2010	1,299,130
2011	3,529,967
2012	524,131

Recreational and non-harvest losses for 2012

Data are not available.

Planned Management Programs for 2013

North Carolina Division of Marine Fisheries is preparing for implementation of Amendment 2 of the ASMFC Interstate FMP for Atlantic Menhaden.

Commercial Fishery Management Measures

Proclamation authority of the director is the mechanism available to close the bait fishery within 48 hours of issuance of any proclamation once NC is close to reaching its TAC of 833.2. MT. After NC reaches its TAC, the fishery will be limited to a 6,000 lb. bycatch limit per trip per day.

Monitoring Requirements

Landings will be monitored through the DMF trip ticket program. This program is a dealer based reporting system that has been in place since 1994. Dealers are required to submit monthly trip tickets to the Division. Biological sampling of Atlantic menhaden in the gill net, pound net and trawl fisheries will be monitored with lengths and ages collected from these gears.

De minimis

North Carolina is not eligible for *de minimis* based on 2010 and 2011 landings. However with low landings being reported for 2012, North Carolina will consider a *de minimis* request should 2013 landings be similar to 2012.

Planned Specific Requirements

The North Carolina General Assembly during its 2011 session ratified a bill on June 28, 2012 and was signed into law by Governor Beverly Purdue on July 16, 2012 that makes it unlawful to take menhaden or Atlantic thread herring with a purse seine net deployed by a mother ship and one or more runner boats in coastal fishing waters. This law went

into effect January 1, 2013 and therefore eliminates the reduction fishery and any bait fishery that fishes purse seines with one or more runner boats from a mothership in estuarine and coastal fishing waters out to three miles.

Session Law 2007-320 that made it unlawful to take menhaden or Atlantic thread herring with a purse seine net within three nautical miles of the shoreline of Brunswick County from May 1 through October 31 of each year was repealed.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**SESSION LAW 2012-190
SENATE BILL 821**

AN ACT TO (1) DIRECT THE DIRECTOR OF THE DIVISION OF MARINE FISHERIES OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, THE EXECUTIVE DIRECTOR OF THE WILDLIFE RESOURCES COMMISSION, AND THE DEPUTY SECRETARY FOR TRANSIT OF THE DEPARTMENT OF TRANSPORTATION TO JOINTLY STUDY FEES ASSOCIATED WITH THE ISSUANCE OF COASTAL FISHING LICENSES AND THE NUMBERING AND TITLING OF VESSELS; (2) DIRECT THE EXECUTIVE DIRECTOR OF THE WILDLIFE RESOURCES COMMISSION, THE DIRECTOR OF THE DIVISION OF MARINE FISHERIES OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND THE COMMISSIONER OF AGRICULTURE TO JOINTLY STUDY THE REORGANIZATION OF FISHERIES MANAGEMENT IN THE STATE; (3) MAKE IT UNLAWFUL TO TAKE MENHADEN OR ATLANTIC THREAD HERRING WITH A PURSE SEINE NET DEPLOYED BY A MOTHER SHIP AND ONE OR MORE RUNNER BOATS IN COASTAL FISHING WATERS; (4) AMEND THE MARINE FISHERIES COMMISSION ADVISORY COMMITTEES; AND (5) PROVIDE THAT A SUPERMAJORITY OF THE MARINE FISHERIES COMMISSION IS REQUIRED TO OVERRIDE A RECOMMENDATION OF THE DIVISION OF MARINE FISHERIES REGARDING OVERFISHING OR REBUILDING OF FISH STOCKS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) It is the intent of the General Assembly to provide funding for the dredging and maintenance of the State's coastal inlets from fees charged to those who make use of the inlets.

SECTION 1.(b) In order to identify possible sources of funds for the purposes set out in subsection (a) of this section, the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources, the Executive Director of the Wildlife Resources Commission, and the Deputy Secretary for Transit of the Department of Transportation shall jointly study the fees associated with the issuance of coastal fishing licenses pursuant to Chapter 113 of the General Statutes and the numbering and titling of vessels pursuant to Chapter 75A of the General Statutes.

- (1) For coastal fishing licenses, the Director and Executive Director shall specifically:
 - a. Identify all types of fishing licenses issued for the purpose of taking fish in coastal fishing waters, both recreational and commercial.
 - b. Identify the fees associated with these licenses.
 - c. Identify the analogous licenses issued and fees charged by states with fisheries profiles similar to those of North Carolina, including at least South Carolina and Virginia.
 - d. Recommend several levels of increases in the license fees and calculate the amount of revenue that would be generated by the different levels of increase.
 - e. Identify any limitations under State or federal law on the use of license fees for purposes not related to the management of marine fisheries.
- (2) For the numbering and titling of vessels, the Executive Director shall specifically:
 - a. Identify all requirements for the numbering and titling of vessels.
 - b. Determine whether there is a method for differentiating between vessels that are used predominantly in coastal fishing waters versus those that are used predominantly in inland fishing waters.
 - c. Identify the fees associated with the numbering and titling of vessels.
 - d. Identify the analogous vessel numbering and titling requirements and fees charged by states with coastal boating profiles similar to those of North Carolina, including at least South Carolina and Virginia.
 - e. Recommend several levels of increases in the fees associated with the numbering and titling of vessels and calculate the amount of revenue that would be generated by the different levels of increase.
 - f. Identify any limitations under State or federal law on the use of fees associated with the numbering and titling of vessels.
- (3) The Director and the Executive Director shall examine all other sources of funding, including the gas tax.

SECTION 1.(c) The Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources, the Executive Director of the Wildlife Resources Commission, and the Deputy Secretary for Transit of the Department of Transportation shall jointly submit a report on the study required by subsection (b) of this section to the Legislative Research Commission's Committee on Marine Fisheries no later than September 1, 2012.

SECTION 2.(a) The Executive Director of the Wildlife Resources Commission, the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources, and the Commissioner of Agriculture shall, in consultation with various user groups, study the current organization of the State's fisheries management agencies and consider whether these agencies might be reorganized to provide for more efficient, productive, and enjoyable uses of the State's fisheries resources.

SECTION 2.(b) In conducting this study, the Executive Director, the Director, and the Commissioner shall specifically consider all of the following:

- (1) The efficient and effective transfer of statutory authority, powers, duties, and functions, including, but not limited to, rule making, licensing, and the rendering of findings, orders, and adjudications.

- (2) The efficient and effective transfer and consolidation of records, personnel, property, and unexpended balances of appropriations, allocations, or other funds. This component of the study shall specifically identify any areas of overlap between agency programs or personnel.
- (3) The uninterrupted and unimpaired continuation of all services provided by the agencies, rules adopted or implemented by the agencies, contracts or other obligations entered into by the agencies, and proceedings to which any agency is a party.
- (4) All statutory, rule, and policy changes that would be necessary to reorganize fisheries management in the State.
- (5) Positions or duties regarding fisheries resource management currently carried out by the Marine Fisheries Commission or the Division of Marine Fisheries of the Department of Environment and Natural Resources that are within the scope of the overall mission of the Department of Agriculture and Consumer Services.
- (6) Any other issues necessary for the potential reorganization of fisheries management in the State.

SECTION 2.(c) The Executive Director, the Director, and the Commissioner shall jointly report on the study conducted pursuant to subsections (a) and (b) of this section to the Legislative Research Commission's Committee on Marine Fisheries no later than October 1, 2012.

SECTION 3.(a) G.S. 113-187 reads as rewritten:

"§ 113-187. Penalties for violations of Subchapter and rules.

(a) Any person who participates in a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in an operation in connection with which any vessel is used in violation of any provision of this Subchapter and its implementing rules is guilty of a Class A1 misdemeanor.

(b) Any owner of a vessel who knowingly permits it to be used in violation of any provision of this Subchapter and its implementing rules is guilty of a Class A1 misdemeanor.

(c) Any person in charge of a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in charge of any vessel used in violation of any provision of this Subchapter and its implementing rules is guilty of a Class A1 misdemeanor.

(d) Any person in charge of a commercial fishing operation conducted in violation of the following provisions of this Subchapter or the following rules of the Marine Fisheries Commission; and any person in charge of any vessel used in violation of the following provisions of the Subchapter or the following rules, shall be guilty of a Class A1 misdemeanor. The violations of the statute or the rules for which the penalty is mandatory are:

- (1) Taking or attempting to take, possess, sell, or offer for sale any oysters, mussels, or clams taken from areas closed by statute, rule, or proclamation because of suspected pollution.
- (2) Taking or attempting to take or have in possession aboard a vessel, shrimp taken by the use of a trawl net, in areas not opened to shrimping, pulled by a vessel not showing lights required by G.S. 75A-6 after sunset and before sunrise.
- (3) Using a trawl net in any coastal fishing waters closed by proclamation or rule to trawl nets.

- (4) Violating the provisions of a special permit or gear license issued by the Department.
- (5) Using or attempting to use any trawl net, long haul seine, swipe net, mechanical methods for oyster or clam harvest or dredge in designated primary nursery areas.

(e) Any person who takes menhaden or Atlantic thread herring by the use of a purse seine net deployed by a mother ship and one or more runner boats in coastal fishing waters is guilty of a Class A1 misdemeanor."

SECTION 3.(b) S.L. 2007-320 is repealed.

Law Enforcement Reporting Requirements

There is no law enforcement reporting requirements for Atlantic menhaden.

**South Carolina Compliance Report to the ASMFC for the
Interstate Fishery Management Plan for Atlantic
Menhaden for the Year 2012**



July 10, 2013

Prepared by:
Joseph C. Ballenger, Ph.D.

Marine Resources Division
South Carolina Department of Natural Resources

1. **Introduction**

There have been no changes to the laws governing the harvest of menhaden in South Carolina state waters. Purse seines, which are the primary gear used to commercially harvest menhaden, remain prohibited in state waters. South Carolina also lacks any industrial processing capability for menhaden reduction so the probability of increased landings is low.

The primary harvest of menhaden in South Carolina waters is by cast net as bait in recreational fisheries. Although we have not conducted any studies to determine the magnitude of the cast net bait harvest, the consensus among knowledgeable biologists and fishermen is that the bait harvest is relatively stable and has minimal impact on local or regional stocks.

2. **Request for *de minimis***

South Carolina has requested (and continues to do so) and received *de minimis* status in prior years, and we have not had any recorded commercial landings of menhaden since 1997. We believe that the cast net bait fishery accounts for an insignificant proportion of the regional annual harvest.

3. **Previous calendar year's fishery and management program**

a. **Activity and results of fishery dependent monitoring**

South Carolina, in partnership with the NMFS, has a cooperative statistics program. We collect commercial landings through mandatory reports from wholesale seafood dealers. These reports, which dealers are required to submit monthly, include quantities and values by species, gear and capture area. South Carolina is also a participant in the ACCSP. As part of our statistical collection activities, port agents regularly visit commercial docks for collection of length frequency and bio-profile samples from a variety of species. Given the level of statistical collection activity, we would note any future commercial landings of menhaden.

b. **Activity and results of fishery independent monitoring**

South Carolina currently has no fishery independent monitoring program directed at menhaden assessment. The SEAMAP program collects some (but not many) menhaden as part of its coastal ocean sampling in the South Atlantic Bight. This information is available by area and season. In addition, our inshore fishery section has two fishery-independent monitoring programs, namely an electrofishing survey and a trammel net survey, that encounter menhaden periodically. A report detailing the design of each of

these surveys as well as updated nominal CPUE in each of these surveys were submitted for the February 26, 2013 Atlantic menhaden technical committee meeting.

c. Copy of regulations that were in effect, including reference to the specific compliance criteria as mandated in the FMP

The only law that specifically applies to the harvest of menhaden is that which bans the use of purse seines in state waters.

d. Harvest broken down by commercial, recreational, and non-harvest losses

There has only been a total of 1,470 pounds of menhaden landed commercially since 1992; 1,300 in 1992 as incidental take by commercial shrimp trawlers and 170 pounds by a short-lived, directed cast net fishery in 1997.

e. Review of progress in implementing habitat recommendations

South Carolina currently has no commercial menhaden fishery and is unlikely to develop one in the foreseeable future.

f. Bycatch in the recreational shrimp baiting fishery

There are no data on menhaden bycatch in this fishery. Based on personal experience, menhaden bycatch is a rare event, and lethal bycatch even rarer. It is felt that this fishery can be disregarded in terms of impacts on menhaden stocks.

4. Planned management programs for the current calendar year

a. Regulations that will be in effect

The state of South Carolina anticipates no changes in menhaden management regulations in 2013. As such, the only law in South Carolina that specifically applies to the harvest of menhaden will remain the ban on the use of purse seines in state waters.

b. Planned monitoring programs

As in previous years, South Carolina will collect routine commercial landings data as part of our cooperative statistics program and supply any relevant data to the NMFS and the ACCSP.

c. Changes from the Previous Year

South Carolina expects no change in how management programs are implemented in 2013.

5. Plan specific requirements

There are no FMP specific requirements on South Carolina with regards to Atlantic menhaden

6. Law Enforcement Reporting Requirements

Amendment 1 to the Interstate Fishery Management Plan for Atlantic menhaden requires all state programs to provide law enforcement capabilities adequate for successfully implementing the jurisdiction's Atlantic menhaden regulations. As such, the adequacy of a state's enforcement activity will be monitored annually by reports of the ASMFC Law Enforcement Committee to the Atlantic Menhaden Plan Review Team.

In compliance with this regulation, South Carolina, through its Department of Natural Resources coastal law enforcement branch, continues to work effectively in conjunction with federal agencies to implement the jurisdiction's Atlantic menhaden regulations.



MARK WILLIAMS
COMMISSIONER

A.G. 'SPUD' WOODWARD
DIRECTOR

January 28, 2013

Michael Waine
Atlantic Menhaden Fisheries Management Plan Coordinator
1444 Eye Street NW, Sixth Floor
Washington, D.C. 20005

Michael:

The State of Georgia is submitting this letter in recognition of the April 1, 2013 deadline for submission of state compliance reports for the Interstate Fishery Management Plan for Atlantic Menhaden.

As a state without reduction processing capabilities and no commercial landings of Atlantic menhaden, we respectfully request *de minimus* status for the State of Georgia.

As reported previously, the Georgia Department of Natural Resources, Coastal Resources Division (CRD) will continue monitoring commercially harvested species through the ACCSP standardized trip ticket reporting system. If commercial landings of Atlantic menhaden do occur, Georgia will report them through this system.

Please contact me if you or the Management Board need further information.

Sincerely,

Jim Page
Coastal Resources Division

cc: Spud Woodward
Pat Geer

Date: March 26, 2013
To: Michael W. Waine
From: Behzad Mahmoudi, Research Scientist, FFWC
Subject: State of Florida Atlantic menhaden compliance report

I. Introduction

Two or more species enter the menhaden fishery along the east coast of Florida: Atlantic menhaden (*Brevoortia tyrannus*), yellowfin menhaden (*Brevoortia smithi*), and potentially other (hybrid) species. Commercial landings in 2012 amounted to 115,645 pounds. This was down 20% from total landings in 2011 (144,852 pounds), and up 43% from the previous five-year average (80,634 pounds). Recreational landings reports are sparse and have varied between 54 and 250,027 pounds during 1981-2011. For the east coast of Florida, the recreational harvest of Atlantic menhaden is estimated at 1,011 pounds in 2011.

II. Request for *de minimis*

The State of Florida officially request *de minimis* status for Atlantic menhaden fishery in Florida. Florida east coast menhaden landings in 2012 amounted to 115,645 pounds (52 metric tons) or 0.0003 % of the total Atlantic coast purse seine landings of Atlantic menhaden.

III. Previous Calendar years' fishery and management program

- a- Table 1 shows annual (1981-2012) commercial landings of menhaden from the east coast of Florida. Landings in 2012 amounted to 115,645 pounds. This was up 43% from the previous five-year average (80,634 pounds), and down 99% from the pre net-ban (1986-1994) average of 2,735,000 pounds.
- b- No regulations were adopted for this fishery in 2012.
- c- Cast net and hand line made a majority of landings during 2012. The trend for standardized commercial catch rates of menhaden on the east coast of Florida is shown in Figure 1.
- d- The trend in the young-of-the-year (YOY) menhaden (genus *Brevoortia*) abundance from the fishery-independent sampling (FWC-FWRI) on the east coast of Florida is shown in Figure 2.

IV- Planned management programs for the current calendar year

- a- No new regulations will be adopted for this fishery during year 2012.
- b- No major changes from the previous year.

V- Plan specific requirements

No plan specific requirements

VI- Law enforcement reporting requirements: Not applicable

Table 1. Annual commercial landings of menhaden reported for the period 1981-2012 from the east coast of Florida.

	<u>mt</u>	<u>pounds</u>	<u>\$</u>
1981	7,007.00	15,447,665	630,023
1982	4,698.40	10,358,109	407,839
1983	3,742.70	8,251,086	357,536
1984	3,845.90	8,478,658	233,130
1985	2,617.70	5,770,965	131,952
1986	3,438.10	7,579,674	301,873
1987	1,259.60	2,776,812	207,555
1988	461.70	1,017,957	78,342
1989	622.60	1,372,480	124,259
1990	1,195.90	2,636,486	388,700
1991	1,132.20	2,495,968	223,939
1992	1,245.80	2,746,484	242,999
1993	1,172.40	2,584,766	247,908
1994	629.10	1,387,012	150,843
1995	299.50	660,272	85,848
1996	123.60	272,386	81,732
1997	185.40	408492	101899
1998	137.00	301,890	87,141
1999	127.90	281,863	95,667
2000	115.30	254,252	112,823
2001	70.10	156,504	46,951
2002	19.00	55,304	11,061
2003	15.00	35,810	7,162
2004	9.47	20,870	4,174
2005	16.46	36,298	7,260
2006	71.27	157,117	31,423
2007	32.32	71,247	14,249
2008	27.26	60,097	12,019
2009	23.10	50,925	10,185
2010	34.50	76,051	15,210
2011	65.70	144,852	28,970
2012	52.46	115,645	23,129

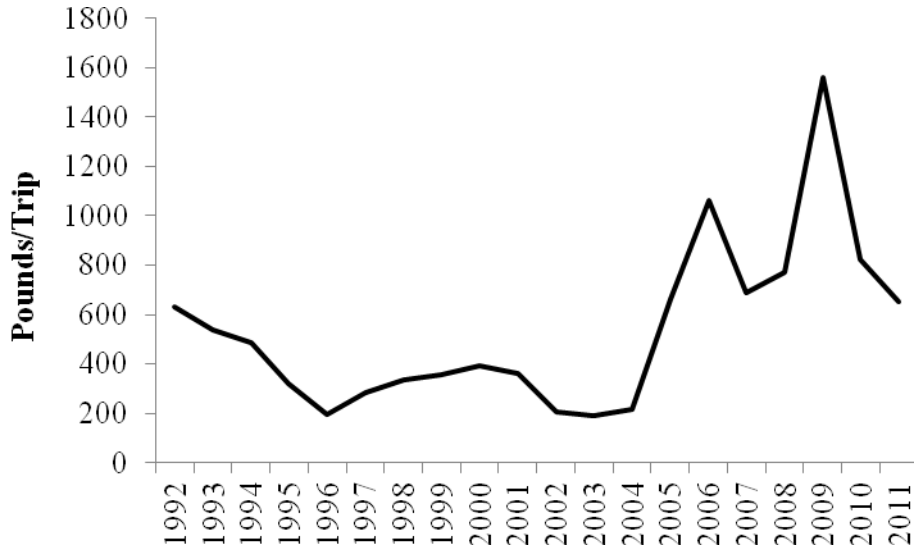


Figure 1. Standardized commercial catch rates for menhaden from the Florida Atlantic coast.

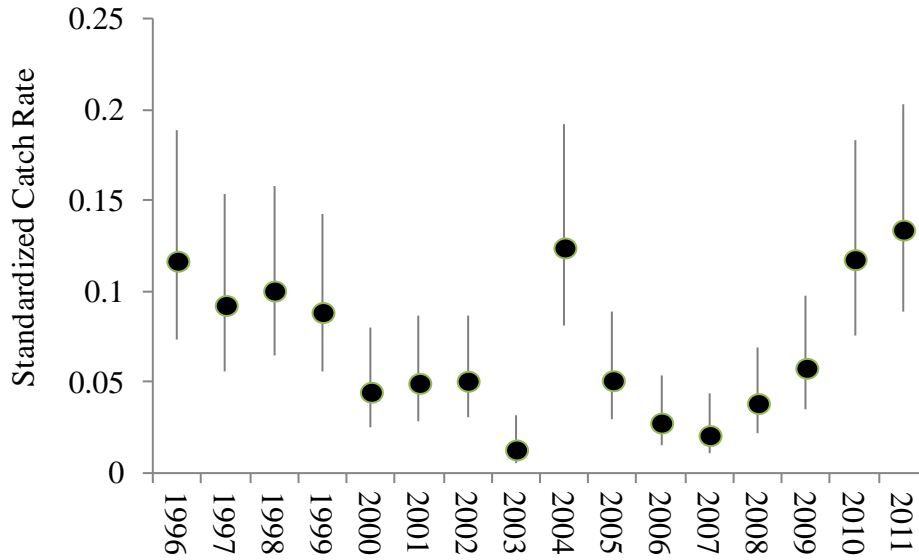


Figure 2. Standardized YOY menhaden catch rates from the fishery-independent-monitoring on the Florida Atlantic coast.