

**PROCEEDINGS OF THE  
ATLANTIC STATES MARINE FISHERIES COMMISSION  
ATLANTIC HERRING SECTION**

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

**Approved August 6, 2013**

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**ATTENDANCE**

**Board Members**

Patrick Keliher, ME (AA)	Bill McElroy, RI (GA)
Terry Stockwell, ME, Administrative proxy	Rick Bellavance, RI, Proxy for Rep. Martin (LA)
Steve Train, ME (GA)	David Simpson, CT (AA)
Sen. David Watters, NH (LA)	Dr. Lance Stewart, CT (GA)
Doug Grout, NH (AA)	James Gilmore, NY (AA)
G. Ritchie White, NH (GA)	Pat Augustine, NY (GA)
Rep. Sarah Peake, MA (LA)	Russ Allen, NJ, proxy for D. Chanda (AA)
David Pierce, MA, proxy for P. Diodati (AA)	Tom Fote, NJ (GA)
Bill Adler, MA (GA)	Kelly Denit, NMFS

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

**Ex-Officio Members**

Michael Eastman, Law Enforcement Representative	Jeff Kaelin, Advisory Panel Chair
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**Staff**

Robert Beal	Katie Drew
Toni Kerns	Melissa Yuen
Kate Taylor	

**Guests**

Patrick Pacquette, MSBA	Joseph Gordon, PEW
Anthony Rios, Ofc. Sen Boyle, NY	Tom Rudolph, PEW
Raymond Kane, CHOIR	Patrick Moran, MA Env. Police

The Atlantic Herring Section of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, May 20, 2013, and was called to order at 10:00 o'clock a.m. by Chairman David Pierce.

### **CALL TO ORDER**

CHAIRMAN DAVID PIERCE: Good morning! Welcome to the Atlantic Herring Section Meeting.

### **APPROVAL OF AGENDA**

CHAIRMAN PIERCE: We have an agenda that is relatively short but important. Melissa has put that agenda together for us, and I ask if there are any changes to the agenda? If not, we will adopt the agenda by consent.

Does anyone wish to make a change to the agenda? I see no one making a request; therefore, the agenda is approved through consent.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN PIERCE: Approval of the proceedings from our last meeting, which was February 19, and that is the meeting when we developed or at least set the stage for initiating this addendum that we will be considering today to approve and then bring out for public comment.

Are there any suggested changes to the proceedings from our last meeting? I see no requests for change; therefore, without objection, we will consider the proceedings from our last meeting approved.

### **PUBLIC COMMENT**

CHAIRMAN PIERCE: Public comment, as we always do for those in the audience, if you care to raise any issue, make any comment that is relative to any sea herring management issues that are not on today's agenda, we offer you the opportunity to do so now. Tom.

MR. TOM RUDOLPH: Thank you, Dr. Pierce and members of the section. I will be very brief.

I just wanted to say two things today, both supportive of actions you're currently undertaking. I believe the staff is passing out a letter I submitted fairly late -- I'm Tom Rudolph with Pew Charitable Trust -- last week just simply expressing support for you voting out Addendum VI for public comment today.

I really appreciate you moving quickly to get that consistency in place with the federal plan. The other issue is again we're supportive of the work that the section has undertaken to look into Atlantic herring spawning protections. My understanding is that the staff and technical people are still working on a follow-up white paper hopefully for presentation in August, and I just wanted to say thank you for that work and look forward to the report in August. Thank you very much.

CHAIRMAN PIERCE: Okay, thanks, Tom. Is there anyone else from the public care to comment on an issue not on the agenda? All right, in that case we will go on to the rest of this morning's business, and that would be our consideration of Draft Addendum VI for public comment. Melissa is going to give a presentation providing background and the options in Draft Addendum VI.

She is also going to highlight something that we need to consider as part of this addendum that actually would be consideration of a research set-aside similar to what the New England Council adopted for sea herring. My mistake when last we met to discuss and decide on the specifications for 2013, 2014 and 2015, apparently I neglected to have the section consider that strategy as well, which would be a research set-aside for 2014 and 2015. Melissa will provide a bit more detail on that, and at the appropriate time I will entertain a motion to include that specific part of the specification package, the research set-aside. Melissa, if you would walk us through the Draft Addendum VI.

### **DISCUSSION OF DRAFT ADDENDUM VI FOR PUBLIC COMMENT**

MS. MELISSA YUEN: I will now go over Draft Addendum VI to the Interstate Atlantic

Herring Fishery Management Plan. First is to show you where the addendum stands. In February the section initiated the development of Draft Addendum VI. Today I will be reviewing the options developed by the plan development team for the section's consideration.

As you know, Atlantic herring is managed by the New England Fishery Management Council and the commission with complementary plans. The council submitted Framework 2 to NOAA Fisheries which parallels the 2013-2015 specifications. The framework authorizes the council to split annual catch limits seasonally during the specifications' process.

It also establishes a policy for annual carryover of up to 10 percent of unutilized sub-quota under specialized conditions. The council proposed new accountability measures to close the directed fishery when 92 percent of the sub-ACL is reached and then close the stock-wide fishery when 95 percent of the total ACL is reached.

This map shows the four management areas for Atlantic herring. Currently the Interstate FMP has a trip limit trigger and seasonal splitting provisions for Area 1A but not for Areas 1B, 2 and 3. There are no provisions for quota rollover for any of the four management areas. Therefore, the draft addendum was necessary for consistent provisions across the management areas.

In February 2013 the commission's Atlantic Herring Section set annual catch limits for the 2013 through 2015 fishing seasons at just under 180,000 metric tons. This is an 18 percent increase from the 2010 to 2012 limits. This new stock-wide specification is identical to the ACLs adopted by the council.

These are the four proposed issues in Draft Addendum VI. Issue 1 proposes seasonal splitting for Areas 1B, 2 and 3. Option 1, status quo, is to not allow seasonal splitting for these areas. Seasonal splitting would still be allowed for Area 1A. Option 2 is to allow states to seasonally split the sub-ACLs to maximize value to the Atlantic herring fisheries. The actual

splits would be set as part of the specifications' process.

Issue 2, quota rollover for all areas, please note that on Page 4 of the draft document, Item 3.2 should also include Area 1A. Option 1, status quo, no quota rollover for Management Areas 1B, 2 and 3. Area 1A will continue to have a rollover provision. Option 2; allow for up to 10 percent of unused quota in the management area to carry over to the first fishing season with landings' data provided that the total ACL is not exceeded.

Under this option the following provisions would apply. The stock-wide ACL would not be changed from the annual specification. All harvest control measures would continue to apply to both the sub-ACLs and the stock-wide ACL. All carryovers would be based on initial sub-ACL allocations for the fishery year. Provisions for carryovers can be modified in the future through the specification process.

Issue 3 is on trip limit triggers for all management areas. Option 1, status quo, there would be no trip limit triggers for Areas 1B, 2 and 3. There would be no triggers for the stock-wide ACL. For Area 1A, the trip limit will reduce to a 2,000 pound bycatch limit if 95 percent of the sub-ACL is reached.

Option 2 proposes to establish a trigger to close directed fisheries in a management area when 92 percent of the sub-ACL is projected to be reached and then close the stock-wide fishery when 95 percent of the total ACL is projected to be reached. A 2,000 pound bycatch allowance will continue when the directed fishery is closed.

Issue 4 is for using the annual specification process to set sub-ACL triggers. Option 1, status quo would be using the addendum process to set sub-ACL triggers. Option 2 is using the specification process. As Dave mentioned before, the research set-aside was discussed at the last meeting, but the section did not motion to include an option in the document. That concludes my presentation on Draft Addendum VI. Thank you, Mr. Chairman.

CHAIRMAN PIERCE: Thank you, Melissa. Again, the purpose of our meeting is just to review the draft, and Melissa certainly has done that very well. We now have all of the necessary text to go along with the decisions we made at our last meeting, so I now ask the section if there is a desire to make any changes to this document before we have a motion to bring it out for public comment. Terry.

MR. TERRY STOCKWELL: Mr. Chairman, I assume we would need to move to consider the RSA in this document or can we do it by consent?

CHAIRMAN PIERCE: I would say we could do it by consensus. I would ask if there is any objection from the section for us to include in this addendum to be brought out for public comment a research set-aside for 2014 and '15 only with 3 percent of each sub-ACL being that set-aside. Is there any objection to that addition to the document? Yes.

MR. THOMAS FOTE: New Jersey has had a problem with research set-asides since it hasn't been used for the purpose when we basically initiated the research set-aside to basically help industry and basically the universities do the studies. A lot of it is going back to NMFS and SEAMAP and things like that. I have no objection putting it in for public comment, but I just wanted to make sure that was on the record that we object until it is used for the purpose it was designed for.

CHAIRMAN PIERCE: Thank you, Tom; a very good point. I believe that it will be appropriate for the section at, for example, our next meeting to make some suggestions or at the meeting after that make some suggestions as to how the research set-aside should be used. Again, it is for 2014 and '15. I will turn first to Jeff Kaelin who heads up our advisory panel.

#### **ADVISORY PANEL REPORT**

MR. JEFF KAELIN: I think this time the herring industry and the region – we had talked about this at the council's AP meeting – did decide to go to 3 percent. The way that the New England Council uses the RSA is different than

the way the Mid-Atlantic does, so we're comfortable with going in that direction. There is not a lot of money there; but we thought since the quotas went up, we should give this a try.

MR. DOUGLAS GROUT: Mr. Chairman, just one point of clarification on this. If we're doing this by consensus, I think the wording should be that we have the ability to consider research set-asides in the specification process, because what if three or four or five – the next specifications' process there was a decision not to have a research set-aside; so as long as we're not locked into having a research set-aside, that we can set it whatever level we feel appropriate.

The second comment I was going to make as far as your suggestion that we come up with some ideas for use of the research set-aside, I still would like to have the National Marine Fisheries Service handling the research set-aside so all we would be doing, as I understand it, with your suggestion is to make recommendations to the National Marine Fisheries Service or the council for ideas for research set-aside. Is that the way you understood it?

CHAIRMAN PIERCE: Yes, Doug, and you are the Chair of the Sea Herring Committee of the council, correct? Okay, the council does have as part of its specification process this research set-aside strategy; am I correct?

MR. GROUT: Correct.

CHAIRMAN PIERCE: So basically we would be supporting the New England Council's initiative with an understanding that by having this particular research set-aside in our addendum, my feeling is it makes it clearer to the New England Council that, indeed, the Sea Herring Section needs to be part of this process in determining what research should be done again as part of a recommendation to the National Marine Fisheries Service for use of the set-aside. Bill.

MR. WILLIAM A. ADLER: This is more for clarification of a couple of things that were said when the presentation was made. First of all, it was proposed that no rollover –

CHAIRMAN PIERCE: Bill, excuse me, before you do that, I would like to bring this particular issue to a close, again, the research set-aside. Are there any objections to including this particular approach in the addendum to be brought out to public comment? Jim.

MR. JAMES GILMORE: Mr. Chairman, I have no problem including it. I just wanted to put a caveat in that there is a significant administrative burden for any of the states that take this on from experience, so they should be aware of that. Doug's point about having NOAA Fisheries maybe help out with that could be – we ended up having to hire three people with the RSA, with the other programs we have right now. There is a lot of work for the state when you're considering one of these programs that the other states should consider when they're evaluating this. Thank you.

CHAIRMAN PIERCE: All right, I see no objections to our including it in the addendum; so with no objections being registered, we will do that. Melissa will work on the language and include that in the addendum to be brought out to public comment. All right, with that understanding, then I would go to you, Bill. You had a question on the presentation.

MR. ADLER: Yes, a couple of questions. When it said no rollover in the area, we have a rollover in 1A. Are you indicating that if you did split an area, 1B or 2, whatever, that if there was an underage in the first section of that breakup of the time; that if you had an underage, that you couldn't roll it over into the second section, like we can in 1A. That is my first question. Is that what is being proposed here is that you can't roll it over within the same year; is that the way this is worded?

CHAIRMAN PIERCE: Well, Option 2, okay, on Page 4 of the document says to allow for up to 10 percent of unused quota in any management area to carry over to the first fishing season with landings' data within that same management area. It goes over to the next year.

MR. ADLER: But let's say you split an area into two sections like 1A has and what you have assigned to the first section you don't use and then you get to the second section of that year; does that mean you can only roll over 10 percent or none of what into the second part of that same year?

CHAIRMAN PIERCE: Toni, do you have a response?

MS. TONI KERNS: Our addendum does allow for rollover for Area 1A between the periods, and that will continue to be allowed. This does not say that cannot be allowed. I do not believe that Framework 2 allows for rollover between periods for the other areas, but Melissa is going to double check that to make sure right now. I don't remember off the top of my head. This rollover was specifically to address the rollover from year to year and not to trump our rollover in Area 1A between periods within the same year.

MR. ADLER: Okay, I understand not year from year; I understand that. It was just that like 1A you can roll it over within that year if you separate – let's say you separate 2 into a half year this quota and then the second half we decide or somebody decides that it is the rest of the quota and you don't use the first part; can you then run it into the second part of that year?

MS. KERNS: We're double checking that right now if the council put that forward in their framework document. This document was done to mirror the actions taken by the council. The board did not direct the section – the section did not direct staff to include any additional options outside of what was proposed in Framework 2.

MR. ADLER: My second question, Mr. Chairman, when it says a stock-wide closure when 95 is reached; that is within that area, correct?

CHAIRMAN PIERCE: The 95 percent would be within that area, yes.

MR. ADLER: Thank you, Mr. Chairman. My last question is if they go with splitting Area 3,



who gets together – like we do in 1A, who gets together; is it the federal council that gets together and decides, okay, we're going to split Area 3 into two sections; is that the council's purview because, of course, that is all federal waters?

CHAIRMAN PIERCE: Well, we're following the council's lead. We're not going to be acting independent of the council to split up a quota in any way that is different from what the council has decided. With regard to your previous question, I think I misspoke on that one, Bill. It is 95 percent – the stock-wide fishery closes when 95 percent of the total ACL is projected to be reached, so it is stockwide and not by individual components.

The sub-ACL is 92 percent, so we're being more conservative within each individual sub-component, Area 1A, 1B, Area 2, 3. We're considering as the option 92 percent of the sub-ACL; and then for the whole quota across all of the sub-areas it is 95 percent. Jeff, did you have something you wanted to add?

MR. KAELIN: Yes, I just wanted to say that I think from the perspective of the advisors it was the intention of the New England Council to allow these sub-area rollovers like Mr. Adler was talking about; like if Area 2 was split, you could roll over the first part of the season into the second part of the season, the same way you do 1A now.

The other thing I just wanted to be clear about, Mr. Chairman, on the RSA, that is also rolled back into the quota under the New England Council system by I think November 1 or October 1. I am not sure of the date. I'm just thinking that if this is going to be added to the addendum, the public should be clear that 3 percent returns back to the quota by date certain and that mirror what the New England Council does.

SENATOR DAVID H. WATTERS: Mr. Chairman, could you comment briefly on the confidence you have in the reporting here so that we would understand the 92 and 95 percent is good figures for not ending up with an overage.

CHAIRMAN PIERCE: I believe at our last meeting we debated what was the appropriate percentage; and after that discussion and debate, we thought that 92 percent was the best choice. There is nothing magical to it. There is no analysis behind it. It is just an additional level of caution that we thought would be necessary.

Because of what has happened in the past with our having a sub-ACL being exceeded because the closures weren't quick enough, this provides a greater certainty that we will not have that overage. With regard to the research set-aside, Jeff is correct, indeed, with this research set-aside as part of the addendum.

If there is no objection, we will make sure that the language in the document reflects what is in the council approach, which is if it is not used, then it gets flipped back into the overall quota to be used by the fishery itself. It doesn't get put on the shelf somewhere as part of an amount that is not allocated for research. The document will reflect that intent. Toni.

MS. KERNS: To answer Bill's question about the rollover from season to season, I did look it up in Framework 2, and it should be a part of provision where we allow for seasonal splitting for 1B, 2 and 3. Within that provision, any left over quota from a period within that season will be rolled over into the following period. It is just we treat 1A would be part of the option for 1B, 2 and 3.

CHAIRMAN PIERCE: Thank you for that question, Bill. You clarified an important point with staff's assistance and Jeff's contribution as well. All right, are there any additional comments on the presentation and on the addendum? Let's also highlight that as Melissa noted in her presentation on Page 4, Item 3.2, the quota rollover would also include Area 1A. Apparently that was not included in the draft addendum. That should be there so we will make that change. Is there any further comment on the addendum? Terry.

MR. STOCKWELL: No further comment, but I have a motion when you're ready, Mr. Chairman.

CHAIRMAN PIERCE: Go right ahead, Terry.

MR. STOCKWELL: **I move to approve Draft Addendum VI for public comment.**

CHAIRMAN PIERCE: All right, we have a motion to approve Draft Addendum VI for public comment and Bill Adler has seconded the motion. Is there any comment on the motion? I see no desire to comment. Is there any need to consult with your colleagues? I see no need to do that either.

**All those in favor of the motion please signify by raising your hand; is there any opposition; any null votes. All right, the motion passes and we will therefore bring it out to public hearing for comment.** As noted in the document itself and as highlighted by Melissa, we're looking to have a public comment period extend through June 2013. My assumption is that you will be asking states if they would like to have a public hearing in their state.

What state would like to have a public hearing to address this addendum; the state of Maine, Massachusetts and New Hampshire. All right, with that said, we will have three public hearings in those states, and Melissa will work with the individual states to set up the time and the locations of those public hearings.

After the public comments are received following the public hearings, then we have scheduled reviewing the results of those hearings and then taking action and selecting the management measures for final approval in August of this year. That is the schedule we will adhere to. I think that covers all of our business.

#### **OTHER BUSINESS**

We get to other business and there is one issue I would like to highlight. I thought perhaps there might be a need to have a motion relative to this particular issue; but after discussing it with Bob Beal and also with Jeff Kaelin, I think it makes more sense just to bring to the section's attention what Jeff Kaelin in particular is doing working on behalf of the industry and what the New England Council and the Mid-Atlantic Council

have already done relative to a possible amendment to the Magnuson Act.

Perhaps the best thing to do is to have Jeff just highlight what that is and then to inform you that this particular issue will be brought to the Policy Board because it cuts across all species that ASMFC manages. It will be brought to the Policy Board. I suspect someone on the Policy Board might make a motion to this effect.

If anyone, after hearing what Jeff has to say cares to get more details regarding this particular issue, then you can talk to me, of course, any other council member who participated in the development of this particular approach, approved formally by both councils, or talk to Jeff in the hallway to get the specifics. If you would, Jeff, highlight for the benefit of the section what this issue is.

MR. KAELIN: Leading up to the "Managing our Nation's Fisheries 3 Conference" in D.C. a couple of weeks ago, which some of you attended, a lot of us in a grassroots kind of a way around the country have been looking at Magnuson and saying, you know, it is time to have a sustainability program in the United States where we can get a sustainability seal for every pound that we take out of the water.

It is an idea that is catching on nationally. We had a sixteen to nothing vote at the Mid-Atlantic Council. A couple of weeks ago New England voted eighteen to nothing for this. The Western Pacific Council took the same position. We're working with the three commissions and the remaining five councils to try to have a motion passed that basically says that Magnuson should be amended to authorize NMFS to provide the industry with a sustainability certification program and certification mark.

Their Fish Watch Program is very good, but we have been told by the agency they need additional legislative authority to actually be able to give us a seal that we can put on our packaging. You could do it in the supermarkets. It could be used domestically in an export way to counteract the MSC Green Mail situation we find ourselves in.

I will give you one example. On dogfish, for example, which was just MSC certified by three processors in New Bedford – I give them a lot of credit for doing that. We're actually involved in the scallop certification now under MSC. Because Canada did it, we need it in the EU, but we don't see it as a long-term solution.

On the dogfish, as a processor, if we were to come in and get the MSC certification, it would cost us \$135,000 to come into the room, and that means that the three processors spent almost a half a million dollars to get the MSC certification. If you ever read their papers, all they do is look at what we do in the U.S., for example.

We think this is a very simple fix. It is catching fire nationally. Again, this is a Policy Board issue. I have already discussed this with Bob Beal and Toni. Thank you, Dave, for letting me mention it this morning. I've got copies of this motion. It is relatively simple.

I am going to have to go Gloucester Thursday for the FMAT PDT discussion on river herring catch caps. Greg DiDomenico will be here – well, it is Wednesday afternoon I think is the Policy Board. We hope that this will get a favorable acceptance at the Policy Board. I really appreciate the time to talk with you about it this morning.

CHAIRMAN PIERCE: All right, thank you, Jeff. As I said, if there is any further discussion on this, you can have it with Jeff in the hallway. Of course, there will be something more full blown and detail provided to the Policy Board. Jeff has a draft motion apparently that somebody may make. Yes. Pat.

MR. PATRICK AUGUSTINE: Mr. Chairman, we will have a piece of paper before that time to look at to see exactly what the wordage is?

MR. KAELIN: You will have yours as soon as we break.

MR. AUGUSTINE: Okay, and then a follow-on, if the feds get involved or the Fish and

Wildlife or whoever gets involved with it; will it have an impact on any states' likelihood of contemplating a lawsuit that says while you're having a federal government agency now give the stamp of approval, that it will counteract what these other groups are doing?

Do you follow what I'm saying? I mean, you have an existing group that is charging an outrageous amount of money to do something that doesn't make sense – well, it makes sense; I'm sorry; I apologize for that. But, that could be done a lot more efficiently and without the cost and accomplish exactly the same thing that we're trying to accomplish, certification of the product. My concern is that let's assume that the three groups have agreed to do this; is there a possibility of a lawsuit? I want to make sure that the language is absolutely perfect; so that when we agree to this and a letter goes forward, we have an ironclad document.

CHAIRMAN PIERCE: There is no need to respond. I think you and Jeff can talk about that, and that issue, I am sure, will be raised at the Policy Board meeting so all Policy Board members can appreciate your concern and then discuss it. All right, if there is no other business, do I have a motion to adjourn?

#### ADJOURNMENT

The motion to adjourn has been made. Any objection? I see none so the meeting is adjourned.

(Whereupon, the meeting was adjourned at 10:32 o'clock a.m., May 20, 2013.)