

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

**The Westin Crystal City  
Arlington, Virginia  
May 1, 2018**

**Approved August 7, 2018**

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## INDEX OF MOTIONS

1. **Move to approve agenda** by Consent (Page 1).
2. **Move to approve proceedings of February, 2018** by Consent (Page 1).
3. **Move to have the Atlantic herring spawning re-closure protocol to read that a sample is defined as a minimum of 80 randomly selected adult sized fish, with a target of 100 fish, from a fishery dependent or independent source** (Page 4). Motion by Steve Train; second by Ray Kane. Motion carried (Page 5).
4. **Move that the Atlantic Herring Section approve the 2018 Atlantic Herring FMP Review, state compliance reports, and *de minimis* status for New York** (Page 6). Motion by Doug Grout; second by Steve Train. Motion carried (Page 6).
5. **Motion to adjourn** by Consent (Page 7).

## ATTENDANCE

### Section Members

Pat Keliher, ME (AA)	Dave Borden, RI (GA)
Steve Train, ME (GA)	Colleen Giannini, CT proxy for P. Aarrestad (AA)
Doug Grout, NH (AA)	John McMurray, NY, proxy for Sen. Boyle (LA)
G. Ritchie White, NH (GA)	Jim Gilmore, NY (AA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)	Adam Nowalsky, NJ, proxy for Asm. Andrzejczak (LA)
Rep. Sarah Peake, MA (LA)	Tom Fote, NJ (GA)
David Pierce, MA (AA)	Jeff Brust, NJ, proxy for L. Herrightly (AA)
Raymond Kane, MA (GA)	
Bob Ballou, RI, proxy for J. McNamee (AA)	

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

### Ex-Officio Members

#### Staff

Robert Beal	Megan Ware
Toni Kerns	Jessica Kuesel

#### Guests

Rene Cloutier, ME MMP	Arnold Leo, E. Hampton, NY
Justin Davis, CT DEEP	Loren Lustig, PA (GA)
Jeff Deem, VMRC	Andrew Petersen, Bluefin Data, LA
Shaun Gehen, SFC, DC	Andy Shiels, PA (Administrative proxy)
Zach Greenberg, PEW Trusts	Melissa Smith, ME DMR
Najih Lazar, Univ. of Rhode Island	Justin Davis, CT DEEP

The Atlantic Herring Section of the Atlantic States Marine Fisheries Commission convened in the Jefferson Ballroom of the Westin Crystal City Hotel, Arlington, Virginia; Tuesday May 1, 2018, and was called to order at 3:00 o'clock p.m. by Chairman Patrick C. Keliher.

#### **CALL TO ORDER**

CHAIRMAN PATRICK C. KELIHER: Good afternoon everybody. We are going to jump right into the business; to try to make up a little bit of time.

#### **APPROVAL OF AGENDA**

CHAIRMAN KELIHER: Item Number 2 is the approval of the agenda. Are there any additions to the agenda? Seeing none; approval of proceedings from the February, 2018 meeting.

#### **APPROVAL OF PROCEEDINGS**

CHAIRMAN KELIHER: Are there any comments on the proceedings back from February? Seeing none; those are approved.

#### **PUBLIC COMMENT**

CHAIRMAN KELIHER: Moving right along to public comment, we do have a contingency from Senegal here today; and would ask Najih Lazar to please come to the public microphone to make a quick statement.

MR. NAJIH LAZAR: Good afternoon, Mr. Chairman. Thank you very much and good afternoon everybody. My name is Najih Lazar; I'm with the University of Rhode Island with the Coastal Resource Center. I used to be a part of this Commission many years ago; and glad to be back here.

I'm now working in a different front in Africa, been in Ghana, and then recently working in Senegal on still fisheries management, trying to share and exchange the learning experiences of the Atlantic States Fisheries Commission. I have

with me here a delegation that represents the Ministry of Fisheries and the Maritime Economy from the Senegal; and they are here behind me. If you wouldn't mind, stand up.

The Minister of Fisheries is with us. Unfortunately, he is a little bit behind schedule but he will join us for the reception dinner tonight. Thank you very much for having us here today; and we'll look forward to listening to the Atlantic herring, and later on the ACCSP proceedings as well. Thank you.

CHAIRMAN KELIHER: Great, thank you very much. We appreciate your attendance here at the meeting today. Please don't watch my process on running a meeting. I might not be the best one. Just as a reminder; we go by Pat's rules, not Roberts Rules.

#### **DISCUSSION OF POTENTIAL IMPACTS OR POSSESSION LIMITS IN THE ATLANTIC MACKEREL FISHERY IN HERRING AREA 1A**

CHAIRMAN KELIHER: Item Number 4 is Discussion of Potential Impacts or Possession Limits in the Atlantic Mackerel Fishery in Herring Area 1A. Megan is going to present on that.

MS. MEGAN WARE: Today I'm going to review some of the ongoing actions related to the harvest of shad, river herring and Atlantic mackerel. Many of these discussions have occurred in different management setting. The goal today is to try and synthesize these for the Section; and provide an update on the actions that have been initiated. There are two primary issues I'm going to touch on today. The first is the Atlantic mackerel fishery. I will talk about their river herring and shad catch caps, the accountability measures when 100 percent of the quota is harvested, and then action that has been taken at the Councils.

Then I will also touch on the river herring and shad catch caps in the Atlantic herring fishery; since one of those has been harvested. On

February 23, the river herring and shad catch cap for the mackerel fishery was harvested; and a 20,000 pound trip limit was implemented. Concurrently it was reported that about 89 percent of the mackerel quota had been caught.

The figure to the right is the Atlantic mackerel quota from the GARFO reporting website. The blue line is the 2018 catch; and the yellow line is the 2017 catch. You can see that blue line is quite steep at the beginning of the year; and it kinds of levels off once that 20,000 pound trip limit was implemented.

There is about 2.2 million pounds of quota that remain; and it's estimated that 100 percent of the quota will be caught in November. Why is the mackerel fishery a concern for the Herring Section? There is a 0 possession limit for mackerel when 100 percent of the quota is caught. Regulations state that a fisherman cannot take, retain, possess, or land mackerel under a 0 possession limit.

This suggests that encountering mackerel in the herring fishery could be a violation. As a result, mixing of herring and mackerel, even at minimal levels, could hinder the operation of the herring fishery. There have been several discussions at the New England Council and Mid-Atlantic Council. I'm going to focus on the Mid-Atlantic Council discussions; since that's where most of the action has taken place.

At that Mid-Atlantic Council meeting there were two frameworks that were initiated; one that is more of a short term view for the rest of the 2018 fishing year, and then one has a longer view during the 2019 to 2021 specification package. Short term framework action has been initiated to consider possession limits in the mackerel fishery; once 100 percent of the quota is caught.

At present it appears that the three options in that document will be status quo, so that would be a 0 possession limit, a 5,000 pound possession limit, and then a 10,000 pound

possession limit. Final action is expected in June, 2018, so it's a fairly quick timeframe; and then subsequent rulemaking could be used to correct the prohibition on take in the current regulations.

Looking more towards a longer-term solution, the Mid-Atlantic Council is working on the specification package for 2019 to 2021 in the mackerel fishery. Through that they are going to consider incremental trip limits in the fishery. One of the options presented in the briefing materials was that at 80 percent of the quota there would be a 40,000 pound trip limit; and then once it got to 95 percent of the quota there would be a 5,000 pound trip limit.

These trip limits address the need for a limited amount of mackerel to be harvested following the closure of the directed fishery; and final action is expected in August. The New England Council has also discussed this issue. Given much of the action was taken at the Mid-Atlantic Council, the New England Council passed a motion of support; to develop the action by the Mid-Atlantic Council to modify the possession limit and the definition of take. Overall there are ongoing actions that should address concerns regarding the 0 possession limit ahead of November, which is again that projected date when 100 percent of the mackerel quota will be caught.

Most of the action is occurring at the Mid-Atlantic Council; and the actions consider both immediate and longer term solutions. Then I'll also briefly touch on the Atlantic herring, river herring, and shad caps. On March 12, the catch cap for the midwater trawl vessels in the Southern New England/Mid-Atlantic area was caught.

As a result vessels issued a federal herring permit, which fish with midwater trawl gear, may not catch, possess or land more than 2,000 pound of herring in or from that closure area. That is going to be the purple area on the figure. Then this final slide is just an overview of the other catch cap areas. Right now that

Cape Cod area is about 15 percent of the river herring and shad catch cap has been caught. The Southern New England bottom trawl is at 25 percent, and the Gulf of Maine is at 0 percent. With that I will take any questions.

CHAIRMAN KELIHER: Are there any questions of Megan and the presentation? Wow, everybody is quiet, good.

### **TECHNICAL COMMITTEE REPORT ON SPAWNING FISH SAMPLE PROTOCOLS**

CHAIRMAN KELIHER: Seeing none; we will move on to Item Number 5, the Technical Committee Report on Spawning Fish Sample Protocols.

MS. WARE: I will be putting on the TC hat today to present the TC report. As a reminder, at the February meeting the Section tasked the TC with investigating a method of scaling up samples of herring that are less than the required 100 fish minimum. This was prompted by concern that samples of herring greater than 90 fish, but less than 100 fish, are not considered when determining a spawning re-closure.

To remind everyone on the spawning re-closure protocol. Amendment 3 allows for a two week extension of a spawning closure; if a sample indicates a significant number of spawned herring. To initiate a re-closure that sample must comprise 25 percent or more mature herring; by number in a sample that have yet to spawn.

The sample also has a requirement, and it must be a minimum of 100 randomly selected adult size fish from a fishery dependent or independent source. There are really two criteria here. There is a trigger that initiates a re-closure; which is that 25 percent, and then there is also a requirement that a sample be made up of 100 fish.

The TC met in March via conference call to discuss this task. Overall the TC concluded that

the requirement to have a certain percentage of mature herring, so that 25 percent, is really the priority in allowing for a re-closure. Regarding the size of the sample, the TC recommends that the Section maintain a target of 100 fish per sample to ensure a robust protocol.

But the TC did express comfort with a minimum baseline of 80 fish per sample. However, that sample must meet that 25 percent mature criteria in order to trigger a re-closure. Since the TC is recommending that priority be given to the composition of the sample, no analysis is needed to scale up a sample of herring less than 100 fish. That 25 percent can be applied to a sample of less than 100 fish. The TC does note that whether there is an 80 or 100 fish minimum requirement, a line must be drawn somewhere to define a sample.

As a result, there will always be some samples which fall slightly short. As a reminder, stipulations for a sample in the forecast system, so that's for that initial four week closure, are slightly different in that each sample must contain at least 25 female herring in gonadal stages 3 through 5.

Currently samples which contain less than 100 fish are included in the forecast system; as long as they meet that 25 female fish requirement. Next steps for the Board, if the Board is interested in altering that minimum fish requirement in the re-closure protocol that can be done via a Board motion, and then we would also incorporate that change into a subsequent management document; so whatever is the next addendum initiated by the Board, or by the Section, excuse me. With that I'll take any questions.

CHAIRMAN KELIHER: Are there any questions regarding the TC report on this issue? Ray.

MR. RAYMOND W. KANE: Yes, Megan. The TC recommends 100 fish count; but they're comfortable with an 80. Can you explain that?

MS. WARE: They are recommending that it be a target of 100 fish; but that if a sample was 80 fish they would be comfortable using that to determine if a re-closure is needed in the herring fishery.

CHAIRMAN KELIHER: Doug.

MR. DOUGLAS E. GROUT: Just to be clear on what our next steps are. If we do by Board vote here that 80 fish minimum would go into place immediately, and you just in a future action just change the wording in it. One of the things that I got out of the TC memo, which I think you were pretty clear about is even with an 80 fish minimum sample, 25 percent at a minimum must be spawning fish, sexually mature excuse me, sexually mature fish. Correct?

CHAIRMAN KELIHER: Steve.

MR. STEPHEN TRAIN: I'm prepared to make a motion that gets us there as we continue the discussion if you would like.

CHAIRMAN KELIHER: That would be fine, thank you.

MR. TRAIN: I think you have it; but I would be happy to read what I've got. **Move to have the Atlantic herring spawning re-closure protocol to read that a sample is defined as a minimum of 80 randomly selected adult sized fish, with a target of 100 fish, from a fishery dependent or independent source.**

CHAIRMAN KELIHER: Second by Ray Kane; any comments, go ahead Bob?

MR. BOB BALLOU: Given that this is such a high volume fishery, I'm just struck by the fact that we're bouncing between 80 and 100 fish as if it were a challenge; and it must be on occasion to get a sufficient sample size. But Megan, can you just kind of clue me in to as to why on occasion there is a challenge in getting enough herring for sampling; given that it is a high volume fishery?

MS. WARE: I'm not sure it was necessarily a challenge; but my impression was that some states when they did the sampling will get 98 or 99 fish and that would automatically disqualify that sample from being used to determine if a re-closure is needed. That was the request to look at a lower minimum sample size. But as the TC notes, whether the baseline is 80, 90, 100 at some point a line is drawn; and so there will always be samples that might fall slightly short.

CHAIRMAN KELIHER: Dennis.

MR. DENNIS ABBOTT: Would it be better to define the amount of fish required as a measure of volume versus number to someone sitting down and count out 100 herring; or does 100 herring represent 50 percent of a five gallon pail or a full five gallon pail?

CHAIRMAN KELIHER: Yes, all I can comment on is I know when my staff are picking up fish they go down and randomly select from the catch as it's being offloaded. It's never been done by volume. They just try to guesstimate when they have somewhere around 100 fish. Almost always they end up with over 100 fish.

But in two cases last year, one case I think David and Doug and I talked about on a phone call, resulted in two samples that potentially would have closed the eastern Gulf of Maine, only we only had 97 and 96 fish I think. I think it seems to me this is an attempt to try to make sure that when we've got the right amount of fish that we've got some flexibility in showing that we can make those types of closures and protect the stock. Colleen.

MS. COLLEEN GIANINI: Megan, I'm just wondering if you can speak to, when we met on this last I think we had suggested a minimum sample size of 90 fish; so I'm a little bit surprised it went down from there. I know we're kind of splitting hairs. But can you speak to how they got to 80?

MS. WARE: I think it was more of a comfort level with the TC than any sort of statistical analysis. But they did note that obviously the higher the number the more robust the sample is; and a greater representation it is of the population.

CHAIRMAN KELIHER: I did ask Matt Cieri from my staff and from a statistical standpoint; was he more comfortable with 90 versus 80, and at that time he answered that he didn't think there would be any difference. I know the question was asked of Renee; but I don't know if you ever heard back from here.

MS. WARE: I think she was interested in checking with the TC members; and it sounds like you might have gotten an answer through your state representative.

CHAIRMAN KELIHER: Any additional comments or questions on the motion? David.

DR. DAVID PIERCE: Yes we've discussed the spawning re-closure protocol for quite a long time. Frankly, we've discussed it so much it became humorous; maybe not to everybody else, but to me as we struggled to figure out how in the world do we reclose when we have some evidence that the fish are still spawning? It's important to reclose, and frankly I've always turned to my staff that has done the sampling that has got the statistical knowhow to ask him, as well as staff from other states, what can we live with?

What will do the jobs, because the fishery is closed, it can be hard to get samples. They'll sample from the whiting fishery, they'll sample whatever they can, whatever is available, Bill, they will get it. In the past I've always been concerned that we might get a sample that would be biased that might come from a fishery that's actually not representative of the sea herring fishery itself that we reinstate that would stop when the closure was reinstated.

But I backed off of that. I think the motion is a good one; it covers the fishery dependent and independent source. My assumption is that our staff, your staff, New Hampshire involved in this will strive to get the 100 fish. But if they just can't get it, then okay 80 randomly selected adult fish, why not? This is a good way forward; and I support it.

MR. ABBOTT: Last word. Would it be better if it read that a protocol to read that an adequate sample of selected adult fish versus a number, get away from having a number if it was an adequate number – with a target of 100 fish; just a thought.

CHAIRMAN KELIHER: That's kind of arbitrary to the sampler. I mean it's still a target. Then who determines what is adequate at that point?

MR. ABBOTT: The scientists. You're still looking. What happens now with the minimum of 80 when you get to 78? It just continues to pin a number, where the people doing the sampling know what adequate number will give them their necessary information.

CHAIRMAN KELIHER: Yes, my feeling is the 80 becomes the floor in this conversation. We don't see many less than that. But I'll see what other folks have. Doug.

MR. GROUT: I see the target and the threshold; and I think the threshold is what they're saying is the minimum that's adequate.

CHAIRMAN KELIHER: Thank you, anybody else? Seeing none; I'm going to read the motion. **This is move to have the Atlantic herring spawning re-closure protocols to read that a sample is defined as a minimum of 80 randomly selected adult sized fish, with a target of 100 fish, from a fishery dependent or independent source. Motion by Mr. Train seconded by Mr. Kane, are there any objections to the motion? Seeing no objection the motion passes.** That concludes Item Number 5.

## **CONSIDER APPROVAL OF THE 2018 FMP REVIEW AND STATE COMPLIANCE**

CHAIRMAN KELIHER: Item Number 6 is to Consider Approval of the 2018 FMP Review and State Compliance. Megan.

MS. WARE: I will go through the 2018 FMP Review on the 2017 Fishing Year. The last stock assessment update for Atlantic herring occurred in 2015; and it included data through 2014. Results of that assessment indicated that Atlantic herring is not overfished and overfishing is not occurring. The next assessment is scheduled for 2018; with a SAW/SARC review scheduled for June, and results of that assessment will be used to inform the next specification package.

The U.S. Atlantic Herring Fishery is controlled by annual catch limits. The stock-wide ACL for 2016 to 2018 was 104,800 metric tons; and then the Area 1A sub-ACL is 30,300 metric tons. Preliminary information from 2017 indicates that 29,164 metric tons were caught in Area 1A; which represents 90.9 percent of the sub-ACL.

Since the directed fishery closes when 92 percent of an area's sub-ACL is projected to be reached, there was no closure in that Area 1A fishery in 2017. I just wanted to note that this figure is updated from the figure that is in the document. The ACCSP 2017 landings were posted after the PRT had completed the FMP review.

This updated figure, which now includes 2017, will go into the FMP review. This slide outlines the days out program, and the effort control measures which were implemented in Area 1A for 2017; 2017 was the first year under Addendum I. The original landings schedule for Area 1A was set at three days for vessels with a Category-A permit.

Then this was subsequently increased to four, and then five, and then seven days; as it became clear that the landings were occurring

at a slower pace than the previous two years. Likewise the weekly landing limits for the Category-A permits also increased throughout Trimester 2. For the start of Trimester 3 there was a three-day-consecutive-landings limit, and then this was increased to seven days, once it became clear that landings were below the sub-ACL.

Trimester 3 landings continued well into December, creating a longer season than the previous two years. This slide goes through the spawning closures that occurred in 2017. In eastern Maine it closed on the default date of August 28, since there was only one sample from that area. Then the closure was extended for two additional weeks, closing October 16 through the 30th, after a sample indicated a significant number of spawning herring.

In western Maine, the GSI 30 model was used to close on the projected date of September 26. There was no re-closure in the western Maine area. Then for Massachusetts and New Hampshire, again the GSI 30 model was used to project a closure date of October 1. That closure was extended two additional weeks; after samples indicated a significant number of spawned herring.

In terms of state compliance, the PRT finds that all states are in compliance with the Atlantic herring FMP. For de minimis status a state may be eligible for de minimis if it is combined average of the last three years of commercial landings constitutes less than 1 percent of the coastwide commercial landings for that same three year period. New York has requested and met the requirements of de minimis status. The PRT recommends that the Atlantic Herring Section approve the 2018 Atlantic Herring FMP Review, State Compliance Reports and de minimis status for New York.

CHAIRMAN KELIHER: Any questions on the Compliance Report? Seeing none; I would entertain a motion. Doug.

**MR. GROUT: I move that the Atlantic Herring Section approve the 2018 Atlantic Herring FMP Review, state compliance reports, and de minimis status for New York.**

CHAIRMAN KELIHER: **Motion by Mr. Grout, is there a second, second by Mr. Train. Any discussion on this, any opposition to this, seeing none; the motion passes unanimously.** That concludes all the business. Is there any additional business that would be brought before the Section? David.

DR. PIERCE: Not so much business, but a comment regarding what we might see this year; that is the amount of herring that will be landed. I noticed in the presentation that Megan gave that the most recent year's amount of landings dropped down relative to the previous years. I guess we could speculate part of the reason for that was availability of menhaden; because of what we have done, what ASMFC has done with menhaden management, the size of the quotas, allocations to the states.

I know there will be a lot more herring available to be harvested by purse seiners; primarily. We may be seeing what the states do; notably New Hampshire, Massachusetts and Maine, what we feel we have to do as we always do every year; changing the days for landing, for catching, and all that we do regarding slowing down the harvest of sea herring.

I suspect that we may find ourselves with a lot of menhaden being caught; assuming they're in our waters and they can be caught. We'll see a much reduced landing of sea herring as menhaden takes over; as I hope it would, the big market. We shall see.

CHAIRMAN KELIHER: Yes, I'm never certain of what my crystal ball might, it's very foggy. Like everywhere else in Maine, my crystal ball is very foggy of what may happen with herring landing. Are there any additional items for the Section? Mr. White.

MR. G. RITCHIE WHITE: Just curious if Megan has ever staffed a Board that has only lasted 40 minutes before.

#### **ADJOURNMENT**

CHAIRMAN KELIHER: If she wasn't so long winded we would have been done 20 minutes ago. If there is no other business to be brought before the Section, I would entertain a motion to adjourn; motion to adjourn, so move. Thank you very much.

(Whereupon the meeting adjourned at 3:40 o'clock p.m. on May 1, 2018)