

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

**The Ocean Place Resort  
Long Branch, New Jersey  
Hybrid Meeting**

**November 9, 2022**

Draft Proceedings of the Atlantic Menhaden Management Board Hybrid Meeting  
November 2022

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**INDEX OF MOTIONS**

1. **Move to approve agenda** by Consent (Page 1).
2. **Move to approve proceedings of August 3, 2022** by Consent (Page 1).
3. **Main Motion**  
**Move to set the total allowable catch for 2023 through 2025 at 259,500 MT** (Page 6). Motion by John Clark; second by Pat Geer. Motion amended.

**Motion to Amend**

**Move to amend to replace 259,500 MT with 233,550 MT** (Page 6). Motion by Megan Ware; second by Cheri Patterson. Motion passes without objection (Page 10).

**Main Motion as Amended**

**Move to set the total allowable catch for 2023 through 2025 at 233,550 MT**

**Motion to Amend**

**Move to amend to replace 233,550 with 213,840 MT** (Page 10). Motion by Robert LaFrance; second by Allison Colden. Motion failed (5 in favor, 13 opposed) (Page 12).

**Main Motion as Amended**

**Move to set the total allowable catch for 2023 through 2025 at 233,550 MT**

**Motion to Amend**

**Move to amend to replace 233,550 MT with 225,000 MT** (Page 13). Motion by Lynn Fegley; second by Loren Lustig. Motion failed (7 in favor, 11 opposed) (Page 13).

**Main Motion as Amended**

**Move to set the total allowable catch for 2023 through 2025 at 233,550 MT.** Motion carried unanimously (Page 14).

4. **Main Motion**  
**Move to approve a modified version of Option B of Section 3.1.1 allocation. Step 1 so that the following states are at 0.25%: PA, SC, GA, CT, DE, NC, FL and the remaining states will all receive a base allocation of 0.5%** (Page 21). Motion by Doug Haymans; second by Chris McDonough. Motion amended.

**Motion to Amend**

**Move to amend that Pennsylvania moves from 0.25% to 0.01%** (Page 23). Motion by Cheri Patterson; second by Roy Miller. Motion carried (12 in favor, 2 opposed, 1 null, 3 abstentions) (Page 23).

**Main Motion as Amended**

**Move to approve a modified version of Option B of Section 3.1.1 allocation. Step 1 so that the following states are at 0.25%: SC, GA, CT, DE, NC, FL; that PA is at 0.01%; and the remaining states will all receive a base allocation of 0.5%.** Motion carried (15 in favor, 1 opposed, 2 abstentions). (Page 24).

**Motions (continued)**

5. **Main Motion**  
**Move to approve under Section 3.1.2 Timeframe Option 3A: Combination, sub-option 1:25/75** (Page 24).  
Motion by John Clark; second by Pat Geer.  
  
**Motion to Substitute**  
**Move to substitute Option 4B moving average: provision to limit states' moving average landings if total landings exceed the total allowable catch** (Page 25). Motion by Megan Ware; second by Cheri Patterson.  
Motion failed (8 in favor, 10 opposed) (Page 31).  
  
**Main Motion**  
**Move to approve under Section 3.1.2 Timeframe Option 3A: Combination, sub-option 1:25/75.**  
  
**Motion to Substitute**  
**Move to substitute Option 2: 2018, 2019, 2021** (Page 32). Motion by Nichola Meserve; second by Jim Gilmore. Motion carried (8 in favor, 7 opposed, 3 abstentions) (Page 34).  
  
**Main Motion as Substituted**  
**Move to approve Section 3.1.2 Option 2: 2018, 2019, and 2021.** Motion carried (12 in favor, 3 opposed, 3 abstentions) (Page 34).
6. **Move to approve overage payback Option 2** (Page 34). Motion by Nichola Meserve; second by Jim Gilmore. Motion carried without objection (Page 35).
7. **Move to approve Option 1 (status quo) under Section 3.2.1** (Page 35). Motion by Cheri Patterson; second by Joe Cimino. Motion carried unanimously (Page 35).
8. **Move to approve under Section 3.3.1 Option 2 (States may split quota by sector/fishery/gear type)** (Page 35). Motion by Joe Cimino; second by Pat Geer. Motion carried unanimously (Page 36).
9. **Main Motion**  
**Move to adopt Option 2 in Section 3.3.2 (No purse seines, all other small-scale and non-directed gears maintained)** (Page 36). Motion by Nichola Meserve; second by Lynn Fegley.  
  
**Motion to Substitute**  
**Move to substitute to maintain purse seines in IC/SSF with a reduced trip limit of 4,000 lbs. for purse seines only** (Page 36). Motion by Megan Ware; second by Dennis Abbott. Motion tabled.  
  
**Move to table until after the Board addresses Section 3.3.4** (Page 41). Motion by Adam Nowalsky; second by Eric Reid. Motion carried unanimously (Page 41).
10. **Move to approve under Section 3.3.3 Option 1 (status quo)**. (Page 42). Motion by Jim Gilmore; second by John Clark. Motion carried unanimously (Page 43).

**Motions (continued)**

11. **Move to adopt Option 2A Sub-option 1 and 2B Sub-option 1 in Section 3.3.4 (to evaluate incidental catch and small-scale fishery landlines annually against the coastwide total allowable catch and to allow the modification of the daily trip limit and/or gear types included in the incidental catch/small-scale fisheries provision via Board action)** (Page 43). Motion by Allison Colden; second by Doug Grout. Motion carried unanimously (Page 45).

**Main Motion**

**Move to adopt Option 2 in Section 3.3.2 (No purse seines, all other small-scale and non-directed gears maintained).** Motion by Nichola Meserve; second by Lynn Fegley

**Motion to Substitute**

**Move to substitute to maintain purse seines in IC/SSF with a reduced trip limit of 4,000 lbs. for purse seines only** (Page 36). Motion by Megan Ware; second by Dennis Abbott. Motion failed (5 in favor, 9 opposed, 3 abstentions, 1 null) (Page 46).

**Main Motion**

**Move to adopt Option 2 in Section 3.3.2 (No purse seines, all other small-scale and non-directed gears maintained).** Motion by Nichola Meserve; second by Lynn Fegley. Motion carried (14 in favor, 1 opposed, 3 abstentions) (Page 46).

12. **Move to approve the Addendum as modified today and have the allocations be effective January 1, 2023 and the remaining measures will be effective May 1, 2023. Implementation plans will be submitted by January 1, 2023 and reviewed by the Board at the Winter Meeting 2023** (Page 47). Motion by Cheri Patterson; second by Jim Gilmore. Motion carried unanimously (Page 47).
13. **Motion to adjourn** by consent (Page 47).

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**ATTENDANCE**

**Board Members**

Megan Ware, ME, proxy for Pat Keliher (AA)	G. Warren Elliott, PA (LA)
Steve Train, ME (GA)	John Clark, DE (AA)
Cheri Patterson, NH (AA)	Roy Miller, DE (GA)
Doug Grout, NH (GA)	Craig Pugh, DE, proxy for Rep. Carson (LA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)	Lynn Fegley, MD, AA (Acting)
Nichola Meserve, MA	Russell Dize, MD (GA)
Raymond Kane, MA (GA)	Allison Colden, MD, proxy for Del. Stein (LA)
Sarah Ferrara, MA, proxy for Rep. Peake (LA)	Pat Geer, VA, proxy for J. Green (AA)
David Borden, RI (GA)	Bryan Plumlee, VA (GA)
Conor McManus, RI, proxy for J. McNamee (AA)	Chris Batsavage, NC, proxy for K. Rawls (AA)
Eric Reid, RI, proxy for Sen. Sosnowski (LA)	Jerry Mannen, NC (GA)
Matt Gates, CT, proxy for J. Davis (AA)	Mel Bell, SC (AA)
Rob LaFrance, CT, proxy for B. Hyatt (GA)	Malcolm Rhodes, SC (GA)
Sen. Craig Miner, CT (LA)	Chris McDonough, SC, proxy for Sen. Cromer (LA)
Jim Gilmore, NY (AA)	Doug Haymans, GA (AA)
Emerson Hasbrouck, NY (GA)	Erika Burgess, FL, proxy for J. McCawley (AA)
Joe Cimino, NJ (AA)	Gary Jennings, FL (GA)
Tom Fote, NJ (GA)	Marty Gary, PRFC
Adam Nowalsky, NJ, proxy for Sen. Gopal (LA)	Max Appelman, NMFS
Kris Kuhn, PA, proxy for T. Schaeffer (AA)	Rick Jacobson, USFWS
Loren Lustig, PA (GA)	

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

**Ex-Officio Members**

Joshua Newhard, Technical Committee Chair	Meghan Lapp, Advisory Panel Chair
Scott Simmons, Law Enforcement Committee Rep.	

**Staff**

Bob Beal	Lindsey Aubart	Dustin Colson Leaning
Toni Kerns	James Boyle	Adam Lee
Madeline Musante	Emilie Franke	Mike Rinaldi
Tina Berger	Chris Jacobs	Julie DeFilippi Simpson
Kristin Anstead	Jeff Kipp	

**Guests**

Mike Armstrong, MA DMF	Jeff Brust, NJ DEP	Nicole Lengyel Costa, RI DEM
Vincent Balzano	Mike Celestino, NJ DEP	Caitlin Craig, NYS DEC
John Bello	Benson Chiles, Chiles Consulting	Robert Crockett
Alan Bianchi, NC DENR	Matt Corbin, MD DNR	Jessica Daher, NJ DEP
Jesse Bisette	Blaine Chocklett	Maureen Davidson, NYS DEC
Kurt Blanchard, RI DEM	Matt Cieri, ME DMR	Monty Deihl, Ocean Fleet Svcs.

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**Guests (continued)**

Taylor Deihl, Omega Protein	Chip Lynch, NOAA	Alexei Sharov, MD DNR
Everett Eaton, VA Media	Shanna Madsen, VMRC	Ethan Simpson, VMRC
Arissa Edwards, CBF	Joshua McGilly, VMRC	Melissa Smith, ME DMR
AJ Erskine	Patrick McGrath, VIMS	Somers Smott, VMRC
Tony Friedrich, SGA	Dan McKiernan, MA (AA)	Rene St. Amand, CT DEP
Alexa Galvan, VMRC	Kevin McMenamin	Terry Stockwell, Southport, ME
Lacie Gaskins, Omega Protein	John Maniscalco, NYS DEC	David Stormer, DE DFW
Shaun Gehan, Gehan Law	Drew Minkewicz, KDW	Mary Beth Tooley
Lewis Gillingham, VMRC	Steve Minkinen, US FWS	Chris Uranek, ME DMR
Angela Giuliano, MD DNR	Chris Moore, CBF	Beth Versak, MD DNR
Kurt Gottschall, CT DEEP	Kelly Mosca, CT DEEP	Mike Waive, ASA
Jamie Green, VA (AA)	Brandon Muffley, MAFMC	Jesica Waller, ME DMR
Pam Lyons Gromen, Wild Oceans	Kirby Rootes-Murdy, USGS	Craig Weedon, MD DNR
Marin Hawk, MSC	Brian Neilan, NJ DEP	Ben Whalley
Helen Takade-Heumacher, US FWS	Derek Orner, NOAA	Holly White, NC DENR
Jaclyn Higgins, TRCP	Lucas Pensinger, NC DENR	Ritchie White, CCA NH
Peter Himchak, Omega Protein	Will Poston, SGA	Kate Wilke, TNC
Harry Hornick, MD DNR	Dale Prentice	Angel Willey, MD DNR
Jesse Hornstein, NYS DEC	Jill Ramsey, VMRC	Josh Winger, NC DENR
Bill Hyatt, CT (GA)	Story Reed, MA DMF	Chris Wright, NOAA
Jeff Kaelin, Lund's Fisheries	Jeff Renchen, FL FWC	Steven Zalesak
Adam Kenyon, VMRC	Harry Rickabaugh, MD DNR	Jordan Zimmerman, DE DFW
John Kravchak	Jason Rock, MD DNR	Erik Zlokovitz, MD DNR
Ben Landry, Omega Protein	Brandi Salmon, NC DMF	Renee Zobel, NH F&G
Mike Luisi, MD DNR	Ross Self, SC DNR	
	McLean Seward, NC DENR	

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The Atlantic Menhaden Management Board of the Atlantic States Marine Fisheries Commission convened in The Monmouth I Room in The Ocean Place Resort via hybrid meeting, in-person and webinar; Wednesday, November 9, 2022, and was called to order at 1:30 p.m. by Chair Mel Bell.

**CALL TO ORDER**

CHAIR MEL BELL: Welcome everyone to the Menhaden Board Meeting. I'm the Chair, Mel Bell. I'll be working us through this today. We actually have a fairly light agenda, only two items on the agenda, really. I'm very proud of the Shark Board, we got through that fairly quickly. We do have some important stuff to deal with. We'll take the time needed to do it.

**APPROVAL OF AGENDA**

CHAIR BELL: First item would be Approval of the Agenda. Are there any additions to the agenda? Bob.

EXECUTIVE DIRECTOR ROBERT E. BEAL: Sorry to interrupt, Mr. Chair. There is nothing to do with the agenda, but somebody left a cell phone upstairs at lunch, it's an older iPhone with a home button, so I don't know whose it is.

MS. TONI KERNS: But you are my friend, because I have a home button.

EXECUTIVE DIRECTOR BEAL: Your technology level is equal with Toni's, but if anyone is missing a phone, let me know. There was a missed call from 410, which I believe is a Maryland number, so I don't know if that is a clue or not. But if anyone is missing a phone, let me know.

CHAIR BELL: If you are missing a phone let Bob know. That's okay, no that's an important thing. It might go off. Back to the agenda. Any additions to the agenda? I don't see anything, so the agenda will stand approved.

**APPROVAL OF PROCEEDINGS**

The Approval of Proceedings of the August, 2022 meeting, any edits, modifications needed to the August, 2022 minutes? I don't see any hands. Okay, no objection then the minutes will stand approved from the August, 2022 meeting.

**PUBLIC COMMENT**

CHAIR BELL: That takes us to Public Comment, and this will be public comment related to items not on the agenda. We can do this in person first, and then roll to the virtual folks. Would anyone here like to make public comment to the Board related to anything not on the agenda? I don't see any hands or anybody moving. If you've got people online, and I would like to try to limit it to like three minutes if we could, just so we can move along.

MS. KERNS: We'll put a timer up. Okay, go ahead, Phil Zalesak.

MR. PHIL ZALESAK: Chairman Bell, my name is Phil Zalesak. First a statement that Atlantic menhaden are not overfished, and overfishing is not occurring in the Chesapeake Bay, is not supported by the Commission's own data. On the contrary, this statement has been shown to be false by more recent scientific research.

Second, a statement there is no scientific proof of localized depletion of Atlantic menhaden in the Chesapeake Bay is also false. Finally, the statement that only a few individuals are concerned about the status of Atlantic menhaden in the Chesapeake Bay is also false. Regarding the Commission's own data, 95 survey site locations were used for Atlantic menhaden data collection.

These locations were shown on Page 472 of the SEDAR 69 Benchmark Stock Assessment Report for Atlantic menhaden dated January 2020. The Northeast Area Monitoring Assessment Program, NEAMAP was the official fisheries and stock management activity for the Commission, surveyed 88 of 95 locations, none in the Chesapeake Bay, none.

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Even if one wishes to count the seven industry sites, only two of those were in the Bay. Given the lack of data from Chesapeake Bay locations, no conclusion can be made about the localized depletion of Atlantic menhaden in the Chesapeake Bay, using this dataset. The claimed lack of scientific proof of localized depletion of Atlantic menhaden in the Chesapeake Bay is also false.

On the contrary, proof of localized depletion is contained in Michael Academia's research study, which was previously forwarded to the Board. It concludes there are insufficient Atlantic menhaden in the mainstem of the Chesapeake Bay to sustain the osprey population. Regarding the statement that only a few individuals are concerned about the status of Atlantic menhaden in the Chesapeake Bay.

A letter signed by 22 national and local organizations, was sent to Governor Youngkin, calling for the ending of reduction fishing in the Chesapeake Bay, until the science demonstrates that industrial menhaden fishing can be done without negatively affecting the broader Bay ecosystem. In addition, petitions in support of this letter were presented to Governor Youngkin's office on October 24, with more than 11,000 signatures.

Finally, this Board could resolve issues by simply passing a motion, which states that Atlantic menhaden reduction fishery shall be limited to federal waters, the Atlantic Ocean. That is outside Virginia waters and east of the three nautical mile western boundary or the Exclusive Economic Zone of the Atlantic Coast. In fact, Mr. Chairman, you have the authority to call for such a motion at this meeting. I hope you do. I thank you for your time.

CHAIR BELL: No further public comment right now. Good, well then, we'll get at it.

### **SET SPECIFICATIONS FOR 2023**

The first item for business for us on the agenda would be to set the 2023 Specifications, and we felt that doing this first would help us kind of establish, you know folks that have a picture in their mind of what things might look like. That helped with the

decision-making process a little bit later, as we get into Addendum I. I'm going to turn this over to Josh Newhard.

### **REVIEW TECHNICAL COMMITTEE REPORT OF STOCK PROJECTIONS**

MR. JOSH NEWHARD: I'm going to go over the projection number that was provided to the Board last month, I believe. Some brief background on TAC specifications. The coastwide TAC has typically been set at an annual or multiyear level, based on Board action. The Board has used best available science, which is historically or more recently been projection analysis that uses the data from the most recent accepted stock assessment model.

The history of previous TACs is listed there, ranging from you know minimum of around 170,000 metric tons up to 216,000 metric tons. As I may say a few times throughout the presentation, in setting a TAC the Board should consider what level of risk they are willing to accept. As I get into the projections and the associated uncertainty, hopefully you'll be able to decide what level of risk you're comfortable with.

The latest projection memo was based off the 2022 stock assessment update that was presented to the Board at the August meeting. At that time the Board requested that the TC examine a suite of TACs and their associated risk to reference points. The two main asks were, what were the TACs associated with a 40 to 60 percent probability of exceeding the ERP target.

Those were looked at in 5 percent increments. Then bringing it down a little bit more, the Board asked the TC to look at what the TAC might be with a single TAC from '23 to 2025, or as separate years, so a varying TAC across the same timeframe. Then the other ask was, what is the percent risk of exceeding the ERP target, given a plus or minus 10 percent increase or decrease in the current TAC.

Again, looking at that in 5 percent increments, and also including the status quo. Just as a refresher. The current reference points, the ERP target is the

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maximum fishing mortality on Atlantic menhaden that sustain striped bass at their biomass target, when striped bass are fished at their fishing mortality target.

Similarly, the ERP threshold is the maximum fishing mortality on menhaden that keep striped bass at their biomass threshold, when they are fished at their F target. This is from the 2022 update. The current status of menhaden fishery is that it is below the F target, the ERP target. You can see on the graph on the left there, ERP target is 0.19. We are above the fecundity target.

Again, the target is the solid line, ERP threshold is the dash line. That is based on the 2022 update. These figures are from the 2022 update as well. We have recruitment on the left and biomass on the right. Then you can see this is going to be a topic that I'll bring up later when we talk about uncertainty, but I just wanted to bring it to the Board's attention now that you can see that we have two strong year classes estimated in the model, 2019 and 2020. We also have some relatively high recruitment estimates for 2018 and 2021 as well.

Then based on those really strong year classes, 2019 and 2020, that is kind of what is driving this increase in biomass on the right-hand graph as well that you can see just in the recent time series as well. In the projections we use Monte Carlo boot strap runs of the BAM, the Beaufort Assessment Model. Again, that's based on the 2022 update. It's the same method as the benchmark, just with updated data, more recent fishery data. Uncertainty is accounted for using the best scientific methods available. Just as a reminder, similar with all other projections, they are highly uncertain, and they are subject to all the same assumptions that are built into the assessment model. There is no change in the fishing effort, there is no seasonality that's modeled, there is no structural model of uncertainty. All the same model caveats that apply to the assessment also apply to the projections. More specifically, and as was kind of brought up in the presentation of the 2022 update. There are some additional uncertainties

that surrounds the impact of the data quality or essential lack thereof, due to the pandemic in 2020 and 2021.

Several surveys that were used in the BAM had missing datapoints. Some of the larval surveys were actually not used in the 2022 update, and similarly there was reduced commercial sampling, so we're potentially missing some lengths and ages across the sampling coverage. That's an additional source of uncertainty that is built into the model, and of course that uncertainty is going to extend out into the projections as well.

Additional uncertainty, we noticed in the 2022 update, and we also saw in the 2019 benchmark, there is a retrospective pattern observed. What you can see here, if we look at the 2019 benchmark in the yellow or gold line, you can see the terminal year of the benchmark was 2019, with a 2017 terminal year, data wise.

At the end of that benchmark, we saw some very high recruitment classes as well. You can see that in the gold. But then if you compare that to the 2022 update, which used newer data, you can see that those were essentially revised to not be quite as high as was predicted in the 2019 benchmark.

The TC discussed this, especially in light of we're seeing these high recruitment years again at the end of the time series as well. If you couple that with the decrease in the amount of data that we had available to use, that there is some concern that, are we seeing that same pattern again. It appears that way.

You know we can't say for certain one way or another. Just to potentially get ahead of a question that may come up. The 2019 benchmark used 2017 data as the terminal year. However, it was used to set the TAC in 2020 to 2021. Those high year classes from the 2019 benchmark that you see in 2015 and 2016, essentially weren't really available when setting a TAC for 2020 and 2021.

This year, the high recruitment classes from the 2022 update are from 2020 and 2019. Those fish

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will be available for setting the TAC in '23 and 2024. That is an additional source of uncertainty that the TC wanted to bring up to the Board's attention. In terms of that retrospective pattern that we saw, and it also occurred in the benchmark. We believe that especially in the terminal year the model is underestimating fishing mortality, and we are overestimating fecundity, and that we considered adjusting for just projections based on two accepted methods.

Essentially what happened was one method told us not, don't adjust the projections it was fine. The other suggested that we should adjust. The TC met to discuss it, and we felt that we did not recommend adjustment projections at this time, and as I believe it was brought to the Board's attention in August, or maybe it was during the call. But the Assessment Science Committee should consider a policy for retrospective adjustments to not only help guide the Menhaden TC, but all the other TCs and SASs as well. I believe that they are going to look at that, I may be mistaken there. Again, but given all this uncertainty, the Board may want to adjust their risk tolerance as needed. This is a key to the graphs that are presented in the projection memo. I'm not going to go over all the graphs, but I did want to provide a key, so people can just refamiliarize yourself with them. As we click through and just describe what each arrow is pointing too. That solid line there in the landings, that is whatever TAC is projected.

This example is the status quo, so you can see that. We're around 194,000 metric tons, and that's not changed from year to year. We click through once it should go to the orange line, that's our target. The blue line is the threshold. Then within each graph, when there is uncertainty. If you click through, you'll see that the solid line is the 95th and 5th quantile.

The dotted line is the 25th and 75th quantile, and then the dashed line is the median for the whatever scenario. If we want to click through, we can actually get into what the projections look like. This table shows that the first range, where we're looking at what within 40 to 50 percent of

probability of exceeding the ERP target. What are the associated TACs?

That's in the first column. The second column is a static TAC, if you will, so a TAC that is set for one TAC for the 2023 to 2025, and then the other three columns are with just a TAC set for each specific year and changing over time. You'll note that the TAC associated for the single TAC for 2023 to 2025 is essentially the minimum TAC over the same timeframe.

If you look at 40 percent probability of exceeding the ERP target, note that the smallest TAC for the time varying period is the same as, excuse me, the single TAC for 2023 to 2025, if that makes sense. Then at the bottom there you can see what the recent TACs are from the past two years, so 215,000 metric tons from 2018 to 2020, and then our current TAC, 194,400.

Then these are the TACS with plus or minus 10 percent from status quo. Status quo is in the middle. That first column goes from a 10 percent reduction, and then in 5 percent increments up to a 10 percent increase over a current TAC. Those first three columns are the probability of exceeding the ERP target for each TAC year that was requested.

Then you can see in the last three columns, those are the probability of exceeding the ERP threshold across all years of the projection. You can see those, no projection within this scenario had a chance of exceeding the ERP threshold. I think that's it. With that we can take any questions.

CHAIR BELL: Good presentation. I appreciate you all responding to the tasking from the Board back in August. Thank you. Questions for Josh. Yes.

MR. ROBERT LaFRANCE: Hey, it's Robert LaFrance from Connecticut here. I just wanted to ask about the data that you had, in terms of COVID and some of the uncertainty that might have got around that. I just want to make certain I am understanding it. It sounds to me like we just had less data overall in the model. I was just wondering if you could speak to how much less data we had.

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MR. NEWHARD: That might be a better question if Katie or Kristen want to weigh in on. You know I don't know if we even can quantify that exactly.

DR. KRISTEN ANSTEAD: We did have fewer commercial sampling, so that affects kind of the making space for catch at age and some of the data going into the commercial data. It wasn't zero, but it was less than we've had before during those two COVID years. Additionally, for fishery independent data, several surveys were not running.

The model can accommodate missing data, and we did come up with our regional indices that kind of patched over some of the holes. But it did have greater error associated then with those point estimates on both sides, fishery dependent and independent we had some data gaps.

MR. LaFRANCE: Thank you, and I guess just as sort of a follow up to that. Does that calculate into your risk analysis, the fact that the data isn't as robust as it was in the past?

MR. NEWHARD: I'm sure (muffled) assessment, you know it would have just resulted in some more uncertainty around the estimates. Then that would be carried over into the projections.

CHAIR BELL: Lynn.

MS. LYNN FEGLEY: Thank you so much for this presentation, it is very helpful. This is a hindsight is 20/20 question, and probably should have been asked at the last Board meeting. But because the quota is associated with 40, 45, 50 percent probability of exceeding the target, it tends to be significantly higher than the ones where we're looking at 5 and 10 percent. Do you have any sense on let's say for the 40 percent chance of exceeding the target, what sort of chance we have of exceeding the threshold? If you don't that's okay, I'm just curious.

MR. NEWHARD: Yes, I don't have that offhand. I'm trying to look at the projecting graph. I don't think we looked at that exactly, and I don't have that. We looked at 60 percent that's in the memo, so I can't

really say that it relates to 40, unless other staff has thoughts.

CHAIR BELL: I think that's it. They don't have that available right now. They may be able to find that, give them a second. Yes, Adam.

MR. ADAM NOWALSKY: We've all dealt with probabilities of overfishing and kind of had a standard of 50 percent. But that's been in a single species world. Is there any type of basis for the 50 percent probability of overfishing in an ERP target or threshold world? Has there ever been any legal challenge of anything like that? Do we have any basis to treat that as a standard, the way we've treated it in single species management?

DR. KATIE DREW: I don't think there is any kind of legal precedent or a regulatory precedent. This is really one of the first times we've ever actually had a quantitative ERP, we or anybody else has had a quantitative reference point to try to do these types of projections with. In theory, we are sort of accounting for the benefit around forage fish when we set the ERP target and threshold. Whereas before you might have accepted, in a single-species world you might have accepted a lower percent probability or a lower risk, because of not accounting for that ecosystem services. We're trying to account for that here with these reference points. However, I don't think there is any kind of scientific justification to say 50 percent is exactly right. I think this comes back to the Board's perception of risk and uncertainty about what they value between the risk of exceeding the CRP target, versus the benefits of being riskier, from a socioeconomic perspective. But we are, I think, in somewhat uncharted waters, in terms of exact numbers and best practices around those numbers.

CHAIR BELL: Thanks, Adam, good question. Other questions. Pat.

MR. PAT GEER: This kind of leads up similar to what Lynn was saying. I was just wondering, I know the TC was only tasked at looking at the TAC in 5 percent increments, and looking at the probability of exceeding the target and the threshold of those.

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Was there any work done looking at 15 percent increase or 20 percent increase, or 15 percent decrease at all?

DR. ANSTEAD: We didn't look at anything except for the Board tasking.

MR. GEER: Okay, thank you.

CHAIR BELL: All right, other questions. They gave us exactly what we asked for. Thank you for that. My kids never did that. Any other questions at this point? We're going to have to choose a TAC. Right now, we're at 194,400. If we want something other than that we're going to have to decide. Yes, John Clark.

MR. JOHN CLARK: Are you ready for a motion, Mr. Chair, just to get the discussion started?

CHAIR BELL: Yes, it seems like we're kind of out of questions here, so let's get this thing rolling.

**MR. CLARK: I sent a motion, the motion is to move to set the TAC for 2023 to 2025 at 259,500 metric tons, and if I can get a second, I'll speak to it.**

CHAIR BELL: Second by Pat Geer. All right, discussion of the motion.

MR. CLARK: I'll just say that based on the information we've received, the probability of exceeding the ERP target is 40 percent for this, which is a much lower probability than we have right now. I know we are facing a very difficult situation coming up here of reallocating the commercial quota, which invariably can cause a lot of dislocation and problems for communities that are on the side that might be getting less TAC in the near future. I think this gives us a buffer to work through some of these problems coming up, without risking exceeding the TAC. I think it's, as I said a good point to start the discussion of where we should set the TAC.

CHAIR BELL: All right, Pat, as the seconder, do you have anything to add to that?

MR. GEER: I agree with what John said. You all remember being in Bar Harbor. It was a little bit colder, not much more. But several years ago, when we were doing a TAC, we went back and forth with nine different motions that all failed. I agree with John. This is a starting point for our discussion, starting higher and working from there. Having this discussion start from this point and work from there.

CHAIR BELL: You've got the motion, you've heard the rationale for the motion, discussion of that. Yes.

**MS. MEGAN WARE: I'm going to make a motion to, I guess it would be to amend, and it would be move to amend the 259,500 to 233,550, and if I get a second, I will explain.**

CHAIR BELL: You have a motion to amend, does Megan have a second for that? Yes, Cheri, second. Motion seconded, rationale.

MS. WARE: I think it is important to describe kind of how I got to this number. I think in our discussion today we're probably going to hear two key themes, one of them is uncertainty in the model, and the other is uncertainty with herring biomass. I wanted to try and address both of those with this TAC.

Regarding the assessment, I think we heard a really good presentation today about some of the uncertainties that COVID has created in our sampling and surveying. Then it also sounds like we have a mild retrospective pattern that I think we need to acknowledge, and potentially consider that in our risk tolerance.

But I also want to balance that with saying, this is a very robust stock assessment. This certainly represents best available science. It's showing a very healthy stock. That led me to a 40 percent risk of exceeding the ERP target, which is actually the 259,500 number. But I then wanted to address herring, and I know a few years back we had analysis from the ERP Workgroup, which looked at that relationship between striped bass and herring.

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At first it looks like there was a pretty strong relationship there. But we had some follow up analysis that suggested it was really seasonality that could be playing a role there. It may not be truly reflecting the ecosystem dynamics. But I do want to acknowledge that is a source of uncertainty. I wanted to account for that, and in the ERP Workgroup memo, they actually suggested one way to do that is via a buffer.

I took them up on that suggestion, and I applied a 10 percent buffer, and that's how I got the 233,550. I think this Board has prided itself on being conservative for menhaden management, and I think that this TAC follows that. I mean we're putting a very low risk of exceeding the F target. We are addressing herring biomass, and this is all within a very conservative ERP framework.

CHAIR BELL: I thank you, Megan. Cheri, do you have anything to add to that as a seconder?

MS. CHERI PATTERSON: No, Megan covered it quite well, but I am concerned about leaning more towards the conservative aspect of the uncertainties that we have realized with lack of data over the last two COVID years.

CHAIR BELL: I think I saw, yes Robert, your hand first and then back over to Steve.

MR. LaFRANCE: I have a question. I also was interested in putting forward a motion that would amend that motion. Is now the appropriate time for that? My motion would be to go to the 10 percent, which is 213,480.

CHAIR BELL: Since we had another hand, let's maybe have just a tad more discussion and come back to that.

MR. LaFRANCE: No problem at all, absolutely, thanks, Mr. Chair.

CHAIR BELL: Yes, did you have something?

MR. STEPHEN TRAIN: I would say as a fisherman, this is probably the second most important species

to me on the East Coast, and I could support the original motion. But I would have still had a little knot in my stomach on it, because we've done a very good job with this species. If we go up to the max every time and something goes wrong, it's risky. It seems to me the amended motion allows us to increase tonnage landed, while still decreasing fishing mortality, and that is a dream scenario to me in fisheries management. I think that the amendment is a much better choice.

CHAIR BELL: Any other comments on the amended motion right now? Dennis.

MR. DENNIS ABBOTT: I more have a point of order in that we have a motion and an amendment, then that is where we're supposed to stop at the moment, and we would have to vote on the amendment, and then whatever the main motion is at that time, that is open to further amendments. We can't have amendments on top of amendments.

CHAIR BELL: Right, thanks, Dennis, I appreciate that and I've seen that happen where you put an amendment through an amendment. Yes, it's crazy, but that is procedurally, I think correct. Discussions on the current amended motion. Are there thoughts, pro/con? As Dennis points out, what we would need to do is deal with this motion and then go back. Anything else here, Bob?

EXECUTIVE DIRECTOR BEAL: Procedurally, one of the things you can do is just sort of go around the table and see where people are, instead of a whole bunch of up and down motions and that sort of thing. You know, do you like this number? Do you have another number in your head? You know just sort of do it through dialogue, and then I think people have a good sense of what the universe you're operating in is. Then you can get into the motions. It's sometimes a good idea just to see generally where folks stand, if you're up to that, Mr. Chair.

MR. BELL: Yes, this is some high-level wheeling and dealing here. Okay, good point. Are we, just get a sense, it's a large room to read the room, but in

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terms of the number right now, are we kind of thinking that's reasonable? Nichola.

MS. NICHOLA MESERVE: I'll get on the record then and say that I support the amended number there, 233,550 metric tons. I appreciated the Technical Committee's memo, and their recommendation to look at our risk tolerance, and I agree that sticking with a 50 percent probability that we used in the last TAC setting should be revised here to the 40 percent. On top of that I can support Megan's 10 percent buffer, given the larger ecosystem situation now, with herring and mackerel as well. That's where I am, thanks.

CHAIR BELL: Joe, you had your hand up and then Eric.

MR. JOE CIMINO: Yes, if it helps, I'll jump in. We asked folks to do a lot of work and they have. They've given us some really great information. But I really appreciate how much thought Megan put into this, and the comments to the amended motion. I think I'm ready to support that. I have concerns of playing it even more conservative.

To me it starts to play that we are just going to walk away from all the hard work we asked people to do. I'm seeing a lot of fisheries independent surveys, and we're all seeing a lot of fish off the beaches here. I honestly have concerns about very large fish kills next year. I think probably New York would too.

CHAIR BELL: Eric.

MR. ERIC REID: I do have concerns, being from New England, about both herring and mackerel. I support the motion to amend for all the comments before me, and I would not support a motion to further amend to a number like 10 percent.

CHAIR BELL: Allison.

DR. ALLISON COLDEN: I just wanted to speak to the 10 percent that Rob LaFrance had put forward. Megan is exactly right that I think a lot of the discussion here today is going to focus on our

uncertainty as it relates to the model, and the fact that our ERP target and threshold don't currently reflect the best state of our knowledge with respect to Atlantic herring.

I do want to just throw it out there for us to consider as well. You know some of the arguments so far have also referenced this Board's past action, and how we have been successful in being conservative in managing this very important forage species. I went and took a look at some of the changes that we have made over the years since 2012, when we first put in a coastwide quota, and 10 percent has been the largest increase from year to year that this Board has taken in the past.

It just feels like to jump from 194 to 233, or even anything further beyond that, seems like a really large increase. Our next action to reallocate the quota amongst our states means we also don't really have a good idea of how well that is going to move things around. Is the capacity going to be where it needs to be to catch all of those fish if we set our quota that high?

I'm a little bit concerned going all the way to 2025, with an increase of a magnitude this size, that when we get our ERP assessment update in 2025, if there is something that changes, because of the incorporation of herring data or other changes to the assessment. We could have a little bit of regulatory whiplash if we need to cut back really quickly, having taken such a large increase. I just wanted to throw that out there for people to consider, with respect to a smaller number.

CHAIR BELL: There is an opinion for a little more conservative approach. Back to the number we have. Would anyone else like to speak to comfort level to this? Robert.

MR. LaFRANCE: Yes, I just want to speak to it. I really would align myself with what Allison said. I mean, if you take a look historically, you've been between 170,000 and 216,000 metric tons. We've only moved 10 percent up or down in any individual year. This is significantly bigger movement, in a model that we know has some uncertainty, a model

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that we know has additional uncertainty as a function of some of the COVID issues that we have.

It seems to me that it makes sense at this time, when we're doing reallocation, to actually utilize some additional fish to help make it easier for different jurisdictions to deal with some of the changes they're going to have. But I don't know that I'm comfortable, based upon what I've heard about the model and I'm learning about the model, specifically with regard to other species, as to whether or not that risk tolerance at 40 percent is in fact something we want to be at.

I feel, and I saw this the other day. There are a ton of fish out there. It seems like some of the stripers are coming back. It seems like there is an ample amount of fish. Where they are located and how we learn about that. We still have a number of years before we're really going to be able to look at this spatially.

I guess I'm really looking at a risk cup, and trying to make you keep it very, very conservative. That's why I'm trying to keep it within the realm that we've had in the past, but also recognize that we're going to make accommodations to a number of the states, because they will be getting some additional fish.

CHAIR BELL: Thank you. That's a little bit more conservative again. John.

MR. CLARK: I made the original motion. I also think that Megan's motion makes a lot of sense. One of the other things that these increases will help us with is one of the problems that has been there since we've gone to the allocations we have now, is the harvest coming in from small scale, the episodic event, those type of things.

Having a bigger allocation to spread around right now, could help us get away from some of those other methods we're using now to allow states to catch more menhaden. That is kind of in a gray area right now, and this would make it everything, hopefully make it more accountable also, the quotas.

CHAIR BELL: There is again the maker of the original motion, kind of more comfortable with the lower number, perhaps. Yes, Warren.

MR. G. WARREN ELLIOTT: We would be supportive of the amended motion. We would also be open to discussing Rob's this far as well.

CHAIR BELL: Dennis.

MR. ABBOTT: I think at the root of all of this is the desire for some states to increase their percentage of quota. But I have concerns. I will go along with this number, I will say. However, it concerns me that under the original motion, under the allocations presently enforced, that Virginia would see an increase of 40,000 metric tons.

Under this proposal, Virginia would get about 30,000 metric tons, while the New England states would be, again as I said in previous meetings, picking up crumbs by comparison. Somehow, in this whole process, we should be looking to achieve some form of equity, understanding that there has been a shift in the population.

There is a desire and a need for northern states, particularly in New England to actually prosecute the menhaden fishery to a greater degree. Well again I'm in favor of this, but I do have questions about increasing quota in the Commonwealth of Virginia by 30,000 metric tons. Can Omega Protein under their present regime even handle an extra 30,000 tons, you know whatever? Again, that is my real concern at this point in time.

CHAIR BELL: Yes, Matt.

DR. MATT CIERI: I think some of the retrospective issues, and the TAC projections being based on a single species model, without sort of accounting for some of prior increases and the state of the Atlantic herring. I would certainly support the substitute motion, and maybe perhaps even the 10 percent option.

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CHAIR BELL: All right, sounds like we're reading folks are comfortable with less than the original motion. Yes, Loren.

MR. LOREN W. LUSTIG: I likewise speak in support of the 10 percent proposal that we heard from Allison and Rob. I think it demonstrates not only wisdom, but prudence and caution. That is where my desires would be.

CHAIR BELL: If I'm kind of reading things correctly, and I understand procedurally what we need to do. Perhaps what we should do is go ahead and vote on the amendment, see how that goes and then we need to dispatch perhaps the original, and then that takes us to a fresh number that we can have some further discussion, if that's conservative enough, perhaps. Any other comments about the amended motion right now?

Any discussion on it? All right, what I would like to do is vote on it. Is that something that we would need to caucus for? Two minutes, does that work? Okay, let's take a two-minute caucus, and we'll come back and vote on it. Okay, everybody has had time to caucus, I assume, so we will go ahead and vote on this. Toni, you're going to stand by.

First of all, is there any objection to the motion? Okay good, you saved us some time, thank you. To the amended motion, I'm sorry. **This is the amended motion. The amended motion, which would take it to 233,550. Any objection to that right now? I don't see any hands, so then that motion passes without objection. Then that motion now becomes the main motion.** Yes, Robert.

MR. LaFRANCE: I think procedurally I can make a motion to amend at this point. Sure, no, no, take your time. Mr. Chair, I just wanted to get my hand up.

CHAIR BELL: You see before you, now this is the main motion. Move to set the TAC for 2023 to 2025 at 233,550 metric tons. That is now the main motion. Discussion of the main motion.

4 MR. LaFRANCE: Mr. Chairman, I basically still feel that that is probably too high, from where I'm sitting. I do think that the 10 percent is within the realm and the range that we've had historically. Given that there is a lot of uncertainty, which we've heard for different species, regionality, a whole bunch of other factors.

**I would like to make a motion to amend that to the 10 percent level, which would be the number of 213,840 metric tons for the TAC. That basically would result in a 2025 probability of exceeding the ERP target of 14 percent, so it's not without risk. It's not like some of the others where we have a zero.**

There is some risk associated with that, and I feel that that is at least, since there is some risk in the out years, and I've noted that the data also tends to show in some of the probabilities that the TAC has to go down in the future. I guess I'm really offering the idea of being particularly cautious in this particular motion.

CHAIR BELL: Okay, thank you, so we have a motion to amend again, a little bit more conservative, down to 213,840. Is there a second to that? Allison seconds. All right, now further discussion of the sort of more conservative approach, perhaps. Allison.

DR. COLDEN: Yes, so I'll just reiterate some of the points from before, and be a little bit more specific too with respect to some of the uncertainty. In the presentation I did notice, with respect to the fecundity and the F that our conclusions in the most recent assessment about not being overfished and overfishing not occurring. Those are in the terminal year, and it was sort of in between in the years preceding that.

That terminal year is the one that we're talking about having the most uncertainty associated with it. In the projections, talking about where the projections were coming from, being based on the year class of 2019 and 2020 moving through the fishery. Again, those are the years where we have

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the least amount of data to constrain our conclusions about what the projections may be.

Projections are always uncertain; models always have uncertainty. That is nothing that this Board or this Commission is not used to dealing with, and dealing with in a responsible way. But I just personally feel like there are some additional sources of uncertainty with respect to this species at this time that warrant this approach, and warrant the 10 percent increase.

CHAIR BELL: All right, thank you. We've heard from kind of both sides of the table there for a rationale for that. Pat.

MR. GEER: I just want to point out that the 10 percent that has been mentioned before has historically been the increases or decreases, where before the ecological reference points were put into play. You're pointing out, you're saying it's a very, very conservative estimate. I agree with what Mr. Cimino said. It's almost too conservative, in my opinion, so I'm going to oppose this.

CHAIR BELL: All right, Eric.

MR. REID: I'm really having a hard time, why we can't get our head wrapped around success. I mean we spent yesterday talking about being flexible, and when things go up, we need to be flexible. I'm pretty darn sure that when things go down, we're not all that flexible, because the conversation would have been over if these numbers were reversed.

I support the underlying motion. I said that before. There is no reason to worry about 233,550. I realize uncertainty is some concern, but uncertainty is built into this model as well. I realize that it's only anecdotal information. But if you go out on that boardwalk, there is menhaden as far as you can see, and that is the case from Maine to Virginia, and that works for me.

CHAIR BELL: Okay, we've heard some support, some opposed to that. Yes.

MR. RAYMOND W. KANE: I can't support the amended motion to the motion on the board right now. Understanding that ecological reference points, this is really the first species that we're managing. It's relatively new, and I agreed with ecological reference point management. I appreciate the work the Technical Committee has done, and I'm wondering, what's the probability? At 233,000 metric ton, what is the probability, 30 percent?

But also, we have to keep in mind the harvesters in this nation. Because we failed managing Atlantic Sea herring properly, and we have failed managing mackerel properly. This is the one forage species left in the ocean for both the ecosystem and for the harvesters to use for bait. I can't support the amended motion. I can support 233,500.

CHAIR BELL: Yes, Jim.

MR. JAMES J. GILMORE JR.: I also cannot support the amended motion, and back to what Pat said before. Remember, we went through a painful exercise of getting ecosystem-based reference points, and that was to make this more predictable. New management and we're going to try new things now.

I think the 10 percent is way too conservative, based upon the effort we put in with ecosystem reference points. I think we need to take something, and it's still not very risk averse. I mean I think we're talking about maybe in the 20 percent chance of exceeding the target, so it's still pretty low. On top of that, just to everyone, and I hope we agree at the table.

Then we get down to say two or three years, and then suddenly we maybe erred a little bit. We may be doing big cuts back at that time. That's, I think, the way we need to start managing now is that the new tools we're using, we should be utilizing our success, as Eric said. If it turns out that they're not working, well then, we should take equal measures at a future date.

CHAIR BELL: Robert.

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MR. LaFRANCE: I just want to respond to that particular argument. That is exactly why I would like to see the 10 percent. I don't want to see us trying to, like overstate and overshoot targets or TACs every year. By trying to do it in a predictable way, trying to move the TAC from one level to another, in sort of a predictable way at 10 percent.

I recognize it is exceedingly conservative. But I also recognize it sends a signal to the fishermen that yes, if we continue to manage the species like this, we can continue to see increases over time. But to do it, put it way up and then have to pull it back, I think that we're going to be in trouble if we have to do that going forward, which is why I'm supporting the 213,840 metric ton.

CHAIR BELL: I'm starting to get kind of a sense of the room. I think we're at a point where this is going to be a crucial vote. What I would suggest, if there is any other comment from anyone at the table at this point, let me know. But what I would like to do is get a little public comment on it before we vote. Then that will probably be an important vote. Anyone else want to comment on the amended motion, so we're down to the 213 level? I don't see any hands. Yes, we could go ahead and take one now.

MS. KERNS: It's Jeff Kaelin online.

CHAIR BELL: Yes, go ahead, Jeff.

MR. JEFF KAELIN: Yes, thank you, Mr. Chair, Jeff Kaelin with Lund's. Sorry I couldn't be with you today. Just very briefly, I don't support the amended motion. At 10 percent, I'll just point out that wouldn't even put us back to the 2016,000 where we were in 2020, when we took the 10 percent cut, which I think in retrospect wasn't necessary.

This is an important fishery. You're going to discuss allocations. We're all concerned we're going to lose access to the resource, you know that we've earned over time through our history and so forth. I think the 10 percent motion is needlessly conservative, and a reasonable place for the Board to end up

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today is with the underlying motion 233,550, which in and of itself is extremely conservative.

I guess offline I'm looking forward to talking more about the herring buffer. You know we've been in the herring business a long time. I just heard yesterday that striped bass is at 75 percent certainty that it will be recovered by 2019, and remember, we were leaving enough menhaden in the water for that to happen, according to this earth model. The herring buffer was pretty hard to accept, but then I will support the 233,550 as a reasonable compromise, and I appreciate the opportunity to speak.

CHAIR BELL: That's it for public. What we'll do, need to caucus again, or do you want to just go for it? All right, let's just go for it. Oh, I'm sorry. Let's just go ahead and vote on this. Do you need to caucus before we vote on this? No, okay. **Then we have the amended motion here, amend the main motion from 233,550 down to 213,840. That is the motion on the table. I assume there are objections to the motion, so we'll go ahead and vote. Do you want to call state by state?**

MS. KERNS: Will do, Mr. Chair. We'll start with those states in favor. Please, leave your hands raised until I call your state name. Connecticut, Fish and Wildlife Service, NOAA Fisheries, Pennsylvania, and no hands online. Oh, Erika, did you put your hand up? Can you raise it again if you did?

All right, and Florida. Thank you, Erika. Those against the motion, raise your hand. Rhode Island, Massachusetts, New York, New Jersey, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, Potomac River Fisheries Commission, Maine and New Hampshire.

**CHAIR BELL: Are there any abstentions, and then null votes. What is the final tally there? Okay, 5 for 15 against, 13 against, yes, we got some extra states. All right, so that motion fails, so the original motion is still the motion we have.**

All right, so that takes us back to the original motion. Clean slide, there is the motion in front of

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us now. Any further discussion of this motion? Yes, Lynn.

MS. FEGLEY: I have trepidation here. I feel I'm obligated to say something, because our delegation was split on that last motion. I do agree that the 10 percent number is too low, and that we need to manage this appropriately so we're not seeing fish killed. We've been down this road before. **I'm just going to try one time here to amend this motion to replace the 233,550 with 225,000 metric tons as a compromise between being too low and too high.**

CHAIR BELL: Let's get that down there. Was that 225,000, Lynn, even?

MS. FEGLEY: Two hundred and twenty-five thousand metric tons, 225,000.

CHAIR BELL: There is a motion to amend to 225,000 metric tons, I need a second. Loren does second, Loren Lustig seconds. All right, a new number for you to ponder, based on it's not quite as conservative as the 10 percent approach, but it's a little more conservative, sort of something in the middle. Thoughts about that. Joe and then Robert.

MR. CIMINO: This is with all due respect to Lynn, who is a friend and a colleague, and I think she knows it's with all due respect. You know there was a comment about sending a message to fishers. We're sending a message to the scientific community that we would rather do this arbitrarily, because we know better somehow, then what is coming out of the best available science. I think Megan had a very well-reasoned move to get us to the 233. This is kind of a shame. I mean all the press releases that went out in support of this approach. To just walk away from it now. I'm a little flustered, I'm sorry.

CHAIR BELL: Robert.

MR. LaFRANCE: I just wanted to thank Lynn for putting forward the motion. I think it definitely moves us closer to being conservative. I recognize people are back and forth about what level of risk we are willing to take. I feel that this is a very

reasonable approach. It's a significant increase from where we're at. It's not like we're not listening to the science. We're just not maybe moving as quickly as it might recommend.

CHAIR BELL: All right, other comments on this amendment approach? Yes, Megan.

MS. WARE: Yes, I'm going to support the underlying motion of 233,550. I think, thinking back to the framework for our ecosystem reference points. We consistently chose to set ourselves up for a conservative framework, and I think we did that by assuming the maximum demand of striped bass on menhaden in the assumptions that we made.

I think we set ourselves up conservatively. I think I agree with the comment before made from Joe that I get a little nervous about deviating too strongly from the guidance that we're being provided, particularly when this is a very healthy stock. I think, once again to echo Joe. You know last night he said we need to learn how to celebrate the wins. I think this is a potential in here.

CHAIR BELL: Any other comments, or discussion of the amendment before us, anything new? I don't see any hands. Let's go ahead and vote. **All in favor of the amended motion here to reduce down to 225,000 raise your hands.**

**MS. KERNS: Again, keep your hands up, I'm going to raise the names. I have Florida, Connecticut, U.S. Fish and Wildlife Service, NOAA, Pennsylvania, PRFC and Maryland.**

**CHAIR BELL: All right, all opposed to the amended motion.**

MS. KERNS: Rhode Island, Massachusetts, New York, New Jersey, Georgia, South Carolina, North Carolina, Virginia, Delaware, Maine and New Hampshire.

**CHAIR BELL: Okay that was 6 in favor, 11 against, so the motion fails. We didn't have, any abstentions? I don't think we nulled. Okay, no abstentions.** That takes us back again to the

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original motion we have up there. It was 7 to 11. All right, so this is the motion before us again. I don't know if we need any additional discussion of it. Anything new?

MR. ABBOTT: Not really, but we've narrowed the numbers down as 225 being too low and 233 agreed upon number. It seems like we would only be working between 233 and 225. I think it's time to call the question.

CHAIR BELL: That's why I was asking for anything new. I think you're right. We've kind of honed down a little bit there. Let's go ahead and vote on this. Do you need to caucus on this motion? No, okay. **Then the motion we're voting on is to move to set the TAC for 2023 to 2025 to 233,550 metric tons. That is the motion.** All in favor of the motion, raise your hand, and hold them up so we can count.

MS. KERNS: Rhode Island, Massachusetts, Connecticut, New York, New Jersey, Fish and Wildlife Service, NOAA Fisheries, Pennsylvania, Florida, Georgia, South Carolina, North Carolina, Virginia, Potomac River Fisheries Commission, Maryland, Delaware, Maine and New Hampshire.

**CHAIR BELL: Thank you, all opposed to the motion, raise your hand. Oh, okay. All right, thank you, so the motion carries unanimously.** We have a new TAC established, thank you. That's it for Item one on the two-item agenda. You're halfway there. Does anybody need to take a break at this point? We good? We'll roll into the next item then. We have a multi-level presentation up here, so James will start and then relay, and we'll just work through this whole thing. We'll have his presentation first. James. We're just loading the presentation. Yes, Roy.

MR. ROY W. MILLER: Before we move on, I was wondering if I could request a calculation of the percent associated with the motion that we just passed. In other words, was it 25 percent, 20 percent or what? If we could get that calculation. Thank you.

CHAIR BELL: Yes, hang on. Let's take five and we'll get things set up here, and then we'll deal with that question too, Roy.

DR. ANSTEAD: Hey Roy, just a clarification. Are you asking for how much percent increase of the overall TAC or the error associated?

MR. MILLER: The percent probability.

DR. ANSTEAD: We can probably give you a range but not a specific, because we only ran the specific ones that were included in the memo. But we can give you a range.

CHAIR BELL: Take a break and talk amongst yourselves for a few minutes.

(Whereupon a recess was taken.)

CHAIR BELL: All right, we're going to get started here, three o'clock. Now we're going to get into Addendum 1 to Amendment 3. James has got a presentation first.

MR. JAMES BOYLE: Are you going to deal with Roy?

CHAIR BELL: Oh yes, going to deal with Roy's question. Sorry.

DR. ANSTEAD: Roy, you're interested in knowing what the percent risk of exceeding the ERP target is associated with the new TAC that was just set at 233,550.

MR. MILLER: Yes, that is correct. I would like to see it in the meeting record if it can be calculated. I understand it may take additional time.

DR. ANSTEAD: Yes, that's correct. Just based on the memo we can only give you the range somewhere between 14 and 40 percent, but if you would like to task us with calculating it, we'll send it back to Amy and get a number for you.

MR. MILLER: Well, I would like to see the number. I don't want to make an assignment just based on my opinion. But that is my opinion. Thanks.

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**CONSIDER ADDENDUM I TO AMENDMENT 3 ON  
COMMERCIAL ALLOCATIONS, EPISODIC EVENT SET  
ASIDE PROGRAM, AND INCIDENTAL  
CATCH/SMALL-SCALE FISHERIES  
FOR FINAL APPROVAL**

MR. BOYLE: Thank you, Mr. Chair, and good afternoon, everybody. As mentioned, I'll be reviewing the options in Draft Addendum I and the associated Public Comments. For this presentation I'm going to start with a very quick overview and recap of the process that the document has gone through until this point.

Then I'll move on to covering the contents of the Draft Addendum. Unlike in previous meetings where we took one section at a time, due to how interconnected these sections are, I'm going to go through the entire document and all the comments, followed by the presentation from the AP Chair, and before taking questions and moving on to motions altogether.

The goal of today's meeting is to choose the final options for implementation in 2023. Here is a quick recap of the process. The Board initiated the development of Draft Addendum I in August last year, 2021. The document went through a few iterations before it was approved for public comment in August of this year.

**REVIEW PUBLIC COMMENT SUMMARY**

Public comments were accepted from September 1st through September 30th, and summarized for the Board to consider for final approval at today's meeting. There were 10 total hearings ranging from Maine to North Carolina. These included 2 webinars, 6 in person and 2 hybrid hearings, 246 members of the public attended the hearings in total, not including state or Commission staff, or Commissioners or their proxies, although some people did attend and comment at multiple hearings.

Electronic polls and show of hands, or show of hands were used at most hearings for some of the options. From the written comments a total of 121

comments were received with 34 coming from 3 different form letters, and 23 organizations commenting across 9 different letters, which left 64 individual comments.

This slide shows a summary of all the major options. I'm going to present the options in order of the document, so I'll begin with the two steps of the allocation, as shown at the top of the slide, followed by the episodic event set aside options or ESA, and then ending with the 4 sections of the incidental catch and small-scale fishery.

We're starting with the allocation. The objective of the options in this section are to align with the recent availability of the resource, enable states to maintain current directed fisheries with minimal interruptions during the season, reduce the need for quota transfers, and to fully use the annual TAC, but without going over.

For Step 1, to set the minimum allocation to each state, most comments favored Option B, to use a 3-tier minimum system that aims to reduce the amount of TAC that was reserved for minimum allocation, while still allowing for states to acquire the necessary allocation when combined with Step 2. Many of the comments in support of Option B expressed concern that giving quota to states that do not use it, only reduces the quota to state for the greater economic reliance on the menhaden fishery, when a quota is already designated for a potential harvest.

Comments in support of the status quo is Option A of a 0.5 percent fixed minimum. Often felt that it was most equitable to assign the minimums equally, and wanted states with smaller or no menhaden fishery to have a greater ability to reserve quota for other ecological purposes. Moving on to Step 2, to determine the timeframe used to assign the remainder of the coastwide TAC.

Most comments favored Option 2, to use landings from the average landings from 2018, '19, and 2021. Comments in support of that option often refer to increased availability and economic need in

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the northeast, in particular, and a desire for quotas to align more closely with that availability.

A number of comments of those who preferred Option 2 also gave a secondary preference for Option 3A, Sub-option 1, which would use both historical and recent landings, while giving recent landings a greater weight at a 75/25 split. The second most popular option was Option 3A, Sub-option 2, which weights the historic and recent landings equally in a 50/50 split, and supporters of this option often said that the system is more equitable to benefit longstanding fisheries.

Another significant minority of comment support is some version of the moving average in Option 4, either 4A or 4B or didn't specify. To update the timeframe to always be the most recent three years, and those commenters generally noted the changing nature of the fishery, and wanted to see the quota distribution be equally dynamic over time.

After the August Board meeting, staff added the two options for the overage paybacks to the end of the allocation section, as we discussed at that meeting, to allow for overage paybacks in the second year after an overage, due to the timing of when we have our most accurate understanding of the previous year's landings.

However, to further streamline and simplify the options being presented in the public hearings, this section was omitted very early in the hearing process, although there was one vote for Option 2 in the written comments. Moving on to the episodic even set aside, the options in this section, their objective is to ensure sufficient access to episodic changes and regional availability, in order to minimize in season disruptions, and reduce the need for quota transfers and incidental catch or small-scale fisheries landings.

The only two options in this section, most comments were in favor of Option 2, which would have the ESA increase somewhere between 1 and 5 percent. Although the vast majority of those commenters did not specify a sub-option. Of the

supporters that chose a sub-option, most supported Option 1 for the Board to set the new percentage statically at this meeting. Many comments in support of some version of Option 2 also expressed support for the increase to be to the maximum of 5 percent. Supporters of Option 1, to maintain the ESA at 1 percent, sometimes opposed the ESA generally, as a way for a small group of states to fish over their quota, or believe that it is sufficient to achieve its goal already at 1 percent. Lastly, we have the incidental catch and small-scale fishery section. The objective of these options is to sufficiently constrain landings to achieve overall management goals of meeting the needs of existing fisheries, reducing regulatory discards, and indicating when landings can occur, and if those landings are part of the directed fishery.

This first section is about when is a state allowed to enter into the incidental catch provision. Most comments supported Option 1, the status quo. Although it is notable that Option 2 achieves the same goal, which maintains the ability for states to divide their quota by sector, and for sectors to enter into the incidental catch small-scale fishery provision at different times.

Supporters of this current system frequently cited the benefits of flexibility for different states, and some referred to the success of the sector divisions that are currently utilized in New Jersey and Virginia. Supporters of Option 3, which would make it uniform along the coast that states cannot enter into the provision until the entire state allocation is met, expressed concern that the system may be manipulated to get fisheries into the incidental catch provision earlier in the fishing season.

Section 2 is concerning the permanent gear types in the incidental catch provision. Most comments favored Option 1, to maintain the current list of permitted gear types. The primary concern for many commenters was that by removing purse seines in either Option 2 or 3, they would lose the ability to release menhaden over the trip limit, and non-target species alive, especially if the pivot was to gillnets.

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Along with the bycatch mortality, some commenters cited the economic and physical tole of removing purse seines, as they felt gillnets were less efficient and harder on fishing crews, as well as the concern of adding more line to the water, should they transition to a stationary gear.

As a reminder, the sub-options of Option 1, which were also omitted from the hearing presentations for clarity, give the Board the ability to choose the status quo, while changing the classifications of one or both of fyke and trammel nets to better reflect their uses, as we discussed at the previous meeting.

Opponents to Option 1, whether they supported Option 2, to remove only purse seines or Option 3 to remove all small-scale directed gears, frequently felt that purse seines specifically do not conform to the goals or the perceived goals of the incidental catch small-scale fishery provision, as either small scale or nondirected. Section 3 concerns the trip limits for those permitted gear types.

The majority of commenters favored the status quo for directed trip limits, which would maintain the 6,000 pound per trip per day limit, often inciting the relatively small percentage of incidental catch small-scale fisheries landings when compared to directed landings, and believing that lowering the trip limit would make the incidental catch and small-scale fishery economically unviable, thereby enhancing the burden specifically on small fishers. Options 2 and 3 would reduce the trip limit to 4,500 pounds and 3,000 pounds respectively, only for the small-scale directed gear if they are listed at the bottom of the slide, which are the same gear that would be removed from the provision entirely under Option 3 of the previous Section 3.3.2. Similarly, to the previous section, fyke and trammel nets have been removed from the directed gear category for Options 2 and 3.

This last section is discussing whether or not incidental catch and small-scale fisheries landings should count as part of the total coastwide quota. Most comments supported Option 1, to continue the current system where those landings are not counted against the TAC. Similar to other sections

of this provision, some commenters believe the incidental catch small-scale fisheries landings to be a small percentage of the overall landings, and that imposing limits on it puts an undue burden on small fishers.

When counted together, all of the different versions of Option 2 represent a very significant minority, who largely expressed the view that incidental catch and small-scale fisheries landings should be counted equally to directed landings, in order to limit the overall use of the provision. While few people chose an option regarding the Board response, there was an even split between those who support modifying just trip limits and those who support a hybrid approach, and modifying both trip limits and gear types.

As a reminder, the Sub-option 1 under both 2A and 2B would give the Board the ability to make a modification through Board action. But the Board may always choose to use adaptive management to make a change, regardless of whether those sub-options are selected. There were some additional comments that were received that were either tangentially related to the topics in the Addendum, or regarding other topics altogether.

Related to allocation, a number of commenters expressed concern over the distribution of coastwide quota, particularly in the concentration in the reduction fishery. Many commenters also raised concerns regarding the size of menhaden that are landed, and how spawning stocks may be affected by juveniles being harvested.

Related to the incidental catch and small-scale fisheries provision, some commenters did not select a specific option, but they expressed general concern that without more restrictive limits on menhaden fishing, the stock will follow the same decline as was seen in Atlantic herring. Additionally, many commenters were concerned about incidental catch and small-scale fisheries landings specifically being used in the allocation timeframes, leading to a greater increase of quota, relative to other states, for states that utilize provision more.

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Additional topics that were raised, while this is not an exhaustive list, here are some of the comments received that were not specifically related to the Addendum. There was general concern about the spatial concentration of menhaden harvest along the coast, and the effects on local ecosystems, especially in sensitive areas such as Chesapeake Bay, Boston Harbor, and Narraguagus Bay.

There was general concern about the complexity of Addendum I and the quota system overall, and its ability to understand. A number of comments also concerned state regulations that do not pertain to the Commission here, but may be of interest to the Commissioners.

**ATLANTIC MENHADEN ADVISORY PANEL REPORT**

With that I will pass it over to AP Chair Megan Lapp, who is on the webinar to provide the Atlantic Menhaden Advisory Panel Report.

MS. MEGAN LAPP: Thank you, James. The Menhaden Advisory Panel met on November 1st, with 8 AP members in attendance and with 1 AP member providing written comments, which are incorporated into the summary. As you can imagine, a lot of the AP input was split based on geographic location of the AP members, which will come as no surprise to the Board, with a few exceptions, which I'll try to point out.

The three-tiered fixed minimum was supported by 7 AP members with no opposition from any AP members, so I would encourage the Board to take note of that. There were different rationales and differing opinions that led to this support, but wide support for this option. For this on allocation timeframe there was more of a split opinion.

Four AP members supported Option 2, the recent years of 2018, '19, and 2021, to support the recent menhaden distribution. But 2 of those also stated that they could support Option 3A, Sub-option 1, the 75/25 weighting as a backup, in case the Board did not accept Option 2. There were also 3 AP members who supported Option 3A, Sub-option 2, the 50/50 weighting of years.

I would note that there was no support for the Option 4 moving average option. In fact, 2 AP members specifically opposed these actions. I would encourage the Board to take note of that as well. As far as allocation from the AP, the main takeaways were a lot of support for the three-tiered fixed minimum, and no support for the moving average option.

Moving on, episodic events. Three AP members supported Option 1, the status quo of 1 percent with the rationale that allocation options already address increasing quota in the northeast, and 1 percent is a lot of fish. Two AP members supported Option 2, increasing episodic events between 1 and 5 percent, to suit the objectives of episodic events to address northern influx of fish. For incidental catch small-scale fisheries, as far as timing, 2 AP members supported status quo, 1 AP member commented that their state does not separate quota by sector.

But they would not oppose Option 2 if that helps other states. Regarding gear types under this provision, 1 AP member supported Option 1, status quo, emphasizing that it is important for the Maine Lobster industry, and noted that the large turnout and public hearings in Maine, were to support this option. We had some discussion about how purse seines are important for the Maine lobster fishery.

Three AP member supported Option 2, removing purse seines from the approved gear type. Two of these 3 preferred Option 2, but would accept Option 1. These 2 AP members were strongly opposed to Option 3, because it would eliminate the incidental catch small-scale fishery in the state of New York if it were adopted.

One AP member was more strongly supportive of Option 2, and did not believe that purse seines conformed to the goal of the provision, and noted that they have a 50-fathom size description placed on purse seines currently in this provision, as nondirected gear is the same size limit imposed by the state of New Jersey for directed gear. Regarding trip limit, 4 AP members supported Option 1, status quo, and there was no support by

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the AP for changing that at all. I would encourage the Board to note that. As far as catch accounting, 1 AP member supported Option 1, status quo, with meaning that the landings don't count against the TAC.

One AP member supported Option 2, to account for the landings against the TAC, but did not specify a sub-option. An additional issue that did come up in the discussion was the desire of 1 AP member to consider beach seines separately from haul seines, due to differences in those gear types in the New York fishery. That was all I had, Mr. Chair.

**CONSIDER FINAL APPROVAL OF ADDENDUM I**

CHAIR BELL: At the end of the day, everybody is probably not going to be happy, but you need to be content enough with what we've got to move forward. That's the thing here. I don't think anybody will walk away from the table 100 percent happy. But that is natural in this type of process. We've had a good bit of public input through the hearings, through the written comments that you've seen, a couple hundred pages of that.

We've got the AP input. You've obviously given this a lot of thought, because I've heard from a number of you, and I know we have some motions that have been submitted that we can tee up at the appropriate point when we come to that. What I would like to do is just work through this, and hone it down to something that is acceptable. Yes, Doug.

MR. DOUG HAYMANS: Mr. Chair, before we move on anything, could I ask sort of a procedural question?

CHAIR BELL: Sure.

MR. HAYMANS: In Step 1, right, we've got 2 options, and the second option being a three tier. We're realizing that 3 states were included in the lower end of the three tiers. But if we wanted to move, or at least one of those states wanted to move into the other tier, is that doable within the realm of the public comment that we've already put out there?

CHAIR BELL: Yes, would that be enough of a change that it would fall outside of what we've sort of scoped through the public.

MS. KERNS: Give me one minute.

CHAIR BELL: The trick is obviously as you move through these things, you can't get outside, sort of the box that we've created. As long as you make adjustments that kind of fall within the box of the parameters that we've scoped, we've taken to public hearing, and we analyzed. That is probably where your wiggle room is, and that's the question is this that particular concept something that we could adjust?

MR. HAYMANS: Yes. What I'm looking at is if the three states are 0.01 percent level would be interested in joining the other states at 0.25, especially in light of the increased quota, because I don't know that 47,000 pounds would ever allow a state to develop a small-scale fishery. But I would like to see us move up one, and that is not one of the options that was put out there.

CHAIR BELL: We're just trying to get an interpretation here, hang on.

MS. KERNS: Doug, I want to confirm with Bob on one piece of it. That is why I'm pausing, and waiting for him to come back. But I would note that, I know you said that you only get, I think it's 47,000 or roughly pounds. But we do say in the draft that it's just the initial portion of your allocation. You will get whatever else, or I guess you don't have any landings history, so you won't get anything else, so never mind, sorry.

CHAIR BELL: Should we come back to that?

MS. KERNS: Can we continue on with discussions and I'll get back to the Board?

CHAIR BELL: Okay. Just to move it along here. I'm kind of moving through the document, and dealing with the first, and I'm actually using the document, Page 12 to 13. You've got two options to deal with; status quo or the three-tiered fixed. Maybe that

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kind of gets to your, yes, we're right there. Maybe we should move past that one to the next.

Okay, yes, since you asked that question, Doug, we're not really prepared to probably deal with that one just yet. Well, while we're waiting on Bob's interpretation, we can at least just discuss that, I guess. Doug, you brought that point up. If others would like to weigh in on that as well, they certainly can, or discussion on it. Yes, Chris.

MR. CHRIS McDONOUGH: I would just like to echo Doug's point. I have the same concerns, as far as the way the three-tiered system is set up, and whether or not it can be adjusted.

CHAIR BELL: John.

MR. CLARK: Just from the way I read this is, if for right now three tiers, what went out to the public was pretty concise and clear as to what it said. Based on the concerns they are raising; wouldn't that be something that could be done by an addendum after this addendum?

CHAIR BELL: Possibly. I'm kind of waiting on the Bob thing too. My interpretation is probably a little more strict. Whatever you took to the public that's the way it is. That's just my interpretation. Yes, Emerson.

MR. EMERSON C. HASBROUCK: Perhaps my memory isn't as good as it used to be, or maybe we're talking about something different. But my recollection is that at the meeting where we approved this document for public hearing, we had an extensive debate about the three-tier fixed minimum, in terms of what states were going to be in which tier. We've already discussed and debated that, at least that's my recollection.

CHAIR BELL: Any other recollections of that? Doug.

MR. HAYMANS: As we have seen, states do have the right to change their minds, right?

CHAIR BELL: Certainly. Yes, Robert.

MR. LaFRANCE: I just want to point out the last sentence in the document, because I do think it speaks of what we're talking about at some level. It does say, the total TAC assigned to this option, and it breaks out three states, four states and nine states. It seems to me that all of those percentages could be altered, you would just have to make certain that you change the percentage.

CHAIR BELL: Okay, thanks a lot. Yes, Malcolm.

DR. MALCOLM RHODES: Just thinking back on other documents that went out for public review, where we may have had a suite of levels. We've moved within, we hadn't accepted the 1 or 2 or 3 or 5 options, we may have had an Option 6, as long as it was within that area. The 3 states, or all the states in the third tier, Option A, would allow up to 0.5 percent if we took it. You go up to the 0.25 instead of the 0.01, I think would be within a range of values that had been vetted and sent out to the public.

It's not saying, well we want to go up to 3 percent. It's not like we are exceeding a number that has already been sent out to the public. I know in the past we have moved to numbers that weren't exactly in the documents that were sent out. I don't see where moving up a little bit. I mean we're talking about 0.45 percent of the TAC, to move the 3 states up to 0.25.

CHAIR BELL: Any other thoughts on that? There is an argument for, we've kind of got a range that we've technically shown the public from 0.5 down to 0.01. Lynn.

MS. FEGLEY: I just wanted to say for the record, just if it puts any of this in perspective, that under the new TAC that we just developed, that 0.01 level I believe would set those states just over 51,000 pounds of quota if I did the math right. I think it's 51,489. Just so we understand the poundage that we're talking about here.

CHAIR BELL: This is somewhere around 50,000. Yes, Toni.

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MS. KERNS: To answer Doug's question. You are asking if we can move those states into the 0.25 category. That is turning us into a 2-tiered approach. I think that is within the realm, because if you are currently at 0.5, then it is within the range of what went out for public comment, in that sense. The Board did remove a 2-tiered option before, but that 2-tiered was 0.01, and 0.5 were the 2 tiers. It's not exactly the same.

CHAIR BELL: Okay, so then if we go with the 3-tiered approach, do we have to identify then specifically what level or state, or can that come later, in that range?

MS. KERNS: Correct, it would be a modified version of Option B, I wouldn't necessarily call it a 3-tiered approach anymore, because you would not have 3 tiers, to keep it clear.

CHAIR BELL: Okay, so far, we're just having questions and talking about this, but yes, Toni.

MS. KERNS: That's my interpretation. If the Board does not agree with my interpretation, that is the prerogative of the Board.

CHAIR BELL: There is no specific motion or anything at this point, unless we want to.

MR. HAYMANS: If you would like a motion.

CHAIR BELL: Well, that might help us kind of focus on some action here, Doug.

MR. HAYMANS: I would move that the states of South Carolina, Georgia and Pennsylvania be moved from 0.01 percent to the 0.25 percent allocation. If there is a better way to word that I am happy to hear it.

CHAIR BELL: Yes, we're going to try to capture that. Everybody heard that. What Doug was saying was a move from 0.01 to 0.25. No, this isn't one you have. Let us put it up there for you. Doug, go ahead.

**MR. HAYMANS: Mr. Chairman, I would like to modify my motion before it gets a second, if that's okay. I'll wait until we're ready. If I can read my shorthand. Mr. Chairman, I would move a modified version of 3.1.1 allocation, Step 1, so that the following states are at 0.25, Pennsylvania, South Carolina, Georgia, Connecticut, Delaware, North Carolina and Florida. Each would be receiving the 0.25 percent share. Do I need to read the 0.5?**

CHAIR BELL: Yes, let them get that down. Is that all the states?

MR. HAYMANS: Yes, and then the remaining states would each receive a 0.5 percent of the TAC.

CHAIR BELL: Okay, so this is a proposed modification of Option B there on Page 13, 3-tiered approach.

MR. HAYMANS: I believe it is a modified version of Option B of 3.1.1. I'll get this right.

**CHAIR BELL: The motion is, move to approve a modified version of Option B of Section 3.1.1 allocation. Step 1, so that the following states are at 0.25%, PA, SC, GA, CT, DE, NC, FL, and the remaining states will all receive a base allocation of 0.5 %. That's the motion.**

MR. HAYMANS: Yes.

CHAIR BELL: Is there a second for that motion? Chris McDonough. Okay, discussion of the motion. Doug, do you want to lead off, since you made the motion?

MR. HAYMANS: Certainly, just a little more. I realize that we don't have an active fishery today, but we certainly have menhaden in the state of Georgia. We do use an awful lot of menhaden in the state of Georgia for our bait for our crab fishery. It all comes from the Mid-Atlantic.

I am very surprised that at some point that someone hasn't developed a fishery to supply our own bait. If we were left at the 0.01, I don't think

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that option would ever be there. I currently feel like my fishermen feel when I talk to them and try to restrict things. They always accuse me of taking but never giving back. I sort of feel that way now. Rather than taking, I mean this is the 0.25 level is about 800,000 pounds, roughly, depending on metric or English. It's several hundred thousand pounds less than we're allocated now. It leaves us about 1.1 million pounds for a fishery developing if it could. We're certainly willing to horse trade as we have done over the past several years, if needed.

CHAIR BELL: All right, Chris, do you have any comments as seconder of the motion?

MR. McDONOUGH: No, I think Doug covered everything pretty well.

CHAIR BELL: All right, John Clark.

MR. CLARK: Just a couple questions. I mean first of all, if you did develop a fishery, Doug, we still will likely have the incidental catch small-scale fishery, which I know we were using that before the allocations changed. Then is there any need to bring Pennsylvania into that also, since they might get a menhaden in Pennsylvania state waters once every five, six years?

MR. HAYMANS: I brought Pennsylvania in to be all inclusive. That is certainly the direction our nation is headed in these days is to be all inclusive.

CHAIR BELL: Okay, Jim Gilmore, passed. Any other? Nichola and then Steve.

MS. MESERVE: I do support the ability for us to provide flexibility with this provision for the possibility of the growth in a state. I'm a bit hesitant to do that for a state that I don't think has any prospect of a commercial fishery in the future. Looking at the table of commercial landings that was in Amendment 2, and Pennsylvania is not even a column in there, of course. I think I could support this if Pennsylvania were to stay in the lower tier, and that way we would be maintaining a 3-tiered approach, and would just be moving two states.

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CHAIR BELL: Thanks. Steve and then Joe Cimino.

MR. TRAIN: I understand what's going on here, and it kind of ties back to what my good friend, Dennis Abbott said earlier. You know as this resource builds up and there was more fish available, we didn't think all the increase in quota would go to all the states that already had all the quota. I think almost everybody around here sees that. I think there is an issue to deal with here, but it might be a bigger issue. I think we're going to deal with some of it in a little bit, but it may be bigger than what we already have on our table. It may be a future addendum or amendment.

CHAIR BELL: Okay, Joe and then back to Dennis.

MR. CIMINO: Yes, I appreciate what Doug is trying to do and why. I'm just going to go on record to say I'm opposed to the motion for a couple reasons. I think we have ways to get you quota when needed. We're trying to utilize the TAC. That is one of the things that we say we're going to deal with. To hold stuff aside for future fisheries, I don't think is the way to do that. I think we're missing our problem statement in that approach. As John pointed out. You know I've been in several states, and I know that a 6,000-pound trip limit, there are very few gears that are going to hit their head, and not being able to come in what that amount of fish.

CHAIR BELL: Dennis.

MR. ABBOTT: A question I would start off with is, I sees that 7 states would be at 0.25 percent. What is the aggregate change in total quota? Are we looking at a decrease for those combined 7 states of 1 percent? If that is my quick math, okay 1.2 million pounds. Whatever it is, that is less quota that those states will have for borrowing, number one.

Of that, if the figure is right, 1.2 million pounds, under the present circumstance, again 75 percent of that, would it not be reallocated to the Commonwealth of Virginia? Where does that reduction in quota go? It doesn't, in my mind solve the problem. Also, if there is any decrease, that is less poundage that those 7 states will have to loan

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out to the 4 states that borrowed most of the quota, transferred the quota, not borrowed the quota if they are not paying it back later.

The state of Maine had 20 percent of the quota transfers. New Hampshire had 20 percent of the quota transfers. Massachusetts had 20 percent of the quotas, and ironically, again the Commonwealth of Virginia got 20 percent of the quota transfers. You know the whole system really; I said it before and I'm going to say it again. It's broken.

We're not solving the problem of being able to catch menhaden where menhaden are available. Again, I'm not sure if I want to support this, because simply put, if 7 states have less quota to provide to Maine, New Hampshire and Massachusetts, I don't see the benefit. Unless somehow in the long run, the effected states see their quotas rise dramatically.

CHAIR BELL: Do you have any comments on this? All right, I don't see any hands. Do you need to caucus on this before we vote on it? Okay, let's take a 2-minute caucus then, if we could. All right that's two minutes. We'll go ahead and vote on this if you've had time to caucus. All right you see the motion, I won't read it again, I read it once already. All in favor, yes, Ma'am.

MS. PATTERSON: Is it too late to throw an amendment up there?

CHAIR BELL: Well, I don't think so.

**MS. PATTERSON: I would just like to amend that Pennsylvania get put at the 0.1 percent, and all the other states at 0.25 percent. Just pull Pennsylvania out of those under the 0.25 percent.**

CHAIR BELL: Okay, there is a proposed amendment to the motion to basically take Pennsylvania out and leave them at 0.01. Motion got a second? Okay, got a second from Roy Miler. Discussion of that. Rationale, Cheri.

MS. PATTERSON: Well, as what was already mentioned, Pennsylvania really has no fishery at

this point in time, whereas the other states have an ability to have small-scale fisheries.

CHAIR BELL: Okay, so the logic there is that Pennsylvania doesn't have the fish. Basically, we just pull them out of the original motion. That's what would happen, so that is the amendment, the proposed amendment. Further discussion to that. Need to caucus about that? You can. Well, let's vote on that amendment. **Okay, so we have the amendment to the main motion.** Take a minute. Motion, what you see up there. All right, all in favor of the amended motion raise your hand.

MS. KERNS: Florida, Massachusetts, Connecticut, New York, New Jersey, Georgia, South Carolina, Virginia, Potomac River Fisheries Commission, Maryland, Delaware, and New Hampshire.

CHAIR BELL: Oh, okay, all opposed.

MS. KERNS: Pennsylvania, North Carolina.

CHAIR BELL: Okay, so two opposed. Nulls.

MS. KERNS: Maine.

CHAIR BELL: Abstentions.

MS. KERNS: Rhode Island, NOAA Fisheries and Fish and Wildlife Service.

**CHAIR BELL: Twelve in favor, 2 against, 3 abstentions, 1 null. Now we're back. That is the main motion now. Let us reword this. Malcolm.**

DR. MALCOLM RHODES: Just trying to do the Eric Smith thing. Would it be to move to approve Option B, with the 3-tiered fixed minimum approach with Georgia and South Carolina receiving 0.25 percent instead of 0.01 percent. Basically, it's just moving those two states in the original motion.

CHAIR BELL: Toni.

MS. KERNS: The motion was already the property of the Board, so to rewrite an amended motion

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would not be the best procedure under Robert's Rules.

**CHAIR BELL:** If this now is one way of phrasing it. I'll read; the motion now is that we're considering. ***Move to approve a modified version of Option B of Section 2.1.1 allocation. Step 1, so that the following states are at 0.25%, South Carolina, Georgia, Connecticut, Delaware and North Carolina, Florida.***

***That Pennsylvania is at 0.01%, and the remaining states will all receive a base allocation of 0.5%. That is the motion.*** Do you need to caucus on that? I don't see any head nods, let's vote on it. Is there any objection to that motion? Okay, I see one, so I guess we vote on it then. All right, so all in favor of the motion.

MS. KERNS: Florida, Rhode Island, Connecticut, New York, Massachusetts, New Jersey, Pennsylvania, Georgia, South Carolina, Virginia, Potomac River Fisheries Commission, Maryland, Delaware, Maine and New Hampshire.

CHAIR BELL: All right, all opposed to the motion.

MS. KERNS: North Carolina.

CHAIR BELL: Okay, abstentions.

MS. KERNS: NOAA Fisheries and Fish and Wildlife Service.

**CHAIR BELL:** **Okay that's it, 15 in favor, 1 against, 2 abstentions. The motion carries.** Now we have a modified B, and we have the original A, and we need to pick. Is this where we choose options? That was all about changing B, right? Got you, okay, I'm sorry, my fault. We're good. What we did was we approved a modified Option B, and that's what it looks like. Step 2.

We have options under timeframes, the base allocation, this is on Page 13 if you're using the document. We have Options 1, 2, 3, 3A, Option 4. All right, so we're moving into consideration of

options under 3.1.2. Does anybody want to start some discussion there? Yes, John Clark.

**MR. CLARK:** **Well, we might as well move this along, Mr. Chair. I would like to put out there that we approve Option 3A, Sub-option 1, the combination 25% of the historic and 75% of the 2018, 2019, 2021.**

CHAIR BELL: All right, before anything gets up there, so following along there it is move to approve Option 3A, Sub-option 1 in your document. Is there a second to that? Yes, Pat Geer seconds. All right, discussion of that motion. We'll get it up there.

MR. CLARK: May I say?

CHAIR BELL: Yes, yes, John, go ahead.

MR. CLARK: Right, I think that this one is a nice compromise. It allows more of the stock to be allocated to states where the menhaden have been moving to. At that same time, it does preserve historic menhaden fisheries that a lot of states depend on, even when they are not actually landing a lot of menhaden like our state.

I think as was just brought up in the public comment, this was the option that the majority of the public comment favored. As we heard from the Advisory Panel, this was also the option that was favored by the majority of the Advisory Panel also. I think it moves us in the direction we need to go, without moving erratically, and it doesn't cause the dislocations that could be done by a larger shift.

CHAIR BELL: Thank you. Pat, do you have anything to add to that as the seconder?

MR. GEER: Yes, Mr. Chairman. Even though back in February I kind of lost my mind over this. You all remember, I usually don't get very angry. But I realize the importance of trying to have more of the more recent data. But I think as John said, this is a good compromise. It has some of the historical data, but it also has the newer data as well. I'm willing to accept this as well.

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CHAIR BELL: All right, you've heard the rationale for the motion. Megan.

**MS. WARE: I would like to move to substitute. I would move to substitute for Option 4B, which is the moving average with the provision to limit states' moving average landings if total landings exceed the TAC. If I get a second, I'll provide rationale.**

CHAIR BELL: Okay that's a move to substitute by Megan. Is there a second for that? Second by Cheri. Megan, do you want to explain your rationale there?

MS. WARE: Yes, thank you. I thought long and hard about this and kind of have a lot to say, but I will try and be succinct. I think the long and the short of it is that I truly believe this is the best long-term option for this Board. I think first and foremost we need to acknowledge that we are managing a dynamic resource.

If we work off of that collective understanding, then we can't keep trying to chase a moving target with a static solution. This is the only option before the Board today which provides the opportunity to proactively incorporate both our dynamic resource and our changing environment into our policies.

It was less than 24 hours ago that we collectively sat around this table and we had a discussion on climate change scenario planning. The phrases I heard from Commissioners about what we need is we need something that is nimble, we need something that is flexible, we need something that is proactive.

I also heard a commissioner talk about changes in trends over time, and the challenges that this creates for management. This is exactly the type of situation that the moving average thrives. This is a scenario where we know change is occurring, but our ability to predict the direction of that change is imperfect.

I think if we're going to put stock into things like the climate change conversation we had yesterday, we

also need to start investing in the solutions, and the moving average is the solution before the Board today. I think a really unique characteristic about the moving average is that unlike the other options, it's the only one that doesn't make quota increases permanent, and it doesn't make quota decreases permanent.

But importantly, this fluidity is bounded, and it is bounded because a state can never go below its fixed minimum. I think that provides a really critical safety net for many states around this table. I just want to address two concerns that I've heard with this. First, I do want to acknowledge that there are many states that rely on Virginia for bait. Based on the TAC we just implemented, I think Virginia's quota is increasing, and at this point maybe 45 million pounds. That is a pretty significant increase for Virginia, and that quota increase is kind of collectively what the New England states will be allocated under this option. The second is that I've heard concern about including episodic landings under the moving average, and that will solely advantage the northern states. I would highlight that the moving average works, because you have to have levers that move quota around.

If you don't have levers, we're losing the moving part or the moving average. I would also note that this Board actually considered a moving average option, which did not include episodic landings or incidental catch small scale fishery landings, and the PDT recommended removal of that option, because it wouldn't achieve the goals and objectives of this Addendum.

That said, 2023 landings aren't incorporated into the moving average until 2025, so we actually have two years to have a discussion about the episodic set aside, and if that needs to be modified in light of the moving average, I am happy to have that discussion. But I think this is the best option for the Board to set.

CHAIR BELL: All right, thank you for that, Megan. Cheri, as the seconder do you have anything to add?

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MS. PATTERSON: Megan touched upon just about everything that I was going to touch upon as well. Again, I just want to reiterate that we did have a climate change scenario discussion yesterday, where we had this exact discussion, this exact issue presented to us, and we had a different view than what we have right now. I think that in the spirit of this, that this is the spirit of why we got this Addendum initiated, is to make sure that we're following the fish, and not necessarily following history past or politics.

CHAIR BELL: Thanks, Cheri, other comments, so Lynn and then over to Jim.

MS. FEGLEY: I think, you know I love the idea of a moving average. I think that it is a very clever way to address this issue of stocks that flux back and forth from the north to the south. But the problem that we have with the moving average as it's written that I don't think that we fully understood, was that the levers to pull really falls within the episodic set aside, which is only acceptable to a small portion of the states.

If I may lay out a scenario, we have now increased our quota. The landings are going to be aligned. I believe that our largest players, which now are the states of Maine, New Jersey and Virginia, will be fully capable of landing the quota that they will receive. They will be able to land that. The state of Maryland, we're a tiny state.

We have incidental catch. Between the years of 2004 and 2013, luckily, we landed over 8 million pounds on average, with a high of 13 million pounds. Under this new quota, and under the rolling average, I think the state of Maryland will receive something like 6 million pounds. The option binds us to the TAC.

Here we are, we've aligned to the quota to how it can be caught. If the coastal quota is achieved, and Maryland uses the incidental catch, because we have 13 million pounds of fish in the Bay, we have no mechanism to add that into our average. We can't get those fish back. I hope that makes sense, but I think that there are pieces of this. I

understand the climate change, I understand the dynamics. I understand, I think it's a great way forward.

But I would just say that there are pieces that we haven't thought through, and in my little state it scares us a little bit, because we don't have a way to access that extra to get it back. If the episodic, if that set aside quota was equally accessible to all of us, I think it would make more sense, so thank you for listening.

CHAIR BELL: Thank you, Lynn, Jim Gilmore.

MR. GILMORE: I'm opposed to the substitute. The main reason is, and I agree with Lynn and you guys. It's a good way to go, in terms of where are we going for the future. But there is one thing that is inconsistent. Not all our fisheries are the same. Most of the other states are pursuing the fishery. We wait for it to come into the Peconic's.

Last couple of years, yes, I guess it was in 2018, 2019, we got 3 or 4 million fish, 2020, which we're not including we had 4 million. This year nothing came in. I start throwing zeros into that average, I get back to quite likely violating the reason that we had this Addendum was that we wanted to maintain the fisheries. Now, if I'm having a declining quota because of this moving average, which I can have, it's really going against the intent of it.

The moving average scares me also, because I could have a couple of good years and maintain it, then a couple of bad years when nothing comes into the Peconic's, and then suddenly my average is cut in half, or my quota is cut in half, or my allocation is cut in half. Again, that is eliminating a New York fishery, so I really can't support this motion.

CHAIR BELL: All right, so we've heard for, we've heard a couple against. Nichola.

MS. MESERVE: I too support the substitute motion. Megan really covered all the reasons for it very well, and I don't want to be repetitive with that. But I do want to respond to the concern about how the ESA

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plays into it as one of the levers that is pulled, and note that the other provisions have been a much stronger player in that dynamic over the last ten years, at just 1 percent.

If that's not what has been driving the change in the three years of an average that we see in the table in the document. I do think that by changing the allocations, we will likely see a different dynamic as to what states may need to opt into the episodic even set aside. It might not be the tool that we needed, if the underlying allocations change.

I'm also going to put out now that I'm going to be supporting the removal of purse seines from the small scale and incidental catch provision, because that has really driven how the landings have changed. I think that would be an important sidebar in the adoption of the moving average approach. Transfers are still another option that all states have access to, and we have maintained some percentages for nearly every state now. There is going to be some quota available through transfers still, less than before, but I think that will also counteract which states have access to the episodic set aside.

CHAIR BELL: Adam and somebody over here. Adam, you're next.

MR. NOWALSKY: I am also going to be in opposition to the motion to substitute. I appreciate the comments about nimbleness, but history does matter, period. Beyond that, I would call our addendum process largely nimble. In less than a year we could go ahead and modify these baseline years, if we need to in the future.

I would also offer as a thought that if a future addendum does look to modify the baseline years, using something that are either fixed years or a better version of a moving average. Perhaps we could look at something that is more adaptive, that allows us on an annual basis through specifications or something to choose those years, so we don't have to continue to go through an addendum process moving forward.

I don't view this as an endpoint. I agree and very much appreciate the comments about the moving average being a nimble approach. But in this instance history matters. We have an approach through the addendum process that allows us future changes, and I would continue to support our looking at these moving forward, and not treat this as a, put it away for a decade before we look at it again.

CHAIR BELL: Steve.

MR. TRAIN: I agree that history matters, and when we set the original quotas up, we ignored 30 years of menhaden fishing in the state of Maine for a more recent time period. Now we've got a chance to take a more dynamic approach that has the most recent time period.

The trouble with quota management is nobody wants to give up what they've got, even if they don't got it anymore. I support this, because I think it is the most dynamic and effective way to allocate quota, based on the current status of the fishery, and it will continually change. It's adaptive, it's what we talked about yesterday.

CHAIR BELL: Doug Grout.

MR. DOUG GROUT: I certainly can understand the concerns that some of the states have about going to this nimble approach, if you looked at it by itself. There would be flaws in that from my perspective. However, we have already approved one section of this that we have to look at this new rolling average as one way to try and reallocate to where the fishery is.

But the other thing that is there is still the minimum, every state gets a minimum, and you can transfer quota. This makes this a very, very useful way of distributing quota, because we're looking at the last three years average, the way menhaden move around. That is not perfect, because next year or two years from now, menhaden could be gone from New Hampshire for a few years, and pretty soon our quota would go to zero, if we were using a three-year average. But then they would

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come back. They may come back. Again, during those years when we have low or zero quota, we would have to talk to the states where the fish aren't, and try to transfer things back in. I think you have to look at the package here. I think the package that we're putting forward here provides the nimble approach, yet also we have mechanisms to address the concerns that you were pointing out, Jim, about your state. I would support something like this.

CHAIR BELL: Other comments? Yes, Conor.

MR. CONOR McMANUS: I just wanted to convey my support for the substitute motion, just being brief, building on what others have said. When I think about the purpose of the Addendum and why we're here today talking about reallocation. It's trying to be reflective of where the fish are, and providing opportunity where it's needed. I understand the concerns about the moving average, but I also want to echo that it's a moving average.

The idea of the moving average is to provide slower change, but also response to change in the system. Innately having a moving average acknowledges the fact that there is some variability from year to year. There is some history that gets carried through time with that approach. I just want folks to think about that when we think about the moving average. It's not necessarily an abrupt change from year to year, it's trying to account for change over time in a more dynamic way.

CHAIR BELL: All right, we have Dennis and then Jim.

MR. ABBOTT: Briefly, the first motion, the original motion says in essence in plain English, let's count some old years where people weren't catching anything in our calculations. But Jim Gilmore has a fear that in the future if he has zeros, he's afraid of what that will do to his average. I think we've got to keep apples and apples and features and features together. You know we can't live in the past. I think that Megan Ware gave such a good explanation of why the substitute motion is the way we should go.

CHAIR BELL: Jim.

MR. GILMORE: I've heard all that. Let me just break it down in practical terms. The reason we were doing this Addendum was to maintain the states directed fishery. We were also to reduce transfers. Right now, I'll just cut to the chase. I need, and this is based upon the last few years, 1 percent. That is what I need to maintain my fishery.

The last episode we just exercised, we went through, I'm at 0.5 percent. I'm already looking down the barrel probably at getting transfers. I'm going to need more transfers. Then this essentially can even reduce my allocation further if I get zero years, and I have a zero year this year, so I'm going to be getting more transfers.

Then later on, if we talk about gears, and suddenly that small scale fishery gear disappears, I'm going to be doing my entire fishery is going to be based on transfers. This is kind of supporting, and I understand the long-term goal, and trust me, if we were talking about fluke, I would be the happiest guy in the world right now that we're going to take the last three averages of what was in our particular landings, because this is what we tried to change over a long time. Yes, we need to get past history. But I like the original motion, because it's a stepwise towards getting it with using 75 percent of recent years. Adam's right, this part of it I think is a good idea, but maybe a couple years down the road after we get this built. Right now, this will impact New York's fishery, and against what the Addendum was trying to get at.

CHAIR BELL: All right, Matt.

DR. CIERI: I'll be really brief. Just speaking to support this option, the substitute. Just to say that this species has proved itself to move in the past. It's moved north in the past, it's moved south in the past. I think having a dynamic approach is just this is the species to try it with.

CHAIR BELL: All right, Lynn.

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MS. FEGLEY: I'm just going to repeat. I'm going to pile on a little bit with Jim. It is dynamic if the playing field is level. But right now, we are going to do this on a playing field that is not level where our fisheries are operating differently. I'm going to be right in there, I'm going to have to arm wrestle Jim for transfers. Our past does say that we can harvest many more menhaden than we're harvesting now.

If those fish return back to the south, which they may do, we are going to really struggle under this construct to add that back into our averages, if the coast meets its quota. We can't pull that back in, because we'll be over the quota, and 4B binds us to the TAC, which is a good thing. I just wanted to repeat that. It's a great idea. I just think we have a few things we need to think through.

CHAIR BELL: Megan, and then Emerson.

MS. WARE: Thanks, I just wanted to respond to a few of these comments. I think people are concerned that their quota is going to go to zero, or they are not going to have a fishery. Based on the quotas I'm looking at under this option, I don't see how people are coming to that conclusion. Specifically, I'll just put this out there for context, 0.5 percent right now. I'm getting that to be over 2.5 million fish. Right, so that Maryland and New York, you guys can't go below that, right.

What the moving average is saying is it's weighing a state's landings against its quota. If you are landing your full quota, you will be rewarded in the moving average, it's demonstrating a need for growth. That is what this option is saying. This option is providing the opportunity for growth, whether you have 0.25 percent of quota or over 75 percent of quota. I think this is the right option today.

CHAIR BELL: All right, I had several hands, I had Emerson then Max, and then Eric.

MR. HASBROUCK: I'm opposed to the substitute for the reasons that Jim gave and the reasons that Lynn gave. But the other thing that I want to point out is that there is really no public support for this option. I mean we take this document out to the public

hearing, so that we can get public input. Whenever it was, an hour and a half ago, James gave us, no Megan actually gave the report from the AP. In the AP there was no support at all for any of the Option 4, any of the three different things in Option 4, two different items in Option 4. No AP support whatsoever. Then in the public hearings there was very minimal support for Option 4B, hardly any at all. I think we also need to listen to the public.

CHAIR BELL: All right, Max Appelman and then back to Eric.

MR. MAX APPELMAN: I'm going to speak in support of the substitute, for a lot of the reasons that have been said already. I'm not going to repeat them all. But I think importantly to me, it's a process to allocations that aligns very well with what feels like our collective policies and positions and recommendations for managing fisheries in the face of climate change.

It's adaptive, it's innovative, I think I'm comforted that there is going to be a gut check a few years down the road, two, three years. That seems to be the pattern with menhaden allocations right now, and I'm not expecting it to be completely perfect. But I agree with the position and the posture that it presents, it provides.

CHAIR BELL: Eric Reid.

MR. REID: I would really like to ask Mr. Geer that if he finds his brain would you please look for mine, because it's probably in the same place as yours. I can't really decide whether or not we're talking about where fish are or where fish aren't in this discussion. A little while ago we redid the TAC at a very conservative number, to protect the resource so the resource keeps building.

I'm reasonably comforted in that, although I agree with Mr. Gilmore that it is a risk. But because of our earlier action, where we're conserving the fishery, pretty heavily really, we could have gone to 300,000 tons, you know, 300,000 or bust, I suppose, but we didn't. I'm reasonably comforted in the fact that we've already done something to protect the

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resource that would allow for the geographic spread of these fish.

Rhode Island, we're at risk. But I'm willing to take that risk, given our earlier actions, and the way the ecosystem is changing. You know it gives states who are not in double digits of quota, to build history and build quota, which means growth, which means jobs. I like that. A lot of people like that. I support the substitute for those reasons, but I know it's a risk, but I'm willing to accept that risk.

CHAIR BELL: Anyone else who hasn't? A lot of good back and forth, both sides of this argument. Cheri.

MS. PATTERSON: Emerson, could I just get some clarification on what you just indicated. Were you just talking about the AP, or are you talking about the public response, in regards to the public did not? I may have misunderstood, and I'm sorry if I did. Are you saying that the public does not like the moving average?

CHAIR BELL: Go ahead, Emerson.

MR. HASBROUCK: I said that in the report that we got from Megan earlier, the AP did not support Option 4A or 4B. There was no support out of the AP for either of those.

MS. PATTERSON: Okay.

MR. HASBROUCK: In the summary of public comments, there was very minimal support of Option 4B.

MS. PATTERSON: Okay, thank you.

MR. HASBROUCK: Second and third lowest support of any of the options.

CHAIR BELL: Anything else. Lynn.

MS. FEGLEY: I hesitate to do this, but I really just want to pose this in the form of a question, so that if I'm not understanding, somebody can help me understand. Under this option, I think that Maryland's quota would land somewhere between

5 and 6 million pounds. I'm not concerned about our quota going to zero.

But what I'm concerned about is those years that weren't too long ago, when we had a lot more menhaden arriving in our nondirected gear. If my quota now is at 5 million pounds, and we suddenly get fish back in the Bay, and we're landing 8 to 13 million pounds, right? That's 3 plus over our quota, and we used the incidental catch to get there, and simultaneously, the coast harvests the quota.

My question is, how do we get that extra fish into our average? How do we do it? If I can't get a transfer, because I have been slow on the uptick, our fish come in the fall, the transfers are already gone. If my quota is 5 million pounds, and we are capable of landing 8 million pounds. How do I get that fish back into my average, if we hit the coastal quota? If someone can answer that for me, I'm all good.

CHAIR BELL: Anyone? Anything new? Adam then Joe.

MR. NOWALSKY: Some of these comments that I've heard here, again, I have a ton of respect for everyone who supports this idea of looking forward, I do. But another concern I have with this approach is essentially what we're doing, and I've heard the comments about, hey fishermen go out, get landings, they'll be rewarded in the future. We're going to incentivize fishermen to create landings for themselves, to be rewarded in the future?

That's just bad management. I don't think we would support that in any other case. That is essentially what I see this doing, is telling people, go out, land as much as you can in the near term, and that's how you will be rewarded. Again, I'm all for nimble, I'm all for looking forward, I'm all for getting landings where they need to be done. I just don't think 4B is there yet. But I look forward to continuing to work on the problem moving forward.

CHAIR BELL: Okay, Joe.

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MR. CIMINO: I think there is another problem that I guess I haven't heard come up. I think New Jersey has a lot of fishing power. I think we could do well under this. We were able to harvest in the fall. If there was a lot of quota left on a high TAC year, and we're trying to utilize that.

States would have a real disincentive to transfer that quota to New Jersey, when they are capable of catching it in the fall, because that would just increase our three-year average, and we would be this whole new player. I can see states instead sitting on their quota, not allowing those transfers, because the three-year moving average would just keep us going.

CHAIR BELL: Anything else? We've talked this back and forth, and you've all done a good job of making your points. It's a tough one. This is one of the central things we knew we would be dealing with. Yes, Nichola.

MS. MESERVE: Just in response to Joe. Unless I am misinterpreting what you're saying. If states are sitting on their quota, not catching it and not transferring it, then they're going to lose that quota, slowly, in the moving average. I'm not as concerned about what he just raised.

CHAIR BELL: Ray.

MR KANE: You know we went through this whole Climate Change Scenario yesterday, three- or four-hour class on climate change. Menhaden are now in a historical range, and this moving average will benefit states that didn't have access to menhaden in years past. Everything we've done with menhaden so far has been a new direction in management. I support this moving average.

I mean, it was the first stock that we went with ERPs on and the Technical Committee came back with a higher number than what this Board was comfortable with, so we reduced it. But I don't see losers in this. When I hear people sit at the table and say well, you know, we can catch so many pounds, and what happens if we catch more. Well, that is exactly what has happened to a number of

states over the years in the northern region, because once again menhaden, they are in their historical range now.

CHAIR BELL: Anything else? Jim.

MR. GILMORE: This last comment, it's following up on what Adam said, that incentivizing is a good point. I guess what's going to happen in New York is we're going to have guys saying, well we've been keeping it as a small-scale fishery in the Peconic's, let's start fishing the ocean. Let's start getting our quota.

We can take, and if you looked at what we had off the south shore of Long Island, I probably could have taken 15 million pounds this year. If that's what we think this is going to help out, we're actually doing the exact opposite. We're going to be harvesting more, because exactly what Adam said. Now we've got people saying hey, if you can get your quota, you can get more of this. I think it's a bad idea at this point.

CHAIR BELL: Anything else? You all talked this one through pretty good. **I would like to go ahead and try to move this along, so what we're dealing with here is a substitute for the original motion.** I assume we're going to need to caucus, so let's take two. We'll caucus and then we'll vote on it. All right, thank you for that. We've had time to caucus, we're going to go ahead and vote on this. What we're voting on is the motion to substitute. All in favor of the motion to substitute, Option 4.B, raise your hand.

MS. KERNS: Rhode Island, Massachusetts, Connecticut, Fish and Wildlife Service, NOAA Fisheries, Pennsylvania, New Hampshire, Maine. This is opposed. New York, New Jersey, Georgia, South Carolina, North Carolina, Virginia, Potomac River Fisheries Commission, Maryland and Delaware and Florida.

**CHAIR BELL: Any nulls or abstentions, 8 for, 10 against. Motion fails. Back to the original motion becomes the main motion here. Yes, John.**

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MR. CLARK: Just a question. I'm just curious. The Services typically don't vote on state allocation issues. I'm just curious as to why you're both voting on this issue.

CHAIR BELL: Yes, Max.

MR. APPELMAN: Well, the comments I made, those are obviously part of my rationale. But I think when we approach any vote at the Commission there are a lot of different factors and variables that were taken into account. You know if it's a state allocation, it's happening within the realms of the state that's one variable.

But we support process, we support science, and any other variables that might be part of whatever specific action is at hand. You know it's a case-by-case basis, and in this one, you know I really felt that it was the right option for Atlantic menhaden. It aligned very well, like I said, with our broader policies and positions towards adaptive management with changing ocean conditions and stock distribution changes and all that. That's what I'll offer there.

CHAIR BELL: Dennis.

MR. ABBOTT: With all respect to Mr. Clark. We've sat around this table over the years numerous times, I know that I have and some of my colleagues, questioning how the Services have voted on a particular issue. I don't think that we should publicly question their motives or their reasoning for voting, any more than we should do that to any individual member. Sometimes we may agree with where they go, sometimes we don't. But I don't think we have a hard and fast policy of what they should do, nor do I think they owe us an explanation for their vote.

CHAIR BELL: John, do you want to respond to that?

MR. CLARK: Yes, I wasn't trying to put them on the spot, Dennis. I'm just saying that typically when we deal with state allocation issues. Just by tradition I know that the Services just abstain, so I was just curious as to why they voted. I wasn't trying to call

them out. Like I said, it's just different. They typically do not vote on allocation.

MR. ABBOTT: Yes, I understand, John. But again, their motivations are whatever they are.

MR. CLARK: Point taken.

CHAIR BELL: That brings us back to the original motion. Nichola.

**MS. MESERVE: I'm going to try one more time to move to amend to Option 2. Substitute if you prefer. Yes, move to substitute with Option 2. If I get a second, I'll speak to my rationale.**

CHAIR BELL: Okay it's a motion to substitute Option 2 for the original motion. Is there a second to that? Jim Gilmore. Go ahead, Nichola.

MS. MESERVE: I'll just reflect on another comment I heard at the climate workshop yesterday was that we need to stop looking in the rearview mirror and look to the front. We just decided we're not going to look forward, but if we're going to keep looking in the rearview mirror, we need to make it the most recent years here, or else we are going to not meet the objectives of this Addendum to reduce quota transfers, and reliance on the other provisions in the plan right now. I think this is the only option that will meet those objectives at this point.

CHAIR BELL: All right, Jim, you seconded. Do you have anything to add to that?

MR. GILMORE: No, Nichola captured it fine, thanks.

CHAIR BELL: Okay, you heard the rationale for this particular substitute. Any thoughts, further discussion of that? Doug and then Adam.

MR. HAYMANS: I don't want to necessarily weigh in on this, but I do view the 25/75 as more of a forward looking. I mean everything I've been used to is a 50/50 split, viewing past and most recent. This does give a nod to the most recent, without it being all most recent. I'm in favor of the original motion.

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CHAIR BELL: You're in favor of the original motion, okay. Adam.

MR. NOWALSKY: We are talking about an addendum to Amendment 3, but I think we can all agree that the amendment process is typically something that we would call more deliberative and contemplative. Both of the last two amendments to this fishery, Amendment 2 and Amendment 3, recognize the importance of the 2009 to 2011 years, as part of the history in this fishery. That is important.

Having the ability, again to go ahead and move 75 percent into those recent years. We spent a lot of time going through multiple motions at the first part of this Board meeting. Oh, there was another agenda item today, and we wound up with a compromise position. I would hope all Board members can look at themselves now, and again look for the compromise position between history and what's current and moving forward, and the original motion does that. I'll again have to not support the substitute.

CHAIR BELL: All right, Jim.

MR. GILMORE: The concept of the split makes sense. But just from history, if you recall back in 2009 through 2011, not all states were recording landings. New York was one of them. We had no mandated tracking of what the landings were. Our quota back then was 250,000 pounds. Until we did rulemaking and passed, and then essentially got two or three years in, we actually had no history.

When we go back to this, we were probably landing what we do now, and probably 2 to 3 million pounds. But based upon our history, and what's on record, we only had 250,000 pounds. It really doesn't accurately reflect what the fishery was doing back in 2009 through '11. I don't know if New York was the only state, but we definitely were one of them, and I think there were a couple of others. Just the reality of what the numbers were saying back then.

CHAIR BELL: All right, Megan.

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MS. WARE: I'm going to support the substitute. In kind of comparing these two options here, I think the substitute does a better job of achieving our goals today that are outlined in the document. We had four objectives today. The first objective is, align with the availability of the resource. I think the substitute does that better.

Objective 2 was, enable states to maintain current directed fisheries with minimal interruption. I think we achieve that with the substitute, and I'll note that once again Virginia is going to have more pounds to land than they did this past year. The third one was, reduce the need for quota transfers. The substitute is going to do a better job on that. The fourth is fully use the annual TAC without overage, and again I think the substitute does a better job of that. I'm in favor of the substitute.

CHAIR BELL: Pat Geer.

MR. GEER: I've kept my mouth shut until this point. As Mr. Abbott, you know Virginia is the big bad wolf in the room in this. But we have 125-year history of the menhaden fishery in our state. To just ignore that, just for the most recent years. I can't fathom that. I just can't see that. I thought it was a good compromise. I fought hard back in February to have a 50/50 split.

I thought that was the most fair and equitable. I thought the 25/75 was a good compromise. You got more of the more recent data in there, but it's still accounting for some of the historical data. Now we're just throwing it out the window, and not even regarding what's happened in the past. I just can't support that at all.

CHAIR BELL: Other comments, thoughts? **Again, this is looking at the Option 2 versus the original motion up there.** All right, we've had enough discussion. We're going to vote. Do you need to caucus? Yes, take two. **Is the move to substitute Option 2, or the original motion at the top?** All in favor of the substitute motion, raise your hand.

MS. KERNS: Rhode Island, Massachusetts, Connecticut, New York, Pennsylvania, Maryland,



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Maine, and New Hampshire. This is opposed. Florida, New Jersey, Georgia, South Carolina, North Carolina, Virginia, and Delaware.

CHAIR BELL: Any null votes? Any abstentions?

MS. KERNS: Potomac River Fisheries Commission, NOAA Fisheries, and Fish and Wildlife Service.

**CHAIR BELL: Eight in favor, 7 against, 3 abstentions, so it passes. Okay, so the substitute motion becomes the main motion.** We'll clear the board here. All right, we're going to move on this now, get some momentum here. This is now the main motion we're considering. Any further discussion of this motion, which is move to approve Section 3.1.2, Option 2, 2018, '19, and '21. That is the original motion we started with earlier. Oh no, this is the substitute, I'm sorry. This is now the main motion though, any further discussion of this motion? Adam.

MR. NOWALSKY: Just hypothetically, should this motion fail, we would be able to go back to something else that we had prior to this, should this fail?

CHAIR BELL: If it already failed, you couldn't go back to it, I don't believe.

MR. NOWALSKY: Well, so I mean this was a motion to substitute that became a main motion. If this now failed as the main motion, we could go back to one of the motions that hadn't been voted on, because they had been substituted.

CHAIR BELL: Is this Robert's advice? Okay, Dennis.

MR. ABBOTT: Adam, I think what you're saying could be done. A motion to, again going through my experience with Robert's Rules or Mason's Rules in the Legislature. A motion could be made to reconsider our previous action. But that motion has to be made by someone who is on the prevailing side. If we voted for reconsideration and it passed, then you could go back to that motion. But it's not a normal thing. Am I correct, Bob, in my reasoning?

CHAIR BELL: Thanks for that.

MR. ABBOTT: I hope we don't do that, because we'll be here forever, Adam.

CHAIR BELL: Okay, remember I mentioned pizza. Any further discussion of now the main motion before you? Do you need to caucus on this? If you do that's okay, just say so. Okay, guess not. We've probably already caucused. All right well, then let's go. All in favor of this motion as you see it there, raise your hand.

MS. KERNS: Rhode Island, Massachusetts, Connecticut, New York, Pennsylvania, Georgia, South Carolina, North Carolina, Maryland, Maine, New Hampshire and Florida.

CHAIR BELL: Okay, all opposed, raise your hand.

MS. KERNS: New Jersey, Virginia, Delaware.

CHAIR BELL: Any abstentions?

MS. KERNS: Potomac River Fisheries Commission, NOAA Fisheries, and U.S. Fish and Wildlife Service.

**CHAIR BELL: I don't think there are any nulls. It's 12 in favor, 3 against, 3 abstentions. It passes.** That takes us to ESA discussions, 3.2.1. It's in your document. If you're looking at that it would be Page 21, Page 22 under increase in set aside, and we have options there. Would anybody like to begin discussion in this section? Jim Gilmore.

MR. GILMORE: Just a procedural thing. Overage paybacks, are we supposed to be doing something on overage paybacks?

CHAIR BELL: Yes, on Page 15. Sorry, getting ahead. Yes, Page 15, Page 16 of the document, you've got a decision point there, two options related to overage paybacks. One was status quo, one second year after overage. Discussion in this section. Nichola.

**MS. MESERVE: To my understanding of this issue, it's really just a data availability issue. While I prefer that overages be paybacks the next year, I**

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**understand the issue here. I'll move to approve overage payback Option 2.**

CHAIR BELL: There is a motion for Option 2, is there a second to that. Jim seconds it. Okay, we'll get that on the board. That would be Option 2 on Page 16 of your document. Any discussion of that motion? Nichola, you want to, you already covered it, okay. Any further discussion? Is there any objection to that motion?

**This is for Option 2. I don't see any hands for objection. Then it passes unanimously.** That takes us back then to under 3.2.1. We have under increase the set aside we have options there on Page 22. Any discussion of this section? Any ideas, thoughts? Cheri.

**MS. PATTERSON: Okay, I'll jump out of the gate here. I would like to move that the Board consider status quo, Option 1.**

CHAIR BELL: That's a motion for Option 1, status quo, is there a second for that? Joe Cimino. All right, discussion of that motion. It's on Page 22, Option 1, status quo under 3.2.1. Lynn.

MS. FEGLEY: I believe that we will support this motion, but I also want to go on the record to say that now that we have realigned the quota. I know that this Board elected not to place an option for a 0 ESA in the document, but I just want to go on the record that I think it's time that we start to consider eliminating some of these programs.

CHAIR BELL: Thanks, Lynn, and Cheri, I apologize, would you like to explain this, why you like status quo.

MS. PATTERSON: I think at this point in time we're dealing with a lot of compromise, and we're going to be visiting, I have no doubt we're going to be visiting episodic in a couple years. I think we just need to stay at the status quo as a compromise at this point.

CHAIR BELL: Joe, did you have anything to add to that as the seconder? Okay, thanks. Further

discussion of the motion? I don't see any hands. **We'll vote on it. Any objection to the motion? I don't see any hands. The motion passes unanimously.** Thank you. That takes us to under 3.3, 3.3.1 timing of incidental catch in the small-scale fishery provision. That is on Page 23, right off the top there. There are three options there under that. Any ideas? Joe Cimino.

**MR. CIMINO: I would like to make a motion for Option 2, when sector allocation is met.**

CHAIR BELL: Okay there is a motion for Option 2, is there a second? Second by Pat Geer. All right, Joe, you want to explain why you like that one?

MR. CIMINO: Yes, I think it speaks to the intent of incidental catch for two states that were named specifically, the two that made and seconded this motion. What we would have, so New Jersey has an ITQ for the larger portion of the fishery, and if we had to force our gillnet fisheries and our pound net fishery to wait for those ITQ, folks to catch their quota then. All summer long they would have to be throwing dead menhaden over.

CHAIR BELL: Okay, Pat, did you have anything to add to that?

MR. GEER: Just the same thing. Our quota is separated into three sectors, that's allocated out where the same situation would occur.

CHAIR BELL: All right, you've heard the rationale for the motion. Comments on that. Allison.

DR. COLDEN: I believe I made some comments on this before we approved it to go out to public comment. I totally understand, especially with New Jersey and Virginia in particular, why this is an attractive option, and why it may help with the concern of regulatory discards. I just want to point out that there is an opportunity, I think with this motion and this option as written, for there to be some sidestepping of what we're trying to achieve with the incidental catch fishery.

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Right now, there is nothing in the document that would prevent a state from setting a sector or gear type allocation extremely low, and having that fishery, and for the incidental catch fishery pretty early on in the season. There are obviously some benefits to that from an administrative standpoint it's just the daily trip limit, and things are monitored outside of a directed quota allocation. I just want to put that concern on the record, and make sure that it's something we as a Board can continue to look out for as we move through this new allocation process. Because I think, depending upon on how things fall with other parts of this document, there may be some incentives that are counter to what we're trying to achieve in the incidental catch and small-scale fisheries provision, in terms of reducing those landings, and getting back to sort of our original intent in Amendment 3. I just wanted to make sure that that was reflected on the record.

CHAIR BELL: Thank you for that, some concerns of the caution about wording and intentions. Any other comments or thoughts on this motion for Option 2? I don't see any hands going up. **Let's vote. Any objection to the motion? I don't see any hands there. Then the motion carries, unanimous.** Thank you. Now something simple, on to 3.3.2 on Page 23, and carrying over with your various options onto 24. This is under permitted gear types within that fishery. Any thoughts there? Nichola.

**MS. MESERVE: I will move to approve in Section 3.3.2 Option 2, to remove purse seines from the incidental catch small scale fishery provision.**

CHAIR BELL: Okay, motion to adopt Option 2, is there a second. Second from Lynn Fegley. Nichola, do you want to provide some rationale?

MS. MESERVE: Yes, thank you, Mr. Chairman. We've seen in the last year, and I believe this year as well that the use of this gear type under the provision has led to the TAC being exceeded. I think that's a credibility issue with the public, as is calling a purse seine a small-scale gear. It's really an outlier, and the group of what we call small scale, based on the capacity of the gear. I think this is the

right time to make this change, now that we have changed the allocation, so that states that have relied on it in the past have more access now under their quota.

CHAIR BELL: All right, Lynn, did you have anything to add as the seconder? Okay. That is the motion, further discussion. Megan.

MS. WARE: I sent a motion to staff on this topic. It was a little long, but I would like to make that motion now. Yes, this will be a substitute.

CHAIR BELL: Yes, I figured. Let us just find that and get it up there.

MS. WARE: I don't believe that was the motion I had submitted. Spoiler alert.

CHAIR BELL: Yes, we're just dealing with a little technical issue here. We'll get this. Whenever they have that there, if you would just read your motion, then that will be your motion.

MS. WARE: Yes. Thanks for everyone's patience. **Move to substitute to maintain purse seines in incidental catch/small scale fishery provision with a reduced trip limit of 4,000 pounds for purse seines only.** Should the TAC be exceeded by landings under the incidental catch/small scale fisheries provisions, the Board can modify permitted gear types via Board action.

CHAIR BELL: All right that's the motion by Megan Ware, is there a second? Okay, second from Emerson. We have a motion; do you want to explain rationale?

MS. WARE: Yes. I think removing purse seines today is treating the symptom and not necessarily the cause. The reason that we've had so many landings under the incidental catch/small scale fishery provision is because that was the only way for us to have a viable fishery. I think given the allocation changes we just made today, the pressure on this provision is substantially less, if not eliminated. It feels a little premature to remove purse seines.

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I do think purse seines have several advantages, in terms of sustainability that were raised in the public comment. Purse seines have been critical in maintaining low dead discards in Maine, because you can release fish alive. They also have very low bycatch. I am concerned that if for any reason this encourages folks towards gillnets in any way, that we will be increasing bycatch of things like striped bass, bluefish, sturgeon, and probably most concerning is.

You know most of us next week are going to be on a Take Reduction Team meeting, which is specifically focused on right whales and interactions with big scale fisheries. I would hate to have an unintended consequence of this type of motion be increased vertical lines and interactions in the water. This motion is intended to acknowledge that there is some room between a full yes and a full no on purse seines. That is my rationale.

CHAIR BELL: Emerson, did you have anything to add to that?

MR. HASBROUCK: No, I agree with Megan. I think it's also a good compromise between status quo and eliminating purse seines.

CHAIR BELL: All right thanks, that's rationale. I've got Eric and then Adam.

MR. REID: Just a question for the maker and the seconder. At this point we allow, if there are two licenses on a vessel you've got two trip limits at a time. Is that your intent here?

MS. WARE: It's not permitted in Maine. It's been a straight 6,000-pound fishery, and this would be a straight 4,000-pound trip limit.

MR. REID: The motion addresses the whole coast, so I guess that's my question.

MS. WARE: It does address the whole coast, but it is just reducing the trip limit for purse seines only, none of the other gear types.

MR. REID: Okay, but if you have two licenses onboard you can still have 8,000, if you're not.

MS. WARE: I believe that's only for stationary multispecies gear types, it is not for all of the gear types in the small-scale fishery provision.

MR. REID: Okay, well I guess all right.

CHAIR BELL: Adam.

MR. NOWALSKY: Given that 3.3.2 deals with nondirected gear, this would maintain purse seine as a nondirected gear, correct? I'm seeing a nod. Then I've got a follow up question, assuming the answer is yes.

MS. WARE: I think 3.3.2 is permitted gear types in the incidental catch/small-scale fishery provision. This would maintain purse seines in the incidental catch and small-scale fishery provision.

MR. NOWALSKY: Okay, so given that 3.3.2 does not include anything that contemplates trip limits in 3.3.2. Are we comfortable with now adding trip limits to 3.3.2, when there was nothing in this section about a trip limit associated with these gears previously?

EXECUTIVE DIRECTOR BEAL: Yes, Adam, this is kind of a hybrid 3.3.2, if I have my numbers right. As you said, what gears are permitted in the small-scale fishery/incidental catch. Then the next section is the trip limit, so it's kind of hybridizing those two different sections, and putting a more restrictive measure on one gear type that is being retained in the fishery.

We have done this in the past. We take sort of mixing together different options from different pieces of a document, and come up with a hybrid option. The Board has done it in the past, and it is sort of within the range of things that are brought out to public hearing, gear type and trip limits.

CHAIR BELL: Adam, follow up.

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MR. NOWALSKY: This will mitigate any need for further discussion on 3.3.3?

EXECUTIVE DIRECTOR BEAL: Not necessarily. If the Board wants to change all other gear types to 5,000 pounds, for example. That discussion still can happen next.

CHAIR BELL: I had Allison then Max and then back to Lynn.

DR. COLDEN: I did want to specifically touch on one point that Megan made, and a point that I also noted in the public comment related to this provision specifically. I read many times about purse seines being banned, about moving to gillnets as an alternative fishery. I want to make very clear that removing purse seines from incidental catch and small-scale fisheries does not ban the use of purse seines in any way.

It simply moves the landings recorded by that gear into a different bucket of a state's directed landings. We've gone through the majority of this document at this point. We've made decisions on the allocation timeline that shift quota to the more northern states, reflecting the biomass distribution.

We've significantly increased the overall coastwide quota, to reflect everyone's opinion of the best available science, and the ecological reference points target. There was a lot of discussion earlier about, you know if we adopted these ERP targets, we should work with those ERP targets. What I am trying to ensure here is that we are actually going to be accountable to the TAC set on the ERP target. We all know incidental catch and small-scale fisheries landings at this point in the document are not accounted for against our total allowable catch, based on that ERP.

If we're going to be consistent with the arguments that this Board made earlier, in increasing our total allowable catch, then it should follow that we follow the objective of this section as listed in the Addendum to minimize these landings. Purse seines have been responsible for almost 90 percent of the increase in landings since 2017, in the

adoption of Amendment 3, and I think we need to stick to the objective and remove purse seines.

CHAIR BELL: I've got Max Appelman next.

MR. APPELMAN: Yes, just a process also, building on what Adam was saying. How will this affect the decision points under 3.3.4? Also, is that guidance the same about combining options and sort of hybridizing? Are we still going to cover the accountability or accounting part?

CHAIR BELL: Toni.

MS. KERNS: The 3.4 is determining whether or not the incidental catch counts against the TAC or not, right? Therefore, these landings, if the Board let's say says we're going to count the incidental catch landings towards the TAC, then they'll count towards the TAC. I don't understand where you are.

MR. APPELMAN: Yes, let me try to clarify. Part of this motion says that should the TAC be exceeded by landings under the incidental catch/small-scale fisheries provision, that is a specific decision point, I believe under 3.3.4 as well, right? The different options that the Board could have available to them to respond in that scenario.

CHAIR BELL: Yes, to that, Allison.

DR. COLDEN: Yes, I'm sorry, quick follow up, Mr. Chair. I had a similar question to Max, also because I believe in the later section 3.3.4, which it looks like the second half of this motion, is attempting to address with respect to changing permitted gear types be a Board action. The language in this motion appears to be less stringent than what is in 3.3.4, which requires the Board to take action, rather than allowing the Board to take action. I would be interested in sort of revisiting those other pieces as well down the line.

CHAIR BELL: Megan, to that point.

**MS. WARE: Yes, I'm sorry for causing confusion here. I think in the motion I had sent to staff I had**

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**listed out what options this includes. I think maybe for ease I'll just read that so people know what options are getting combined here. For 3.3.2 it's Option 1, maintain purse seines. For 3.3.3, I chose 4,000 pounds that was within the range that went out for public comment. In 3.3.4, my intent was to include catch accounting via Option 2. Excuse me, Option 2B, Sub-option 1, which allows the Board via catch accounting to evaluate permitted gear types, and take action to eliminate a gear type should landings exceed the TAC. Hopefully that helps.**

CHAIR BELL: That was the original wording that you had, which included the other section. Actually, you were next anyway, Lynn.

MS. FEGLEY: You know with all due respect to my friends from Maine. I think this is asking to have your cake and eat it too. I really do. You know we have realigned the quota, and I think looking at the numbers, absent the re-jittering of a tier, the state of Maine will have in excess of 20 million pounds to work with.

I went back and read the 2012 proceedings for when we first did allocation for menhaden in Baltimore. I would actually encourage everybody to go back and read those proceedings, because it was a long, thoughtful conversation, and we talked about this bycatch allowance for hours. It was a very specific problem.

Let me rephrase that. It was a very specific solution to solve a very specific problem about these non-directed stationary multispecies gears. We have twisted it now to a point where it's arguably changed the dynamics of menhaden harvest along the coast, and clearly the fish have moved.

But to this point, I also want to say that we need to really start thinking in these conversations about how we are impacting the economics of fisheries in our states, because we don't all fish in a vacuum. We move our fish up and down the state. I have a lot of concern for my fishermen in Maryland. I shouldn't say my fishermen, Maryland's fishermen, who really worry about the impact on their market

when we're transferring fish out of the Bay, or when we're reallocating.

I think we have worked really hard today to realign the quota. That was our Number one objective, and now we're considering taking a directed gear and allowing it to harvest under a provision that was fully intended to solve the problem for these nondirected multispecies gears that could result in significant amounts of regulatory discards. I apologize for getting a little hot under the collar, but thank you for listening.

CHAIR BELL: Okay, thanks, Lynn. I have several people already lined up. Erika Burgess is online, and then I had Allison and then Doug, and then Adam.

MS. ERIKA BURGESS: Mr. Chair, thank you for recognizing me. I have to say first off, I'm very uncomfortable by a motion that takes three different actions that's in a document and puts it together. I can more easily see how the motion about moving tiers within the base allocation is within the range of options within the document that went out to the public.

But here, I feel like each of these is a separate item, and we might make one decision for purse seines, and we still have to revisit each of the three actions for other gears. But it is the state of Florida's opinion that a purse seine is not a small scale nor a nondirected gear for menhaden, and so for that reason we'll not be supporting this motion, and will be supporting the original motion.

CHAIR BELL: Allison, did you have your hand up earlier?

DR. COLDEN: Sorry, Mr. Chair, that was my follow up to Max's question. I'm good.

CHAIR BELL: Got you, thanks. Doug, Adam.

MR. HAYMANS: I was just trying to alert you, Mr. Chairman to Erika's need, had her hand up.

CHIAR BELL: Okay, Adam.

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MR. NOWALSKY: I would just like to go back to my question and Max's follow up, whereby I had suggested that the motion to substitute would mitigate the need to take action on 3.3. Max asked about 3.3.4. The clarification in italics now seems to suggest that should we vote for the substitute, and vote for it as a main motion, that we would in fact mitigate the need for action on 3.3.3 and 3.3.4.

I think we need clarification as to what is the motion we're voting for. Are we voting for the motion that has a second to it, and then we still need to take action on 3.3.3 and 3.3.4, or is what is in italics the actual motion, and what is on the board should reflect that? That is my opinion as a member of the caucus sitting here around the table.

CHAIR BELL: Toni.

MS. KERNS: Adam, I think that the Board has the ability to take action on all three sections still. This motion is pulling out purse seines and giving it a specific trip limit and a specific reaction to how that trip limit can be changed if the TAC is exceeded. If the Board wants to take action on any of the other gear types that were listed, they can still do that.

They can put a trip limit restriction on it, and then they can put a reaction for those gear types on if the TAC is exceeded. The Board also still has the ability to vote on whether or not to use incidental catch and small-scale landings count against the TAC or not.

CHAIR BELL: This was meant to be purse seine specific.

MS. KERNS: This is meant to be purse seine specific.

CHAIR BELL: Adam.

MR. NOWALSKY: Can I hear that from the maker and seconder of the motion to reflect that, because again, I heard something different from the maker, and what's up there in italics says to me, their motion to substitute includes options for those other sections.

MS. WARE: Yes, I guess, I'm kind of processing this. One part is very easy. The trip limit is purse seine specific. In the second part of the motion, I was choosing options in 3.3.4 that I think are as written, so you would have incidental catch landings evaluated against the TAC. Not realizing that that is confounding this discussion here. Maybe the best way to proceed, and I'll look to Toni here just to chat, is to withdraw this motion. I'll just make a motion to substitute to maintain purse seines with a 4,000-pound trip limit, leave out the catch accounting. We'll deal with that later to simplify this. I get the confusion you're having, Adam, I apologize.

MS. KERNS: You can do that, Megan, but the Board has to agree to withdraw it. It's the property of the Board.

MS. WARE: Would I Have to make a motion to withdraw?

MS. KERNS: Or the Chair can ask if there is an objection.

CHAIR BELL: Is there any objection, since we own the motion. Is there any objection? Megan is proposing withdrawal. I don't see any hands so it's no opposition to that, so withdraw the motion. Yes, Roy.

MR. MILLER: Can you withdraw a motion without the approval of the seconder?

CHAIR BELL: Well, that's a good point.

MR. HASBROUCK: Yes, I'm fine with it, Mr. Chairman.

CHAIR BELL: Okay, so we have the motion maker, the seconder, thank you, Roy, and then we agreed, since we owned the motion that that's fine, we withdraw the motion.

**MS. WARE: With the Board's indulgence I will try again, and it will be move to substitute to maintain purse seines in the incidental catch/small-scale fisheries with a reduced trip limit of 4,000 pounds**

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**for purse seines only.** If I get a second, my rationale I said before still stands.

CHAIR BELL: Now we've kind of simplified that. Is there a second to the motion as Megan just made it? Dennis Abbott. Okay, seconded, discussion. You've already kind of explained the rationale, I guess. Any further discussion of the motion as now it's presented? Yes, Steve.

MR. TRAIN: A little bit of discussion. I support the motion, but I also want to explain something about our fishery in the state of Maine. These are lobster boats 32 to 45 feet that fill a small seine, maximum size 150 fathom by 8 fathom. It's not an industrial fishery. It's not a fleet that runs up and down the coast.

You leave your mooring and shoot to the other side of the cove, make a set and go home. It's like a fish trap that you take out of the water every day, and it is not an incidental catch, it's a small-scale fishery. We're offering to reduce the 4,000 pounds. Hey, a dead fish is a dead fish, I don't care what it went into. This is our small-scale fishery.

CHAIR BELL: All right, thank you. Adam and then Jim.

**MR. NOWALSKY:** I'm okay with this. I sat on enough docks this summer in the state of Maine, and watched the bait come up on the dock, and I support Maine's fishermen for this. However, I can't vote for this motion, until I know that as Allison suggested that it is being directly attributed to the CAP, and not just skating free. **I'm going to make a motion to table this until after we address Section 3.3.4.**

CHAIR BELL: Lynn, to that?

MS. FEGLEY: I was just going to speak in opposition to this. If the Board will indulge me. You know we had a conversation about this. I'm just going to quote the venerable Jack Travelstead, for those who remember him. When we talked about this in 2012, and he talked specifically about purse seine,

he says, purse seine is a directed gear. Nobody would argue with that.

We are talking about pound nets and gillnets. I also want to say that we have a drift gillnet fishery in Maryland. We don't have people rushing to gillnet for menhaden, because of our restriction. Pound nets are a big gear, but they are a stationary gear. We have lots of small-scale fisheries in Maryland that we manage to quota. I just think that this is a little bit over the top, and thank you for indulging me.

CHAIR BELL: Procedural thing here, sorry. Adam made a motion to table. That needs a second, and then we would be restricted to only vetting the time at which it would end. Is that a second, Eric?

MR. REID: Yes, it is, and the motion has basically a time. It says until after we address 3.3.4.

CHAIR BELL: That's what I was wondering. Okay, so that is all we can talk about now. Yes, Bob.

EXECUTIVE DIRECTOR BEAL: The way motions to table work is the only thing you can really talk about is when the Board will get back to this, so tabled, and that's the only part you can talk about. But now where the Board is, we should figure out if you want to table or not, not discuss the previous motion about the 4,000 pounds and the purse seine, and then move into 3.3.4.

**CHAIR BELL: Okay, so we need to deal with this motion then. Any opposition right now to the motion to table? All right, so no opposition so that passes.** Then we go ahead and flip to the next.

EXECUTIVE DIRECTOR BEAL: Then you move to Section 3.3.4 for that conversation, and there are no motions in play right now.

CHAIR BELL: Got it, okay. Let's get to 3.3.4. Part of the motion was to go to 3.3.4. Yes, Bob.

EXECUTIVE DIRECTOR BEAL: Actually, you could go to 3.3.3 or 3.3.4, but what this means is if the Board deals with 3.3.3 they can't come back to the

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motion, they've got to go all the way through 3.3.4 before they can come back to the tabled motion. You could maintain the order of 3.3.3 then 3.3.4 to be consistent with the document.

CHAIR BELL: I'm starting to get hands here. Hang on a second. I've got Erika and Jim, and Allison, I think. All right, Erika, what did you have?

MS. BURGESS: I would like to go into 3.3.3 first, because I believe that will also inform the rest of the discussion. But I have a request for information about the statement that was brought up about some states allowing a vessel with two licenses onboard to have double the vessel limit. If I could know which states that applies to and which gears, and whether it counts towards the TAC or not.

CHAIR BELL: Okay, if I remember the question, that was kind of between Eric and you brought up the question about whether or not a boat could have two different licenses or more.

MR. REID: Yes, the question was particular to that particular motion. There are in some cases. Actually, I might not be the one to answer this question. But my understanding it is that in certain cases on certain gear types that if you have two licensed fishermen onboard, you can have two trip limits. In Rhode Island, for example, our floating fish traps, we allow two licensed captains to bring in two trip limits on the same trip. Whether that is specific to Rhode Island or floating fish traps only, I am uncertain of that.

CHAIR BELL: Toni.

MS. KERNS: Mr. Chair, I think you're looking at what I'm looking at. Under the incidental catch/small-scale fishery provision of Amendment 3 it allows for two authorized individuals working from the same vessel for stationary, multispecies gear. They can work together and land up to 12,000 pounds from a single vessel. It has to be from a stationary multispecies gear type. That can be any state that is within the FMP, Erika. I know that Maryland does prosecute that, but I am not aware of other states that do besides Rhode Island.

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CHAIR BELL: Did that answer the question?

MS. BURGESS: Yes, thank you.

CHAIR BELL: Jim, I think you had your hand up.

**MR. GILMORE: Yes, I was going to try just to maybe do this quick. I was just going to put a motion up for Section 3.3.3 to approve Option 1 that would change the trip limit status quo.**

CHAIR BELL: Motion by Jim Gilmore under 3.3.3 to approve Option 1, seconded by John Clark. Rationale, Jim.

MR. GILMORE: Again, this is critical for us in our fall fishery we've been having, as I mentioned at the last meeting. That's the time of the year in the Peconic's we're having significant fish kills. If we can't land those fish quickly and get them with the market, they end up dying and going to a landfill at significant cost to the local towns. That 6,000-pound trip limit has saved us the last few years, and we would like to make it again.

CHAIR BELL: Hey, John, anything to add to that?

MR. CLARK: I do not, Mr. Chair.

CHAIR BELL: We have a motion by Jim Gilmore, second by John Clark. Move under Section 3.3.3. Option 1 (status quo). Discussion of the motion. Okay, Lynn.

MS. FEGLEY: My question is, if we do this, then we wouldn't be able to change the trip limit for purse seine, right? Is that how this would work?

CHAIR BELL: Yes, Toni.

MS. KERNS: Lynn, I would say that you could, because the motion that has been tabled, the provision is specific to purse seines and it is a specific trip limit for that. You're giving a different trip limit to purse seines.

CHAIR BELL: Okay, I follow you there. Other discussion of this motion. I don't see a lot of hands.

**Is there any objection to this motion under 3.3.3 to adopt Option 1 (status quo)? I don't see any objections, so that motion passes.** Then that would take us to 3.3.4, Page 25, which would be catch accounting in this fishery. Any thoughts there? Allison.

DR. COLDEN: I provided staff a motion for this section, which they graciously perfected for me, and kept the red in free.

CHAIR BELL: That looks like it? Would you like to read that?

**DR. COLDEN: Sure. Move to adopt Option 2A, Sub-option 1, and Option 2B, Sub-option 1 in Section 3.3.4 to evaluate incidental catch and small-scale fisheries landings annually against the coastwide total allowable catch, and to allow the modification of the daily trip limit and/or gear types included in the incidental catch/small-scale fisheries provision via Board action.**

CHAIR BELL: Is there a second to that motion? All right, Doug Grout. We have a motion second, Allison, do you want to explain your rationale?

DR. COLDEN: Sure, thank you, Mr. Chair. I think this is going to be critically important, especially with respect to the motion that we still have on the table. I mentioned earlier, and I'll reiterate here that we have an ERP target for this important fishery species, and I think we need to be responsible to managing to that target.

Our total allowable catch right now, and of course we obviously have overages and payback provisions on a state-by-state basis. But if we go over on a coastwide basis there is no accountability to that number at this point. I think it's important, and shows the intent of this Board that we really do intend to manage to that number, and manage to that goal of ecological reference point, that we have some sort of catch accountability. With respect to the sub-options, I just wanted to touch on that quickly. Right now, obviously, we have the option to modify these types of things via Board action. As we sit here today, working on an Addendum that

has been 18 months or more in the making, we know that those things don't move very quickly.

I think that this would give us the opportunity to react to trends like we saw with the addition of purse seines into the small-scale fisheries. We saw that increasing year over year over the past four years. It took four years for us to step in and take action. In the spirit of being nimble and flexible, I think that this would give us the opportunity to more quickly and directly address any of those issues that we see.

If there are particular gears or sectors that are contributing to continued exceedances of the TAC. Our goal was to get closer to reduce the amount of latent quota. As we move closer and closer via allocations to using all of our coastwide TAC, this becomes more important.

CHAIR BELL: Doug, did you have anything to add to that?

MR. GROUT: Just a simple reiteration that we need to have these start being included under the TAC.

CHAIR BELL: Thank you, so you have a motion you have a second. Further discussion? Adam.

MR. NOWALSKY: This makes it clear that this is covered under the TAC. Option 1 specifically stated that the landings do not count against a state allocation. Option 2 specifies that the landings are evaluated against the TAC, but is silent on the issue of counting against a state allocation. Where does this leave those landings, with regards to counting against the state allocation with Option 2A?

CHAIR BELL: Thinking, Toni.

MS. KERNS: It would come off the top. It would not count against a state's allocation.

CHAIR BELL: Adam.

MR. NOWALSKY: Okay, would staff agree or disagree with the sentiment that a modification to this motion that would clarify that it would go

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against the state's allocation be allowable within the options in the document?

CHAIR BELL: Processing here.

MR. NOWALSKY: I'll go so far as if it helps staff at all, that I think as it's relevant and the gear type of concern, with regards to the motion that we tabled. That I would go so far, if I was to make that motion to amend at this point, to specify specifically that it would be the purse seine gear type that is the type that should be addressed relative to the state allocation, if that helps.

CHAIR BELL: Yes, Bob.

EXECUTIVE DIRECTOR BEAL: It gets tricky, because the way this incidental catch/small-scale fishery works is you are allowed to access that fishery once your state quota is landed. Your state quota is landed in one year, now you initiate your small-scale/incidental catch fishery. All those landings by definition are over your state quota.

They would have to come off. Essentially, anything you catch this year is going to come off next year's quota, because you've automatically already had an overage. That is the difficult part is you can't access this fishery until you end your state quota, or a subsector of that state quota.

CHAIR BELL: Lynn.

MS. FEGLEY: I just feel like we're spiraling into madness, I really do. The purpose of the incidental catch was to allow fisheries that encounter menhaden, and it's really out of their control, to access those fish and not have it repeatedly counted directly against their quota. By including the purse seines in the incidental catch, as Bob just said, by default it is going to come off the top. By default, it won't be counted against the state.

I really think that it might be a small-scale fishery. I mean these guys are catching bait for their lobster fishery. I think that's great. I completely support that. But this is not a provision where they belong. It is absolutely not. They can go find the fish; they

may not travel miles. Our largest boat in Chesapeake is probably what, Russel, maybe 60 feet at max, probably more like 40 would be the average, down to 25.

We have big water in the Chesapeake Bay. But those guys in those boats, they can take a mobile gear and go pretty far, and do some fishing. I just want to repeat that you know when we thought through this Addendum, I think we thought through it really well. Now we're just going back to make it more complicated, and just more serpentine. We're going to start to lose credibility here.

CHAIR BELL: All right, we answered Adam's question. Further discussion of the motion? Not seeing any hands. Yes, Rob.

MR. LaFRANCE: I think we've come full circle, and I'm just wondering how we get out of it. I mean I think as I look at this, we basically said, purse seines are a directed fishery. They should be accounted for in your allocation, and the allocation that we've been working on as a group. That was the original motion.

But in order to help make an accommodation to Maine, so they can kind of get out of that over time, we put purse seines back in. Now we're trying to figure out how to move forward. I guess where I come out is, it seemed pretty clean when we started this to just take purse seines out, so that's where I'm leaning.

In the meantime, I'm sort of playing a little game of chicken with these motions, to know kind of what I heard Adam talking about is, he wanted to make certain we understood where we were. I think this dialogue has been helpful to me. I guess I just wanted to put on the record that I still feel strongly that the purse seine should come out, because we've made all these other accommodations.

MR. APPELMAN: Yes, I support this motion. I particularly appreciate the combination of the sub-options here creating sort of a tool box should any gear type or overages continue, even after this

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reallocation has taken place. I just wanted to voice my support for the motion.

CHAIR BELL: All right, we've got some support, some opposition. Further discussion? Let's go ahead and vote on this one way or the other. Need to caucus on it, since it's kind of unique? Yes, go ahead and take at least two here. I'm assuming you're caucused out here, let's go ahead and vote on this. I won't read the entire motion again before you. You can see it, you just caucused. All in favor of the motion before you raise your hand.

MS. KERNS: Rhode Island, Florida, Massachusetts, Connecticut, New York, New Jersey, U.S. Fish and Wildlife Service, NOAA Fisheries, Pennsylvania, Georgia, South Carolina, North Carolina, Virginia, Potomac River Fisheries Commission, Maryland, Delaware, Maine, and New Hampshire.

**CHAIR BELL: How did that happen? Okay that would be unanimous, there is nobody left. Everybody voted, right? Nobody voted twice. Okay, so that passes.** Yes, that allows us to go back to Adam's motion to table. Now that is automatically off the table, because that was the condition that was placed to table the motion, which takes us back to 3.3.2.

That was where we left off. Where we left off here, we had this motion to substitute. We were just involved in the discussion of the motion to substitute. That is where we would pick up, right? Further discussion where we left off on the motion to substitute. Adam.

MR. NOWALSKY: I've got to look to Maine for some help here, because I want to help. I want to be part of the solution here, not part of the problem. Where I need to be is, I need to see purse seine landings, it's a small-scale fishery continue as part of the state allocation. We've addressed one issue, where it's part of the overall TAC. We've addressed that. We now know it's going to count against the overall TAC. But I am in the position that I feel that the right thing is for these purse seines as a directed fishery, needs to count against the state's allocation.

At the same time, I recognize that once the state's allocation is hit, if the fishery gets shut down, lobstermen are going to be without a bait source. I am sensitive to that. I get it. That is the bridge I need to cross, in order for the purse seine fishery to keep going, I need to know what you can do in Maine to not reach that point, where your purse seines have to stop operating.

But it's going to count against the state allocation. I don't know if there is any other, maybe I'm all alone with this problem here. You know I don't know if there are any other Board members that share the concern. But I'm of the opinion that the purse seine catch has to count against the state allocation, but we need some way to keep your fishermen in bait at the same time.

CHAIR BELL: All right thanks, I understand your point. Lynn.

MS. FEGLEY: Yes, and I'm sorry, because this is Maine's to field, but I just want to respond on our end the reason that this delegation supported the three most recent years was exactly for that. To move that quota up there, so that they would be able to support that lobster fishery.

CHAIR BELL: Yes, Megan.

MS. WARE: I felt like a question was directed at me, so I want to try and answer it. I think it gets to what the provision is, Adam. This provision, it kicks in after you catch your state's quota. Based on what we just voted on with catch accounting, it's saying if Maine catches its full state quota, and we move to this incidental catch/small-scale fishery provision, and purse seines are allowed at 4,000 pounds, then those will be counted against the TAC. But this provision occurs after a state reaches its state's quota.

CHAIR BELL: All right, thanks, Megan, any other hands, any other discussion of this motion to substitute? All right, do you need to caucus on that? Yes, okay. Let's caucus. Take two. Everybody's had a chance to caucus. All right, we're going to head and vote on this. **All right, we're**

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**voting on the motion to substitute right before you there. All in favor of the motion to substitute raise your hand.**

MS. KERNS: New York, South Carolina, Pennsylvania, and Maine and New Hampshire.

CHAIR BELL: All opposed to the motion raise your hand.

MS. KERNS: Florida, Rhode Island, Massachusetts, Connecticut, Virginia, North Carolina, Potomac River Fisheries Commission, Georgia and Maryland.

CHAIR BELL: Any abstentions?

MS. KERNS: NOAA Fisheries and Fish and Wildlife Service and Delaware.

CHAIR BELL: Okay, anybody null out on that? Had one null.

MS. KERNS: New Jersey.

**CHAIR BELL: Got you, 5 in favor 9 against, 3 abstentions, 1 null. All right, so motion fails.** That takes us back again to the **original motion at the top of the screen, which was to move to adopt Option 2 in Section 3.3.2.** We're back to the main motion. Further discussion of the main motion. I don't see any hands, we can vote. Does anybody need to caucus on this? Don't think so. Okay, let's go ahead and vote. The motion before you, all in favor raise your hand.

MS. KERNS: Florida, Rhode Island, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Georgia, South Carolina, North Carolina, Virginia, Potomac River Fisheries Commission, Maryland, New Hampshire.

CHAIR BELL: All right, all opposed raise your hand please.

MS. KERNS: Maine.

CHAIR BELL: Abstentions.

MS. KERNS: Delaware, NOAA Fisheries and Fish and Wildlife Service.

**CHAIR BELL: Okay, 14 in favor, 1 opposed and 3 abstentions, so the motion passes.** I think that's it. I told you guys, yes, Warren, you have a question?

MR. ELLIOTT: Well, just a comment, I know it's late. Thank you, Mr. Chairman. On behalf of Loren and myself, our State Director, Chris Kuhn couldn't be here for this meeting, because of a family emergency. Just sitting here, it would be hard to make an argument to increase a menhaden quota, given Pennsylvania's lack of a commercial fishery or any realistic probability of starting one.

Further, we didn't want to be an obstructionist from other states advancing their quota. With that said, there are menhaden in Pennsylvania waters, and we believe in conserving the resource, and we've been open to in the past transferring quota. We're optimistic that ecological reference points will be effective, and we look forward to continuing to work with all of you on this Board going forward for sound management practices. I just wanted to add that. Thank you.

CHAIR BELL: Thanks, Warren, appreciate that. Okay, remember I said everybody wasn't going to be happy. But you guys did a great job. Toni.

MS. KERNS: Remind the Board that we need a motion to approve the document as modified today, as well as an effective date.

CHAIR BELL: Do we have such, or do we need to actually?

MS. KERNS: We need to make one. Cheri.

**MS. PATTERSON: Yes, I would like to move to approve the Addendum as modified, and the measures will become effective January 1, 2023.**

CHAIR BELL: Do I have a second for that? Jim Gilmore. Discussion of the motion. Yes, Nichola.

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MS. MESERVE: We can move pretty fast in Massachusetts, but I don't think I can make any changes to the measures by January 1. I was thinking more along the lines of, you know implementation plans maybe being due in mid-January. The Board has to approve them at the winter meeting, and then their making implementation deadline of April 1 or May 1, to allow the states their processes. But I wanted to bring that up as a discussion not a motion, to see if that aligned with the other state's abilities to act on new regulations.

CHAIR BELL: Well, that's good, we all have our ways of doing this, but Toni.

MS. KERNS: Nichola, is your intention it's for the quota to be effective January 1?

MS. MESERVE: Yes.

MS. KERNS: Then we would need to craft a split effective date.

MS. MESERVE: I'll throw out May 1, but I was hoping if there was any discussion about that, certainly willing to discuss it.

CHAIR BELL: We're trying to find something that works for everybody with their systems, and we don't want to get anybody crossways here. In the discussion right now, would May 1 be acceptable? Okay, and so in terms of modifying this so the maker and the seconder of the motion are okay with the tinkering of the wording, I guess we're still tinkering. All right.

MS. KERNS: Nichola added date for implementation plans, and I think we should include those in the motions as well. You suggested.

MS. MESERVE: January 15 for implementation plans being due, and then the Board would take action on them at the winter meeting. If that provides enough time for PRT review and what not.

CHAIR BELL: Let's get this up here and we'll make sure you fully understand what you're signing off on.

MS. KERNS: Indulge me, Mr. Chair. The Commission meeting is the very last week in January. If you want the PRT to provide comments to the state implementation plans we would need them sooner than January 15.

MS. MESERVE: January 1.

MS. KERNS: Yes. That will be in supplemental materials or a report at the meeting, just to prepare the Board for that.

CHAIR BELL: Is that settled out now? Cheri.

**MS. PATTERSON: Jim, are you okay? Okay. I would like to reiterate my motion. Move to approve the Addendum as modified today, and have the allocations be effective January 1, 2023, and the remaining measures will be effective May 1, 2023. Implementation plans will be submitted by January 1, 2023, and reviewed by the Board at the Winter Meeting 2023.**

CHAIR BELL: All right, that's the motion. Everybody good with that? Questions. **Discussion of the motion. Opposition to the motion. I don't see any hands, so the motion passes unanimously.**

#### ADJOURNMENT

CHAIR BELL: Thank you very much. Is there any other business to come before the Menhaden Board? Okay, seeing none, the Menhaden Board is adjourned. Thanks again, you guys have done a lot of work, and staff and everybody, thank you.

(Whereupon the meeting adjourned at 5:45 p.m. on Wednesday, November 9, 2022)



# Atlantic States Marine Fisheries Commission

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## MEMORANDUM

**TO:** Atlantic Menhaden Management Board  
**FROM:** James Boyle, FMP Coordinator  
**DATE:** January 24, 2023  
**SUBJECT:** PRT Review of Addendum I to Amendment 3 Implementation Plans

At the November meeting, the Atlantic Menhaden Management Board (Board) took final action on Addendum I to Amendment 3 to the Interstate Fishery Management Plan for Atlantic Menhaden. Based on Board action, jurisdictions must implement regulations by May 1, 2023.

The Plan Review Team (PRT) met to review the state implementation plans and their consistency with the Addendum. The PRT determined that each jurisdiction has fulfilled the requirements of Addendum I, with the exception that the PRT is still in the process of reviewing the Potomac River Fisheries Commission plan.

The PRT found other notable features:

1. In Maryland and Delaware, regulatory language does not include a list of permitted gears because the gear types used by state fishers already conform to the IC/SSF provision. The PRT recommends adding language either through the regulatory or public notice process that lists the permitted gears to preclude the possibility of a loophole where new gears can be introduced.
2. For Pennsylvania, South Carolina, and Georgia, the implementation plans are consistent with the Addendum while no directed fishery exists. Should a fishery develop, the PRT recommends the state(s) develop a new implementation plan.



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES  
21 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0021

PATRICK C. KELIHER  
COMMISSIONER

**TO:** James Boyle, Menhaden FMP Coordinator  
**FROM:** Megan Ware, Maine Dept. of Marine Resources  
**DATE:** December 21, 2022  
**SUBJECT:** Implementation Plan for Addendum I to Amendment 3

**1. Implementation Timeframe**

The Maine Department of Marine Resources (ME DMR) is scheduled to undergo rulemaking to adopt changes from Atlantic Menhaden Addendum I in January 2023. The rulemaking process in Maine includes a 30-day public comment period and public hearing. As a result, ME DMR anticipates publishing a proposed rulemaking on January 18<sup>th</sup> and having the comment period open until February 19<sup>th</sup>. All regulatory change must be approved by the DMR Advisory Council, and we anticipate that meeting will occur in early-to-mid-March. As a result, ME DMR should conclude its rulemaking process by late-March, well before the start of the 2023 menhaden fishing season. For reference, in FY2022, Maine had a June 13<sup>th</sup> start date for the menhaden fishery. We anticipate continuing to have a start date for the Maine menhaden fishery in 2023 as this aides with quota monitoring and enforcement. Thus, Maine should be in full compliance with Addendum I prior to the start of the 2023 fishery.

**2. Commercial Fishery Management Measures**

a) Maine does not specify its yearly quota in state regulation. Instead, our regulations reference the quota that Maine is allocated by ASMFC. An excerpt of our existing regulations which speaks to this point is below.

**41.30 Commercial Menhaden Fishery Management Program**

**1. State Allocation Fishery**

**A. Notice**

*The state allocation fishery is open until such time as the Department has landings information that the quota assigned to Maine by the Atlantic States Marine Fisheries Commission has been reached or could be exceeded. At that time, the Department will notify commercial menhaden license holders by public notice in a newspaper circulated in the area affected, and on the Department's publicly accessible website, of the closing date for the state allocation fishery. It is unlawful to fish for menhaden after the closing date of the state allocation fishery, unless the Department has opened the episodic event fishery, or the incidental catch and small scale fishery.*



- b) Maine has not divided its jurisdictional quota by sector or gear type in previous years and does not plan to do so for 2023.

Maine will need to modify its regulatory language to reflect changes to the permitted gear types in the incidental catch/small-scale fishery (IC/SSF) provision. Maine is proposing to replace its existing language on gears in the IC/SSF provision with language directly from Addendum I. Below is our current regulatory language along with a proposed change to adopt text from Addendum I. This change will remove purse seines from the IC/SSF provision.

#### ***41.30 Incidental Catch and Small Scale Fishery***

*An incidental catch and small scale fishery for menhaden may occur following the full utilization of the state allocation of menhaden or following the full utilization of both the state allocation and an episodic event fishery.*

#### ***C. Gear Restrictions***

*It is unlawful during the Incidental Catch and Small Scale Fishery to use any gear type other than the following: small-scale directed gears which include cast nets, traps (excluding floating fish traps), pots, haul seines, hook and line, bag nets, hoop nets, hand lines, and bait nets; and non-directed gears which include pound nets, anchored/staked gillnets, trammel nets, drift gill nets, trawls, fishing weirs, fyke nets, and floating fish traps. when targeting menhaden: cast nets, traps, pots, haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines, trammel nets, bait nets and purse seines which are smaller than 150 fathom long and 8 fathom deep. The depth of the net will be determined by taking the average size of 20 meshes and then counting the total number of meshes by depth.*

### **3. Monitoring Requirements**

Maine is not proposing any changes to our biological monitoring plan for menhaden. We plan to continue to follow the requirements for biological monitoring outlined in Amendment 3.

A copy of our 2022 fishing year regulations is appended to this implementation plan for reference. As a note, ME DMR did undertake two emergency regulations during the 2022 season to amend the attached regulations. Those included:

- June 21<sup>st</sup> emergency rulemaking to reduce the trip limit in the episodic events set aside fishery to 6,000 pounds. The regulation packet can be found [HERE](#)
- August 28<sup>th</sup> emergency rulemaking to close the commercial menhaden fishery. The regulation packet can be found [HERE](#).

## **DEPARTMENT OF MARINE RESOURCES**

### **Chapter 41: MENHADEN**

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41.50	Recreational Fishing

#### **41.05 Prohibitions**

1. It is unlawful to fish for, take, possess, or land menhaden except from Maine's territorial waters.
2. It is unlawful to fish for or take Atlantic menhaden by vessels rigged with a midwater, otter or beam trawl net in Maine territorial waters.
3. It is unlawful to use a vessel to fish for or take menhaden that exceeds 50 feet overall length as shown on the vessel's current USCG documentation or State registration.
4. It is unlawful for any vessel other than the harvester vessel that made the set to remove fish from the seine or net. If more than one vessel is used to set the seine or net, only the vessel from which the seine or net was removed may take or possess menhaden from the seine or net.

#### **41.10 Suspension of Rules**

The Commissioner has the authority to suspend all regulations 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 and/or text notice to industry members.

#### **41.20 Reporting**

##### **1. Commercial Menhaden Fishing License**

All harvesters must report daily landings to the Department via an approved electronic reporting option by 11:59 PM the day of landing. If no landings occurred on a calendar day, a negative landing report is required.

Exception: Daily reporting is not required for the Incidental Catch and Small Scale Fishery as described in 41.30(3). Weekly electronic reporting remains a requirement. Daily reports are due weekly by 11:59 pm Sunday.

##### **2. Noncommercial Menhaden Fishing License**

All harvesters must report daily landings to the Department via an approved electronic reporting option once per week no later than 11:59 pm Sunday. If no landings occur during the week (Monday 12:01 am through Sunday 11:59 pm), a negative landing report is required.

Harvesters: See Chapter 8.20(M) for reporting requirements.

Dealers: See Chapter 8.10 Landings Program for reporting requirements.

## 41.25 Definitions

- A. Hogshead: one hogshead equals 17.5 lb bushels.
- B. Bushel: one bushel equals 70 lbs of menhaden.
- C. Barrel: one barrel equals 55 liquid gallons; or, 5 bushel of menhaden.
- D. Truck: one truck equals 40,000 lbs of menhaden.
- E. Fish tote: a standard fish tote (tray), measuring 28 inches long x 16 inches wide x 11 inches deep, when level full, equals 1/3 barrel.
- F. Crate: a crate equals two and one half bushels or 175 pounds of menhaden.
- G. Landing: to come to shore, float or a dock and offload menhaden.
- H. Harvester vessel: the vessel that deploys the net to fish for, take and possess menhaden. A harvester vessel is in possession of fish once the net encircles and traps the fish.
- I. Set: To place from a harvester vessel a purse seine or a bait gillnet in the coastal waters of the state for the purpose of taking menhaden.

## 41.30 Commercial Menhaden Fishery Management Program

### 1. State Allocation Fishery

#### A. Notice

The state allocation fishery is open until such time as the Department has landings information that the quota assigned to Maine by the Atlantic States Marine Fisheries Commission has been reached or could be exceeded. At that time, the Department will notify commercial menhaden license holders by public notice in a newspaper circulated in the area affected, and on the Department's publicly accessible website, of the closing date for the state allocation fishery. It is unlawful to fish for menhaden after the closing date of the state allocation fishery, unless the Department has opened the episodic event fishery, or the incidental catch and small scale fishery.

The Commissioner may extend or reopen the State Allocation Fishery at any time with notice to commercial menhaden license holders, should a quota increase or quota transfer of menhaden be received via allocation adjustments of the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Atlantic Menhaden.

#### B. Effort restrictions

It is unlawful to harvest menhaden prior to the opening of the state allocation fishery on Monday, June 13, 2022 at 12:01 AM. Following the opening of the state allocation fishery on Monday, June 13, 2022 at 12:01 AM and prior to the

closure of the state allocation fishery, it is unlawful to fish for or land menhaden except between 12:01 AM to 11:59 PM on Mondays and Thursdays each week. It is unlawful to fish for, take or possess more than 23,800 pounds or 68 barrels per harvester vessel per week. It is unlawful for a harvester vessel to sell, give or transfer menhaden they have taken to any other vessel while at sea. It is unlawful to receive menhaden from a harvester vessel while at sea. It is unlawful to complete more than one landing per calendar day. For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.25.

Exception: Fishing weirs, stop seines, and pound nets are not subject to the harvest schedule detailed above and may land fish seven days a week. However, weekly landing limits still apply.

**C. Storage Requirement**

All menhaden must immediately be stored in barrels, crates or fish totes, or a combination thereof, upon harvest. All menhaden must be contained in barrels, crates or fish totes on both the harvester vessel and the dory towed by the harvester vessel, if utilized.

A dory is a boat with no mechanical means of propulsion that is towed to and from the fishing grounds by the harvester vessel.

**2. Episodic Event Fishery**

Following authorization by the Atlantic States Marine Fisheries Commission, the Department may open an episodic event fishery following the closing of the state allocation fishery.

**A. Notice**

The Department will notify commercial menhaden license holders by public notice in a newspaper circulated in the area affected, and on the Department's publicly accessible website, of the opening date for the episodic event fishery. When the Department receives notice from the Atlantic States Marine Fisheries Commission that the quota for the episodic event fishery has been reached or may be exceeded, the Department will notify commercial menhaden license holders by public notice in a newspaper circulated in the area affected, and on the Department's publicly accessible website, of the closing date for the episodic event fishery.

**B. Effort restrictions**

Following the opening of an episodic event fishery and prior to the closure of the episodic event fishery, it is unlawful to fish for or land menhaden except between 12:01 AM to 11:59 PM on Tuesdays and Fridays each week. It is unlawful to fish for, take or possess more than 14,000 pounds or 40 barrels per harvester vessel per week. It is unlawful for a harvester vessel to sell, give or transfer, menhaden they have taken to any other vessel while at sea. It is unlawful to receive menhaden from a harvester vessel while at sea. It is unlawful to complete more

than one landing per calendar day. For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.25.

Exception: Fishing weirs, stop seines, and pound nets are not subject to the harvest schedule detailed above and may land fish seven days a week. However, weekly landing limits still apply.

### **C. Storage Requirement**

All menhaden must immediately be stored in barrels, crates or fish totes, or a combination thereof, upon harvest. All menhaden must be contained in barrels, crates or fish totes on both the harvester vessel and the dory towed by the harvester vessel, if utilized.

A dory is a boat with no mechanical means of propulsion that is towed to and from the fishing grounds by the harvester vessel.

## **3. Incidental Catch and Small Scale Fishery**

An incidental catch and small scale fishery for menhaden may occur following the full utilization of the state allocation of menhaden or following the full utilization of both the state allocation and an episodic event fishery.

### **A. Notice**

The Department will notify commercial menhaden license holders by public notice in a newspaper circulated in the area affected, and on the Department's publicly accessible website, of the opening date for the incidental catch and small scale fishery.

### **B. Effort Restrictions**

It is unlawful to fish for, take, possess or land more than 6,000 pounds per vessel per day. It is unlawful to fish for or land menhaden except between 12:01 AM to 11:59 PM on Mondays, Wednesdays, and Fridays each week. It is unlawful for a harvester vessel to make more than one landing per calendar day. For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.25, except that it is unlawful during the incidental catch and small scale fishery for a harvester vessel to sell, give or transfer, menhaden they have taken to any other vessel while at sea. It is unlawful to receive menhaden from a harvester vessel while at sea.

Exception: Fishing weirs, stop seines, and pound nets are not subject to the harvest schedule detailed above. However, daily and weekly landing limits still apply.

### **C. Gear Restrictions**

It is unlawful during the Incidental Catch and Small Scale Fishery to use any gear type other than the following when targeting menhaden: cast nets, traps, pots,

haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines, trammel nets, bait nets and purse seines which are smaller than 150 fathom long and 8 fathom deep. The depth of the net will be determined by taking the average size of 20 meshes and then counting the total number of meshes by depth.

**D. Storage Requirement**

All menhaden must immediately be stored in barrels, crates or fish totes, or a combination thereof, upon harvest. All menhaden must be contained in barrels, crates or fish totes on both the harvester vessel and the dory towed by the harvester vessel, if utilized.

A dory is a boat with no mechanical means of propulsion that is towed to and from the fishing grounds by the harvester vessel.

**41.40 Noncommercial Menhaden Fishing**

The following limitations apply to individuals holding a noncommercial menhaden license issued under 12 MRS §6502-C.

**A. Season**

The holder of a noncommercial menhaden license may fish for, take or possess menhaden from May 1 to December 31.

**B. Effort Restrictions**

(1) It is unlawful to fish for, take, possess or land more than 1,050 pounds or 3 barrels per harvester and per vessel, per day.

(2) It is unlawful to make more than one landing per calendar day.

(3) It is unlawful to transfer menhaden they have taken to any other vessel.

(4) It is unlawful to receive menhaden from a harvester vessel while at sea.

**C. Gear Restrictions**

It is unlawful to use any gear type other than the following when targeting menhaden: bait gillnets, hand seines, and cast nets.

**41.50 Recreational Fishing**

An individual may fish or take, by either speargun, harpoon, minnow trap, hand dip net or hook and line, up to 25 menhaden per day for personal use only without a license.

EFFECTIVE DATE:

May 2, 1982 – Section 41.01 with December 31, 1983 sunset provision

AMENDED

July 20, 2009 – Section 05

September 20, 2010 – Section 30

July 23, 2012 - Section 30

June 6, 2013 – Section 30 EMERGENCY (expires September 4, 2013)

July 25, 2013 – Section 30

July 31, 2016 – Section 30 EMERGENCY

August 5, 2016 – Section 30 (1) EMERGENCY (expires November 3, 2016)

August 15, 2016 – Section (30) EMERGENCY (expires November 13, 2016)

June 3, 2017 -Section 41.30 repealed and replaced (EMERGENCY)

June 8, 2017 -Chapter repealed and replaced (EMERGENCY)

July 3, 2017 - Section 41.30 (EMERGENCY)

September 30, 2017 – Section 41.30 (EMERGENCY)

April 28, 2018 – Sections 41.05, & 41.30

September 15, 2018-Section 41.03(B) EMERGENCY

March 13, 2019-Section 41.10, 41.20 and 41.30

July 14, 2019-Section 41.30(3) EMERGENCY

July 21, 2019-Section 41.30(2) EMERGENCY

November 13, 2019-Section 41.20(1)&(2)

March 15, 2020-41.15, 41.20, 41.30

June 27, 2020-41.30, Open EESA (Emergency)

July 2, 2020-41.30, EESA Reduction (Emergency)

November 9, 2020, Restructuring of entire chapter and addition of noncommercial/commercial license types.

April 27, 2021– Sections 41.05, 41.20, 41.25, 41.30, 41.40, 41.50

April 26, 2022-Section 41.30(1)(B)

May 31, 2022-Section 41.30(1)(B), Section 41.40(B)(2)





# New Hampshire Fish and Game Department

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Scott R. Mason  
Executive Director

January 15, 2023

James Boyle  
ASMFC FMP Coordinator  
Atlantic States Marine Fisheries Commission  
1050 N. Highland Street, Suite 200A-N  
Arlington, VA 22201

Dear James,

Below is New Hampshire's (NH) Implementation Plan to conform to Addendum I to Amendment 3 to the Interstate Fishery Management Plan for Atlantic Menhaden. The only change to NH's rules to comply with Addendum I is to remove purse seines from the "small-scale gear" definition in Fis 603.21 Atlantic Menhaden. See Appendix A for Fis 603.21 rules that indicate the change to be conducted.

## Addendum I Implementation:

### 1. Implementation Timeline

*New Hampshire will have the conforming measures implemented by April 1, 2023.*

### 2. Commercial Fishery Management Measures

a) If your jurisdiction includes its yearly menhaden quota in its regulations, please include the changes in language.

*NH doesn't include the yearly menhaden quota in Fis 603.21 - see Appendix A, which only refers to NH's quota as the "annual state quota established by the Atlantic States Marine Fisheries Commission (ASMFC)" under Fis 603.21 (k).*

b) A mechanism for an incidental catch and small-scale fishery provision following the harvest of your jurisdiction's quota and closure of the directed fisheries.

*See Fis 603.21 (o)*

#### **REGION 1**

629B Main Street  
Lancaster, NH 03584-3612  
(603) 788-3164  
FAX (603) 788-4823  
email: [reg1@wildlife.nh.gov](mailto:reg1@wildlife.nh.gov)

#### **REGION 2**

PO Box 417  
New Hampton, NH 03256  
(603) 744-5470  
FAX (603) 744-6302  
email: [reg2@wildlife.nh.gov](mailto:reg2@wildlife.nh.gov)

#### **REGION 3**

225 Main Street  
Durham, NH 03824-4732  
(603) 868-1095  
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#### **REGION 4**

15 Ash Brook Court  
Keene, NH 03431  
(603) 352-9669  
FAX (603) 352-8798  
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I I. Indicate if your jurisdiction divides quota by sector, fishery, or gear type, and provide regulatory language.

*NH does not divide quota by harvest type.*

II II. Provide regulatory language to account for changes in IC/SSF permitted gear types. Under Addendum I, small-scale gears include: cast nets, traps (excluding floating fish traps), pots, haul seines, hook and line, bag nets, hoop nets, hand lines, and bait nets. Non-directed gears include: pound nets, anchored/stake gillnets, drift gill net, trawls, fishing weirs, fyke nets, trammel nets, and floating fish traps.

*NH will change the non-directed gears provision of Fis 603.21 (b) by adding trammel net and will be deleting fyke net, trammel net, and purse seine from the small scale gear definition in Fis 603.21 (c), See Appendix A.*

### **3. Monitoring Requirements**

a) If your jurisdiction is proposing changes to your biological monitoring program, please include the proposed changes.

*NH is not proposing to change conditions of the biological monitoring program.*

**Appendix A: New Hampshire's Atlantic Menhaden rules and proposed change to be in compliance with Addendum I to Amendment 3 to the Interstate Fishery Management Plan for Atlantic Menhaden.**

Fis 603.21 Atlantic Menhaden.

(a) No person shall take, land, possess, or transfer possession of Atlantic menhaden (*Brevortia tyrannus*) while on or leaving the waters under the jurisdiction of the state except in accordance with the licensing and permit requirements of this section.

(b) For the purpose of this section, "non-directed gear" means a pound net, anchored or stake gillnet, drift gill net, fishing weir, fyke net, **trammel net**, or floating fish trap.

(c) For the purpose of this section, "small-scale gear" means a cast net, trap other than a floating fish trap, pot, haul seine as defined in Fis 602.05, **fyke net**, **hook and line**, **and hand line**, **and trammel net**, **purse seines which are no larger than 600 feet wide and 48 feet deep or bait net**.

(d) For purposes of this section, "land" means to transfer or attempt to transfer the catch of fish from any vessel to any other vessel or onto any land, pier, wharf, dock or other artificial structure.

(e) For the purpose of this section, a "menhaden dealer" is:

(1) Any person or business who:

- a. Is a New Hampshire licensed wholesale marine species dealer, pursuant to RSA 211:49-aa or 211:49-c; and
- b. As first point of contact, purchases, ships, consigns, transfers, transports, barters, accepts or packs Atlantic menhaden directly from a commercial harvester for resale; or

(2) Any person or business who:

- a. Has applied for and received a New Hampshire commercial saltwater license, pursuant to 211:49-a or 211:49-b;
- b. Has notified the department in writing of an intent to sell Atlantic menhaden taken under the license as a New Hampshire menhaden dealer; and
- c. Harvests, and then sells, ships, consigns, transfers or barters their own catch of Atlantic menhaden to any other person or business.

(f) Any person who possesses a recreational saltwater license pursuant to RSA 214:9, XVI, may take, land and possess any quantity of Atlantic menhaden by rod and reel with hook and line or hand line for personal use as bait for angling purposes, and not for the purpose of sale.

(g) Any person who possesses a lobster license pursuant to RSA 211:18 may possess any quantity of Atlantic menhaden while in the normal conduct of tending lobster and crab pots.

(h) A holder of a commercial saltwater license engaged in the take of Atlantic menhaden for the purpose of sale shall be subject to the following requirements and restrictions:

- (1) The licensee shall obtain a harvest permit in accordance with Fis 609.01;
- (2) The licensee shall report all harvest information to the department in accordance with Fis 608.02;
- (3) No licensee shall transfer any portion of a catch of Atlantic menhaden while at sea;
- (4) No licensee shall sell, ship, cosign, transfer or barter their own catch of Atlantic menhaden to any person other than an end user or another menhaden dealer;
- (5) A licensee must report any entanglement of gear used to take Atlantic menhaden with other gear types or marine mammals or any release of Atlantic menhaden from a purse seine to Fish and Game Department dispatch at 271-3361 within 12 hours of the interaction; and
- (6) Fishing gear used in the taking of Atlantic menhaden may only be fished between sunrise and one hour after sunset.

(i) No licensee shall deploy a gill net seeking the take of Atlantic menhaden in state waters except in accordance with the following restrictions:

- (1) The waters of the Great Bay estuarine system inland of the Memorial Bridge in Portsmouth, Little Harbor and its tributaries inland of its most seaward jetty, Rye Harbor and its tributaries inland of its most seaward jetty, and inland of the Hampton Harbor Bridge shall be subject to the restrictions contained in Fis 602.06(e);
- (2) Each gill net shall have a high flier buoy or an A-2 or larger orange Gloucester buoy, marked with the name of the licensee, at each end of the net;
- (3) Each gill net shall at all times have an identification tag with the licensee's name attached to the head rope at the junction with the vertical line at one end of the net;
- (4) No gill net shall have a mesh size larger than 4 inches;
- (5) No gill net shall be longer than 300 feet, or have a depth of more than 20 feet;
- (6) No more than 2 gill nets shall be deployed by a licensee at any one time in state waters;

- (7) The 2 gill nets of a licensee shall be either fished separately or tied together so long as the total length of the nets tied together does not exceed 600 feet;
  - (8) Each sink gill net shall be deployed at a location that is within the unaided eyesight of the licensee. Unaided eyesight means unaided by devices such as binoculars or spotting scope;
  - (9) A sink gillnet shall only be weighted with a lead line for a foot rope, and an anchor or weight at only one end of the gill net;
  - (10) A surface gill net shall have a headrope sufficiently buoyant to remain exposed at the water's surface while fishing, and must be fished with one line attached to the vessel at all times; and
  - (11) All gill nets shall be in compliance with the weak link requirements in Fis 602.09(b)(6).
- (j) No licensee shall deploy a purse seine seeking the take of Atlantic menhaden in state waters except in accordance with the following restrictions:
- (1) For the purpose of this section, the vessel that the purse seine net is deployed from shall be the "primary purse seine vessel".
  - (2) For the purpose of this section, the vessel that draws the purse seine net around a school of Atlantic menhaden and returns control of the deployed net back to the primary purse seine vessel shall be the "assisting vessel".
  - (3) No purse seine shall be larger than 600 feet wide and 48 feet deep;
  - (4) Any purse seine deployed must be pursed and retrieved by hand without the aid of hydraulic, electrical, gas or diesel powered devices;
  - (5) No purse seine shall be set or retrieved in the waters landward of 72 COLREGS demarcation line, landward of the Rye harbor approach channel as defined in RSA 211:19-a, III or landward of the outer most jetty at the Hampton harbor entrance;
  - (6) No purse seine shall be set or retrieved from a vessel that is more than 50 feet in length;
  - (7) No more than one additional vessel shall assist another vessel with the take of Atlantic menhaden with a purse seine, nor shall the assisting vessel be more than 50 feet in length;
  - (8) No purse seine shall be set or retrieved on the days of Saturday or Sunday;

(9) Atlantic menhaden shall not be removed from a purse seine with a power assisted pumping device;

(10) All marine species other than Atlantic menhaden shall be released immediately from a purse seine; and

(11) The primary purse seine vessel shall be responsible for reporting all information required under Fis 608.02, including any Atlantic menhaden landed by the assisting vessel.

(k) Except as provided in this section, no holder of a commercial saltwater license or wholesale marine species license shall take, land, or possess Atlantic menhaden for the purpose of sale while on or leaving the waters under the jurisdiction of the state whenever the executive director has projected that 98 percent of the annual state quota established by the Atlantic States Marine Fisheries Commission (ASMFC) has been taken.

(l) A closure date shall be announced via notice by the executive director at least 2 days prior to the closure being enacted.

(m) Until the state's Atlantic menhaden quota has been taken and a closure date announced, any menhaden dealer shall electronically report all menhaden landing transactions daily, providing the following information consistent with the minimum data requirements of the Standard Atlantic Fisheries Information System (SAFIS):

- (1) Name of dealer, or properly licensed person;
- (2) The dealer's wholesale marine species or commercial saltwater license number;
- (3) Week of reporting period;
- (4) Commercial harvester's trip start date;
- (5) Vessel name;
- (6) State of vessel registration and number or coast guard number;
- (7) Commercial harvester's first name, last name, date of birth, and license number;
- (8) Number of trips for commercial harvester per day;
- (9) Species purchased;
- (10) Pounds of species purchased;
- (11) Disposition of species purchased;

- (12) Ex-vessel value or price of purchased species;
- (13) Port, county and state where species were landed;
- (14) Date species unloaded from commercial harvester's vessel;
- (15) Grade and market size of purchased species;
- (16) Gear used to harvest species; and
- (17) Dated signature of the dealer, signed subject to the penalties for unsworn false statements under RSA 641:3.

(n) Once the state Atlantic menhaden quota has been taken and a closure date announced, all menhaden dealers shall electronically report all Atlantic menhaden landing transactions on a weekly basis with the information defined in Fis 603.21(k). The reporting week shall be Sunday through Saturday.

(o) Notwithstanding the above restrictions and requirements, any holder of a commercial salt water license or harvest permit may take, land and possess up to a maximum of 6,000 pounds per day of Atlantic menhaden during a closure period provided that:

- (1) The fish have been taken by non-directed or small-scale gears;
- (2) No licensee shall land Atlantic menhaden more than once per calendar day.

Source. #10375, EXEMPT, eff 7-17-13; ss by #12540, EXEMPT, eff 5-31-18; ss by #12754, EXEMPT, eff 4-10-19



# The Commonwealth of Massachusetts

## Division of Marine Fisheries

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### MEMORANDUM

TO: James Boyle, ASMFC FMP Coordinator for Atlantic Menhaden  
FROM: Nichola Meserve, MA DMF Fishery Policy Analyst *NM*  
DATE: December 8, 2022  
SUBJECT: Massachusetts Implementation Plan for Atlantic Menhaden Addendum I

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#### Overview

The Atlantic States Marine Fisheries Commission approved Addendum I to Amendment 3 of the Atlantic Menhaden Interstate Fishery Management Plan on November 9, 2022, with an effective date of January 1, 2023 for the revised state allocations and May 1, 2023 for the remaining measures. State implementation plans are due by January 1, 2023. Herein, please find the Massachusetts Division of Marine Fisheries' plan to implement the changes in commercial state allocations and the incidental catch and small-scale fishery (IC/SSF) provision for compliance with Addendum I.

#### Timeline

In addition to the regulatory changes needed to comply with Addendum I (as described in more detail below), the Division is considering discretionary modifications to update the state's quota management design in response to the addendum's direct and indirect effects and address other pre-existing management, enforcement, and compliance issues. These may include changes to trip limits, carrier vessel allowances and requirements, the open fishing season, or other measures identified through public scoping and comment.

Accordingly, the Division is proceeding with the following timeline: a public scoping meeting to inform DMF proposal development in mid-January; a public comment period and hearing(s) on DMF proposed regulatory changes in late February/early March; a Massachusetts Marine Fisheries Advisory Commission meeting for approval of DMF recommended measures in late March/early April; and lastly, rule implementation by May 1, 2023. Please note that the potential for delays in executive approval for final rulemaking is elevated given a new incoming administration in January. However, a meaningful impact from belated compliance would not arise until the onset of the IC/SSF, which is not anticipated to occur until mid-season given the state's 2023 commercial quota and intended management approach. Additionally, permit conditions could be issued to restrict purse seines from the IC/SSF upon its commencement if necessary.

#### Proposed Regulatory Changes for Compliance with Addendum I

Commercial Allocation: Under Addendum I, Massachusetts' commercial allocation changes from 1.27% to 2.12% (based on a 0.5% minimum allocation and 2018/2019/2021 landings). No change is needed to the state's regulations as they define the quota as that established annually by ASMFC



rather than a specific percentage or amount (refer to 322 CMR 6.43 (2)). This definition also accounts for overage paybacks, which under Addendum I will be accounted for two years after an overage.

Episodic Event Set-aside Program: Status quo was selected; no rule change is needed.

Timing of IC/SSF Provision: Under Addendum I, it was clarified that a sector, fishery, or gear type within a state that is allocated a sub-quota of a state's allocation may land catch under the IC/SSF provision when its sub-quota is reached. Massachusetts does not divide its commercial menhaden quota among any sectors, fisheries, or gear types; the IC/SSF begins once 100% of the state's allocation is reached. No rule change will be made at this time.

Permitted Gear Types of the IC/SSF Provision: Under Addendum I, purse seines are now excluded from the IC/SSF provision. Massachusetts will need to make a rule change for compliance with this measure. Our draft regulatory language adds definitions for "directed small-scale gear" and "non-directed gear" consistent with Addendum I and then makes the IC/SSF provision specific to these gear types (refer to drafted language at 322 CMR 6.43 (2) and (4)(b)). Massachusetts does not provide any exceptions to the 6,000-pound IC/SSF limit and thus will not be defining stationary multi-species gears at this time. Massachusetts' regulation specifies that the IC/SSF limit is per trip or calendar day, whichever is longer; the Division will take this opportunity to also clarify that no vessel may land more than once per day under the IC/SSF provision.

Trip Limit for Directed Small-scale Fisheries of IC/SSF Provision: Status quo was selected; no rule change is needed.

Catch Accounting of IC/SSF Provision: Under Addendum I, IC/SSF landings will be evaluated against the annual Total Allowable Catch, and if these landings cause the TAC to be exceeded, the Board must modify the trip limit or eliminate from the provision one or more permitted gear types and may do so by Board action. Massachusetts will continue to report IC/SSF landings in its Annual Compliance Report to enable this catch accounting measure. No rule change is needed.

### **Massachusetts Regulations with Proposed Revisions**

*(Note that additional discretionary management changes are being considered for 2023; these are not reflected below and their eventual inclusion may result in alterations to wording or placement of the drafted rule changes needed to comply with the FMP.)*

#### **322 CMR 6.43: Atlantic Menhaden Management**

(1) Purpose. The purpose of 322 CMR 6.43 is to comply with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Menhaden to manage the Atlantic menhaden fishery in a manner that is biologically, economically, socially and ecologically sound, while protecting the resource and those who benefit from it.

(2) Definitions.

Atlantic Menhaden means that species known as *Brevoortia tyrannus* or commonly referred to as pogey or bunker.

Bait Dealer means any person issued a bait dealer permit in accordance with 322 CMR 7.01(3)(g): *Bait Dealer*.

Barrel means a standard cylindrical container with a liquid capacity of 55 gallons or a volume of 7.35 cubic feet.

Commercial Fisherman means any person fishing under the authority of a permit issued in accordance with 322 CMR 7.01(2): *Commercial Fisherman Permits*.

Declare means to file an advisory notification with the Massachusetts Register and publish it via the Marine Fisheries electronic mailing list and website.

Director means the Director of the Division of Marine Fisheries.

Episodic Events Set Aside means the 1% of the total allowable catch of Atlantic menhaden that is set aside for use by the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York when certain conditions exist as established in the Interstate Fishery Management Plan.

Fish Tote means a standard rectangular container measuring 28 inches by 16 inches by 11 inches.

Land means to transfer or attempt to transfer the catch of fish from any vessel to any other vessel or onto any land, pier, wharf, dock or other artificial structure, or for a fishing vessel with any fish onboard to tie up to any dock, pier or other artificial structure.

**Non-directed Gear means pound nets, anchored/stake gillnets, trammel nets, drift gill net, trawls, fishing weirs, fyke nets, and floating fish traps.**

Quota means the Commonwealth of Massachusetts annual commercial Atlantic menhaden quota adopted by the Atlantic States Marine Fisheries Commission and amended by required paybacks and authorized quota transfers and rollovers.

**Small-scale Directed Gear means cast nets, traps (excluding floating fish traps), pots, haul seines, hook and line, bag nets, hoop nets, hand lines, and bait nets.**

Trip means the time period that begins when a vessel departs from any land, pier, wharf, dock or other artificial structure to carry out commercial fishing operations, including the at-sea transfer and transport of fish, and that terminates with a return to any land, pier, wharf, dock or other artificial structure.

(3) Regulated Fishery Permit Endorsement Requirement. It shall be unlawful for any fisherman or vessel to take, land, or possess Atlantic menhaden in excess of 6,000 pounds per trip or per calendar day, whichever duration is longer, without a regulated commercial fishery permit endorsement for Atlantic menhaden issued by the Director, in accordance with 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement* and managed pursuant to 322 CMR 7.06: *Limited Entry Permits*.

(4) Commercial Fishing Limits.

(a) Quota Managed Fishery.

1. Limited Entry Fishery. Commercial fishermen who have been issued a regulated Atlantic menhaden fishery permit endorsement, in accordance with 322 CMR 6.43(3) and 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement*, shall adhere to the following trip limits:

a. Until the Director declares that 85% of the commercial menhaden quota has been landed, it shall be unlawful to possess or land more than 125,000 pounds of menhaden in the coastal waters of the Commonwealth per trip or calendar day, whichever period of time is longer; and

b. Once the Director has declared that 85% of the commercial menhaden quota has been landed, it shall be unlawful to possess or land more than 25,000 pounds of menhaden in the coastal waters of the Commonwealth per trip or calendar day, whichever period of time is longer.

2. Open Access Fishery. Commercial fishermen who have not been issued a regulated Atlantic menhaden fishery permit endorsement in accordance with 322 CMR 6.43(3) and 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement* may participate in an open access fishery for menhaden. For commercial fishermen participating in this fishery, it shall be unlawful to retain, possess, land, sell, barter, or exchange or offer for sale, barter,

or exchange more than 6,000 pounds of Atlantic menhaden per trip or calendar day, whichever period of time is longer.

3. Season. Prior to June 1<sup>st</sup>, the possession, retention, and landing of menhaden in excess of the open access fishery limit at 322 CMR 6.43(4)(a)2. is prohibited. This prohibition shall not apply to the possession, retention, or landing of menhaden caught in lawfully-set fisher weirs by a commercial fisherman with a fish weir regulated fishery permit endorsement issued by the Director pursuant to 322 CMR 7.01(4)(a).

4. Quota Closure. Except as provided at 322 CMR 6.43(4)(b) and (c), it shall be unlawful to catch, retain, or land Atlantic menhaden once the Director has determined that 100% of the menhaden quota has been reached. The quota closure will be enacted and announced in accordance with the procedure set forth at 322 CMR 6.41(2)(c).

(b) Incidental Catch and Small-scale Fishery. When the Quota Managed Fishery is closed, commercial fishermen **using small-scale directed gear or non-directed gear as defined at 322 CMR 6.43(2)** may possess and land up to 6,000 pounds of Atlantic menhaden per trip or calendar day, whichever duration is longer; **it shall be unlawful to retain, possess, or land Atlantic menhaden using any other gear when the Quota Managed Fishery is closed. No vessel may land menhaden more than once in a single calendar day.**

(c) Episodic Event Set Aside Fishery.

1. Annual Process to Participate in the Episodic Event Set Aside Fishery. When the Quota Managed Fishery is closed, Massachusetts may apply to the Atlantic States Marine Fisheries Commission to participate in the Episodic Events Set Aside Program, as provided for in the Interstate Fishery Management Plan. If Massachusetts is approved by the Atlantic States Marine Fisheries Commission to participate in the Episodic Events Set Aside Program, the Director shall notify commercial fishermen and dealers via the Division's e-mail listserv, posting notice on the agency's website, and filing a legal notice with the Massachusetts Register. Once the Atlantic States Marine Fisheries Commission determines that the Episodic Event Set Aside is exhausted, the closure of the Episodic Event Set Aside Fishery will be enacted and announced in accordance with the process set forth at 322 CMR 6.41(2)(c).

2. Commercial Fishing Activity during the Episodic Event Set Aside Fishery. The following restrictions shall apply during the Episodic Event Set Aside Fishery:

a. Commercial fishermen who have been issued a regulated Atlantic menhaden fishery permit endorsement, in accordance with 322 CMR 6.43(3), and 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement*, may possess and land up to 120,000 pounds of Atlantic menhaden per trip or calendar day, whichever duration is longer.

b. All other commercial fishermen may possess and land up to 6,000 pounds of Atlantic menhaden per trip or calendar day, whichever duration is longer.

c. All commercial fishermen participating in the Episodic Event Set Aside Fishery shall only harvest menhaden from the waters under the jurisdiction of the Commonwealth and shall only land in Massachusetts ports.

d. All commercial fishermen participating in the Episodic Event Set Aside Fishery shall be subject to the daily catch reporting requirements set forth at 322 CMR 6.43(5).

e. In accordance with M.G.L. c. 130, § 80, and 322 CMR 7.01(7), the Director may establish commercial fishing permit conditions as necessary to manage the Episodic Event Set Aside.

(d) Additional Requirements to Comply with 6,000-pound Possession Limits. The following requirements shall apply to any fishery for menhaden regulated at 322 CMR 6.43(4)(a) through (c) that is subject to a 6,000-pound possession and landing limit.

1. Storage. All menhaden shall be brought aboard the vessel, and upon retention, be immediately stored in level filled barrels or fish totes.

2. Volumetric Equivalency. A level filled fish tote shall be the equivalent of 117 pounds of menhaden and a level filled barrel shall be the equivalent of 350 pounds of menhaden. 51 level filled fish totes or 17 barrels of menhaden shall be equivalent to the 6,000 pound trip limit.

3. Maximum Purse Seine Dimensions. It shall be unlawful to use a purse seine to catch menhaden that exceeds 450 feet long by 48 feet deep. The depth of the net will be determined by taking the average size of 20 meshes and counting the total number of meshes by depth.

(5) Daily Catch Reporting. All regulated Atlantic menhaden fishery limited entry permit endorsement holders and all commercial fishermen participating in the Episodic Event Set Aside Fishery shall obtain a Bait Dealers permit, as defined at 322 CMR 7.01(3): *Bait Dealer*, and report to the Division of Marine Fisheries their commercial Atlantic menhaden landings in the Commonwealth on a daily basis on forms provided by the Director.

## **3.24 Menhaden**

### **3.24.1 Recreational**

- A. Minimum size: No minimum size
- B. Season: January 1 through December 31
- C. Possession limit:
  - 1. Less than or equal to four inches (4"): Unlimited
  - 2. Greater than four inches (4"): Two hundred (200) fish per person per day

### **3.24.2 Commercial**

- A. Menhaden Management Area:
  - 1. Opening and closure of fishery:
    - a. Fishery opening – possession limit:
      - (1) Biomass Floor: On an annual basis in the spring, the DEM shall conduct regular estimates of the standing stock of menhaden utilizing approved scientific monitoring methods. On the basis of those estimates, DEM shall open the commercial fishery at an initial possession limit of one hundred twenty thousand (120,000) pounds per vessel per calendar day when the estimated weekly standing stock reaches two million (2,000,000) pounds.
    - b. Fishery closure:
      - (1) Biomass Ceiling: When fifty percent (50%) of the estimated standing stock of menhaden, above the minimum threshold amount of one million five hundred thousand (1,500,000) pounds, is harvested, the DEM shall close the menhaden fishery until further notice.
      - (2) If at any time the stock estimate drops below one million five hundred thousand (1,500,000) pounds, the DEM shall close the commercial fishery and the incidental catch fishery will be in effect until further notice.
    - c. Fall opening in the Menhaden Management Area:
      - (1) Beginning September 1, the area south of a line extending from the Jamestown and Newport Bridges, and the area

south of a line extending from Fogland Point to Sandy Point in the Sakonnet River, to the southern extent of the Management Area, will be open to the harvest of menhaden by purse seine provided that the State's quota has not been exhausted or if the Episodic Event Set Aside Program has been enacted in Rhode Island.

- (2) Possession limit: Twenty-five thousand (25,000) pounds per vessel per day

2. Commercial vessel restrictions:

- a. This section does not apply to small scale fisheries as defined in § 3.24.2(D)(1)(b) of this Part, or floating fish traps.
- b. The use of purse seines shall be permitted only in accordance with the following terms and conditions:
  - (1) All nets shall be less than one hundred (100) fathoms (six hundred feet (600')) in length and less than fifteen (15) fathoms (ninety feet (90')) in depth.
  - (2) All nets shall be marked with fluorescent-colored float buoys, distinguishable from the other float buoys on the net, at intervals of fifty feet (50').
  - (3) 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 (DLE). 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.
- c. The possession or taking of menhaden by a fishing vessel engaged in the commercial menhaden fishery is prohibited in the following areas:
  - (1) Providence River: Described as the waters north of a line extending from Rocky Point to Conimicut Light in the city of Warwick, and further extending to Nayatt Point in the town of Barrington.
  - (2) Greenwich Bay: Described as the waters of Greenwich Bay west and north of a line extending from the flagpole on Warwick Point to Sandy Point in the city of Warwick.

- d. The possession or taking of menhaden by a fishing vessel engaged in the commercial menhaden fishery is prohibited on any Saturday, Sunday, official State holiday, or prior to sunrise or following sunset.
- e. Fish storage capacity: A fishing vessel engaged in the commercial menhaden fishery may not have a useable fish storage capacity greater than one hundred twenty thousand (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. Such certification must be kept aboard the vessel at all times. Vessels must either be certified as having a useable storage capacity of one hundred twenty thousand (120,000) pounds or less, or for vessels with a fish storage capacity greater than one hundred twenty thousand (120,000) pounds the excess capacity is rendered unusable in accordance with the specifications set forth in the assessment.

B. Possession of Menhaden in Rhode Island under State Quota Program:

- 1. Possession limit: One hundred twenty thousand (120,000) pounds per vessel per day
- 2. Once the quota has been reached, the fishery will close for directed fisheries, including but not limited to purse seine operations, and the incidental catch fishery will be in effect.
- 3. All commercial menhaden operations conducted in the Management Area, prior to and after the State's quota has been reached, are subject to the provisions of § 3.22.2(A) of this Part.
- 4. The transiting provision in § [1.9\(A\)\(2\)](#) of this Subchapter does not apply to the commercial menhaden fishery. Any vessel transiting State waters must abide by the current State possession limit.

C. Episodic Event Set Aside Program:

- 1. After the State's quota has been reached, if Rhode Island is approved to participate in the Episodic Event Set Aside Program for menhaden, as established by the ASMFC, the possession limit for menhaden will be one hundred twenty thousand (120,000) pounds per vessel per day, until the Set Aside quota has been exhausted, as determined by the ASMFC and/or the DEM, at which time the program will end and the directed fishery will close. Vessels that target and land menhaden in Rhode Island under this program must harvest only from Rhode Island waters and, if operating in the Management Area, must adhere to all the provisions as specified in § 3.24.2(A) of this Part.

2. The Episodic Event Set Aside Program will end on October 31, or when the Set Aside quota has been harvested, whichever first occurs.

D. Incidental Catch Fishery

1. ~~Upon closure of the commercial menhaden fishery~~After the State's quota has been reached, an incidental catch fishery will be in effect as follows:
  - a. Possession limit:
    - (1) Six thousand (6,000) pounds per vessel per day for non-directed and small-scale gears
    - (2) Twelve thousand (12,000) pounds per vessel per day for two (2) commercially licensed individuals harvesting from the same vessel, fishing stationary multi-species gear
  - b. Gear Types:
    - (1) Non-directed: Anchored/stake gillnets, trawls, fyke nets, and floating fish traps
    - (2) Small-scale: Cast nets, pots, hook and line, hand lines, ~~trammel nets~~, and bait nets
    - (3) Stationary multi-species: Anchored/stake gillnets, floating fish traps, and fyke nets

E. Commercial Vessel Reporting Requirements

1. This section does not apply to small scale fisheries as defined in § 3.24.2(D)(1)(b) of this Part, or floating fish traps.
2. Any fisher intending to engage in the commercial menhaden fishery in the Management Area shall notify the DLE at (401) 222-3070 prior to taking or possessing menhaden. 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.
3. Each person engaging in the commercial menhaden fishery shall contact the DEM at (401) 423-1940 at the end of each day to report the area fished and the amount of menhaden in possession by the fisher in pounds.

F. 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.



- G. No person may transfer or attempt to transfer at sea, from one (1) vessel to another, any finfish identified in these Regulations.
- H. Possession limit compliance: It shall be unlawful for any commercial menhaden operation to land more than one (1) possession limit per day.

1. Implementation Timeline

Rhode Island will have the Addendum I implemented before May 1. The associated regulatory process will start approximately early February and a rule effective date just prior to May 1 2023.

2. Commercial Fishery Management Measures

- a. If your jurisdiction includes its yearly menhaden quota in its regulations, please include the changes in language.

Not applicable.

- b. A mechanism for an incidental catch and small-scale fishery provision following the harvest of your jurisdiction's quota and closure of the directed fisheries.

- i. Indicate if your jurisdiction divides quota by sector, fishery, or gear type, and provide regulatory language.

Not applicable.

- ii. Provide regulatory language to account for changes in IC/SSF permitted gear types. Under Addendum I, small-scale gears include: cast nets, traps (excluding floating fish traps), pots, haul seines, hook and line, bag nets, hoop nets, hand lines, and bait nets. Non-directed gears include: pound nets, anchored/stake gillnets, drift gill net, trawls, fishing weirs, fyke nets, trammel nets, and floating fish traps.

Please see attached proposed regulations, with red text indicating changes reflected the modifications based on Addendum I.

3. Monitoring Requirements

- a. If your jurisdiction is proposing changes to your biological monitoring program, please include the proposed changes.

Not applicable.



## **Declaration of Regulation Change 22-10**

Under the authority of section 26-159a-22 of the Regulations of Connecticut State Agencies (RCSA), the Commissioner of Energy and Environmental Protection (Commissioner) is authorized to establish or adjust, by declaration, 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 authority of Section 26-102 of the Connecticut General Statutes (CGS), the Commissioner is authorized to establish prescribed conditions for the operations of commercial fishing activity for any species of fish threatened with undue depletion.

In accordance with the aforementioned authorities, the following sections of departmental regulations are amended as specified on pages 2 through 15 of this Declaration.

- 26-142a-8a. Species restrictions
- 26-159a-8. Winter flounder
- 26-159a-9. Bluefish (*Pomatomus saltatrix*)
- 26-159a-10. Summer flounder (*Paralichthys dentatus*)
- 26-159a-13. Tautog (Blackfish) (*Tautoga onitis*)
- 26-159a-15. Scup (porgy) (*Stenotomus chrysops*)
- 26-159a-16. Black sea bass (*Centropristis striata*)
- 26-159a-19. Spiny dogfish (*Squalus acanthius*)

In addition, this Declaration establishes regulatory measures for commercial fishing of Atlantic menhaden and weakfish, as well as commercial and recreational fishing of Jonah crab.

This declaration supersedes Declaration 22-07, shall be effective 10 days after signing, and shall remain in effect for 120 days or until amended or superseded by subsequent action.

12/16/2022

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**Katherine S. Dykes**  
**Commissioner**

**Date**

## 26-142a-8a. Species restrictions

(b) **Minimum Legal Length.** No person shall possess any fish taken by any commercial fishing gear or for commercial purposes less than the lengths specified below measured from the tip of the snout to the end of the tail and, notwithstanding section 26-159a-4 of the Regulations of Connecticut State Agencies, no person shall buy, sell, offer for sale or possess in a place where fish are offered for sale, any of said species less than the minimum legal length stated herein.

- (1) Atlantic tomcod (frostfish) (*Microgadus tomcod*) - 7 inches
- (2) Tautog (blackfish) (*Tautoga onitis*) - ~~14~~ 16 inches
- (3) Scup (porgy) (*Stenotomus chrysops*) - 9 inches
- (4) Black sea bass (*Centropristis striata*) - 11 inches
- (5) Winter flounder (*Pseudopleuronectes americanus*) - 12 inches
- (6) Bluefish (*Pomatomus saltatrix*) - 9 inches
- (7) Summer flounder (fluke) (*Paralichthys dentatus*) - 14 inches
- (8) Atlantic cod (*Gadus morhua*) - ~~[22-inches]~~ the length specified in 50 CFR § 648.83(a)
- (9) Weakfish (*Cynoscion regalis*) - 16 inches
- (10) Yellowtail flounder (*Pleuronectes ferrugineus*) - ~~[13-inches]~~ the length specified in 50 CFR § 648.83(a)
- (11) Haddock (*Melanogrammus aeglefinus*) - ~~[22-inches]~~ the length specified in 50 CFR § 648.83(a)
- (12) Pollock (*Pollachius virens*) - ~~[19-inches]~~ the length specified in 50 CFR § 648.83(a)
- (13) Witch flounder (*Glyptocephalus cynoglossus*) - ~~[14-inches]~~ the length specified in 50 CFR § 648.83(a)
- (14) American plaice (*Hippoglossoides platessoides*) - ~~[14-inches]~~ the length specified in 50 CFR § 648.83(a)
- (15) Redfish (*Sebastes marinus*) - ~~[9-inches]~~ the length specified in 50 CFR § 648.83(a)
- (16) American eel (*Anguilla rostrata*): 9 inches;**

Any of said species less than the minimum legal length taken by any commercial fishing gear shall, without avoidable injury, be returned immediately to the water from which taken. No person on board any vessel engaged in commercial fishing or landing species taken by commercial fishing gear shall possess any summer flounder fillet less than the minimum total length for the species unless the carcass of the fish from which the fillet was removed has been retained and meets the minimum length. This subsection shall not be construed to prevent filleting of fish on shore or at the dockside.

**26-159a-8. Winter flounder:** modified by the addition of the following specifications.

**(a) Commercial Fishery Possession Limit.**

- (1) No person engaged in commercial fishing shall possess or land winter flounder in excess of 50 pounds or 38 fish, unless such fish were taken in federal waters under a federal commercial fisheries northeast multispecies permit.
- (2) The possession and landings limits specified in subdivision (1) of this subsection shall apply to the vessel, regardless of how many persons are on board. Possession and landing limits shall apply per trip or per day, whichever is the longer period of time. Transfer of winter flounder between vessels at sea is prohibited. In any instance when there is a violation of the possession limit on board a vessel carrying more than one person when the catch is commingled, the violation shall be deemed to have been committed by the owner of the vessel, or the operator of the vessel, if the owner is not on board.
- (3) Any winter flounder taken contrary to this section shall, without avoidable injury, be returned immediately to the water from which taken.

**26-159a-9. Bluefish (*Pomatomus saltatrix*):** subsections (c) Open Commercial Fishing Season and (d) Commercial Fishery Possession Limit are superseded by the following specifications.

(c) **Open Commercial Fishing Season.** The open commercial fishing season begins January 1<sup>st</sup> each year and ends December 31<sup>st</sup> or such sooner date as one hundred percent of the Connecticut quota of bluefish as set forth in subsection (e) of this section has been landed.

**(d) Commercial Fishery Possession Limit.**

- (1) No person engaged in commercial fishing shall possess or land bluefish in excess of the following possession limits that are based on Connecticut's annual bluefish quota specified in the Bluefish Fishery Management Plan of the Atlantic States Marine Fisheries Commission:
  - (A) during the winter one period defined herein as the period between January 1 and April 30, inclusive, the possession and landing limit shall be **1,200** pounds, except as provided in subparagraphs (D), (E) and (F) of this subdivision, and the period target quota shall be 33% of Connecticut's annual quota;
  - (B) during the summer period defined herein as the period between May 1 and October 31, inclusive, the possession limit shall be **1,200** pounds, except as provided in subparagraphs (D), (E) and (F) of this subdivision, and the period target quota shall be 84% of Connecticut's annual quota, cumulatively;
  - (C) during the winter two period defined herein as the period between November 1 and December 31, inclusive, the possession limit shall be **1,200** pounds, except as provided in subparagraphs (D), (E) and (F) of this subdivision, and the period target quota shall be 100% of Connecticut's annual quota, cumulatively;
  - (D) during each period the department shall monitor weekly landings and may periodically adjust the possession limit if less than or more than the period target quota specified in subparagraphs (A), (B) and (C) of this subdivision

is projected to be landed. Except as provided in subparagraph (E) of this subdivision, the adjusted possession limit shall be calculated as (Q / T / W), rounded to the nearest 100 pounds, where Q is the amount of Connecticut's annual quota remaining in the period and T is the projected number of fishing trips per week landing bluefish during the weeks remaining in the period and W is the number of weeks remaining in the period;

- (E) the possession limit shall not exceed **1,500** pounds at any time.
  - (F) when 100% of Connecticut's annual quota is landed the possession limit shall be zero pounds.
- (2) The possession limits specified in subdivision (1) of this subsection shall apply to the vessel, regardless of how many persons are on board. Possession limits shall apply per trip or per day whichever is the longer period of time. Transfer of bluefish between vessels at sea is prohibited. In any instance when there is a violation of the possession limit on board a vessel carrying more than one person when the catch is commingled, the violation shall be deemed to have been committed by the owner of the vessel, or the operator of the vessel, if the owner is not on board.
  - (3) Any bluefish taken contrary to this section shall, without avoidable injury, be returned immediately to the water from which taken.

**26-159a-10. Summer flounder (*Paralichthys dentatus*):** subsection (c) Commercial Fishery Possession Limit is superseded by the following specifications.

(c) **Summer Flounder Commercial Fishery Possession Limit.**

- (1) No person engaged in commercial fishing shall possess or land summer flounder in excess of the following possession limits that are based on Connecticut's annual summer flounder quota specified in the Summer Flounder Fishery Management Plan of the Atlantic States Marine Fisheries Commission:
  - (A) during the winter one period defined herein as the period between January **1** and **April 30**, inclusive, the possession and landing limit shall be **12,000 pounds per bi-weekly period**, except as provided in subparagraphs **(D) and (E)** of this subdivision, and the period target quota shall be **35%** of Connecticut's annual quota. **If the period target quota is met before April 30, the possession limit shall be 50 pounds;**
  - (B)** during the summer period defined herein as the period between May 1 and October 31, inclusive, the possession limit shall be **1,000** pounds, except as provided in subparagraphs **(D) and (E)** of this subdivision, and the period target quota shall be 95% of Connecticut's annual quota, cumulatively;
  - (C)** during the winter two period defined herein as the period between November 1 and December 31, inclusive, the possession limit shall be **10,000 pounds per weekly period**, except as provided in subparagraph **(D)** of this subdivision, and the period target quota shall be 100% of Connecticut's annual quota;
  - (D)** during each period the department shall monitor weekly landings and periodically adjust the possession limit if less than or more than the period target quota specified in subparagraphs (A), (B), and **(C)** of this subdivision

is projected to be landed. The adjusted possession limit shall be calculated as  $(Q / T / W)$ , rounded to the nearest 25 pounds, where Q is the amount of Connecticut's annual quota remaining in the period and T is the projected number of fishing trips per week landing summer flounder during the weeks remaining in the period and W is the number of weeks remaining in the period;

- (E)** when 100% of Connecticut's annual quota is landed the possession limit shall be zero pounds.
- (2) The possession limits specified in subdivision (1) of this subsection shall apply to the vessel, regardless of how many persons are on board. Possession limits shall apply per trip or per day whichever is the longer period of time. Transfer of summer flounder between vessels at sea is prohibited. In any instance when there is a violation of the possession limit on board a vessel carrying more than one person when the catch is commingled, the violation shall be deemed to have been committed by the owner of the vessel, or the operator of the vessel, if the owner is not on board.
  - (3) Any summer flounder taken contrary to this section shall, without avoidable injury, be returned immediately to the water from which taken.
  - (4) When a weekly landing or possession limit specified in subdivision (1) of this subsection is in effect, no person engaged in commercial fishing shall possess or land summer flounder more than the stated weekly limit during each weekly period that begins Sunday morning at 0001 hours and ends the following Saturday night at 2359 hours.
  - (5) **When a biweekly landing or possession limit specified in subdivision (1) of this subsection is in effect, no person engaged in commercial fishing shall possess or land summer flounder more than the stated biweekly limit during each two week period that begins Sunday morning at 0001 hours and ends on the following second Saturday night at 2359 hours.**
  - (6) When a weekly **or biweekly** landing or possession limit specified in subdivision (1) of this subsection is in effect, the commercial fishing vessel operator shall: (A) prior to departure on any trip in which summer flounder will be possessed, inform the Department Energy and Environmental Protection Environmental Conservation Police of the vessel's departure and provide information that shall include, but not be limited to, the vessel's name, vessel operator's name, departure date and time, estimated return date and time and the port of landing, (B) prior to offloading summer flounder inform the Environmental Conservation Police of the vessel's name, vessel operator's name, port of landing, and estimated weight of summer flounder on board.

**26-159a-13. Tautog (Blackfish) (Tautoga onitis):** superseded by the following specifications.

- (a) **Closed Season.** No person engaged in commercial fishing shall possess or land any tautog, wherever taken, except from April 1 to April 30, July 1 to August 31, and October 8 to December 24, all dates inclusive.

(b) **Commercial Fishery Possession Limit.** No person engaged in commercial fishing shall possess or land tautog in excess of the following possession limits that are based on Connecticut's annual tautog target harvest limit adopted under Amendment 1 to the Tautog Fishery Management Plan of the Atlantic States Marine Fisheries Commission.

- (1) The possession limit shall be 10 fish for a person engaged in commercial fishing under a limited access license issued by the Commissioner.
- (2) The possession limit shall be 3 fish for a person engaged in commercial fishing under either a restricted commercial fishing license or a restricted lobster pot fishing license issued by the Commissioner.
- (3) The possession and landing limits specified in this subsection shall apply to the vessel, regardless of how many persons are on board. Possession and landing limits shall apply per trip or per day, whichever is the longer period of time. No person shall transfer tautog between vessels at sea. In any instance when there is a violation of the possession limit on board a vessel carrying more than one person when the catch is commingled, the violation shall be deemed to have been committed by the owner of the vessel, or the operator of the vessel, if the owner is not on board.
- (4) At any time when 100% of the annual target harvest limit is landed the possession limit shall be zero pounds.
- (5) Any tautog taken contrary to this section shall, without avoidable injury, be returned immediately to the water from which taken.

(c) Commercial Tautog Tagging Program. Any person engaging in commercial fishing for tautog or possessing tautog with the intent to sell, barter, or trade tautog must abide by the following provisions for commercial tautog tagging adopted under Amendment 1 to the Tautog Fishery Management Plan of the Atlantic States Marine Fisheries Commission.

- (1) No person engaged in commercial fishing may land or offload tautog without first affixing a commercial tautog tag issued by the Department of Energy and Environmental Protection (department) to the left opercula bone (gill plate) of all tautog to be landed or offloaded, such that the identifying number on the commercial tag is clearly visible.
- (2) Commercial fishermen may only land or offload tautog affixed with commercial tautog tags issued by the department during the same calendar year as the landing or offloading event.
- (3) No tautog shall be sold, purchased, bartered, or traded in Connecticut unless it bears a commercial tautog tag as defined in Amendment 1 to the Tautog Fishery Management Plan of the Atlantic States Marine Fisheries Commission.
- (4) No person shall transfer commercial tautog tags between individuals or fish.
- (5) Any person issued commercial tautog tags by the department in any calendar year must return any unused tags and submit a report of tag use to the department by February 15 of the following calendar year. Failure by any person to return unused tags, submit required reports, or account for disposition of tags issued previously may result in loss of future privilege to obtain commercial tautog tags.



(6) Any tautog tagged with a commercial tautog tag must remain tagged until it reaches the final consumer. Processed or fileted tautog shall be packed with the commercial tautog tag originally affixed to that tautog. Tags must be retained with processed or fileted tautog and be available for inspection until the processed or fileted tautog is sold to the final consumer.

**26-159a-15. Scup (porgy) (*Stenotomus chrysops*):** subsections (b) Commercial Fishing Moratorium and (c) Commercial Fishery Possession Limits are superseded by the following specifications.

**(b) Commercial Fishing Moratorium.**

(1) From May 1 through September 30 inclusive, no holder of a license or registration issued under authority of Section 26-142a of the Connecticut General Statutes shall possess, or shall have possessed scup unless said person:

(A) is in immediate possession of a 2003 Scup License Endorsement Letter for Connecticut Waters, herein referred to as the “2003 Scup License Endorsement Letter,” issued by the Commissioner pursuant to this section which attests that:

- (i) the license holder held a 1997 Scup License Endorsement Letter or a 1994 Summer Flounder License Endorsement Letter as specified in subsection (a) of section 26-159a-10 of the Regulations of Connecticut State Agencies and made qualifying landings during the qualifying period and reported said landings to the department in accordance with section 26-157b-1 of the Regulations of Connecticut State Agencies; or
- (ii) the vessel owner held a 1997 Scup License Endorsement Letter or a 1994 Summer Flounder License Endorsement Letter as specified in subsection (a) of section 26-159a-10 of the Regulations of Connecticut State Agencies and purchased, or was constructing or rerigging a commercial fishing vessel between January 1, 2000 and May 31, 2003 for purposes of fishing with qualifying fishing gear, to be based on more than one form of verifiable written proof of such activity, provided said vessel owner has or will have made and reported qualifying landings with that vessel no later than 12 months immediately succeeding the effective date of this regulation; or
- (iii) the vessel owner held a 1997 Scup License Endorsement Letter or a 1994 Summer Flounder License Endorsement Letter as specified in subsection (a) of section 26-159a-10 of the Regulations of Connecticut State Agencies and an operator of that vessel made qualifying landings with the vessel during the qualifying period and said landings were reported to the department in accordance with section 26-157b-1 of the Regulations of Connecticut State Agencies; or
- (iv) the license holder is the recipient of a license transferred under section 26-142b of the Connecticut General Statutes, such license

was transferred with a 1997 or 2003 Scup License Endorsement Letter issued under this section or a 1994 or 2003 Summer Flounder License Endorsement Letter issued under section 26-159a-10 of the Regulations of Connecticut State Agencies, and such license holder made qualifying landings during the qualifying period and reported said landings to the department in accordance with section 26-157b-1 of the Regulations of Connecticut State Agencies or has or will have made and reported qualifying landings in the 12 months immediately succeeding the date of the license transfer, whichever is later; or

(B) is operating a vessel owned by a license holder who has qualified for an endorsement letter under subparagraph (A) of subdivision (1) of this subsection. During the operation of such vessel, said endorsement letter shall remain on such vessel as authorization of the operator to possess scup and shall not be used to authorize the possession of scup on any additional vessel, except that said license holder shall be allowed to use said endorsement letter to authorize possession of scup on any vessel said license holder owned prior to January 1, 1997 and that said license holder still owns; or

(C) is engaged in the hauling of lobster pots under the authority of section 26-142a of the Connecticut General Statutes and is in possession of lobsters;  
or

(D) is engaged in commercial fishing under a restricted commercial fishing license issued by the Commissioner under authority of Section 26-142a of the Connecticut General Statutes.

(2) 2003 Scup License Endorsement Letters will automatically be issued without application. Any person who does not receive a 2003 Scup License Endorsement Letter, or is denied said endorsement letter, may appeal in writing to the Commissioner. The only grounds for appeal is that the Commissioner erred in concluding that the license holder did not meet the criteria in subclause (i), (ii), (iii) or (iv) of subparagraph (A) of subdivision (1) of this subsection.

(3) No person shall take scup with a trawl net if the qualifying landings for which the 2003 Scup License Endorsement Letter was issued and under which that person is fishing did not indicate the taking of summer flounder or scup by trawl net.

(4) No person who has transferred a commercial fishing license according to the provisions of section 26-142b of the Connecticut General Statutes, with an endorsement letter issued under this section, shall qualify for a 2003 Scup License Endorsement Letter based on the landings history for which the transferred endorsement letter was issued.

(c) **Commercial Fishery Possession and Landing Limits.**

(1) No person engaged in commercial fishing shall possess or land scup in excess of the following possession limits that are based on the coast wide scup quota and Connecticut's summer period scup quota as specified in the Scup Fishery Management Plan of the Atlantic States Marine Fisheries Commission:

- (A) during the winter one period defined herein as the period between January 1 and April 30, both dates inclusive, the possession limit shall be the same as the federal waters possession limit for this period as specified by NOAA;
  - (B) during the summer period defined herein as the period between May 1 and September 30, both dates inclusive, the possession limit shall be 2,500 pounds except as provided in subparagraph (D) of this subdivision, and the period target quota shall be 100% of Connecticut's summer period quota;
  - (C) during the winter two period defined herein as the period between October 1 and December 31, both dates inclusive, the possession limit shall be the same as the federal waters possession limit for this period as specified by NOAA;
  - (D) during the summer period the department shall monitor landings weekly and periodically adjust the possession limit if less than or more than 100% of Connecticut's summer period quota is projected to be landed. The adjusted possession limit shall be calculated as  $(Q / T / W)$ , rounded to the nearest 50 pounds, where Q is the amount of Connecticut's summer period quota remaining and T is the projected number of fishing trips per week landing scup during the weeks remaining in the period and W is the number of weeks remaining in the period, except that:
    - (i) in the lobster pot fishery when in possession of lobsters, the possession limit shall be 10 fish;
    - (ii) a person engaged in commercial fishing under a restricted commercial fishing license issued by the Commissioner, but not in possession of a quota managed species endorsement for scup, the possession limit shall be the lesser of 60 fish or ten percent of the adjusted possession limit as calculated by the department in this subparagraph, expressed in equivalent numbers of fish and rounded to the nearest 10 fish;
    - (iii) at any time during the summer period, when 100% of Connecticut's summer period quota is landed the possession limit shall be zero pounds for all gear types.
- (2) The possession and landing limits specified in subdivision (1) of this subsection shall apply to the vessel, regardless of how many persons are on board. Possession limits shall apply per trip or per day, whichever is the longer period of time. No person shall transfer scup between vessels at sea. In any instance when there is a violation of the possession limit on board a vessel carrying more than one person when the catch is commingled, the violation shall be deemed to have been committed by the owner of the vessel, or the operator of the vessel, if the owner is not on board.
- (3) Any scup taken contrary to this section shall, without avoidable injury, be returned immediately to the water from which taken.

**26-159a-16. Black sea bass (*Centropristis striata*):** subsections (b) Commercial Fishing Moratorium and (c) Commercial Fishery Possession Limits are superseded by the following specifications.

**(b) Commercial Fishing Moratorium.**

(1) No holder of a license or registration issued under authority of section 26-142a of the Connecticut General Statutes shall possess, or shall have possessed black sea bass unless said person:

(A) is in immediate possession of a 2003 Black Sea Bass License Endorsement Letter for Connecticut waters, herein referred to as the “2003 Black Sea Bass License Endorsement Letter,” issued by the commissioner pursuant to this section which attests that:

(i) the license holder made qualifying landings during the qualifying period and said landings were reported to the department in accordance with section 26-157b-1 of the Regulations of Connecticut State Agencies; or

(ii) the vessel owner purchased, or was constructing or riggering a commercial fishing vessel between January 1, 2000 and May 31, 2003 for purposes of fishing with qualifying fishing gear, to be based on more than one form of verifiable written proof of such activity, provided said vessel owner has or will have made and reported qualifying landings with that vessel no later than 12 months immediately succeeding the effective date of this regulation; or

(iii) the vessel made qualifying landings during the qualifying period and said landings were reported to the department in accordance with section 26-157b-1 of the Regulations of Connecticut State Agencies; or

(iv) the license holder is the recipient of a license transferred under section 26-142b of the Connecticut General Statutes, such license was transferred with a 2003 Black Sea Bass License Endorsement Letter, and such license holder made qualifying landings during the qualifying period and reported said landings to the department in accordance with section 26-157b-1 of the Regulations of Connecticut State Agencies or has or will have made and reported qualifying landings in the 12 months immediately succeeding the date of the license transfer, whichever is later; or

(B) is operating a vessel owned by a license holder who has qualified for an endorsement letter under subdivision (1)(A) of this subsection. During the operation of such vessel said endorsement letter shall remain on such vessel as authorization of the operator to possess black sea bass and shall not be used to authorize the possession of black sea bass on any additional vessel, except that said license holder shall be allowed to use said endorsement letter to authorize possession of black sea bass on any vessel said license holder owned prior to May 31, 2003 and that said license holder still owns.; or

- (C) is engaged in the hauling of lobster pots under the authority of section 26-142a of the Connecticut General Statutes and is in possession of lobsters.
  - (2) 2003 Black Sea Bass License Endorsement Letters will automatically be issued without application. Any person who does not receive a 2003 Black Sea Bass License Endorsement Letter, or is denied said letter, may appeal in writing to the commissioner. The only grounds for appeal is that the commissioner erred in concluding that the license holder did not meet the criteria in subclause (i), (ii),(iii) or (iv) of subdivision (1)(A) of this subsection.
  - (3) No person shall take black sea bass with a trawl net if the qualifying landings for which the 2003 Black Sea Bass License Endorsement Letter was issued and under which that person is fishing did not indicate the taking of black sea bass by trawl net.
  - (4) No person who has transferred a commercial fishing license according to the provisions of section 26-142b of the Connecticut General Statutes, with an endorsement letter issued under this section, shall qualify for a 2003 Black Sea Bass License Endorsement Letter based on the landings history for which the transferred endorsement letter was issued.
- (c) **Commercial Fishery Possession Limits.**
- (1) No person engaged in commercial fishing shall possess or land black sea bass in excess of the following possession limits that are based on Connecticut’s annual black sea bass quota as specified in the Black Sea Bass Fishery Management Plan of the Atlantic States Marine Fisheries Commission:
    - (A) during the winter one period defined herein as the period between January 1 and April 30, inclusive, the possession and landing limit shall be 3,500 pounds per bi-weekly period, except as provided in subparagraphs (D) and (E) of this subdivision, and the period target quota shall be ~~33%~~25% of Connecticut’s annual quota;
    - (B) during the summer period defined herein as the period between May 1 and October 31, inclusive, the possession limit shall be 600 pounds, except as provided in subparagraphs (D) and (E) of this subdivision, and the period target quota shall be ~~84%~~95% of Connecticut’s annual quota, cumulatively;
    - (C) during the winter two period defined herein as the period between November 1 and December 31, inclusive, the possession limit shall be 2,000 pounds per weekly period, except as provided in subparagraphs (D) and (E) of this subdivision, and the period target quota shall be 100% of Connecticut’s annual quota, cumulatively;
    - (D) during each period the department shall monitor weekly landings and periodically adjust the possession limit if less than or more than the period target quota specified in subparagraphs (A), (B) and (C) of this subdivision is projected to be landed. The adjusted possession limit shall be calculated as  $(Q / T / W)$ , rounded to the nearest 10 pounds or equivalent number of fish, where Q is the amount of Connecticut’s annual quota remaining in the period and T is the projected number of fishing trips per week landing black sea bass during the weeks remaining in the period and W is the number of

weeks remaining in the period, except that in the lobster pot fishery when in possession of lobsters, the possession limit shall be ~~10 fish~~ **60 pounds**.

(E) When 100% of the Connecticut quota is landed the possession limit shall be zero pounds for all gear types.

**(F) When the target quota for a quota period is met the possession limit shall be zero pounds for the remainder of that quota period.**

(2) The possession and landing limits specified in subdivision (1) of this subsection shall apply to the vessel, regardless of how many persons are on board. Possession limits shall apply per trip or per day, whichever is the longer period of time. No person shall transfer black sea bass between vessels at sea. In any instance when there is a violation of the possession limit on board a vessel carrying more than one person when the catch is commingled, the violation shall be deemed to have been committed by the owner of the vessel, or the operator of the vessel, if the owner is not on board.

(3) Any black sea bass taken contrary to this section shall, without avoidable injury, be returned immediately to the water from which taken.

**(4) When a weekly landing or possession limit specified in subdivision (1) of this subsection is in effect, no person engaged in commercial fishing shall possess or land black sea bass more than the stated weekly limit during each weekly period that begins Sunday morning at 0001 hours and ends the following Saturday night at 2359 hours.**

**(5) When a biweekly landing or possession limit specified in subdivision (1) of this subsection is in effect, no person engaged in commercial fishing shall possess or land black sea bass more than the stated biweekly limit during each two week period that begins Sunday morning at 0001 hours and ends on the following second Saturday night at 2359 hours.**

**26-159a-19. Spiny dogfish (*Squalus acanthius*):** is superseded by the following specifications.

**(a) Commercial Fishery Possession Limits**

(1) No person engaged in commercial fishing shall possess or land spiny dogfish in excess of the following possession limits that are based on the northern region spiny dogfish quota as specified in the Spiny Dogfish Fishery Management Plan of the Atlantic States Marine Fisheries Commission:

(A) between May 1 and October 31, both dates inclusive, the possession limit shall be **7,500** pounds, except as provided in subparagraph (C) of this subdivision;

(B) between November 1 and April 30, both dates inclusive, the possession limit shall be **7,500** pounds, except as provided in subparagraph (C) of this subdivision.

(C) when 100% of the northern region quota is landed the possession limit shall be zero pounds.

(2) The possession and landing limits specified in subdivision (1) of this subsection shall apply to the vessel, regardless of how many persons are on board. Possession

limits shall apply per trip or per day, whichever is the longer period of time. No person shall transfer spiny dogfish between vessels at sea. In any instance when there is a violation of the possession limit on board a vessel carrying more than one person when the catch is commingled, the violation shall be deemed to have been committed by the owner of the vessel, or the operator of the vessel, if the owner is not on board.

- (3) Any spiny dogfish taken contrary to this section shall, without avoidable injury, be returned immediately to the water from which taken.

### Atlantic Menhaden (*Brevoortia tyrannus*)

#### (a) Commercial Fishery Possession Limits.

- (1) No person engaged in commercial fishing shall possess or land Atlantic menhaden in excess of the following possession limits that are based on Connecticut's annual Atlantic menhaden quota specified in the Atlantic Menhaden Fishery Management Plan of the Atlantic States Marine Fisheries Commission. Beginning January 1, the possession limit shall be 120,000 pounds until 75% of the annual quota has been landed, at which time the possession limit shall be 20,000 pounds until 90% of the annual quota has been landed, at which time the possession limit in the directed fishery shall be 0 pounds. Directed fishing means fishing for or landing of Atlantic menhaden with gears other than small scale or non-directed gears as defined in Amendment 3 of the Atlantic Menhaden Fishery Management Plan of the Atlantic States Marine Fisheries Commission.
- (2) No person engaged in commercial fishing in Connecticut state waters shall possess or land Atlantic menhaden in excess of the following possession limits. Beginning January 1, the possession limit shall be 12,000 pounds until 90% of the annual quota specified in subdivision (1) has been landed, at which time the possession limit in the directed fishery shall be 0 pounds.
- (3) No person engaged in commercial fishing with small scale non-directed gears as specified in Amendment 3 of the Atlantic Menhaden Fishery Management Plan of the Atlantic States Marine Fisheries Commission shall possess or land Atlantic menhaden in excess of 6,000 pounds once 90% of the annual quota specified in subdivision (1) has been landed.
- (4) The possession and landing limits specified in subdivisions (1), (2) and (3) of this subsection shall apply to the vessel, regardless of how many persons are on board. Possession limits shall apply per trip or per day, whichever is the longer period of time. The transfer of more than 6,000 pounds per day of menhaden between vessels at sea is prohibited. In any instance when there is a violation of the possession limit on board a vessel carrying more than one person when the catch is commingled, the violation shall be deemed to have been committed by the owner of the vessel, or the operator of the vessel, if the owner is not on board.
- (5) Any Atlantic menhaden taken contrary to this section shall, without avoidable injury, be returned immediately to the water from which taken.

- (6) When in possession of more than 6,000 pounds of Atlantic menhaden as specified in subdivision (1) and subdivision (2) of this subsection, the commercial fishing vessel operator shall:
  - (A) prior to departure on any trip in which Atlantic menhaden will be possessed, inform the Department of Energy and Environmental Protection Marine Fisheries Program of the vessel's departure and provide information that shall include, but not be limited to, the vessel's name, vessel operator's name, departure date and time, estimated return date and time and the port of landing; and
  - (B) prior to offloading Atlantic menhaden inform the Marine Fisheries Program of the vessel's name, vessel operator's name, port of landing, and estimated weight of Atlantic menhaden on board.
- (7) The department shall monitor weekly landings and periodically adjust the possession limit if less than or more than the annual quota is projected to be landed before the end of the fishing season. The adjusted possession limit shall be calculated as  $(Q / T / W)$ , rounded to the nearest 500 pounds, where Q is the amount of Connecticut's annual quota remaining and T is the projected number of fishing trips per week landing Atlantic menhaden and W is the number of weeks remaining in the season.

#### Jonah Crab (*Cancer borealis*)

##### (a) Commercial Fishery.

- (1) No person engaged in commercial fishing by use of a pot or trap shall take Jonah crab except by lobster pot or trap meeting the requirements set forth in Sections 26-157c-2 and 26-157c-4 of the Regulations of Connecticut State Agencies.
- (2) No person engaged in otter trawl fishing including scallop dredge fishing shall possess or land Jonah crabs in excess of 1,000 crabs.
- (3) The possession and landing limits specified in subdivision (2) of this subsection shall apply to the vessel, regardless of how many persons are on board. Possession limits shall apply per trip or per day, whichever is the longer period of time. Transfer of Jonah crabs between vessels at sea is prohibited. In any instance when there is a violation of the possession limit on board a vessel carrying more than one person when the catch is commingled, the violation shall be deemed to have been committed by the owner of the vessel, or the operator of the vessel, if the owner is not on board.
- (4) No person engaged in commercial fishing or acting as a seafood dealer shall possess or land Jonah crab:
  - (A) less than 4.75 inches carapace width; or
  - (B) with ova or spawn attached or from which the ova or spawn has been removed; or
  - (C) with claws detached from the body of the crab, unless also in possession of the body and not more than two claws per body are possessed.

##### (b) Recreational Fishery.

- (1) No person engaged in sport fishing for Jonah crab, including by personal use lobster pot fishing, shall possess or land:



- (A) more than 50 crabs per day or per trip whichever is the longer period of time; or
- (B) crabs with ova or spawn attached or from which ova or spawn has been removed.

Weakfish (*Cynoscion regalis*)

(a) Commercial Fishery Possession Limits.

- (1) No person engaged in commercial fishing shall possess or land weakfish in excess of 100 pounds.
- (2) The possession and landing limits specified in subdivision (1) of this subsection shall apply to the vessel, regardless of how many persons are on board. Possession limits shall apply per trip or per day, whichever is the longer period of time. Transfer of weakfish between vessels at sea is prohibited. In any instance when there is a violation of the possession limit on board a vessel carrying more than one person when the catch is commingled, the violation shall be deemed to have been committed by the owner of the vessel, or the operator of the vessel, if the owner is not on board.
- (3) Any weakfish taken contrary to this section shall, without avoidable injury, be returned immediately to the water from which taken.

## Justification

Measures applying to American eel, Atlantic menhaden, black sea bass, bluefish, Jonah crab, scup, spiny dogfish, summer flounder, tautog, weakfish and winter flounder are necessary to maintain compliance with the mandatory provisions of the Atlantic States Marine Fisheries Commission (ASMFC) fishery management plans adopted for these species under the Atlantic Coastal Fisheries Cooperative Management Act. Measures applying to minimum lengths of northeast groundfish species (pg. 2) are adopted consistent with Northeast Multispecies (groundfish) federal fishery management plans adopted under the Magnuson-Stevens Fishery Conservation and Management Act.

These measures are also required to effectively manage Connecticut's annual adjusted commercial fishery allocations of summer flounder, scup, black sea bass, bluefish and Atlantic menhaden and the New England region allocation of spiny dogfish. These measures provide Connecticut-based commercial fishermen the fullest opportunity afforded under ASMFC and federal fishery management plans.

Under 16 U.S.C. Chapter 17 - Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) Section 5106, states are required to implement and enforce ASMFC fishery management plans. If ASMFC finds that a state has failed to implement mandatory measures of a Commission plan, the Secretary of Commerce is required to impose a moratorium on fishing for that species within the waters of the noncomplying state and prohibit landings of that species regardless where taken.

### Special Comment:

The federal commercial minimum legal lengths for northeast multispecies and redfish are incorporated by reference as we currently do for some recreational northeast multispecies fisheries. Incorporating the new minimum sizes by reference to the CFR will eliminate the need to revisit these measures with each subsequent change in federal rules for species that rarely occur in state waters.

### Management Background:

**Winter flounder:** Stocks in southern New England are in an overfished state. The low possession limit in this Declaration is mandated by ASMFC and is intended to eliminate targeted fishing, but prevent waste by allowing unavoidable bycatch to be landed. The possession limit was reviewed and reaffirmed by ASMFC in November, 2015.

**State Quota-Managed Species:** The **Summer Flounder, Scup and Black Sea Bass** Management Board and the **Bluefish** Management Board of the Atlantic States Marine Fisheries Commission, the Mid-Atlantic Fishery Management Council and NOAA Fisheries establish annual state specific commercial quotas for summer flounder, black sea bass and bluefish. Scup quotas are managed differently by season with January through April (Winter 1) and October-December (Winter 2) being managed on a coastwide basis whereas in May through September (Summer) scup quota is allocated by ASMFC on a state specific basis.

To allow equitable fishing opportunity for all participants in these commercial fisheries, to maximize the economic return of the fish landed, and to ensure that Connecticut does not exceed

its quota allocation, the department is compelled to implement adjustments to the possession limits for summer flounder, scup, black sea bass and bluefish. For the summer 2022 black sea bass fishery (starting May 1, 2022), the department elevated the possession limit for black sea bass in the lobster pot fishery to 60 pounds (previously 10 fish), to provide additional opportunity for lobster pot license holders given the substantial elevation of Connecticut's black sea bass quota for 2022 (increase from 1% to 3.67% of coastwide quota) resulting from implementation of Addendum XXXIII to the ASMFC Black Sea Bass FMP.

**Tautog:** Under ASMFC Addendum VI of the Interstate FMP for Tautog, each state was required to reduce both recreational and commercial harvest from 2008-2009 levels by 39%, which resulted in just 12,613 pounds or 2,913 fish as Connecticut's target commercial harvest quota. The 10 fish possession first applied in 2012 produced landings less than half of the harvest target in 2013 and 2014, and slightly over half of the harvest target in 2015. When the open access Restricted Commercial Fishing License was implemented in 2016, the department established a 4-fish possession limit for that license. The strategy was to provide some opportunity that was comparable to the prevailing recreational possession limit, yet fairly preserve opportunity for long time participants in the limited-access commercial fisheries. The 4-fish possession limit applied to the new Restricted Commercial Fishing License appeared to add negligibly to the 2016 landings. Amendment 1 to the Tautog FMP was implemented in October 2017 and required the states of Connecticut and New York to make a further combined 23% reduction in commercial harvest. The reduction to a 3 fish possession limit for holders of a Restricted Commercial Fishing License was a component of an appeal made by CT to the ASMFC Tautog Management Board at their May 1, 2018 meeting to forego the full reduction required under Amendment 1, while at the same time keeping the possession limit for the restricted commercial license in line with the recreational fishery, which was reduced from a 4 fish limit to a 3 fish limit during the fall season. Amendment 1 also mandated the implementation of a coast-wide commercial tautog tagging program to combat unreported and illegal harvest, particularly in the live fish market. Illegal harvest of tautog is widely considered to be a problem for effective management of the species, and is of particular concern in Long Island Sound due the overfished condition of the Long Island Sound tautog stock.

**Spiny dogfish:** This species is managed under multiple jurisdictions with ASMFC having its own FMP and management measures while NOAA Fisheries establishes management measures through FMPs of both the New England and Mid-Atlantic Fishery Management Councils. Under ASMFC the coastwide quota is divided into northern (ME-CT), southern (NY-VA) and North Carolina regions. In August 2016, NOAA Fisheries increased the possession limit in federal waters to 6,000 pounds. This action triggered a conforming change in the ASFMC possession limit for state waters, and in October 2019, ASFMC maintained a 6,000 pound possession limit for 2019. In 2022, ASMFC took action to increase the possession limit to 7,500 pounds to conform to a corresponding increase to the federal waters possession limit.

**Weakfish:** This stock is depleted likely from a combination of natural causes and overfishing. Low possession limits mandated by ASMFC are intended to eliminate targeted fishing, but prevent waste by allowing unavoidable bycatch to be landed.

**Atlantic Menhaden:** In December 2012, ASMFC adopted state by state quota management for this species effective April 15, 2013. The 6,000 pound commercial possession limit for small scale, non-directed gears established in this Declaration equals the "bycatch limit" maintained by ASMFC. In November 2017, ASMFC passed Amendment 3 to the Atlantic menhaden

management plan, which resulted in Connecticut receiving a fixed minimum allocation of 2.4 million pounds, a substantial increase from previous quota allocations (approx. 70,000 pounds). Connecticut prohibits the use of purse seines, the gear most commonly used in targeted menhaden fishing, and historically, with rare exceptions, virtually all menhaden trip landings in Connecticut were at or below the bycatch limit. The substantial increase in menhaden quota allocation to Connecticut in 2018 therefore created the potential for a substantial change in the character of the State's menhaden fishery. The Marine Fisheries Program held a public informational meeting in Hartford, CT on March 26, 2018 to receive input on management goals for the Connecticut menhaden fishery. Additional comments were received from industry during a Lobster Conservation Management Team meeting held in Old Lyme, CT on March 29, 2018. Subsequently, Connecticut implemented a tiered possession limit plan for the 2018 menhaden fishing year: 120,000 pounds until 50% of the annual quota is landed, then 80,000 pounds until 75% of the annual quota is landed, then 20,000 pounds until 90% of the annual quota is landed, at which time the directed fishery would be closed (landings of up to 6,000 pounds would still be permitted indefinitely under the bycatch limit). Additionally, possession limits for trips prosecuted in state waters were set at 12,000 pounds, and vessels intending to possess more than 9,000 pounds of menhaden were required to notify the Marine Fisheries Program via phone call prior to departure and offload. This management approach was intended to allow opportunity for utilization of Connecticut quota by vessels prosecuting the menhaden fishery outside of state waters, avoid localized depletion of menhaden within state waters, provide a conservative approach to tiered possession limit reductions given uncertainty around the rate at which landings would accumulate, and allow ample opportunity for law enforcement inspection of vessels landing menhaden. Based on the performance of the fishery in 2018, Connecticut is adopting a revised tiered possession limit plan for 2019 and maintained this management scheme for 2020: 120,000 pounds until 75% of the annual quota is landed, then 20,000 pounds until 90% of the annual quota is landed, at which time the directed fishery will be closed (landings of up to 6,000 pounds would still be permitted indefinitely under the bycatch limit). In addition, the threshold for phone call notifications has been reduced to 6,000 pounds, to correspond with the bycatch limit. These changes are intended to reduce the administrative burden of quota monitoring while still allowing for ample precaution against quota overages, as well as facilitate law enforcement inspection of vessels landing menhaden.

**Jonah Crab:** The ASMFC Lobster Board approved a fishery management plan for Jonah crab effective January 1, 2016. The mandatory conservation elements of that plan are included in this declaration. Jonah crabs are rare in Long Island Sound. A few thousand pounds are taken annually, some from the eastern Sound and most from Block Island Sound.

#### **Public Input/Notice:**

Public hearings were held at the time ASMFC mandated the measures pertaining to American eel, American lobster, Atlantic menhaden, black sea bass, bluefish, Jonah crab, scup, spiny dogfish, summer flounder, tautog, weakfish and winter flounder.

On December 14, 2022, the Department held a meeting at Marine District Headquarters in Old Lyme, CT to receive input on how best to achieve the quota management goals outlined above for summer flounder, scup, black sea bass and bluefish in 2023 (see State Quota- Managed Species). Notice of the meetings was provided via Marine Fisheries News list-serve, which has approximately 1,000 subscribers including fishermen, media outlets and environmental groups.

The public meeting was also announced and posted on the DEEP Fisheries web page. Attendees at the meeting, primarily quota-managed species endorsement holders and seafood dealers, developed and were in consensus with the proposed measures.

Regarding the minimum lengths for species managed under the Northeast Multispecies FMP, all public input and notice to date has occurred through the federal fisheries management process, via both the New England Fisheries Management Council and NOAA Fisheries. The Northeast multispecies fish species affected by this Declaration (Atlantic cod, yellowtail flounder, haddock, pollock, witch flounder, American plaice and redfish) do not normally occur in Connecticut waters. Therefore the regulations promulgated for these species pursuant to the federal fisheries management process will have no impact on state-water fisheries or fishermen. Federal permit holders receive direct notice of these changes from NOAA Fisheries.

## **Declaration Authority**

### **Regulation 26-159a-22. Compliance with Interstate Fishery Management Plans.**

(a) The Commissioner may, by declaration, establish and adjust closed seasons, length limits, creel limits, trip limits, and trip limit adjustment values in order to comply with interstate fishery management plans and emergency actions adopted by the Atlantic States Marine Fisheries Commission or the U.S. Department of Commerce.

(b) The Commissioner shall inform the public of all such changes at least 10 days prior to the effective date by placing posters at state boat launch areas, by issuing news releases, by mailing notices to bait and tackle shops and by mailing notices to all affected license holders.

(c) Any declaration made under this section shall be for a period not more than 120 days provided, if notice of intent to amend regulations has been published under Chapter 54, such declaration shall remain in effect until said regulations have been adopted, but not longer than 240 days.

**Connecticut General Statutes Section 26-102. Fish spawning areas and refuges.** The commissioner may establish fish spawning areas and refuges on any waters; and he may establish closed areas and safety zones on public lands and waters and, with the consent of the owner, on private lands and waters, and close any such area to fishing and trespassing. The commissioner shall have emergency authority to declare a closed season on any species of fish threatened with undue depletion from any cause and, the provisions of section 26-116 notwithstanding, if such cause is any person, firm or corporation engaged in commercial fishing activity, the commissioner shall have the additional emergency power to establish prescribed conditions for the operation of such commercial fishing activity, or suspend or prohibit the right of such person, firm or corporation to operate within such waters for such period of time as the commissioner deems necessary. The commissioner may, if he deems it necessary, close any waters, or portions thereof, in the inland district to fishing for limited periods of time.

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## Division of Marine Resources

123 Kings Park Blvd. (Nissequogue River State Park), Kings Park, NY 11754

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## **Atlantic Menhaden Addendum I to Amendment 3 Implementation Plan, New York**

### **1. Implementation Timeline**

Since New York's current regulations already cover the requirements set forth in Addendum I to Amendment 3, regulations will be in place by the May 1, 2023 deadline.

### **2. Commercial Fishery Management Measures**

a) If your jurisdiction includes its yearly menhaden quota in its regulations, please include the changes in language.

New York's regulations give the Department of Environmental Conservation authority to set the yearly quota based on the harvest limits established in the ASMFC's Fishery Management Plan for Atlantic menhaden. No changes will be necessary in New York's regulatory language. See current language below:

*6 NYCRR Part 40 (Marine Fish),*

*(x) Atlantic menhaden commercial fishing - special regulations.*

(2) Quota harvest and trip limits.

(i) The total annual harvest of menhaden may not exceed that amount annually allocated to New York State by the Atlantic States Marine Fisheries Commission (ASMFC) for the period January 1st through December 31st. Annual harvest limits for menhaden are based on the Fishery Management Plan (FMP) for menhaden as adopted and approved by the ASMFC pursuant to the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C., section 5101, *et seq.*

b) A mechanism for an incidental catch and small-scale fishery provision following the harvest of your jurisdiction's quota and closure of the directed fisheries.

I. Indicate if your jurisdiction divides quota by sector, fishery, or gear type, and provide regulatory language.

New York does not divide the Atlantic menhaden quota by sector, fishery or gear type. Regulatory language relating to the division of quota amongst sectors does not currently exist based on how New York manages its menhaden quota.

II. Provide regulatory language to account for changes in IC/SSF permitted gear types. Under Addendum I, small-scale gears include: cast nets, traps (excluding floating fish



Department of  
Environmental  
Conservation

traps), pots, haul seines, hook and line, bag nets, hoop nets, hand lines, and bait nets. Non-directed gears include: pound nets, anchored/stake gillnets, drift gill net, trawls, fishing weirs, fyke nets, trammel nets, and floating fish traps.

New York's current regulations do not explicitly state which gear types are considered non-directed for the IC/SSF; however, the regulations give the department authority to permit or prohibit the use of certain gear types in the fishery. See current language below:

*6 NYCRR Part 40 (Marine Fish),*

*(x) Atlantic menhaden commercial fishing - special regulations.*

(3) Fishery closures.

(i) If the department determines that the maximum allowable harvest of menhaden will take place before the end of any period, the directed harvesting of menhaden for commercial purposes will be prohibited, except that the department may allow a bycatch of menhaden in non-directed fisheries, not to exceed 6,000 pounds daily per vessel trip. Directed harvest may be prohibited for all license holders, or for users of specific gear types as directed by the department upon 72 hours written notice to all license holders referenced in paragraph (1) of this subdivision. If the department closes the period, but unanticipated events result in the quota not being landed by the projected date, then the department may reopen the period for a specified time and a specified trip limit upon 72 hours written notice to all license holders referenced in paragraph (1) of this subdivision.

### **3. Monitoring Requirements**

a) If your jurisdiction is proposing changes to your biological monitoring program, please include the proposed changes.

There are no proposed changes to New York's biological monitoring program for Atlantic menhaden.

**New Jersey Atlantic Menhaden Implementation Plan  
For Addendum 1 to Amendment 3  
January 13, 2023**

**Introduction**

The Atlantic States Marine Fisheries Commission passed Addendum 1 to Amendment 3 to the Atlantic Menhaden Fishery Management Plan in November 2022. The addendum implemented changes to state commercial harvest allocations, as well as certain aspects of the episodic event set aside fishery and incidental/small scale fishery. At the same meeting, ASMFC increased the annual commercial quota for 2023. Aside from approving the quota for 2023, New Jersey's menhaden regulations allow for the changes incorporated into Addendum 1 with no action required by NJ Marine Fisheries. A summary of how Addendum 1 requirements will be implemented is provided below. Complete text of appropriate sections of NJ menhaden regulations are attached for reference.

**1. Implementation timeline**

The measures approved in Addendum 1 are already captured in NJ menhaden regulations (Attachment 1) and require no additional action for implementation. The NJ Marine Fisheries Council was informed of, and approved, the quota change during their meeting on Thursday, January 5, 2023.

**2. Commercial fishery management measures**

- a) NJ's menhaden quota is not specified in our regulations, so no regulatory changes are required.
- b) NJAC 7:25-22.3(b) specifies that 95% of NJ's quota is allocated to the purse seine fishery, with the remaining 5% allocated to all other authorized gears. If a given sector's quota is reached before the end of the year, NJ DEP will close the fishery for that sector pursuant to 7:25-22.3 (c)-(e). Section (f) of the same rule allows for an incidental catch following closure of a sector's fishery. The regulations allow participation in the IC/SS fishery "as established by the Atlantic States Marine Fisheries Commission," so no changes are required to the gears allowed under the IC/SS fishery.

**3. Monitoring requirements**

NJ is not proposing any changes to its biological monitoring plan for menhaden.



## New Jersey Administrative Code

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### N.J.A.C. 7:25-22.3

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[NJ - New Jersey Administrative Code](#) [TITLE 7. ENVIRONMENTAL PROTECTION](#) [CHAPTER 25. DIVISION OF FISH AND WILDLIFE RULES](#) [SUBCHAPTER 22. MENHADEN](#)

#### § 7:25-22.3 Atlantic menhaden annual quota and season

**(a)** The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the annual quota as determined by the Atlantic States Marine Fisheries Council, seasons, annual quota allocation, including modifying gear categories and the quota allocation by gear-type, incidental catch allowance, application of the incidental catch allowance to the annual quota, reporting requirements, trip limits, or gear marking requirements specified in this subchapter by notice in order to maintain consistency with any fishery management plan approved by the Atlantic States Marine Fisheries Council or to maintain consistency with fishery management plan approved by the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council, or the South Atlantic Fishery Management Council and adopted by the National Marine Fisheries Service 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, 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 in the New Jersey Register, on the Department's website, through email to every menhaden license holder, 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.

nets, gill nets, trawls, bait nets, and other authorized gear being allocated the remaining five percent, combined. If the quota for any gear type is exceeded, the overharvested amount shall be deducted from the following year's quota.

**1.** The season for fishing and landing menhaden in the State shall be:

- i.** January 1 to December 31 for licensees taking menhaden, or landing menhaden taken, by purse seine;
- ii.** January 1 to December 31 for licensees taking menhaden, or landing menhaden taken, by gill net;
- iii.** January 1 to December 31 for licensees taking menhaden, or landing menhaden taken, by pound net or wire pound net;
- iv.** January 1 to December 31 for licensees taking menhaden, or landing menhaden taken, by trawl;
- v.** January 1 to December 31 for licensees taking menhaden, or landing menhaden taken, by bait net; and
- vi.** January 1 to December 31 for licensees taking menhaden, or landing menhaden taken, by other authorized gear not otherwise specified above.

**2.** The daily trip limits during the open season for menhaden in the State shall be:

- i.** The daily trip limit shall be unlimited for licensees taking menhaden, or landing menhaden taken, by purse seine;
- ii.** The daily trip limit shall be unlimited for licensees taking menhaden, or landing menhaden taken, by gill net;
- iii.** The daily trip limit shall be unlimited for licensees taking menhaden, or landing menhaden taken, by pound net or wire pound net;
- iv.** The daily trip limit shall be unlimited for licensees taking menhaden, or landing menhaden taken, by trawl;
- v.** The daily trip limit shall be unlimited for licensees taking menhaden, or landing menhaden taken, by bait net; and
- vi.** The daily trip limit shall be unlimited for licensees taking menhaden, or landing menhaden taken, by other authorized gear not otherwise specified above.

**(c)** The Department shall close the menhaden season for each respective gear type, by giving not less than two days' notice of the projected date that the year's quota for that gear type will be landed.

**(d)** If the Commissioner, or his or her designee, has closed the season and if unanticipated events result in the quota not being landed by the projected date stated in the closure notice, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days' public notice.

**(e)** Public notice shall be provided by a posting on the Department's website and by email sent to all licensees under this subchapter. Each licensee shall, at the time of licensure, provide the Department with the licensee's email address to facilitate the provision of notice pursuant to this section.

**(f)** If the season for a particular gear type is closed because the quota amount allocated to that gear type has been harvested and landed, then:

- 1.** The holder of a Menhaden Landing License for that gear type or the holder of a Menhaden Personal Use and Limited Sale License may continue to land an incidental catch as established by the Atlantic States Marine Fisheries Commission, or by the Mid-Atlantic Fishery

Document:

N.J.A.C. 7:25-22.3

2. The holder of a Menhaden Dealer License may continue to accept incidental catch from the holder of a Menhaden Landing License or the holder of a Menhaden Personal Use and Limited Sale License, as established by a fishery management plan for menhaden; and
3. The incidental catch allowance shall be applied to the annual menhaden catch quota as provided by a fishery management plan for menhaden.

## History

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### HISTORY:

New Rule, R.2021 d.142, effective December 20, 2021.

See: 53 N.J.R. 297(a), 53 N.J.R. 2139(a)."

Former N.J.A.C. 7:25-22.3, Taking of Atlantic menhaden for bait, was recodified to N.J.A.C. 7:25-22.4.

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## James Boyle

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**From:** Kuhn, Kristopher <kkuhn@pa.gov>  
**Sent:** Wednesday, January 18, 2023 11:28 AM  
**To:** James Boyle  
**Subject:** FW: [External] Menhaden Addendum I State Implementation Plans  
**Attachments:** M22-126\_Addendum I Implementation Template.pdf

James,

See below for Pennsylvania's implementation plans for Addendum I to Amendment 3 and let me know if you need anything further.

### **Pennsylvania Amendment 3, Addendum I Implementation Plan for Atlantic Menhaden**

**Implementation Timeline** – In effect immediately upon ASMFC implementation.

**Commercial Fishery Management Measures** – There are no directed commercial fisheries in the Pennsylvania waters of the Delaware River and Estuary.

**Monitoring Requirements** – Pennsylvania does not conduct directed fishery independent monitoring for Atlantic Menhaden. Data regarding species occurrence, relative abundance, and seasonality of Atlantic menhaden are collected if encountered during non-targeted fisheries monitoring.

Thanks,

Kris

**Kristopher M. Kuhn** | Director  
Pennsylvania Fish and Boat Commission | Bureau of Fisheries  
595 E. Rolling Ridge Dr. | Bellefonte, PA 16823  
Office Phone: 814-359-5115 | Mobile: 814-571-4872  
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**From:** James Boyle <JBoyle@asmfc.org>  
**Sent:** Friday, December 16, 2022 4:11 PM  
**To:** ATLANTIC MENHADEN BOARD <atlmen\_bd@asmfc.org>  
**Subject:** [External] Menhaden Addendum I State Implementation Plans

***ATTENTION:** This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).*

Good afternoon Atlantic Menhaden Management Board,

Please find attached a memo with a template for the state implementation plans for Addendum I to Amendment 3. As



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL**

DIVISION OF FISH & WILDLIFE  
RICHARDSON & ROBBINS BUILDING  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

FISHERIES  
SECTION

PHONE  
(302) 739-9914

## **Atlantic Menhaden Addendum I to Amendment 3 Implementation Plan**

December 19, 2022

### 1. Implementation Timeline

Delaware is already in compliance with the management measures in Addendum I under our current Atlantic Menhaden regulations and fishery management system.

### 2. Commercial Fishery Management Measures

- a. Delaware's current Atlantic Menhaden regulation allows its TAC to be changed whenever Delaware is required to do so under Addendum I to Amendment 3.
- b.
  1. Delaware does not divide its TAC by sector, fishery, or gear type.
  2. No regulation change required as the gears Delaware uses in its Atlantic Menhaden commercial fishery are still included in the Addendum I IC/SSF permitted gear types.

### 3. Monitoring Requirements

Delaware is not planning to change its current Atlantic Menhaden fishery monitoring.

## Maryland's Implementation Plan for Addendum I to Amendment 3 of the Interstate Fishery Management Plan for Atlantic Menhaden

January 3, 2023

### 1. Commercial Fishery Management Measures

- a) A mechanism to close the directed commercial fisheries in Maryland is already in place, and can be found in section C(2) of the current regulation (see below).
- b) A mechanism to adjust Maryland's yearly quota as required by ASMFC is already in place, and can be found in section A (1) of the current regulation (see below).
- c) A mechanism to enable the transfer of unused quota between states, if warranted, and the ability to adjust Maryland's quota as it relates to the transfer of quota is in place through section A (1) of the current regulation (see below).
- d) A mechanism allowing pound-for-pound pay back to reduce the subsequent year's quota to account for any overharvest of Maryland's current year quota is already in place, and can be found in section A(2) of the current regulation (see below).
- e) A mechanism for an incidental catch and small-scale fishery provision following the harvest of Maryland's quota and closure of the directed fisheries are already in place. The closure and bycatch limits would be announced through a public notice as established in sections B and F of the attached regulation (see below). The landing limits by gear in i. through iv. below will be established via public notice if Maryland's quota is met.

i. Maryland will allow pound net fishermen to apply for a Menhaden Bycatch Landing Permit, which will allow the harvest of up to 6,000 pounds per day. Details of requirements and limitations of the permit are set forth in section D of current regulation (see below). All other gear, and non-permitted pound net fishermen, will be restricted to a 1,500 pound per day limit after the open season closes. All gear currently being used for menhaden in Maryland are in either the small scale or non-directed category (purse seining is not legal in Maryland).

ii. Only multiple fishermen with a Menhaden Bycatch Landing permit harvesting from one vessel will be allowed to utilize the 12,000 pound limit provision, and only pound net fishermen may apply for the permit.

iii. During the bycatch period harvesters will be limited to landing menhaden once per day or trip, whichever is longer.

- v. The use of multiple carrier vessels to land more than the established limits by one harvester will not be permitted.
- f) Maryland is not eligible to participate in the episodic events set aside program, which sets aside 1% of the coast wide TAC for the New England states (Maine - New York) because they have sporadic availability of menhaden in their waters. This allows access to the fish in years when fish are present.
- g) The Chesapeake Bay reduction fishery harvest cap only applies to Virginia, since Maryland does not have a reduction fishery.

## **2. Monitoring Requirements**

- a) Maryland currently has a timely reporting system for monitoring the quota in place through section E within the current regulation (see below).
- b) Maryland currently has a timely reporting system for monitoring the bycatch fishery in place through section E within the current regulation (see below).
- c) Maryland will continue to collect age and length samples through the existing Maryland Onboard Pound Net Survey, and supplement this sampling with fish dealer sampling when necessary to meet the one 10 fish sample per 200 metric tons of menhaden landed requirement.
- d) Maryland will continue to require pound net fishermen to report the number of nets fished and the pounds of menhaden landed per day

### Maryland's current Atlantic Menhaden Regulation

#### [COMAR 08.02.05.07](#)

##### .07 Atlantic Menhaden.

##### A. Quota.

(1) The annual total allowable landings of Atlantic menhaden for the commercial fishery is set by the Atlantic States Marine Fisheries Commission and shall be published 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. A public notice shall be issued in accordance with §F of this regulation when the quota and season are approved by the Atlantic State Marine Fisheries Commission.

##### 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 Atlantic menhaden.

(2) Upon the State quota being met or exceeded, the catch limit for Atlantic menhaden and the harvest rate at which an Atlantic menhaden bycatch allowance landing permit is required shall be established and may be modified through a public notice issued in accordance with §F of this regulation.

##### D. Atlantic Menhaden Bycatch Allowance Landing Permits.

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

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

(4) Operators.

- (a) An operator means an individual who is not a permittee and acts as an agent of a permittee.
- (b) The only person a permittee may use as the operator of their Atlantic menhaden bycatch allowance landing permit is the individual the permittee has designated as the authorized user of the permittee's commercial fishing license in accordance with Natural Resources Article, §4-701(k)(7), Annotated Code of Maryland.
- (c) An operator may only fish the pound nets that the permittee has:
  - (i) Registered in the permittee's name; and
  - (ii) Notified the Department as being active in accordance with Regulation .01C of this chapter.
- (d) When engaged in permitted activities, an operator shall be:
  - (i) In possession of the permittee's tidal fish license and Atlantic menhaden bycatch allowance landing permit; and
  - (ii) On the vessel named on the permittee's tidal fish license.
- (5) Atlantic menhaden bycatch allowance landing permits may not be transferred and are valid only for the named individual on the permit card or their operator as described in §D(4) of this regulation.
- (6) A permittee or a permittee's operator shall be on board any boat harvesting Atlantic menhaden under an Atlantic menhaden bycatch allowance landing permit.

#### E. Reporting.

- (1) Reporting Requirements. In addition to the requirements of Natural Resources Article, §4-206, Annotated Code of Maryland:
  - (a) Any Atlantic menhaden harvested from a pound net must be reported on the day of harvest in the manner specified by the Department; and
  - (b) An Atlantic menhaden bycatch allowance landing permittee shall report in the manner specified by the Department.
- (2) Reporting Penalties.
  - (a) The Department may suspend the holder of an Atlantic menhaden bycatch allowance landing permit from participation in the menhaden fishery for up to 90 days per violation for failing to comply with §E(1)(b) of this regulation.
  - (b) In addition to any other penalty, the Department may deny an application for an Atlantic menhaden bycatch allowance landing permit for failing to comply with §E(1) of this regulation during the previous season.
  - (c) Prior to suspending a permit under this regulation or denying an application for a permit, the Department shall give the licensee notice of its intended action and an opportunity to appear at a hearing conducted in accordance with the contested case procedures set forth in State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 08.01.14.

#### F. General.

- (1) When the menhaden quota, established by the Atlantic States Marine Fisheries Commission, has been met, the Secretary may issue a public notice on the Fisheries Service website to modify the season and catch limits in compliance with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan.
- (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 section is a violation of this regulation.



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MARYLAND - VIRGINIA  
"Potomac River Compact of 1958"

**Potomac River Fisheries Commission**

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**TELEPHONE:**  
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**AFTER HOURS:**  
(804) 742-0174

**FAX:**  
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**E-MAIL:**  
[contactprfc@gmail.com](mailto:contactprfc@gmail.com)

**MEMORANDUM**

Date: January 23, 2023

To: ASMFC via James Boyle

From: PRFC via Martin L. Gary, Executive Secretary

Subject: Atlantic Menhaden Addendum I Implementation Template

1. Implementation Timeline: The Potomac River Fisheries Commission adopted PRFC Order 2023-06 on December 8, 2022 with an implementation date of January 1, 2023. This Order adoption brings PRFC into compliance with ASMFC's Atlantic Menhaden Addendum 1 fishery management parameters for PRFC's quota under the addendum.

2. Commercial Fishery Management Measures

a) If your jurisdiction includes its yearly menhaden quota in its regulations, please include the changes in language. PRFC Order 2023-06 is found below.

b) A mechanism for an incidental catch and small-scale fishery provision following the harvest of your jurisdiction's quota and closure of the directed fisheries.

The mechanism for implementation and monitoring of a small-scale fishery is included in PRFC Order 2023-06.

I. Indicate if your jurisdiction divides quota by sector, fishery, or gear type, and provide regulatory language.

The PRFC quota is not divided by sector or gear type. >99% of harvest comes from PRFC's pound net fishery.

II. Provide regulatory language to account for changes in IC/SSF permitted gear types. Under Addendum I, small-scale gears include: cast nets, traps (excluding floating fish traps), pots, haul seines, hook and line, bag nets, hoop nets, hand lines, and bait nets. Non-directed gears include: pound nets, anchored/stake gillnets, drift gill net, trawls, fishing weirs, fyke nets, trammel nets, and floating fish traps.

### 3. Monitoring Requirements

Are included in PRFC's Order 2023-06.

updating the order date

**ORDER #2023-06**

## **COMMERCIAL ATLANTIC MENHADEN CATCH LIMITS AND RESTRICTIONS**

---

**THE POTOMAC RIVER FISHERIES COMMISSION**, having found it necessary to comply with certain provisions of the Atlantic States Marine Fisheries Commission (ASMFC) Amendments 2 and 3, and Addendum I to the Interstate Fishery Management Plan (ISFMP) for Atlantic Menhaden and the provisions of Regulation I, Section 7(a)(2):

**HEREBY DECLARES AND ORDERS:** the catch limit for Atlantic menhaden provided for in Regulation III, Section 10(a) shall be 5,547,430 pounds. A weekly menhaden harvest call-in program will be imposed when 70 percent of the catch limit is projected to be landed. When the PRFC Atlantic menhaden catch limit is reached, all commercial fisheries shall be closed to all gear types.

**BE IT FURTHER DECLARED AND ORDERED:** When the commercial fisheries for Atlantic menhaden are closed, subject to the provisions of the ASMFC Amendment 2 and Addendum I to the IFMP for Atlantic Menhaden, PRFC commercial fishermen using stationary multi-species gear are permitted to possess and/or land no more than 6,000 pounds of Atlantic menhaden for a single vessel per day, which must be harvested by the licensee from his licensed net(s). In this case, stationary multi-species gears are defined as pound nets, anchored/staked gill nets, and fyke nets. Exception – a single vessel may land/possess no more than 12,000 pounds of Atlantic menhaden per day when there are two PRFC pound net licensees physically on board who each have at least one of their pound nets set and fishing and prior to the fishery being closed and the by-catch provisions being implemented, no more than 6,000 pounds of Atlantic menhaden are harvested from either of the licensees' nets.

**AND IT IS FURTHER DECLARED AND ORDERED:** this Order #2023-06 shall become effective January 1, 2023 shall supersede and repeal Order #2022-08 and remain in effect until December 31,-2023.



# COMMONWEALTH of VIRGINIA

*Marine Resources Commission*

*380 Ferwick Road*

*Building 96*

*Fort Monroe, VA 23651*

Travis A. Voyles  
Acting Secretary of Natural and  
Historic Resources

Jamie L. Green  
Commissioner

December 20, 2023

## MEMORANDUM

**TO:** James Boyle, FMP Coordinator  
*Atlantic States Marine Fisheries Commission*

**FROM:** Shanna Madsen, Virginia Technical Committee Representative  
*Virginia Marine Resources Commission*

**RE:** Addendum I to Amendment 3 Implementation Plan

The attached document describes the planned Virginia regulation change for Atlantic menhaden according to the Atlantic States Marine Fisheries Commission (ASMFC) Fishery Management Plan (FMP) for Atlantic Menhaden.

*An Agency of the Natural and Historic Resources Secretariat*

[www.mrc.virginia.gov](http://www.mrc.virginia.gov)

Telephone (757) 247-2200 (757) 247-2292 V/TDD Information and Emergency Hotline 1-800-541-4646 V/TDD

## 1. Implementation Timeline

Proposed changes to the regulation will be discussed at a public hearing at a Commission meeting in Virginia on February 28, 2023. If approved, the amended regulation will be effective as of March 1, 2023. Virginia's two largest sectors, the purse seine bait sector and the purse seine reduction sector are unable to begin fishing until May so the new quotas will take effect before those fisheries are open.

## 2. Commercial Fishery Management Measures

- a. The proposed regulation will include Virginia's new allocation percentage: 75.21%. The proposed language is below subject to Commission approval and edits.

### **4 VAC 20-1270-30. Total allowable landings for menhaden; allocation, accountability, overages, restrictions, closures, state-to-state transfers, and transfers between sectors.**

*A. Total allowable commercial landings for menhaden shall be equivalent to 75.21% of the annual total allowable catch (TAC) set by the Atlantic States Marine Fisheries Commission.*

- b. Virginia's quota is divided into three sectors: purse seine reduction, purse seine bait, and non-purse seine bait (includes non-directed and directed small-scale fisheries). The allocation percentages through those sectors are 90.04%, 8.38%, and 1.58%, respectively. The mechanism for closures is explained below in section F.

### **4 VAC 20-1270-30. Total allowable landings for menhaden; allocation, accountability, overages, restrictions, closures, state-to-state transfers, and transfers between sectors.**

*B. Total amount of allowable commercial landings in subsection A of this section shall be allocated as quotas among three sectors of the menhaden fishery in proportion to each sector's share of average landings from 2002 through 2011, as described in subdivision 1, 2, and 3 of this subsection.*

*1. The purse seine menhaden reduction sector shall be allocated a quota that is 90.04% of the allowable commercial menhaden landings.*

*2. The purse seine menhaden bait sector shall be allocated a quota that is 8.38% of the allowable commercial menhaden landings.*

*3. The non-purse seine menhaden bait sector shall be allocated a quota that is 1.58% of the allowable commercial menhaden landings.*

....

*F. It shall be unlawful to harvest or land in Virginia, any menhaden after the Commissioner of the Marine Resources Commission (commissioner) projects and announces that 100% of the total allowable landings for any sector has been taken. The commissioner may reopen a fishery sector if, after all reports as described in 4VAC20-1270-60 have been received, the portion of the total allowable catch has not been harvested by that sector.*

*1. The commissioner shall announce the date of closure when the total allowable landings for the purse seine menhaden reduction sector is projected to be taken.*

*2. The commissioner shall announce the date of closure when the total allowable landings for the purse seine menhaden bait sector is projected to be taken.*

*3. The commissioner shall announce the date of closure when the total allowable commercial landings for the non-purse seine menhaden bait sector is projected to be taken. 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 calendar day as bycatch. Any two persons licensed in the non-purse seine menhaden bait sector may possess and land up to 12,000 pounds of menhaden bycatch when working together from the same vessel using stationary multi-species gear per the Atlantic States Marine Fisheries Commission incidental catch provision.*

- c. There are no regulatory adjustments needed for the changes in the permitted gear types.

**3. Monitoring Requirements**

- a. There are no regulatory adjustments needed for the monitoring requirements.



ROY COOPER  
*Governor*

ELIZABETH S. BISER  
*Secretary*

KATHY B. RAWLS  
*Director*

## NORTH CAROLINA REPORT FOR THE IMPLEMENTATION OF ADDENDUM I TO AMENDMENT 3 TO THE INTERSTATE FISHERY MANAGEMENT PLAN FOR ATLANTIC MENHADEN

January 1, 2023

### Introduction

This report details the implementation plan for North Carolina to meet the Atlantic States Marine Fisheries Commission (ASMFC) requirements of Addendum I to Amendment 3 to the Interstate Fishery Management Plan for Atlantic Menhaden. Addendum I requires each state to submit implementation plans by January 1, 2023. Addendum I will be fully implemented on May 1, 2023, however all menhaden landings for the 2023 calendar year will count toward the quota allocation beginning January 1, 2023. The TAC will be managed on a jurisdictional allocation basis. The 2023 quota allocation for North Carolina is 859.93 mt (1,895,817 lb) and makes up 0.37 percent of the total coastwide TAC of 231,214.50 mt (M22-122\_Revised).

### 1. Implementation Timeline

- a. North Carolina will implement management under Addendum I to Amendment 3 effective January 1, 2023. Many of the requirements for Addendum I are currently being met for North Carolina through the Amendment 3 Implementation Plan (2018).

### 2. Commercial Fishery Management Measures

- a. North Carolina does not include its yearly menhaden quota in its regulations. The mechanism to close the directed commercial bait fishery is through the rule 15A NCAC 03M .0512 which will be used to close (via proclamation) once 90% of the quota allocation is reached. A notice of closure will be submitted to the ASMFC at the time if occurs and will be documented in the North Carolina annual compliance report.
- b. The mechanism to manage for a 6,000 lb trip limit per calendar day for non-directed and small-scale fisheries following the harvest of the state's quota allocation and closure of directed fisheries will be through proclamation authority provided by 15A NCAC 03M .0512, allowing the Division director to set a trip limit per fishing operation per day including authorization of two individuals, working stationary multispecies gear from the same vessel, to work together and land a 12,000 lb limit per calendar day. It will be made clear in this proclamation that the vessel is part of the operation, and it is unlawful to make multiple trips in one calendar day. The 6,000 lb trip limit will also be applied through 15A NCAC 03M .0512 for operations of the haul seine fishery that does employ carrier

vessels. The mechanism to close the directed commercial bait fishery is through the rule 15A NCAC 03M .0512 which will be used to close (via proclamation) once 90% of the quota allocation is reached. A notice of closure will be submitted to the ASMFC at the time it occurs and will be documented in North Carolina annual compliance report.

- i. North Carolina will not divide menhaden quota by sector, fishery, or gear type.
- ii. The mechanism to implement IC/SSF permitted gear types under Addendum I will be through proclamation authority from 15A NCAC 03M .0512. Small-scale gears include cast nets, traps (excluding floating fish traps), pots, haul seines, hook and line, bag nets, hoop nets, hand lines, and bait nets. Non-directed gears include pound nets, anchored/state gill nets, drift gill net, trawls, fishing weirs, fyke nets, trammel nets, and floating fish traps.

### **15A NCAC 03M .0512 COMPLIANCE WITH FISHERY MANAGEMENT PLANS**

(a) In order to comply with management requirements incorporated in Federal Fishery Management Council Management Plans or Atlantic States Marine Fisheries Commission Management Plans or to implement state management measures, the Fisheries Director may, by proclamation, take any or all of the following actions for species listed in the Interjurisdictional Fisheries Management Plan:

- (1) Specify size;
- (2) Specify seasons;
- (3) Specify areas;
- (4) Specify quantity;
- (5) Specify means and methods; and
- (6) Require submission of statistical and biological data.

(b) Proclamations issued under this Rule shall be subject to approval, cancellation, or modification by the Marine Fisheries Commission at its next regularly scheduled meeting or an emergency meeting held pursuant to G.S. 113-221.1.

*History Note: Authority G.S. 113-134; 113-182; 113-221; 113-221.1; 143B-289.52;*

*Eff. March 1, 1996;*

*Amended Eff. October 1, 2008.*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018*

### **3. Monitoring Requirements**

- a. North Carolina is not proposing any changes to its biological monitoring program.

## James Boyle

---

**From:** Mel Bell <BellM@dnr.sc.gov>  
**Sent:** Tuesday, January 3, 2023 12:15 PM  
**To:** James Boyle  
**Cc:** CHRIS MCDONOUGH; BEN DYAR  
**Subject:** [External] RE: Menhaden Addendum I State Implementation Plans

Good morning James,

I hope you were able to enjoy some time off for the holidays, and not freeze to death. We had a bit of a cold snap here but are back to a more normal weather pattern for the moment. Just playing catch-up today on a number of things.

Since SC has no directed commercial fishery for Atlantic menhaden at this time, and no specific State Laws or Regulations pertaining to menhaden, our implementation of new Addendum I requirements is very simple, and already in place. Let me know if this is sufficient for us.

Thanks.  
mb

### **South Carolina Amendment 3, Addendum I Implementation Plan for Atlantic Menhaden**

**1. Implementation Timeline** – In effect immediately upon Commission implementation

**2. Commercial Fishery Management Measures** – No directed commercial fishery. Incidental commercial landings are captured through existing Commercial Wholesale Dealer reporting system or Commercial Bait Dealer reporting system if they occur.

**3. Monitoring Requirements** – No directed fishery independent data collection efforts in place. Data regarding abundance, size, seasonality, etc. of menhaden possible when encountered through any existing fisheries monitoring/research projects if menhaden are collected.

---

**From:** James Boyle <JBoyle@asmfc.org>  
**Sent:** Friday, December 16, 2022 4:11 PM  
**To:** ATLANTIC MENHADEN BOARD <atlmen\_bd@asmfc.org>  
**Subject:** Menhaden Addendum I State Implementation Plans

Good afternoon Atlantic Menhaden Management Board,

Please find attached a memo with a template for the state implementation plans for Addendum I to Amendment 3. As a



## James Boyle

---

**From:** Knowlton, Kathy <Kathy.Knowlton@dnr.ga.gov>  
**Sent:** Tuesday, January 10, 2023 1:02 PM  
**To:** James Boyle  
**Subject:** [External] RE: Menhaden Addendum I State Implementation Plans

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Hi James. Apologies as this is a day later getting to you than I intended. We had a biologist out of office yesterday that I wanted to double check wording with. My leadership has approved the sentences below. Do you need them in a letterhead memo? Thank you!

### Georgia Amendment 3, Addendum I Implementation Plan for Atlantic Menhaden

**1. Implementation Timeline** – In effect immediately upon Commission implementation.

**2. Commercial Fishery Management Measures** – There is no directed commercial fishery in Georgia. Incidental commercial landings would be captured through existing commercial landings reports.

**3. Monitoring Requirements** – There are no directed fishery independent data collection efforts in place in Georgia. Data regarding abundance, size, seasonality, etc. of menhaden are collected when menhaden are encountered through existing fisheries monitoring/research projects.

Kathy Knowlton  
Fisheries Management & Programmatic Support  
[Coastal Resources Division](#)  
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GEORGIA DEPARTMENT OF NATURAL RESOURCES

---

**From:** James Boyle <JBoyle@asmfc.org>  
**Sent:** Friday, January 6, 2023 4:41 PM  
**To:** Knowlton, Kathy <Kathy.Knowlton@dnr.ga.gov>  
**Subject:** FW: Menhaden Addendum I State Implementation Plans

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

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**From:** Mel Bell <[BelLM@dnr.sc.gov](mailto:BelLM@dnr.sc.gov)>  
**Sent:** Tuesday, January 3, 2023 12:15 PM  
**To:** James Boyle <[JBoyle@asmfc.org](mailto:JBoyle@asmfc.org)>

## Florida Implementation Plan for Addendum I to Amendment 3 of the ISFMP for Atlantic Menhaden

### 1. Implementation Timeline

*Currently implemented. No regulatory changes are needed to implement the provisions of Addendum I in Florida's state waters.*

### 2. Commercial Fishery Management Measures

a) If your jurisdiction includes its yearly menhaden quota in its regulations, please include the changes in language.

*N/A.*

b) A mechanism for an incidental catch and small-scale fishery provision following the harvest of your jurisdiction's quota and closure of the directed fisheries.

I. Indicate if your jurisdiction divides quota by sector, fishery, or gear type, and provide regulatory language.

*Florida does not divide the state quota into sector or gear type allocations, but can monitor commercial landings by gear type.*

II. Provide regulatory language to account for changes in IC/SSF permitted gear types. Under Addendum I, small-scale gears include: cast nets, traps (excluding floating fish traps), pots, haul seines, hook and line, bag nets, hoop nets, hand lines, and bait nets. Non-directed gears include: pound nets, anchored/stake gillnets, drift gill net, trawls, fishing weirs, fyke nets, trammel nets, and floating fish traps.

*In Florida, all entangling nets, such as trammel nets and gillnets, are prohibited in Florida's state waters.*

*Fyke nets or pound nets are not permitted gears for the harvest of saltwater fish in Florida's state waters.*

*Purse seines are legal gear in Florida's state waters; however, purse seines used within nearshore and inshore Florida waters (inside a line 3 miles seaward of the coast along the Gulf of Mexico or one mile seaward of the coast along the Atlantic Ocean) may contain no more than 500 square feet of mesh area. Purse seines with more than 500 square feet of mesh area may only be used within state waters outside of inshore and nearshore waters. While Florida's regulations do not specifically prohibit the use of a purse seine as a harvesting gear in the small-scale directed fishery, this gear restriction could be incorporated into an Executive Order closing the directed fishery if the quota is projected to have been met.*

*Relevant rule language is attached.*

### 3. Monitoring Requirements

a) If your jurisdiction is proposing changes to your biological monitoring program, please include the proposed changes.

*No changes are required to Florida's biological monitoring programs to implement the changes in Addendum I.*

# Florida State Regulations and Laws Relevant to Implementation of Addendum I to the Interstate Fishery Management Plan for Atlantic Menhaden

## Trammel net regulations

### **68B-4.0081 Statewide Net Gear Specifications; Soaking Requirements; Definitions; Cast Net Specifications**

(2)(a): The use or placement in the water of any gill or entangling nets of any size is prohibited.

### **68B-4.002 Gear Definitions**

(3) “Entangling net” means a drift net, trammel net, stab net, or any other net which captures saltwater finfish, shellfish, or other marine animals by causing all or parts of heads, fins, legs, or other body parts to become entangled or ensnared in the meshes or in pockets of the net. This term does not include a cast net.

## Purse seine regulations

### **68B-4.0083 Food Fish: Gear and Other Restrictions; Use of Explosives to Kill Fish Prohibited; Certain Uses of Frame Nets Prohibited; Stop Netting Prohibited; Possession of Certain Proscribed Nets Prohibited; Use of Chemicals Prohibited.**

(1)(c) No person may take food fish within or without the waters of the state with a purse seine, purse gill net, or other net using rings or other devices on the lead line thereof, through which a purse line is drawn, or pound net, or have any food fish so taken in his or her possession for sale or shipment. The provisions of this paragraph shall not apply to shrimp nets or to pound nets or purse seines when used for the taking of tuna or menhaden fish only.

### **68B-4.0081 Statewide Net Gear Specifications; Soaking Requirements; Definitions; Cast Net Specifications.**

(2)(c) No person shall take or harvest, or attempt to take or harvest, any marine life in Florida waters with any net that is larger than 500 square feet in mesh area that has not been authorized by rule of the Commission. The use of a shrimp trawl, purse seine, jellyfish paired trawl, or calico scallop otter trawl that is larger than 500 square feet in mesh area, outside nearshore and inshore waters, shall be considered so authorized for purposes of this paragraph.

...

(3) The following net gear specifications shall apply in nearshore and inshore Florida waters:

(a) No person shall fish with, set, or place in the water any net with a mesh area greater than 500 square feet.

### **68B-2.001 General Definitions.**

As used in Division 68B, F.A.C.:

(17) “Nearshore and inshore Florida waters” means all Florida waters inside a line three nautical miles seaward of the coastline along the Gulf of Mexico and inside a line one nautical mile seaward of the coastline along the Atlantic Ocean.

## Fyke net regulations

### **68B-4.020 Saltwater Fish Traps.**

(1) It is unlawful for any person to fish with, set, or place in the waters of the state any trap other than those listed in this subsection.

(a) A blue crab trap authorized by and used according to the requirements of Rule Chapter 68B-45, F.A.C.

- (b) A spiny lobster trap authorized by and used according to the requirements of Rule Chapter 68B-24, F.A.C.
- (c) A stone crab trap authorized by and used according to the requirements of Rule Chapter 68B-13, F.A.C.
- (d) A black sea bass trap authorized by and used according to the requirements of paragraph 68B-14.005(1)(b), F.A.C.
- (e) A shrimp trap authorized by and used according to the requirements of paragraph 68B-31.007(2)(e), F.A.C.
- (f) A pinfish trap not exceeding 2 feet in any dimension, with a throat or entrance not exceeding 3 inches in height by 3/4 inch in width.
- (g) A trap authorized for the harvest of freshwater fish by Rule Chapter 68A-23, F.A.C.
- (2) It is unlawful for any person to land, take, sell, or offer for sale any saltwater fish caught in state waters by any trap other than a trap specified in subsection (1).

*Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 3-1-05.*

## Executive Order Authority

### Section [120.81](#), Florida Statutes: Exceptions and special requirements; general areas.—

(5) HUNTING AND FISHING REGULATION.—Agency action which has the effect of altering established hunting or fishing seasons, or altering established annual harvest limits for saltwater fishing if the procedure for altering such harvest limits is set out by rule of the Fish and Wildlife Conservation Commission, is not a rule as defined by this chapter, provided such action is adequately noticed in the area affected through publishing in a newspaper of general circulation or through notice by broadcasting by electronic media.

### Rule [68-1.009](#), Florida Administrative Code: Delegations of Authority to the Executive Director

Under paragraph 22 of the Delegations of Authority [incorporated by reference](#) in Rule 68-1.009, Florida Administrative Code, the Executive Director of the Florida Fish and Wildlife Conservation Commission may issue executive orders to manage or regulate fish and wildlife in exigent circumstances. Relevant regulatory language follows:

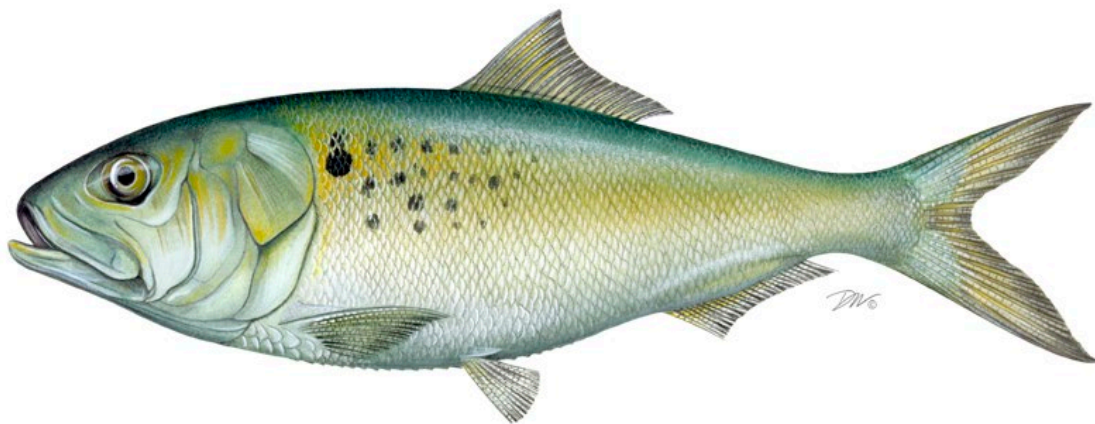
22. The Executive Director may perform other administrative actions, such as, but not limited to, issuing executive orders pursuant to section 120.81(5), F.S., issuing executive orders when necessary to manage or regulate fish and wildlife in exigent circumstances, issuing executive orders in response to declarations of emergency by the Governor, and other administrative actions as may be necessary to supervise, direct, conduct, and administer the operations of the Commission pursuant to its duties under Article IV, Section 9, Florida Constitution, or as authorized or required by law.

# Atlantic States Marine Fisheries Commission

Technical Addendum I

to

## ADDENDUM I TO AMENDMENT 3 OF THE ATLANTIC MENHADEN INTERSTATE FISHERY MANAGEMENT PLAN



*Sustainable and Cooperative Management of Atlantic Coastal Fisheries*

February 2023

## INTRODUCTION

At the November 2022 Atlantic Menhaden Board (Board) meeting, the Board approved Addendum I to Amendment 3 to the Interstate Fishery Management Plan for Atlantic Menhaden, which allocates a baseline quota of 0.01% to Pennsylvania; 0.25% to South Carolina, Georgia, Connecticut, Delaware, North Carolina, and Florida; and 0.5% to Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Maryland, Potomac River Fisheries Commission, and Virginia; and then allocates the rest of the Total Allowable Catch (TAC) based on landings from 2018, 2019, and 2021. However, Addendum I inadvertently did not include text to amend the time period used to redistribute relinquished quota.

## STATEMENT OF THE PROBLEM

Section 4.3.2 (Quota Allocation) of Amendment 3 includes language which specifies how quota is distributed when a state relinquishes quota before the start of the fishing year. Specifically, it states:

*States, on an annual basis, have the option to relinquish part, or all, of their fixed minimum quota. States must declare, to the FMP Coordinator, any relinquished quota by December 1<sup>st</sup> of the preceding fishing year and the amount that is being relinquished. Any quota that is relinquished by a state will be redistributed to the other jurisdictions (i.e. those which have not relinquished quota) based on landings from 2009-2011.*

Section 3.1 (Commercial Allocation) of Addendum I replaces Amendment 3 Section 4.3.2, but inadvertently did not include language to update the time period used to redistribute relinquished quota from 2009-2011 to 2018, 2019, and 2021, as is the guidance in Amendment 3. The November 2017 Atlantic Menhaden Board proceedings, where Amendment 3 was approved, clearly state the Board's intention was for relinquished quota to be redistributed according to whichever timeframe was selected in section 4.3.2. The following motion was approved at that meeting:

*Move that states must declare any relinquished quota by December 1st of the previous year. States have the ability to declare how much of their quota to relinquish. Any quota that is relinquished by a state is redistributed to the other jurisdictions based on historic landings from the time period selected by the Board in this Amendment (Page 110). Motion by Pat Keliher; second by David Borden. Motion carried (Page 111).*

Because the Board did not consider a new method to allocate the relinquished quota in Addendum I, the time period used to redistribute relinquished quota should have automatically changed to the new timeframe approved by the Board in section 4.3.2.

## **PROPOSED MANAGEMENT MEASURES**

The following paragraph replaces the third paragraph in Section 3.1.2 of Addendum I to Amendment 3 (*Timeframe to base allocating the remaining TAC*):

*States, on an annual basis, have the option to relinquish part, or all, of their fixed minimum quota. States must declare, to the FMP Coordinator, any relinquished quota by December 1<sup>st</sup> of the preceding fishing year and the amount that is being relinquished. Any quota that is relinquished by a state will be redistributed to the other jurisdictions (i.e. those which have not relinquished quota) based on landings from 2018, 2019, and 2021.*

## **COMPLIANCE**

This Technical Addendum will become effective on \_\_\_\_\_.





# Atlantic States Marine Fisheries Commission

1050 N. Highland Street • Suite 200A-N • Arlington, VA 22201  
703.842.0740 • 703.842.0741 (fax) • [www.asmf.org](http://www.asmf.org)

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## MEMORANDUM

**TO:** Atlantic Menhaden Management Board  
**FROM:** James Boyle, FMP Coordinator  
**DATE:** January 24, 2023  
**SUBJECT:** Recommendation for Technical Addendum to Amendment 3

Addendum I to Amendment 3 to the Interstate Fishery Management Plan for Atlantic Menhaden allocates a baseline quota of 0.01% to Pennsylvania; 0.25% to South Carolina, Georgia, Connecticut, Delaware, North Carolina, and Florida; and 0.5% to the remaining jurisdictions, and then allocates the rest of the Total Allowable Catch (TAC) based on landings from 2018, 2019, and 2021.

However, Addendum I did not include language to modify the redistribution of relinquished quota from the timeframe specified in Amendment 3, which was 2009-2011. Based on the proceedings from the November 2017 Board Meeting, where Amendment 3 was approved, the Board's intention was for relinquished quota to be redistributed according to whichever timeframe was selected in section 4.3.2. Therefore, Staff is recommending a technical addendum to revise the oversight and redistribute relinquished quota according to the updated allocation timeframe from Addendum I. Per the ISFMP Charter, a technical addendum can be used to make technical corrections to an approved FMP, amendment, or addendum without use of the public review process. This flexibility is for the correction of accidental omissions, erroneous inclusions, and/or to address non-substantive editorial issues.

For questions, please contact me at [jboyle@asmfc.org](mailto:jboyle@asmfc.org) or (703)-842-0740.

M23-11