PROCEEDINGS OF THE

ATLANTIC STATES MARINE FISHERIES COMMISSION

ATLANTIC HERRING SECTION

Hilton Mystic
Mystic, Connecticut
October 27, 2014

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Board Members

Pat Keliher, ME (AA)
Terry Stockwell, ME, Administrative proxy
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Doug Grout, NH (AA)
G. Ritchie White, NH (GA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)
Rep. Sarah Peake, MA (LA)
David Pierce, MA, proxy for P. Diodati (AA)
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Mark Gibson, RI, proxy for R. Ballou (AA)
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Rep. Craig Miner, CT (LA)
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Adam Nowalsky, NJ, proxy for Asm. Sgt. R. Andrzejczak (LA)
Tom Baum, NJ, proxy for D. Chanda (AA)
Tom Fote, NJ (GA)

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

Ex-Officio Members

Jeff Kaelin, Advisory Panel Chair

Michael Eastman, Law Enforcement Representative

Staff

Robert Beal
Toni Kerns

Marin Hawk
Melissa Yuen

Guests

Sen. Ronnie Cromer, SC (LA)
Mike Johnson, NC Leg. Proxy

Mary Beth Tooley, O'Hara

The Atlantic Herring Section of the Atlantic States Marine Fisheries Commission convened in the Grand Ballroom of The Mystic Hilton, Mystic, Connecticut, October 27, 2014, and was called to order at 8:00 o'clock a.m. by Chairman Terry Stockwell.

CALL TO ORDER

CHAIRMAN TERRY STOCKWELL: Okay, we've got a fairly full agenda.

APPROVAL OF AGENDA

CHAIRMAN STOCKWELL: I do want to add two issues to other business. One is a notice of closure issue that we went roundabout over this weekend. The second is an issue concerning ACCSP funding for shoreside monitoring of bycatch. Are there any other items folks would like to add to the agenda? Seeing none; that consider the agenda approved.

APPROVAL OF PROCEEDINGS

CHAIRMAN STOCKWELL: The Proceedings from August 2014; are there any comments, additions or deletions? Seeing none; consider the Proceedings approved.

PUBLIC COMMENT

CHAIRMAN TERRY STOCKWELL: Under public comment, we have Mary Beth Tooley.

MS. MARY BETH TOOLEY: Mr. Chairman, I just have a brief comment and that would be relative to the Herring AP. I've been a member of the advisory panel for many years. We met recently by conference call, which is really a good way to quickly bring a group together to provide some input to the commission in their process.

I do think that when we're undergoing an amendment process; that it would be a really good idea if we could have an in-person meeting, at least one somewhere as things develop. We haven't had one in some time. I know that participation in the AP has not been the best in recent years. I do think that if we were to have an in-person meeting where people could actually sit down and discuss the issues, it would provide a lot of value to your process. Thank you.

CHAIRMAN STOCKWELL: Thank you, Mary Beth. Do you want to follow up, Melissa?

MS. MELISSA YUEN: When I give the update on the development of Draft Amendment 3, the PDT has requested an extension for additional time to work on it and also to provide time to have an in-person advisory panel meeting. We will plan on having one.

CHAIRMAN STOCKWELL: Is there anybody else in the audience who would like to speak to the Section? Seeing none; we're going to turn it over to Melissa for an update on the development of the draft amendment.

UPDATE ON DEVELOPMENT OF DRAFT AMENDMENT 3 FOR PUBLIC COMMENT

MS. YUEN: Right now I will provide an update on the progress on the development of Draft Amendment 3 to the Atlantic Herring FMP. As a reminder, the three issues presented into Amendment 3 are spawning area efficacy, the fixed-gear set-aside and empty fish hold provision. This is the timeline for the development of Draft Amendment 3.

Originally we intended to have the Section consider approval of Draft Amendment 3 for public comment at this meeting. However, the PDT requests additional time to complete analysis of the spawning area efficacy as requested through the memo that is provided in the briefing materials; and also the advisory panel would like to have an in-person meeting to give a more thorough review of the socioeconomic impacts and guide us in the development of management options.

Now I will go over the contents of Draft Amendment 3. Under Chapter 1, which consists of background information on the resource and fishery, we discuss the statement of the problem of why this amendment is needed and the benefits of implementation. The intention of Amendment 3 is to enhance spawning protections, create an incentive for better fishing practices, to reduce unmarketable catch and to minimize adverse effects on species that are associated with Atlantic herring such as river herring while minimizing the adverse effects on participants in the fishery.

A description of the resource characterizes the range, stock definition and status and life history information. This is one of the sections the PDT will continue to develop and include additional analysis to update the information, particularly the spawning stages of Atlantic herring. A description of the fishery characterizes the historical and recent trends of the fishery.

As just a brief review over the time series from 1950 to 2013; the annual commercial catch by the United States Atlantic Herring Fleet was generally flat with slightly declining trend between 1950 through 1983 when it reached a historic low of 51 million pounds. Since then catch has increased and peaked in 2009 with 225 million pounds and averaged about 154 million pounds.

In 2013 the catch totaled 235 million pounds, which is an increase from 2012. A majority of the herring is caught by trawls followed by the purse seine. When the Section reviewed the public information document, it requested some information on the monthly landings. This graph shows the distribution of herring landings by month.

To illustrate recent trends, the orange-shaded area is the ten-year average while the blue is the three-year average from 2011 to 2013. As you can see, the recent trend and higher amount caught from June through late October reflects the recent management program of seasonal splitting. Then to continue with the contents; Section 1.4, habitat considerations, contains the essential fish habitat designation, which was provided by the New England Fishery Management Council.

Currently the council has proposed an update to the Atlantic Herring EFH through its Omnibus Habitat Amendment 2. Impacts of the fishery management program includes analyses of the potential biological and environmental impacts to the proposed measures. I will go over that in more detail later. Section 1.5 contains the analysis on socioeconomic impacts of each issue.

The second chapter is on goals and objectives of this amendment. The PDT is seeking clarification from the Section on the management goals of the FMP; specifically in regard to the spawning protection program. Basically the PDT wishes to know if the goal of the spawning protection program is to prevent disruption of spawning activities or to prevent catch of spawning fish, which would have some tolerance of fish being caught and brought to port.

A statement of the management goal will help guide the PDT's development of spawning protection management options. This chapter also includes the overfishing definition, which is taken from the 2012 stock assessment for Atlantic herring completed through the 54th Stock Assessment Workshop, which found the stock to be not experiencing overfishing and is not overfished. An operational stock assessment for Atlantic herring is scheduled for 2015.

Currently there is no rebuilding program for Atlantic herring because it is rebuilt. In Chapter 3 the monitoring program lays out the responsibilities of the technical committee, advisory panel, plan review team and the Section to ensure that each of the listed items are reviewed consistently. The chapter on

management program implementation presents the issues and options for management measures in each of these categories.

I will go over these issues after the summary of the contents. To wrap it up, Chapter 5 contains the mandatory compliance elements for states to be consistent with the FMP. Chapter 6 lists the research and data needs to inform stock assessment and management programs. This is another section that the PDT wouldn't have to update for this amendment. Chapter 7 contains an analysis of the interaction between Atlantic herring and protected species such as marine mammals and sea turtles. Finally, Chapter 8 lists the references used throughout the document.

Issue 1, spawning area efficacy, there is a need to review inshore spawning areas because there are maybe variations in the spawning season that is different from the patterns when the spawning closure program was first implemented. For example, if herring are still spawning after the four-week closure and fishing resumes, the PDT believes that there is potential for a large amount of spawning herring to be caught.

The current mechanism to extend the closure, which is a re-closure of the program, the spawning closure for two weeks is different from the original trigger because it is based on 25 percent of the herring still in spawning stages rather than the state of spawning maturity of the fish. The plan development team reviewed boundary and sampling programs for the Massachusetts/New Hampshire spawning areas specifically.

It found the boundaries to be adequate at this time and does not recommend any subareas or splits. Currently there is just not enough information to inform that. Also, a biological rationale for the two-week extension is there might be a potential gear bias during sampling. The plan development team reviewed the socioeconomic impacts of this issue by working with the advisory panel.

The conclusion was that a two-week extension to the Massachusetts/New Hampshire area would have a negative impact on industry. The cost of business outweighs the need for additional protection of a rebuilt stock. According to the 2012 stock assessment, the spawning stock biomass of Atlantic herring in 2011 was 517,000 metric tons, which is 230 percent above the SSBmsy, so the stock is not overfished and there is no biological justification for additional precautionary measures.

The two management options we have at this point is Option 1, status quo, so by default the spawning area closure will last for four weeks, catch sampling of the fishery will resume at the end of the initial four-week closure period. If catch sampling indicates significant numbers of spawning herring are still in the area, closures will resume for an additional two weeks.

A significant number of spawning herring is defined as 25 percent or more mature herring by number in the catch sample that have yet to spawn. Mature or spawned herring are defined as Atlantic herring in the ICNAF gonadal stages of 5 and 6. Option 2 is the two-week extension to the Massachusetts/New Hampshire spawning area; so that area closure will last for six weeks; and then the additional two weeks will serve as the default in lieu of their continued sampling and re-closure.

The statement of the problem for Issue 2 is fixed-gear set-aside. There is anecdotal evidence of sea herring in the Gulf of Maine after November 1; and fixed-gear fishermen have expressed that they want to have the set-aside available to them through the remainder of the year. The plan development team noted at this time that there is no biological basis for or against adjusting the fixed-gear set-aside.

The fixed-gear landings have not been fully utilized in the last ten years. In fact, there have been zero landings caught from the fixed-gear fleet after November 1. Also, they wanted to note that the fixed-gear fishery can still access the total Area 1A sub-quota given that the total allowable catch has not been reached.

Lastly, the plan development team notes that the state and federal rules would be inconsistent if the current provision is adjusted. The socioeconomic impact analysis; there would be a neutral impact to industry either way if this provision is adjusted. The advisory panel did note and the plan development team also noted that the cost needed to implement complementary action outweighs the need to adjust the set-aside.

The set-aside is a relatively small portion of the total allowable catch. For instance, in 2013 through 2015 it is 295 metric tons of the 31,200 metric tons for Area 1A. Again, landings from the past ten years shows no landings from November through December. Then the management options we have so far are Option 1, status quo; the fixed-gear set-aside will be available to the fixed-gear fishermen until November 1.

After that point, if the set-aside has not been fully utilized by the fixed-gear fisheries by November 1, it will be made available to the remainder of the herring fleet in Area 1A until the directed fishery closes. Of course, we want to add this piece to make it more clear that fixed-gear fishermen can continue fishing and landings will count towards the Area 1A sub-quota.

Issue 2, Option 2, is to remove the fixed-gear set-aside rollover provision and then the fixed-gear set-aside would be available to fixed-gear fishermen west of Cutler through December 31st. When 92 percent of the Area 1A TAC has been reached, all directed herring fisheries in Area 1A will be closed and unused portions of the fixed-gear set-aside would not be rolled over from one year to the next.

The third issue, empty fish hold provision, is a requirement for vessel owners to empty their fish hold prior to departing on a trip. This issue was raised because of the instances of large catch that would result in unsold fish, which is a challenge to dispose of. There is also the issue of mixing of double counting catch landed from multiple trips, which impacts the monitoring of bycatch and incidental catch of river herring and such species.

As a reminder, the New England Fishery Management Council approved a requirement in Framework Adjustment 4 for vessel holds to be empty of fish prior to leaving a dock. The council adopted Alternative 2.1.2, Alternative 2, Option C, a waiver will be issued for instances when there are fish in the holds after inspection by an appropriate law enforcement officer.

This alternative only applies to Categories A and B boats. The intent is for waivers to be issued for refrigeration failure and non-marketable reported fish. The plan development team recognized that fishermen may have surplus catch that cannot be sold and is a challenge to dispose. The proposed requirement to empty the holds of fish may be an incentive to curb wasteful fishing practices and harvest more efficiently to meet market demands.

This could eliminate the practice of keeping fish in the hold from one trip to another, which mixes the amount of the fish that is caught. This does need consideration for law enforcement and the plan development team will be working with the Law Enforcement Committee to better develop a system for this.

At this time the plan development team also worked with the advisory panel to discuss the issue of waivers, whether there should be a limit to the number of waivers. At this time there is not information to inform an appropriate number. For the socioeconomic

impact analysis; it was concluded that this will have a positive impact on industry; that it would create an incentive for fishermen to better plan their fishing activities to meet market demand.

There was not enough information at this time to inform the limit of waivers. A waiver system could actually serve as a way to collect data on the frequency and the reasons for unmarketable fish. It will also create safer conditions for people working on vessels. The management options are Option 1, status quo.

Currently there is no empty fish hold provision and there would be no requirement for vessels to empty their holds of fish prior to a fishing departure. Option 2, empty fish hold provision, this mirrors the option that was provided by the New England Fishery Management Council in its Framework 4.

This option would require that fish holds on Categories A/B Atlantic herring vessels empty a fish hold before leaving the dock on any trip when declared into the Atlantic Herring Fishery. A waiver may be issued for instances when there are fish in the hold after inspection by an appropriate law enforcement officer.

The intent is for waivers to be issued for refrigeration failure and non-marketable fish that has been reported by the vessel. Only vessels departing on a fishing trip, which has declared into the fishery, are required to have holds empty of fish. As such, waivers would not be required for vessels transporting fish from dock to dock.

A government official must verify the amount of fish in the hold, the reasons for unmarketable fish and the vessels transporting fish to multiple ports. In conclusion, the plan development team still requests additional time for a complete analysis particularly at the spawning efficacy section; and also the advisory panel would be planning an in-person meeting to go over the amendment in more detail. Are there any questions?

CHAIRMAN STOCKWELL: Are there questions for Melissa? David.

MR. DAVID V. BORDEN: This will be a really quick question. On the fish hold inspection by the enforcement personnel, what is the expectation that the enforcement personnel are going to do? Are they going to certify that there are fish in the hold or are they going to be certifying how much fish is in the hold?

MS. YUEN: Basically, the idea was to have a government official certify the fish hold so that there would be record of the reasons for unmarketable fish. It would be a better way to keep track of how many fish is actually kept in the hold if a boat has to move from one port to another, multiple ports.

MR. BORDEN: Just a quick follow-up; has the enforcement committee reviewed the provision on this? I was just kind of curious.

MS. YUEN: No; that is one of the things we would like to have the additional time to do; to work more closely with the Law Enforcement Committee. We had a brief conversation during the development of the public information document; but we needed time after meeting with the advisory panel to still go back with the Law Enforcement Committee.

CHAIRMAN STOCKWELL: Further questions for Melissa? Okay, seeing none, Melissa, the PDT's intent is to have this document ready for us to approve at the winter meeting?

MS. YUEN: Yes.

REVIEW AND SET ATLANTIC HERRING SPECIFICATIONS FOR 2015

CHAIRMAN STOCKWELL: Okay, we're moving on to our 2015 specifications. Doug.

MR. DOUGLAS E. GROUT: The PDT had a question for the board, I believe.

MS. YUEN: Yes, we would like further clarification on the management goals for the spawning protection program.

MR. GROUT: The way I read it is one our objectives is to provide adequate protection for spawning herring and prevent damage to the herring egg beds. Currently the way we're handling things is to – from the way I perceive it – prevent the catch of spawning herring. That seems to have been a fairly good way of trying to prevent fishing on spawning herring. Trying to prevent the disruption of spawning activity, I don't know how we'd prove that. That would be my response to the question for clarification; that we're trying to prevent the catch of spawning herring.

DR. DAVID PIERCE: I agree with Doug; it is to protect spawning herring and taking fishing pressure off of spawning herring. Unlike codfish where they come and they meander and there is a day and a nighttime spawning ritual and it occurs over a long period of time; sea herring schools arrive on the grounds and they spawn. It is a rather quick event that has been well documented.

I don't believe there is any need for us to try to get into the fine tuning of actually trying to deal with taking fishing pressure off of the spawning behavior because it just happens. Fortunately, it is a quick thing. I agree with Doug. That is the way we've been doing it. That has been the procedure; that we follow the logic that we've followed for many years; and I see no reason to depart from the way we've been protecting spawning herring through the measures we have in place now.

CHAIRMAN STOCKWELL: So to expand upon that thought, take an area like the eastern Maine area where there was no spawned herring being sampled. One of the reasons why I think we're discussing the development of this amendment is to address when, why and how we've closed areas. What I'm taking from you, David and Doug, is that we're solely protecting spawning fish and not fish, whether they're adults or juveniles or whatever life stage they're at? Doug.

MR. GROUT: Yes, as long as you're sampling the boats and the samples that you're getting do not have spawned herring either because they're juveniles or because they're herring that are not in spawning condition. I think that is what we're trying to get at is if we do come across spawning herring in the catch based on the criteria set by the plan; that is when you would close the fishery.

DR. PIERCE: Well, in light of what you just said, Terry, I've got to elaborate a bit. My focus is on spawning fish, but I've always said and I continue to say that – and I know there is disagreement with me on this – that, all right, the vessels are not fishing on spawning fish so what do they then direct on? Well, spent fish, we would hope; adult fish, we would hope, that are spent but oftentimes they'll focus on juvenile fish; and sometimes very small fish; and I don't think that is wise.

But that is not an element of our management program, protecting juvenile fish. It is about let them spawn, take the pressure off of spawning fish. I just wanted to make that point because of what you said, Mr. Chairman. My concern continues to be there, but I'm not prepared to offer up any motions that would initiate some action that would somehow stop the fishery from focusing on juvenile fish. That is a very complicated matter, to say the least.

We've tried to do that in the past and we have been rather unsuccessful; so for now it is all about spawning fish. The resource is in great shape, which also puts us in somewhat of a comfort zone. We'd be in a lot different position regarding what we might want to do or should do if we were looking at a biomass of herring that was on the low side, similar to the way it was back in the 1970's when we had some real problems. Anyways, that is my view on that.

CHAIRMAN STOCKWELL: Thank you for the clarification because I reflect upon the passionate speeches by our old friend Vito J. and wanted just to make sure that the PDT's guidance was clear. Jeff.

MR. JEFF KAELIN: Mr. Chairman, I should have put my hand up before to ask about if Melissa is going to provide some comments from the AP call. We did have an AP call; and I give Melissa a lot of credit for tracking everybody down a couple times so we could get that done. I think we did touch on the spawning issues a little bit.

But I just wanted to, if I could, Mr. Chairman, get some clarification from what Doug was suggesting so I can understand it and interpret it to the other people. Were you talking about changing the language in the objective on Page 26, which continues with language that says "protect damage to herring egg beds"?

On Page 41 there is language in the document that states that trawling in spawning areas or primary nursing areas should be prohibited. I think the issue of bottom trawling in closed areas to protect spawning herrings has come up for years and it did come up again on the call. I'm just pointing out that the goals and objectives in the document are contrary to the way the spawning closures are now managed; and that is that just herring boats can't go in there. I just raise that issue because the goals and objectives around that issue may be contrary to the way that the spawning closures have always worked. Anyway, I just want to throw that out there.

CHAIRMAN STOCKWELL: Anybody else? Melissa and Renee, do you have what you need?

MS. YUEN: Yes; thank you.

CHAIRMAN STOCKWELL: Okay, we're going to move on to the specifications.

MS. YUEN: Under Addendum VI to the Atlantic Herring FMP, the Section can set seasonal splitting for Areas 1A, 1B and 2. Last year, as with the previous year, zero percent of the area sub-quota for Area 1A was allocated to January 1 through May 31; 72.8 percent was available from June through September and 27.2 percent was allocated from October through September; and the fishery would close when 92 percent of the seasonal period's quota has been harvested. That was last year's motion.

MR. GROUT: I would like to make a motion, Mr. Chairman, and I believe gave this to Marin. **I'm going to move to allocate the 2015 Area 1A TAC seasonally with 72.8 percent available from June through September and 27.2 percent allocated from October through December. The fishery will close when 92 percent of the seasonal period's quota has been harvested; and underages from June through September may be rolled over into October through December period.**

CHAIRMAN STOCKWELL: Okay, check your motion, Doug. It just went up on the board.

MR. GROUT: After "June through September", it should say "may be rolled into the October through December period".

CHAIRMAN STOCKWELL: Okay, seconded by Bill Adler. Section discussion? Mary Beth, did you want to comment?

MS. TOOLEY: Mr. Chairman, I first had a question. I'm just wondering if we have any information available on how well this process has functioned in recent years relative to attaining the 92 percent. I don't believe we've had any seasonal closures that have been needed. I'm not sure if that is correct. I think we actually did go over in perhaps in 2012; and then this year perhaps it was close, maybe slightly over. Melissa, do you have any information on whether or not any seasonal quotas have been exceeded, particularly the June through the end of September?

MS. YUEN: For this past fishing year, there was an underage; so actually we were pretty spot-on. There was only a very small amount that was rolled into the third trimester.

MS. TOOLEY: I think I could be incorrect because I haven't looked at these numbers recently; but 2013 I think there was – the trimester from June through the end of September was exceeded; not by much, I don't think, but I think it was exceeded.

MS. YUEN: Yes, it was exceeded by a small amount so then it was deducted from the third trimester's sub-quota.

MS. TOOLEY: So I think in general the program does work. I am not saying that it does not, but the amount of fish that is allocated for the fall, if the earlier season is exceeded, then that's a loss of fish to those fishermen who rely on that fall fishery. It has created a lot of angst and clearly they're unhappy. In the federal plan we have the ability to roll fish over from year to year.

We have deductions if you exceed a quota. In this particular plan there is no deduction. It is not part of this, but I think it is something for the Section to consider that in the future if you have a quota that is exceeded; then it should be deducted from that seasonal quota in the following year. I'm not sure that you have the ability to do that today; but I would ask the Section to consider it perhaps in a future action to make that adjustment. I think it is an issue of fairness and fishermen would appreciate it. Thank you, Mr. Chairman.

MR. WILLIAM A. ADLER: Mr. Chairman, not this year but didn't last year they reached their basically 72 or whatever it was and we actually closed it for like a week and then reopened it; didn't that happen?

MS. YUEN: Yes, I believe that did happen.

CHAIRMAN STOCKWELL: Other comments from the section? Seeing none, why don't you caucus?

(Whereupon, a caucus was held.)

CHAIRMAN STOCKWELL: Okay, those who support the motion on the board, please indicate so. **The motion carries unanimously;** seven/zero. Is there any further business under this agenda item, Melissa?

MS. YUEN: No, we're good; thank you.

UPDATE ON ATLANTIC HERRING OFFSHORE SPAWNING STUDY

CHAIRMAN STOCKWELL: Okay, we're on to an update on the Offshore Spawning Study.

MS. TONI KERNS: We have been discussing, through the NRCC, the potential to do an offshore spawning study in the Nantucket Shoals Area. We've had several discussions at NRCC as well as with the Science Center to see where we can do some data collection or collaboration of data collection since we have discussed with the Section the expense of this spawning study if the Section wants to manage the offshore spawning site in a similar way that we manage the inshore events.

Through the discussion with the Science Center, there are no current surveys or sampling programs that would overlap with that area at the correct time; and so we would have to come up with new funding to do a sampling program in order to manage in the same way. Currently there is no additional funding through the Science Center to do such a survey.

We did discuss with them, though, to get some information from the previous acoustic survey so that we can get a better understanding of the timing of the spawning although we know that is variable and isn't going to be something that we can always count on but it will at least give us a better idea. We're going to do that

data exchange with them; but until we come up with some additional funding if we're going to manage in the same way, I don't see the ability to do a study. Terry, do you have anything else to add?

CHAIRMAN STOCKWELL: No; that was pretty complete. The Science Center did underscore that the distribution is thin so they need a broad-based survey. They did request, if it is the Section's intent to move forward with this, that we clarify whether or not we intend to manage Area 3 the same way we do Area 1A; and the high cost of even developing the survey was going to exceed our budget, much less implementation of it altogether. They asked for us to identify a secure source of funding before we came back to them. Sarah.

REPRESENTATIVE SARAH K. PEAKE: Thank you for the update and for pursuing that and even though at least I don't like the answer, at least getting an answer. Have we identified a dollar amount both for the development of what the survey would look like as well as the implementation; do we have some notion of how much?

MS. YUEN: In the second technical committee, they did provide an estimated budget. I believe off the top of my head it was about $92,000 to $115,000 for a full-time employee, who will help design the program and also analyze the samples.

CHAIRMAN STOCKWELL: On top of that, Sarah, the annual cost – I mean, our current state of Maine bycatch portside monitoring program, which we're going to talk about in one of the next agenda items, is around $200,000 a year. One of the important components of it is fresh samples; and there were concerns expressed by the Science Center how we would get fresh fish ashore and who would be cutting it. Renee.

MS. RENEE ZOBEL: Additionally, the cost provided by the technical committee was just for the sampling similar to the program that happens in 1A right now. That did not include the cost of a survey that we would have to do to get the background information to do that.

REVIEW AND POPULATE THE ADVISORY PANEL MEMBERSHIP

CHAIRMAN STOCKWELL: Any other questions or comments on Area 3? Okay, we're on to review and populate the AP membership. Melissa.

MS. YUEN: **We have a nomination for a new advisory panel member. His name is Shawn Joyce for the state of New Hampshire.** At this time would the Section please consider approving him for the advisory panel?

MR. G. RITCHIE WHITE**: I would like to nominate Shawn**. He is a very active recreational fisherman and is close friends with a commercial fisherman. He does go out on that person's small-mesh bottom trawl fairly frequently; so he is fairly knowledgeable.

MR. STEPHEN R. TRAIN: Do you need a second on that?

CHAIRMAN STOCKWELL: Is there an objection to adding Shawn? Seconded by Steve Train. Is there an objection to adding Shawn as a member of the AP? **Seeing none, would you please extend our congratulations and condolences**? Okay, we're on to other business. I added two issues; one of which was notification of closure of directed fisheries.

This past week David and Doug and I had a fair amount of correspondence about initially the notice that came from GARFO on the 23rd; the ASMFC notice that came the following day on the 24th; and the problem that we had with the state of Maine requiring in our rules that industry be notified in a newspaper.

Because of this notification process, the state of Maine was not able to restrict landings at midnight on Saturday. There was one more

landing day in Maine and the industry is tied up ashore. We identified in our follow-up conversations a couple fixes to this. The first is the wording in our ASMFC notices need to reference the restrictions that remain into effect until 90 percent of the TAC for the period June through September is projected to be exceeded. This currently did not.

Probably more importantly than that is in the past – and there has been a change of the guard at GARFO – state directors used to get a heads-up that they're getting close to issuing their closure. The state of Maine appreciated this because it takes us three to four days to get the notice out. Finally, it was clear to me in the agency's closure notice; that there is no language referencing state landings' day restrictions so that industry and enforcement were clear on what is allowed and what is not.

We don't think in our sidebar conversations over the weekend that there is any formal action that the Section needs to take with the exception if it is the Section's will I could draft a letter to the agency requesting that they follow through with their notification and modify their language for the quota closures. It is a one-time problem and I hope it is never replicated; but it caused a lot of angst between three states and the industry members. I'll be willing to take any questions or any suggestions. Dennis.

MR. DENNIS ABBOTT: Mr. Chairman, appreciating what you said, but I would question in this modern day and in a day where people aren't reading newspapers that newspaper notification is greatly outmoded and would Maine consider a different notification process to speed up the notification? It is just a gone-by-thing that people read newspapers to start with; plus I assume you have to pay to put the notice in the newspapers.

CHAIRMAN STOCKWELL: It is archaic but it is in our laws. Pat and I have worked with our current AP not only for herring closures but for shrimp closures; and our read from our rules, it is very specific language says, "Herring-permitted license holders shall be informed by public notice in a newspaper circulated in the area affected of any effort reduction dates."

Fine; on most weeks but on a Friday, when we can't get notices of anything into the papers, it doesn't become effective until the following week. There is no possible way. We'd love to go electronic. Matt Cieri has an e-mail distribution list, but it is a courtesy and not a formality. I think if we were in the position of having had the information on Tuesday we could have started the process and had it in effect. I'm not trying to make excuses; I'm just telling you the predicament that we're in. Doug.

MR. GROUT: Mr. Chairman, given the fact that the National Marine Fisheries Service is not a member of the Section; I know we spoke last night with Mike Pentony, who is the Assistant to the Regional Administrator, but it might be worth – **I'd like to make a motion that we do draft a letter asking them to see if they can modify the language in their notice to somehow reflect the fact that are no landing days according to the commission process and that they need to take that into consideration; and then also ask them to resume the practice they had of notifying states in advance of when they anticipate putting out a closure notice so that we can have our notices come out at the same time that theirs does.**

CHAIRMAN STOCKWELL: Is there a second? Seconded by Bill Adler. That would certainly help close the loop and ensure that we don't have another situation like again. Is there any further Section discussion? David.

DR. PIERCE: It is relative to the motion. Regarding what happened, I've had three days to calm down. Friday was a difficult day, to say the least, because I had to deal with members of the Massachusetts fishing industry, the processors and their anger that they could not land in Massachusetts after the federal closure

and yet fish could be landed in the state of Maine.

It led to some rather discussions between and the Massachusetts processors and fishermen and I don't want to go through again. It was awkward; it was embarrassing; and, frankly, I had to conclude my discussions with the industry by saying Massachusetts is not going to modify its rules and regulations like that to accommodate the fact that there is an inequity here; you can land in Maine but you can't land in Massachusetts.

The chairman and I had a long discussion on Friday. I understood the problem as best I could and I understood the problem faced by Terry in particular. I wasn't happy with the outcome, to say the least. I had a different point of view from the chairman; but at the same time I'm not from the state of Maine, which has its own unique way of doing business; not in a bad way but unique way, archaic way. Sorry about that, Terry; I didn't mean to say that.

Anyways, I'm satisfied that the chair has been taking every step necessary to avoid this happening again. The simple response that I had to my industry on Friday was go land in the state of Maine. Oh, my goodness, so the processors in Massachusetts weren't too happy with that outcome to go land in the state of Maine, but that was the only option available to them.

Now, whether or not the landings that have occurred because of this awkward situation will result in the exceeding of the 1A quota, that remains to be seen, I suppose. I really hope it doesn't happen; we'll just wait and see. Again, I had to get that off my chest and make it known that there was a lot of conversation back and forth. I also spoke with Jeff Kaelin, who made a call to me asking what is going on. Thank you, Mr. Chairman, for clarifying the situation and for offering up ways to move forward that will prevent this from happening again.

CHAIRMAN STOCKWELL: Thank you, David; I almost need to send my response via carrier pigeon. Tom Fote.

MR. FOTE: Terry, is there any movement to basically correct it? Also, doesn't NOAA – I know in our area they announce a fishery closes a couple of days of advance and so that gives us plenty of time. We need to really address where you can basically do this by e-mail or electronics. I mean is there any movement in the legislature to do that?

CHAIRMAN STOCKWELL: I'm going to break the rules here and call on Pat.

MR. PATRICK C. KELIHER: The Department of Marine Resources continues to argue with our Attorney General's Office on this point. We have tried to correct this several times. The issue for us is that it is not within Title XII where our rules and laws reside. It has become a big issue. Mr. Pierce is absolutely correct because it is an archaic way to do business; and is one that we're continuing to try to resolve.

I think the language that is being discussed now with that motion and with some tighter language coming out of the Section when we get to the closures, as Doug and I discussed with Terry last night, I think it will resolve this in the future to avoid this problem again. The legislative debate; Representative Kumiega can try to work it through, but we've tried to address this at least four times now.

MR. KAELIN: To Dave's comments about whether or not the industry might have gone over – the fleet might have gone over the other night; I think Friday afternoon the notice came out that you could go until midnight Sunday; and when it was clear that landings couldn't occur in Massachusetts, which is where our boats were, and that Maine was open and that there was quota that was available, eight platforms did go to Maine on a nine-truck limit.

We self-limited based on what we believed to have been the quota. The quota that was on the internet had already deducted the 932 tons for the RSA, which gets added back before the end of the period. Our estimate is that we were, with that 900 tons, about 1,200 tons shy of the 1A quota based on the self-limit that the industry – you know, we put ourselves on a limit so we wouldn't go over. We were in touch with Pete Christopher that afternoon.

I had set the afternoon aside to work on my fluke PID comments, frankly. I think all of us had other things on the agenda Friday when this blew up. I just wanted to express on behalf of the industry that we did self-limit to try to stay under that quota. The other thing I wanted to point out is we've only taken about a third of the Area 2 quota so far.

We didn't have a winter fishery in Area 2 so resource-wide, we're still well under where we're supposed to be. I just wanted the Section members to know that we tried to self-limit because we were very concerned about an overage like we had in 1B before, last year; so we're trying to be responsible around a very confusing afternoon. I appreciate your calling me back, too, David, because it was a tough day for all of us.

REPRESENTATIVE PEAKE: Mr. Chairman, I, too, just want to – it has been raised already – weigh in on my concern about this motion and how we would address the overage issue. I feel like we're sort of dealing with a slinky kind of situation here where you start to move the front end of it with seeing that a closure needs to be made; but then because of a delay in a newspaper publishing, delay in landings that are actually coming in, it takes a while for that whole slinky to catch up with the front end; and there is a lot of room inside of that whole length of the process for overages to occur.

I would hope that we would take a look back at this to see how it is actually playing out on the ground or on the dock, if you will, as soon as we possibly can. To my colleague from the House in Maine, I would like to offer any assistance possible. The Massachusetts House in a number of areas has changed over the last session or two our public notice requirements for everything from town meeting notices to public hearing notices to reflect the fact that everybody can walk around with one of these and receive things online,

Also to address the additional costs; I think there are a number of ways to look at this. For some members of the House and Senate, if you say it is going to save the state ex-hundreds of thousands of dollars; that is a compelling argument. If for other members of the House and Senate you say it will provide greater notification; and for those who care about protecting a resource like this, that it will provide notification in a more timely way so that we can be more nimble, let people fish when they're allowed to fish but then shut down the fishery; I think there are a lot of compelling arguments to your attorney general, to your governor, whoever that may be in a week and a half, I'd be happy to work with you and look at what our model legislation is. Thank you.

MR. ADLER: Mr. Chairman, if I could address Maine, does it say in the law that you can't close it until you've published it in the newspaper or can you publish it in the newspaper; but also since there is not that many, that you could also alert them by other means that this is what is going to happen and put it in the newspaper if the law says you have to; or does the law say you can't close it until the newspaper publishes it?

CHAIRMAN STOCKWELL: We are bound by the newspaper limit. I mean very clearly we have to publish our notice – in order for the notice to be legal, it has got to be published in the newspaper. We do multiple other outreach. I'm sure you're on Matt Cieri's e-mail distribution list. That is a courtesy notification process but it has no legal binding authority.

Are there any further questions, comments or thoughts about what I hope was just a one-time anomaly? To Representative Peake's point, we have had this process working for a number of years without a problem until this time. We've had a slight change in NMFS staff. I think by working with them, we're going to be able to plug the holes and ensure that this doesn't happen again.

Seeing no further comments; **the motion is move to recommend to the ISFMP Policy Board to send a letter to NOAA Fisheries recommending a modification in herring closure notices to reflect ASMFC no-landing days and timing of state notification to directors.** Motion by Mr. Grout and seconded by Mr. Adler. Okay, those who support the motion on the board, please indicate so. **It is unanimous and carries seven/zero.**

The last agenda item I have under other business concerns ACCSP funding, which will be before the Coordinating Council tomorrow. The state of Maine has had a commercial catch sampling and comparative bycatch sampling for herring, mackerel and menhaden funded through ACCSP under the maintenance component for the last thirteen years.

This program enables the current age-structured model; it supports the spawning closure management; it directly involves haddock and river herring bycatch and incidental catch monitoring. It runs from Maine to New Jersey. It is roughly a $200,000 project that has been pared down to about a $150,000 project. It has been the cornerstone of our monitoring program.

It has fallen below the bar at ACCSP; so I just wanted to make everyone aware of that. We're going to try tomorrow to bring it above the bar. There is some creative thinking going on. In the past we've also sent some correspondence from the Section at one time to the Coordinating Council and other times to the Policy Board. I think Doug might rise to the bait here.

MR. GROUT: As the chairman of the council's herring committee, this project provides so much information to the herring management process here; that if we lost this, we'd be dead in the water. As Terry mentioned, we wouldn't be able to get spawning samples. It provides information for the whole stock assessment, the catch-at-age stock assessment, the age samples.

It is involved with the river herring bycatch monitoring as well as the haddock bycatch monitoring. **I would like to make the following motion that the Atlantic Herring Section recommend the commission request the ACCSP Coordinating Council fund portside commercial catch sampling for the Atlantic Herring, Atlantic Mackerel and Atlantic Menhaden Fisheries.**

CHAIRMAN STOCKSELL: Okay, motion made by Doug Grout and seconded by David Pierce.

DR. PIERCE: This makes a great deal of sense, obviously, from the sea herring perspective side. If it wasn't for the money provided by the commission to do this port sampling, the states as well as the federal government would be in a very difficult position relative to our understanding what is actually being caught and landed in a very important fishery; a fishery that, of course, is in the public's eye.

I can say that because of the e-mails I've received over the years regarding the sea herring fishery and the interactions the fishery has with other users of herring or other fisheries where herring, of course, is important as forage. We need to have good understanding of the nature of the bycatch landings of river herring, the shad, the haddock and whatever else.

The sampling that has been done to date by my agency and by the state of Maine has been

quite comprehensive and it has resulted in our having information that has really put me and others in a position of saying whether bycatch is occurring and to what extent. Fortunately, bycatch has been low and in some cases not happening at all.

It has given me a great level of comfort in terms of how I interact with those who have great concern about this fishery; we all do. Data are required and this is the way to get that continued stream of data. I fully support this as well as, of course, the add-on that is mackerel as well as the menhaden fisheries, too.

MR. BORDEN: Mr. Chairman, if this motion gets implemented, my assumption is it will bump another project; is that correct? If so, what project will get bumped?

CHAIRMAN STOCKWELL: Well, I'm not going to speak for the whole Coordinating Council, but one of the other things I was doing on Friday was working with Cherie Patterson. The state of Maine and the Commonwealth are looking at merging their swipe card programs.

If that moves forward as we intend it to do, it will free up significant funds that should fund this as well as a project from the state of New York that fell below the bar. It is not a done deal yet, though. Further comments from the Section? Tom.

MR. TOM BAUM: Just a little background for me; you said the costs would be approximately $150K and that has been pared down. Did the state provide in-kind funding like have you assumed some of the costs from previous years?

CHAIRMAN STOCKWELL: We're down to barebones. We've let staff go. We've got one man doing the sampling of what was being done by three.

MR. BAUM: Okay, so throughout the years has sampling decreased?

CHAIRMAN STOCKWELL: Yes. Mark.

MR. MARK GIBSON: I'm opposed to the motion for the question that Dave Borden raised that we really don't know what rejiggering would have to be done by the Coordinating Council. This discussion would probably be better served happening there at that time so we could understand the full implications to it. Every species board or section can send forward a recommendation on their preferred project; and we've had that happen before as well. I think it is premature to get involved in this now; so I'm going to oppose it. Thank you.

CHAIRMAN STOCKWELL: Any final comments from the Section? Jim.

MR. JAMES J. GILMORE, JR.: I'm just going to agree with Mark. I conceptually do not have a problem with this, but then what are we not funding. We all have projects on there. This is important, but we've got a lot of other ones that are important, too, including MRIP and things like that that we've got. Again, I'm not opposed to it conceptually, but I'll probably vote no to it just because of that; I don't know what we're losing. Thank you.

MR. GROUT: Just a brief response; again, this is the sentiment of this board. It is not going to be the final decision. It is just saying that the Herring Section feels that this is an important project. The final decision is made by the Coordinating Council and they're going to be evaluating what projects are up and down. I hope you'll at least consider this because of the importance of this to not only herring but some of the other important port sampling such as Atlantic menhaden here.

REPRESENTATIVE WALTER KUMIEGA, III: If we don't ask; we're not going to get it. As Doug said, the Coordinating Council has the decision to make; but if we don't ask for the funding, for sure we're not going to get it.

CHAIRMAN STOCKWELL: Any final thoughts? Okay, move that the Atlantic Herring Section recommend that the commission request the ACCSP Coordinating Council fund portside commercial catch sampling for the Atlantic herring, Atlantic mackerel, and Atlantic menhaden fisheries. Motion made by Doug Grout and seconded by David Pierce. Caucus, please.

(Whereupon, a caucus was held.)

CHAIRMAN STOCKWELL: Everybody ready? **Those who support the motion on the board, please indicate so; those opposed. The motion carries five to two**.

ADJOURNMENT

CHAIRMAN STOCKWELL: Is there any final business to come before the Herring Section? Seeing none; thank you for a productive discussion. This Section stands adjourned.

(Whereupon, the meeting was adjourned at 9:10 o'clock a.m., October 27, 2014.)