

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

August 14, 2006  
Doubletree Hotel Crystal City  
Arlington, Virginia

## ATTENDANCE

### Section Members

George Lapointe, ME DMR  
Patten White, ME Gov. Appte.  
John Nelson, NH F&G  
Rep. Dennis Abbott, NH Leg. Appte.  
G. Ritchie White, NH Gov. Appte.  
Dr. David Pierce, MA DMF  
Vito Calomo, proxy, MA Gov. Appte.  
William Adler, MA Gov. Appte.

Mark Gibson, RI DEM  
Everett Petronio, RI Gov. Appte.  
Gil Pope, proxy Rep. Eileen Naughton (RI)  
Eric Smith, CHAIR, CT DEP  
Dr. Lance Stewart, CT Leg. Appte.  
Pete Himchak, NJ F&W  
Erling Berg, NJ Gov. Appte.

### Staff

Ruth Christiansen  
Toni Kerns

Bob Beal  
Vince O'Shea

### Guests

Terry Stockwell, ME DMR  
Joe Fesseden, ME DMR  
Louis Daniel, NC DMF  
Bennie Williams, USFWS-FWMA  
Rich Ruais, ECTA

Janice Plant, Commercial Fisheries News  
Jeff Kaelin, F/V Providian and Atlantic  
Frost Seafood  
Mary Beth Tooley, ECPA

*There may have been others in attendance who did not sign the attendance sheet.*

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## SUMMARY OF MOTIONS

**Move to approve PRT Report and FMP Review and the NY proposal for *de minimis*.**

Motion made by Mr. Lapointe, second by Mr. Nelson. Motion carries.

**Move to approve New Jersey for *de minimis* status in 2006.**

Motion made by Mr. Lapointe, second by Rep. Abbott. Motion carries.

**Move to approve Technical Addendum I to Amendment 2 to the Interstate Fishery Management Plan for Atlantic Herring as amended today.**

Motion made by Dr. Pierce, second by Rep. Abbott. Motion carries.

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***WELCOME/CALL TO ORDER***

The Atlantic Herring Section of the Atlantic States Marine Fisheries Commission convened in the Washington Ballroom of the Doubletree Hotel Crystal City, Arlington, Virginia, and was called to order at 4:37 o'clock p.m., August 14, 2006, by Chairman Eric Smith.

**CHAIRMAN ERIC SMITH:** Okay, for those who don't know, I am Eric Smith. I am chairman of the Herring Section as opposed to a Board. Ruth Christiansen is our key staff member on herring. We have an agenda that has been on the back table all afternoon.

***PUBLIC COMMENT***

Now, that is our welcome and call to order; is there public comment on things other than what is on the agenda, which would be the time we reserve for those other comment periods.

Seeing none, we will move to Item 3, which is 2005 Compliance Reports and the FMP Review. Ruth.

***2005 COMPLIANCE REPORTS AND  
FMP REVIEW***

**MS. RUTH CHRISTIANSEN:** Thank you, Mr. Chairman. The actual FMP

review, I apologize for not getting that out to you on the materials that were sent to you. The actual FMP review document is being handed out by staff right now, so you can take a look at that as I speak and if you have any questions.

I'll go ahead and highlight the major components of the FMP review for you. For the 2005 fishing year for Atlantic herring, there were almost 97,000 metric tons of herring caught for 2005. This graph is included in the FMP review, and it shows the relationship between the landings for herring and the fishing mortality for herring. It has been updated through 2005.

**CHAIRMAN SMITH:** It's Page 5 of the document, if you want to keep up from the document.

**MS. CHRISTIANSEN:** This next graph shows the breakdown of landings by gear type. The major landings are caught by pair-trawl and purse seine. Pair-trawl makes up 42 percent of the landings, and purse seine makes up 34 percent of the landings.

This graph is the 2005 landings for herring by state. Massachusetts makes up about 55 percent of total landings of herring, and Maine comes in at about 44 percent.

With the state compliance, this is for the 2005 fishing year for Atlantic herring. From the PRT all states, Maine through New Jersey, are fully implementing the requirements of the FMP. There are no major compliance issues. New York has requested continuing de minimis status for 2006. Thank you.

**CHAIRMAN SMITH:** Thank you. Are there any questions on the FMP review or compliance report? Seeing no questions, is there a motion to approve? George.

**MR. GEORGE LAPOINTE:** Motion to approve with New York's request for de minimis status.

**CHAIRMAN SMITH:** Okay, motion made by George; seconded by John Nelson to approve both reports and including New York's proposal for de minimis status. Discussion on the motion? Seeing none, all those in favor, raise your hand; all those opposed; abstentions. The motion carries. Ruth.

**MS. CHRISTIANSEN:** Thank you. Okay, the next item on our agenda is just an update on the – we have a question.

**CHAIRMAN SMITH:** Pete.

**MR. PETER HIMCHAK:** Mr. Chairman, in our compliance report, dated April 2006, we had also requested de minimis status for Atlantic herring on the basis of our landings as reported on Page 1 of our report.

**CHAIRMAN SMITH:** Okay, is there objection to New Jersey being granted de minimis status, as was indicated in their report? Seeing none, then two states would be de minimis. To this point, Mary Beth? Okay, comment from the audience.

**MS. MARY BETH NICKELL:** Yes, thank you, Mr. Chairman. Mary Beth Nickell, East Coast Pelagic Association. Could I have some clarification on de minimis status and what that means for the state of New Jersey?

**CHAIRMAN SMITH:** Your question is essentially they have a amount of landings and what is the qualification criteria for de minimis.

**MS. NICKELL:** Well, I think if you look at the landings New Jersey has had in recent times, I want to understand why they request de minimis status. However, there is a

processing plant in New Jersey that has expressed intent to pack herring at times should herring become available.

I was just curious what the status would mean for the state, and if it really makes any difference at all. I am really not too sure.

**CHAIRMAN SMITH:** Pete.

**MR. HIMCHAK:** Well, it's my understanding on the basis of the landings – and, again, de minimis on Atlantic herring for us, it would relieve us of any significant monitoring on the fishery, but we currently have no compliance requirements.

We're still required to maintain our management program as it already exists. So, requesting de minimis, from my point of view, is we're just doing it as a formality based on our landings' pattern.

But if capacity develops, say, in 2006, and our landings increased by a significant amount, then we would not qualify for de minimis next year. But usually the de minimis eases the burden of the fisheries-independent and fishery-dependent monitoring requirements.

**MS. NICKELL:** Okay, thank you very much.

**CHAIRMAN SMITH:** Okay, seeing no objection at that time, then, New Jersey and New York would both – David.

**DR. DAVID PIERCE:** Sorry, Mr. Chairman, what exactly are we debating now, whether New Jersey should be given de minimis? No motion has been made for de minimis, correct?

**CHAIRMAN SMITH:** What I'm suggesting – and I'm probably trying to abbreviate it too much – they had proposed that they be granted de minimis status.

Oversight, we identified New York; we did not identify New Jersey.

I'm just asking is there objection to including New Jersey in the motion we just took to approve the two plans, including New Jersey as well as New York. If there is objection, I will take it as a motion.

**DR. PIERCE:** Yes, I would object to that. In light of what I know regarding New Jersey's interest in sea herring, I know – I am chairman of the New England Fishery Management Council Sea Herring Committee, and I know that the New Jersey Industry has been very active in the discussions with the development of the Sea Herring Plan, access to the fishery, access criteria, strong mackerel fishery out of the state of New Jersey.

And, of course, they catch large amounts of herring as part of that directed fishery for mackerel. Therefore, I would have to see something in writing and have to see some better explanation as to why de minimis would be warranted for a state that clearly has great interest in sea herring.

I suggest that the potential for increased landings and more processing of herring in New Jersey is great. I just need more explanation as to why it is warranted.

**CHAIRMAN SMITH:** Pete.

**MR. HIMCHAK:** Mr. Chairman, what other explanation is needed other than we're 0.07 percent of the coast-wide commercial landings? The potential for growth does not preclude us from getting de minimis status. I mean, this is a small point to argue, but I am still making the argument because we requested it.

**CHAIRMAN SMITH:** George LaPointe.

**MR. LAPOINTE:** If we need to, I will do a motion. I will argue that New Jersey should be granted de minimis status. If you take all of our states, for fisheries that are minor, you want to ease the burden on management actions on those jurisdictions.

Yes, they have plans for development. Are they all going to come about within the next year; I am not so sure. Because they are federally based fisheries, I suspect there is a reporting requirement already, because they are part of the federal plan.

We can pick this up when it expands. It strikes me that – you know, are they going to get it for a long time? They are going to get it for a year right now, and so it just provides some flexibility and some forbearance to New Jersey's situation for a fishery that may grow but hasn't grown yet.

**CHAIRMAN SMITH:** Just for clarification, Pete, did you say you had that in the request? Was it in your compliance report?

**MR. HIMCHAK:** Yes, Mr. Chairman, it is in our compliance report, dated April 2006.

**CHAIRMAN SMITH:** That is why; we have January of '06 in here. Okay, Vince.

**EXECUTIVE DIRECTOR JOHN V. O'SHEA:** Thanks, Mr. Chairman. I think there might be a little confusion here, and that is what does the plan require for de minimis status. That question was asked and hasn't been answered yet.

It might be helpful for people to understand what de minimis status is within the plan, and I think Bob has that answer. Then I think the rest of the comments may flow together.

**CHAIRMAN SMITH:** Bob.

**MR. ROBERT E. BEAL:** Thank you, Mr. Chairman. My recollection is that de minimis status for herring is 0.1 percent of the previous year's landings. If a state is below that threshold of that 0.1 percent or 1/10<sup>th</sup> of 1 one percent, they can qualify for de minimis states.

Pete has indicated that New Jersey was 0.07 percent of the 2005 landings, which is below that threshold. It is still up to the management board to approve that, but in relation to the threshold, they are below that number.

**CHAIRMAN SMITH:** Okay, is there a motion to include New Jersey as a de minimis state for 2007?

**MR. LAPOINTE:** So move, Mr. Chairman.

**CHAIRMAN SMITH:** Moved by George LaPointe; seconded by Dennis Abbott. Discussion on the motion? Seeing none, all those in favor of the motion, raise your right hand; all those opposed; abstentions. Okay, so the motion carries and New Jersey is included as a de minimis state for 2007 fishing year.

Let's get some clarification for the chairman here. Even if I had not gotten up at ten to three this morning, I would probably still be confused at this point.

We're in August 2006; aren't we taking an action based on the most recent data for purposes of setting the rules for '07, or are we actually picking de minimis in August for the year that is eight months in?

**MS. CHRISTIANSEN:** We are six months, seven months into the year. The compliance reports and the FMP review should have been done back in May, so this would have been approved and done a little bit earlier.

But for scheduling and agenda items, we did not take up the FMP review during our May Commission meeting. Compliance reports are due February 1<sup>st</sup> of each year. That may help to understand.

**CHAIRMAN SMITH:** That helps me, so Joe is clear, and the record is clear, and the audience and the chairman, that motion is for 2006. Okay, assuming that doesn't influence any Section member's view – Okay. Jeff you keep raising your hand; is it on this issue?

**MR. JEFF KAELIN:** Thank you, Mr. Chairman. Jeff Kaelin of Winterport, Maine, representing the fishing vessels Providian and AJ and the processing vessel, Atlantic Frost. This is just a process question. Does the ASMFC Charter allow de minimis states to vote on management plans? It does?

**CHAIRMAN SMITH:** Yes.

**MR. KAELIN:** Isn't that odd, really?

**CHAIRMAN SMITH:** No.

**MR. KAELIN:** It should be, thank you.

**CHAIRMAN SMITH:** David Pierce.

**DR. PIERCE:** Just a clarification regarding the question just asked by Jeff. A de minimis state cannot vote on compliance issues, correct?

**CHAIRMAN SMITH:** I don't believe that's true.

**MR. BEAL:** No, a state that has a declared interest in a fishery is a full-participating member of the management board and votes on all issues in front of the management board.



**DR. PIERCE:** Well, I am confused, then, because I thought that there was an ASMFC decision not too long ago that when a state declares de minimis, it cannot vote on a compliance issue, to rule, for example, a state out of compliance.

I am quite sure that decision was made unless it was specific to one species or another, but I would appreciate if the executive director could clarify that point for me.

**CHAIRMAN SMITH:** Yes, I heard the word “proxy”. The thing I remember we debated and we decided as a Policy Board was proxy board members, proxy commissioners, when they are meeting specific proxies, they cannot vote on the issue.

When they are – whatever the term of art is – the long-term proxy, permanent proxy, they can vote on issues. So if you are appointed for menhaden or herring or anything else for that reason and for that meeting, you cannot vote on any issue for final action.

**EXECUTIVE DIRECTOR O’SHEA:** I’ll get with Dr. Pierce afterwards, Mr. Chairman, and make sure, but I’m not aware of any action by the Policy Board, in the four years I’ve been here, relative to de minimis status.

You’ve made other changes to voting and relative to final actions, but I don’t know any of it that related to the de minimis thing. I’ll get with Dr. Pierce to answer his question. Thank you.

**DR. PIERCE:** I’ll also have to get with Paul Diodati because in a discussion I had with him not too long ago, that was our understanding, so I definitely will have to talk about this with Paul and with Vince afterwards. Thank you.

**CHAIRMAN SMITH:** Okay, thank you for sharing that with us. It may be a point that needs some clarifications, so that is worthwhile. Gil.

**MR. GIL POPE:** Mr. Chairman, we didn’t get our zero percent of the pie. Just our of curiosity, we’re not even mentioned in here, whether it’s de minimis or whether –

**MS. CHRISTIANSEN:** I didn’t get landings’ data from Rhode Island for 2005.

**CHAIRMAN SMITH:** As all good attorneys know, never ask a question unless you know what the answer is. That concludes the brevity of the Section. We’re moving on to Item 4, which is the update on the 2006 TRAC assessment. Ruth.

#### ***UPDATE ON 2006 TRAC ASSESSMENT AND SPECIFICATIONS PROCESS***

**MS. CHRISTIANSEN:** All right, thank you, Mr. Chairman. I am just going to present the Section with a brief update on the results from the TRAC assessment and the upcoming specification process for herring.

The major findings to come out of the 2006 TRAC assessment were that the combined U.S. and Canadian landings for 2005 were at 105,000 metric tons. This is down slightly from the 2003 and 2004 fishing years.

Stock biomass is at one million metric tons for 2005. Again, this is down slightly from 1.3 million metric tons in 2000. The fishing mortality rate has remained at about 0.1 since 2002. There have been three very large recruitment year classes in the last decade; one in 1994; one in 1998; and one in 2002.

The relative proportion of the inshore component of the overall stock complex is

about 18 percent. The recommendations from the TRAC are to adopt a strategy to maintain a low-to-neutral risk of exceeding the fishing mortality limit reference point; and when the stock conditions are poor, the fishing mortality rate should be further reduced to promote rebuilding.

From the stock surplus production model, they estimated Fmsy at 0.31; msy at 194,000 metric tons; and Bmsy at 629,000 metric tons. Again, with the TRAC recommendations, they provided a population outlook in terms of the consequences on spawning stock biomass and yield.

These numbers are represented in thousandths of metric tons. These are for the years 2006, 2007 and 2008. These numbers are based on a fishing mortality rate of 0.11, which is what it was for 2005.

So, using the information from the TRAC assessment, the Herring Section will meet jointly with the New England Council's Herring Committee on September 12<sup>th</sup> in Danvers, Massachusetts. The purpose of this meeting is to select final fishery specifications for the 2007, 2008 and 2009 fishing years. You will be getting a lot more information about this meeting and materials for this meeting in the upcoming week. Thank you.

**CHAIRMAN SMITH:** Okay, questions? David Pierce and Bill Adler.

**DR. PIERCE:** Not so much a question but an add-on. Indeed, the Section and Council's Herring Committee will be meeting at that time. We expect to get some more information from Bill Overholtz regarding the status of the inshore portion of the Gulf of Maine.

It wasn't reflected in the TRAC report; however, at the last Herring Committee

meeting, Bill Overholtz did express some very specific concerns about the inshore portion of the Gulf of Maine, and I believe he referenced 2006 data.

It is still somewhat shaky, frankly, in my mind, because we haven't yet got anything paper yet. We haven't got anything from Bill and Company to describe the nature of their specific concerns, but they were expressed.

We will have that information, I hope, to assist us with our discussions about what to do with the specifications for the upcoming years since obviously the status of the inshore portion of the Gulf of Maine is extremely important for all of us.

In addition, another point, the 18 percent figure that was provided by the TRAC representing the proportion of the herring resource that is inshore, I believe, for those of you who weren't at that meeting, that 18 percent represents splitting the difference, basically, between three different methods that were used to try to come up with some idea as to what the proportion of the stock is inshore.

Neither of those particular approaches were weighed. In other words, one wasn't given more weight over the other. They were treated equally in terms of their value. It is a number that is out there. I guess it is all we have to use, but, frankly, I personally still feel very uncomfortable with that number because it is just a splitting of the difference between a number of approaches that weren't evaluated for the TRAC process to determine whether one way of doing it was better than the rest.

**CHAIRMAN SMITH:** Okay, Bill Adler.

**MR. WILLIAM A. ADLER:** I may have missed this, but is there a reason why, with the fishing mortality rate where it is, that the

spawning stock biomass keeps dropping? Does anybody have an answer as to why that is happening?

**CHAIRMAN SMITH:** I think generally unless you get average or consistent recruitment of the same pattern you have had in the recent past, if it drops off a little bit, the stock size declines; and if you maintain the same F, your quota has to go down.

**MR. ADLER:** So, in other words, it is not fishing that is doing it; it is something else?

**CHAIRMAN SMITH:** You are trying to hold the fishing mortality rate constant, but the stock size is declining on its own just because recruitment hasn't stayed high. It doesn't mean you are in a bad spot. You still have 900-plus thousand metric tons of biomass. It is just things vary. Vince.

**EXECUTIVE DIRECTOR O'SHEA:** I also think that – and maybe I'm wrong on this, but there are other things that affect recruitment than just the number of adults in the population. There are environmental factors, predators, all sorts of other things, and it is not a direct relationship. We'd like it to be, but the reality is it isn't.

**CHAIRMAN SMITH:** Recruitment just happens. I mean, I guess that is the short answer. Recruitment has varied and therefore the stock varies. Okay, other questions on the TRAC report? It is not anything we need to approve; it's just an update for us. Rich Ruais.

**MR. RICH RUAIS:** Thank you, Mr. Chairman, Rich Ruais with the East Coast Tuna Association, which is a number of groups, diverse stakeholders that are very concerned about the resource in Area 1A.

I just wanted to add – I don't have a question, but I wanted to add to what David

said. I was at the July 6<sup>th</sup> meeting when Dr. Overholtz basically reviewed the inshore trawl survey for 2005, the spring and the fall, and the spring for 2006.

He told the Council that there was a 50 percent drop in the interaction or the catches of herring in the NMFS Trawl Survey. He advised the Council that he would interpret that – the term he used was “caution”, that policies in the Gulf of Maine should be cautious. I just wanted to add that. Thanks.

**CHAIRMAN SMITH:** Thank you. Mary Beth and then Jeff.

**MS. NICKELL:** Thank you, Mr. Chairman, just a follow up on Rich's comments. Dr. Overholtz also said that in looking at the NMFS surveys, he felt that the fall survey was the best indicator of herring abundance in the inshore; and if you take the fall survey, that it is relatively stable over time and has not shown significant reductions.

It is just the past two years, and it's really preliminary data that's really too early to show any trend in the inshore component. Dr. Overholtz did say that it is a note of caution, and we should consider it and watch how that develops. He also indicated the fall survey is stable and it is a better indicator of herring abundance.

**CHAIRMAN SMITH:** Thank you. Jeff Kaelin.

**MR. KAELIN:** Thank you, Mr. Chairman, Jeff Kaelin again, fishing vessels Providian and AJ and Atlantic Frost Seafoods. You know, I am not up here to argue a political perspective on this issue, but I just think that one year of trawl surveys really isn't going to give us an awful lot of information.

I think we should be cautious about this resource, because we all want to be able to

utilize it for a long period of time. I think we are being very cautious with this resource in terms of what the OY is.

I just wanted to provide the committee members or the Section members with a perspective about surveys. We did a few years of – I can't think of the word I'm trying to say – hydro-acoustic surveys in the Gulf of Maine with Bill Overholtz's oversight.

There were a lot of years when you go in and you survey and the fish just aren't there, and then the next year they may be there. These surveys have to be – you know, the data is very time specific. They can be there at one time of the year in Year 1 and in Year 2 you can go in there at the same time and not find anything at all.

It's extremely variable, so I hope we don't rush to our political agendas over one year of data. In fact, the TRAC report I think is what we should be focusing on, and that was a pretty assessment.

The other thing is the long period of time, at least ten years, that we have been able to take 60,000 metric tons for the domestic fishery in the Gulf of Maine. I think that should tell us something, too, that we are being conservative. In fact, our yields are very, very consistent. So, those are just some things I wanted to say about that. Thank you.

**CHAIRMAN SMITH:** Thanks. You can now appreciate how September will shape up for all of us, because this is the issue; and, as many people are in the audience on herring, everyone will want to talk.

We were getting an update here, and I think we have benefited from those additional comments. You know, the decision date is September, and we should all make ourselves as knowledgeable as possible on

this. Other questions or comments for Ruth? Vito.

**MR. VITO CALOMO:** Thank you, Mr. Chairman. I was also at that meeting, Mr. Chairman, and Bill Overholtz did say we should proceed with caution, but he did not throw any red flags in the air and say we are in real trouble.

I asked him that question, and said, "No, proceed with caution." But, for the past 30-odd years that I was in that business, I have been hearing about the Gulf of Maine, that we should proceed with caution, for at least 30 years.

And the second point I want to make, Mr. Chairman, if you allow me another minute, please, is that I think the Atlantic States Marine Fisheries Commission has listened to caution and has proceeded cautiously, because we did vote to have spawning closure to protect the spawning fish in that area.

We are taking a very proactive move without a tremendous flag, in the name of caution, so we are very proactive. Thank you, Mr. Chairman.

**CHAIRMAN SMITH:** Thank you. Seeing no other questions on the TRAC report, we will move on to Item 5, the review of Draft Technical Addendum. Ruth.

#### ***REVIEW OF DRAFT TECHNICAL ADDENDUM***

**MS. CHRISTIANSEN:** Thank you, Mr. Chairman. The Draft Technical Addendum to Amendment 2 was provided to you, and it is on the CD and the mailing material. I just have a couple of slides, before we open it up for discussion, to highlight the purpose of the technical addendum.

When Amendment 2 was approved back in January, the spawning tolerance language, as it was approved, which is contained in Section 4.3.2.3 of Amendment 2, reads “Any vessel is prohibited to fish for, take, land or possess spawn herring as identified below from or within a restricted spawning area. Spawn herring shall be identified as Atlantic herring in the ICNAS Gonadal, Pages 5 and 6.

With Draft Technical Addendum I to Amendment 2, the technical addendum modifies the spawning tolerance language to either sex: “Any vessel is prohibited to fish for, take, land or possess herring from or within a restricted spawning area. Vessels are permitted to transit the restricted spawning areas with herring on board, provided they comply with the provisions listed in following two paragraphs.”

I did not list those paragraphs here, but that is the modification that Draft Technical Addendum I provides to Amendment 2. Thank you.

**CHAIRMAN SMITH:** Okay, thank you. Let me try and characterize this and see if it resonates with you. We voted for something last January for Amendment 2. There was a lack of clarity and probably everyone didn't look carefully enough at the Amendment 2 document.

We just went based on the nature of the vote, and there was a disconnect between the vote and what people thought it meant in the document and what it actually said. We clarified the vote, it came out the same way in May, and we moved ahead to do a technical amendment to make sure that the plan itself should have been amended after the January vote, and it actually got amended the way Ruth just described it.

That's what we are back here now to talk about today; do we like this technical

amendment, or do we think something ought to be adjusted in it. The other key thing is the state of Maine has sent a letter, and it was on the supplemental material that you received in the second mailing, the second CD. We like to call it The Second Coming.

You could read that – I'm mistaken; it was on the first CD. It was all the compliance reports on the second CD, okay. Maine's position, in a letter regarding the appropriateness of the technical amendment, is there for you also to consider.

That is by way of introduction now where we are based on what Ruth just showed you. I guess I would hear from – people have different points of view on this, and I am going to take a few and then offer a couple of ways of looking at it and see if we can find a way to satisfy as many of us as possible. Would anyone like to comment on this? David Pierce.

**DR. PIERCE:** Yes, I would like to comment on it, but, first, if I may, Mr. Chairman, I would like to address a question to George through you. I understand George's perspective; he has made it very clear in the letter that he has made available to the Section.

George, would you please inform us as to what you are doing this year relative to the spawning closure? Are you going with the 25 percent tolerance as it stands right now; in other words, status quo? Are you going with a zero percent tolerance? It is still unclear to me as to what you brought to public hearing. Just clarify that, if you would, George.

**MR. LAPOINTE:** It was 20 and not 25; was it not? Maine went to the public hearing with the zero tolerance provision, you know, what was in Amendment 2. The public hearing was right after our May meeting, and the regulation was approved at

my advisory council meeting, which was in the middle of July, and went into effect three days thereafter.

**DR. PIERCE:** Okay, so zero percent tolerance? Okay. All right, regarding the technical amendment, Mr. Chairman, I agree with the way the technical amendment is worded and believe it expresses the intent of the majority of the Section when we first addressed this issue.

Status quo certainly was never acceptable to me and I think to the majority of the Section members, because we were informed by the Law Enforcement Committee of ASMFC, about a year and a half ago, that by unanimous vote of the Law Enforcement Committee, that the 20 percent tolerance was unenforceable as currently worded.

So, that played a major role in influencing my views regarding what to do with the 20 percent tolerance, and it was consistent, actually, with my long-standing opinion regarding the 20 percent tolerance.

Then, of course, we had the zero percent tolerance brought to public hearing, and the confusion that ensued from that clearly -- to me, anyway, I never understood it to mean that we would have no tolerance, because that would have been illogical.

When we went with the 20 percent tolerance years ago, it was because we concluded, as a group, that zero percent tolerance didn't make any sense because boats could not avoid fish with spawn. They would find them. There is no way they could avoid them.

They would catch them, and therefore they would have to dump them, or not fish at all for fear that they would be held -- that they would violate the rule, that they would have fish with spawn. So that was an untenable situation that we had put the fishermen in --

we would have put the fishermen in with a zero percent tolerance.

So, zero percent was illogical; we would have put the fishermen in an untenable position; 20 percent as a tolerance; status quo, you know, we could not continue to support because of the unanimous view of the Law Enforcement Committee, and that did include the state of Maine.

So now we end up with this technical amendment, which, indeed, I feel, does represent the intent of what we did decide to bring to public hearing as part of Amendment 2 dealing with the spawning closures, and that would be the no directed fishery for herring in those areas that would be closed during that spawning period.

I am satisfied with the technical amendment. I believe it does the job, but at the same time I do understand the concerns of other states; notably, the state of Maine has raised objection to the technical amendment.

**MR. LAPOINTE:** We should first be clear it is a technical addendum and not a technical amendment. I mean, that was said of number of times. The letter I sent to Bob in June outlines our concerns, that, in fact, the technical addendum -- and the language is right here, "the correction of accidental omissions, erroneous conclusions and/or to address non-substantive editorial issues," and we think the scope of this goes way beyond that.

The Law Enforcement Committee -- at the last meeting, I believe we got a handout, and I wish I had it in my files, and I don't -- said Maine did enforce and a couple of other states couldn't. You know, we have something we have enforced; we can enforce; we will enforce; and so we just think that the technical addendum is inappropriate for the correction that is being asked.

**CHAIRMAN SMITH:** On that point alone, I really don't want to debate for a third time the whole narrative of the thing. To me, that is the fundamental issue that we have to decide before we see if we're going to vote on this thing or not and before we decide if we like the words or not.

Maine's view, as George just pointed out, is it is not appropriate to do this by technical addendum. When I read the letter, I think the key point in my mind is if we agree with them, then we don't think it was an accidental omission because the other two conditions don't really apply as much.

If we agree that the technical addendum is appropriate, it is because we think there was an accidental omission, just in the process alone. And if you think of how we got here, we voted in February, we confirmed the vote in May because the document, regrettably, didn't get updated to be consistent with the vote.

My view on the process alone is that is an accidental omission. If you buy that argument, the technical addendum is in-bound; if you don't buy that argument, then Maine has a point, and we need to look at something different.

I would like you to just focus on that for a minute, because we have to decide before we decide on the addendum. Dennis.

**REPRESENTATIVE DENNIS ABBOTT:** Thank you, Mr. Chairman. Reading the minutes of the last meeting, stated by Chairman Smith in a motion made by myself – "Let me read the motion into the record: Move to task the staff with the development of a technical addendum to reflect the intent of the Section vote in January 2006 and as clarified today that there shall be no directed fishing for herring in closed areas during spawning closures."

I think that is very clear, what we intended and what we have before us today.

**CHAIRMAN SMITH:** Other comments on the issue of the procedure alone? Ritchie White.

**MR. G. RITCHIE WHITE:** Thank you, Mr. Chairman. I would just add to what Dennis said, that I think by that vote we have already made the decision. We already decided that was the route we should go, and the Section voted to do it. I guess I don't understand your asking is this the proper way to go, because I think the Section already voted and said it is the correct way to go.

**CHAIRMAN SMITH:** Okay, thank you. Maybe I'm trying, as the chairman, to be fair to all sides too much. We took an action in May to start this technical addendum, get the document today, and make our vote.

In the meantime, one of the Section members has written a letter that provides their position that it is not appropriate, and I think it is worthy of some debate. If I get the sense from the Section that they think the addendum is still appropriate, then we can move on to what the language of it is.

If the Section is persuaded by Maine's position, then the Section needs to say it before we start talking about the language in there. I have heard two folks from New Hampshire. George.

**MR. LAPOINTE:** I think the other important thing in the technical addendum language, it talks about accidental omissions, it talks about erroneous inclusions, and then it says, "and/or to address non-substantive editorial issues".

My point is that you have to look at those together, and this isn't a "non-substantive

editorial issue”. It is important to put the two together.

**CHAIRMAN SMITH:** Okay, but my rule on grammar, I’ve always learned if it says “and/or”, it really means “or”. Any one of those conditions can apply; not all three of them have to apply.

**MR. LAPOINTE:** My point stands.

**CHAIRMAN SMITH:** Okay. Vito.

**MR. CALOMO:** Thank you, Mr. Chairman. I appreciate the opportunity again to speak to you. I’m agreeing with the state of New Hampshire. I believe we should go forward with the technical addendum. I understand what the state of Maine is trying to do.

My point is this will be the second vote. We did vote in Rhode Island. We did clarify it back here, and the vote was the same, Mr. Chairman. No one changed their mind. There wasn’t another vote that went the other way, Mr. Chairman. We were all pretty clear on what we were voting on.

I understand what Maine is trying to do; and if I was in his position, I would try to do it, too, but that is not what we voted on. We voted to move forward, Mr. Chairman. Thank you very much.

**CHAIRMAN SMITH:** Okay, is there another Section member, other than the state of Maine, that is persuaded that we ought to rethink or debate further whether the technical addendum is appropriate?

Seeing none, if we call for a motion, we are going to have a vote in favor of continuing with the addendum, so I think what we ought to do is now talk about the details of the addendum because it is still in play.

Comments on the language of the addendum? Okay, I have a few, very few. On Page 1 of the document -- you know, I am probably obsessing more over the words, but you can’t have a better example of why we need to obsess over the words now than what we have been involved in since February.

After the word “area” in the first sentence, I would suggest we add “except for the incidental bycatch and transiting provisions of Section 4.3.2.3”.

Okay, in the addendum document, the first page of text, it is in the italicized language, the very last sentence on the page, it’s “any vessel is prohibited to fish for, take, land or possess herring from or within a restricted spawning area”; the next paragraph goes on to talk about the transiting provisions, but nowhere in here does it say anything about the bycatch.

And just to be clear, I’m simply suggesting that we add at the end of that last sentence on the first page, just add the words “except for the incidental bycatch and transiting provisions of Section 4.3.2.3”. All right, no objection, we’ll add those.

That’s actually the only comment I had on language. Okay, other comments on language of the addendum? Okay, seeing none, David.

**DR. PIERCE:** I would move to adopt Technical Addendum I to Amendment 2 of the ASMFC Plan for Sea Herring.

**CHAIRMAN SMITH:** Motion made to approve Technical Addendum I; seconded by Dennis Abbott. Okay, the motion is on the floor; comments on the motion from the Section? Dennis.



**REPRESENTATIVE ABBOTT:** Is it necessary in the amendment to put down “as amended”?

**CHAIRMAN SMITH:** Probably. As you started to speak, I thought someone would say “as amended today”, just to be sure we are capturing that language that was added. Other comments on the motion from the Section first? Okay, seeing none, comments from the audience? Jeff Kaelin and then Mary Beth.

**MR. KAELIN:** Thank you, Mr. Chairman. Jeff Kaelin again. I know I am not going to change any minds, but, you know, I just cannot understand what the rationale for this approach is from a biological perspective.

I don’t think it has been justified. I mean, I would much rather see us – and I know this is never going to happen – have a full-blown amendment on spawning issues and evaluate what the biological benefits of something like this would be. We have never done that.

There is some anecdotal concern about small fish being harvested we have heard in these discussions, and there is absolutely no biological basis for that concern if you look at catch at age throughout this fishery.

So, what this is going to do is just cause a tremendous disruption in the bait market potentially for weeks at a time because the two eastern closures have been closed simultaneously for as much as a month in the past.

I just don’t understand what we are trying to accomplish here in terms of biologically based or science-based fisheries management. It just seems like a punitive stick that is directed towards a very important summer bait fishery.

I know that Maine is going to get outvoted here, but I just have not heard any

justification from anybody in terms of why this is something we want to do. What is the biological benefit going to be? I would love to have a discussion about that. I would like to have this referred to the technical committee because, frankly, we don’t see one at all.

**CHAIRMAN SMITH:** Thanks, Jeff, but, as you pointed out, you’re not going to change any votes. The fact is we’re not going to get into debating this a third time today. The fact is it was discussed and debated in January and May and no minds were changed.

**MR. KAELIN:** I know that, but you’ve got to realize from the industry’s perspective there was never any expectation that these areas would be –

**CHAIRMAN SMITH:** Okay, please, I am asking you let’s not debate the relative merits of the issue again, because that is not the business we came here to talk about today. Thank you for that. Section members, do you want to caucus on this?

Okay, seeing no other comments, is the Section ready for a vote or a caucus? Okay, all those in favor, raise your hand; all those opposed; abstentions. The motion carries. Is there Other Business for the Section? Mary Beth.

**MS. NICKELL:** Thank you, Mr. Chairman. I passed on making comments earlier because obviously we are not going to change anybody’s mind here today. But, I think people have lost sight of the value and benefits of spawning closures for herring in the Gulf of Maine.

We’ve had these spawning closures in place for 25 years, and fishermen strongly supported the implementation of spawning closures. When you asked Dr. Overholtz why he thinks the resurgence of herring

occurred on Georges Bank, he thinks it is largely in part due to the implementation of spawning closures in the Gulf of Maine.

(Whereupon, the meeting was adjourned at 5:30 o'clock p.m., August 14, 2006.)

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In the past these closures have worked very well. They have provided incentive to fishermen to move off in running fish, and it has worked. We're creating measures now that are punitive for those fishermen, are going to be disrupted in the market, and I do not believe that when this Commission went out to public hearing, that that was clear to the public.

It may have been clear to all of you when you voted in January what you thought you were voting for, but it was not clear to the industry, and it most certainly was not clear to the public. Thank you.

**CHAIRMAN SMITH:** Other comments? Later on I will have to apologize to Jeff once again, because I realize the reason I bridled is because Mary Beth got under my skin the same way. I don't sense that this Section is being punitive.

There is a healthy debate about effectiveness of management in an area that is supposed to be closed during a spawning period, and people are going to have their minds on that. I just saw that debate starting again.

Sorry, Jeff, I didn't mean to cut you off like that, but the fact is people are going to have different points of view on that, and we can't solve that today. We're not going to debate something that wasn't even on the agenda. We're talking about the technical addendum. Okay, sorry for me trying to help the issue.

***OTHER BUSINESS/ADJOURN***

Is there Other Business in the Herring Section? See no Other Business for the Herring Section, we stand adjourned.