

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

The King & Prince Beach and Golf Resort  
St. Simons Island, Georgia  
October 28, 2013

Approved February 5, 2014

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2. **Approval of Proceedings of May 22, 2013** by consent (Page 1).
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4. **Move to substitute to extend the Pilot Episodic Event Program until the 2015 Annual Meeting or further Board action. If an episodic event is declared before September 1 and not fully used by October 31, any remaining quota will be redistributed to other states and jurisdictions** (Page 9). Motion by Terry Stockwell; second by Pat Augustine. Motion carried as the main motion (Page 12).
5. **Move to adjourn by consent** (Page 22).

## ATTENDANCE

### Board Members

Terry Stockwell, ME, proxy for P. Keliher (AA)	Roy Miller, DE (GA)
Steve Train, ME (GA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Rep. Walter Kumiega, ME (LA)	Tom O'Connell, MD (AA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)	Lynn Fegley, MD, Administrative proxy
Doug Grout, NH (AA)	Bill Goldsborough, MD (GA)
G. Ritchie White, NH (GA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
Jocelyn Cary, MA, proxy for Rep. Peake (LA)	Jack Travelstead, VA (AA)
Paul Diodati, MA (AA)	Kyle Schick, VA, proxy for Sen. Stuart (LA)
David Pierce, MA, Administrative proxy	Cathy Davenport, VA (GA)
Bill Adler, MA (GA)	Louis Daniel, NC (AA)
Robert Ballou, RI (AA)	Bill Cole, NC (GA)
David Borden, RI, proxy for B. McElroy (GA)	Mike Johnson, NC, proxy for Sen. Jenkins (LA)
David Simpson, CT (AA)	Robert Boyles, Jr., SC (AA)
Rep. Craig Miner, CT (LA)	Sen. Ronnie Cromer, SC (LA)
Dr. Lance Stewart, CT (GA)	Malcolm Rhodes, SC (GA)
James Gilmore, NY (AA)	Spud Woodward, GA (AA)
Pat Augustine, NY (GA)	Nancy Addison, GA (GA)
Sen. Phil Boyle, NY (LA)	Jim Estes, FL, proxy for J. McCawley (AA)
Tom Fote, NJ (GA)	Martin Gary, PRFC
Peter Himchak, NJ, proxy for D. Chanda (AA)	Steve Meyers, NMFS
Adam Nowalsky, NJ, proxy for Asm. Albano (LA)	Mike Millard, USFWS
John Clark, DE, proxy for D. Saveikis (AA)	

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

### Ex-Officio Members

Lloyd Ingerson, Law Enforcement Representative

### Staff

Robert Beal	Kirby Rootes-Murdy
Toni Kerns	Mike Waive

### Guests

Kelly Denit, NOAA	Ken Hinman, Wild Oceans
Nichola Meserve, MA DMF	Mitchell Feigenbaum, PA Leg. Proxy
Raymond Kane, CHOIR	Loren Lustig, Gov Appt.
Patrick Paquette, MA Striped Bass Assn.	Ben Landry, Omega Protein
Jeff Kaelin, Lund's Fisheries	Ron Lukens, Omega Protein
Michael Petony, NMFS	Vince Ringgold, MSSA
Allison Murphy, NMFS	Dave Smith, MSSA
Chris Baker, MEP Boston	Mike Smith, MSSA
Wilson Laney, USFWS	Robert Crockett, Richmond, VA
Russ Allen, NJ DFW	Ed O'Brien, Chesapeake Beach, MD
Charles Lynch, NOAA	Rob O'Reilly, VA MRC
Joseph Gordon, PEW	Drew Minkewicz, KDW

The Atlantic Menhaden Management Board of the Atlantic States Marine Fisheries Commission convened in the Lanier Ballroom of The King and Prince Beach & Golf Resort, St. Simons Island, Georgia, October 28, 2013, and was called to order at 3:10 o'clock p.m. by Chairman Robert H. Boyles, Jr.

### **CALL TO ORDER**

CHAIRMAN ROBERT H. BOYLES, JR.: Good afternoon, everyone. My name is Robert Boyles from the South Carolina Department of Natural Resources. I have my first meeting as Chair of the Menhaden Management Board. I appreciate everyone being here.

### **APPROVAL OF AGENDA**

CHAIRMAN BOYLES: The first item on the agenda today is seeking your consent for the approval of the agenda, which was sent out to you in your briefing materials. We have had a request to add one item under other business from Jim Estes, so Jim will take care of that. Are there any other items for consideration for the agenda? Pete.

MR. HIMCHAK: Mr. Chairman, I had brought up back in August that maybe at this particular meeting we might have an opportunity – I mean, we've learned a lot this year implementing these TACs, and it would be wise to listen to some of the other states as to any problems that they have encountered, be it underreporting; lower than expected TAC, hard to track down; and how to put in regulations; and the 6,000 pound bycatch allowance, how big it is becoming. I'm sure at the February meeting we'd have a better grasp of the entire year, but we certainly have encountered enough problems that we wouldn't hesitate to share with other members.

CHAIRMAN BOYLES: Pete, we'll see if we can get to that as time allows. Terry.

MR. TERRY STOCKWELL: Mr. Chairman, related to Pete's point, I would like to have some discussion if not today at our winter meeting about working with staff to track the quotas. New Jersey, for instance, Maine didn't find out about New Jersey reaching its quota until we

received it through industry. There has got to be a way we can think through those logistics.

CHAIRMAN BOYLES: Okay, are there any other items for the agenda? Seeing none; the agenda will stand approved as amended.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN BOYLES: The next item on the agenda is approval of proceedings of our August 2013 board meeting, which again were distributed as part of the meeting materials. Is there any objection to approval of those meeting minutes?

Seeing none; those minutes will stand approved as submitted.

### **PUBLIC COMMENT**

CHAIRMAN BOYLES: Next is time on the agenda for public comment for members of the public who would like to speak on items that are not on the agenda. We have one individual, Ken Hastings. Mr. Hastings, if you could forward to the public mic, identify yourself and make your comments, please.

MR. KEN HASTINGS: My name is Ken Hastings. I'm a recreational fisherman from Maryland. I looked very carefully at the agenda; and I didn't see anything about accountability of catch reporting on their so I came prepared to make a few statements about that today, if that is all right. I notice you're working it up maybe to have time later on and maybe cover it in the February meeting.

I think the catch reporting, as some of you may have already realized, may not be adequate for a number of reasons. You went to a lot of trouble to try to reduce the TAC; and to my way of thinking that means you actually meant to decrease the number of fish that were going to be taken and not get involved in just some paperwork exercise that made you kind of feel good.

I was glad to see that. I know how this is done in Maryland. I know that traditionally catch reporting in Maryland is not very accurate, and it is done for the obvious reason of increasing the catch beyond the allowable quota. There doesn't appear to be a valid accountability method to keep that from happening.

There is no reason to expect it isn't happening with menhaden since it happens everywhere else. Recently Maryland went through a Striped Bass Sustainability Certification Process that did not terminate as most people had hoped it would, because the agency doing the certification decided there were deficiencies in the way Maryland handled bycatch of primarily striped bass gear, and they mentioned menhaden in particular.

Well, I thought maybe this was just a Maryland thing and they're working on some things there to try to fix that, I know, but then I picked up this letter back here from Florida that indicates that historically up to 75 percent of the catch has not been reported at all. That tells there is a lot of this underreporting going on possibly. Maybe those are the only two, but I'm doubting that.

Even at that, legally at 6,000 pounds per trip of bycatch, even if it's reported correctly, it will only take a few days for the Maryland fishermen to catch the TAC over and over and over. 12,000 pounds, of course, just makes that potentially twice as bad. We need to ensure that we have a real reduction in order to evaluate how this is working. It shouldn't be a paperwork exercise with meaningless numbers. We should be able to do better than this. Thank you.

**CHAIRMAN BOYLES:** Thank you, Mr. Hastings. Is there any other member of the public who like to make a comment? Seeing none; we'll move on in our agenda. Mike Wake is going to review the Episodic Event Set-Aside Pilot Program.

## **REVIEW OF THE EPISODIC EVENT SET-ASIDE PILOT PROGRAM**

**MR. MICHAEL WAINE:** I'm going to spend a few minutes to refresh everybody's memory on this program and then I'll move into reviewing how 2013 went. This set-aside was written into Amendment 2 that we implemented in July of this year. Just a quick overview of how we got to this point; the board approved this set-aside back in December. Like I said, we implemented it in July.

The board tasked a subcommittee of New England states. Because episodic events, which are events in which menhaden occur in higher abundance than they normally occur, were historic to the New England Region, the board tasked the New England states to come up with a pilot program that would help address this need. The subcommittee did that and brought back a proposal in May and which the board approved the pilot program for 2013.

As part of the provision of that, I am reviewing that at this meeting right now. Let me walk me through the eligibility. It was decided that only the New England states, Maine through Connecticut, would be eligible to participate in the set-aside program because this was historic to New England.

The interested states must implement the following mandatory provisions as part of the eligibility requirements. Those are daily trip level harvester reporting that would be submitted weekly to ASMFC. Remember, this is 1 percent of the overall TAC, so we're talking about roughly 1,700 metric tons of the set-aside.

In order for us to track landings relative to that set-aside, there would be daily trip level reporting to the commission. The episodic event harvest must be restricted to state waters and states must implement a maximum daily trip limit no greater than 120,000 pounds per vessel. As part of the

qualification process, a state had to demonstrate that it met those mandatory requirements.

The process was that states resubmitted their implementation plan for Amendment 2 specifically outlining that they met the requirement of the set-aside program. In August the commission issued a letter to the board identifying that the states of Maine, Massachusetts and Rhode Island met those provisions and were qualified to participate in the program.

There were some New England states that were not interested at that point in qualifying for this program. To declare participation, a state was to monitor their state landings to determine if an episodic event occurs; and that is defined as any instance when a qualified state has reached its individual state quota prior to September 1 and also has information indicating the presence of unusually large amounts of menhaden in its state waters.

If an event is triggered in any of those states, they must declare to the commission that it plans to begin harvesting from the set-aside. If the states do declare participation, they are not eligible for de minimis status because they are gaining access to the set-aside amount. I'm headed now into a review of what happened in 2013.

In August Rhode Island declared participation in the program. Rhode Island is unique in which they have a spotter pilot program that evaluates the biomass in Narragansett Bay, and they had levels that began in May and continued through July of approximately five million pounds. That was a higher biomass than they normally saw during this time period.

In addition, historically when menhaden occurred in large abundance in the spring and early summer, they returned in late summer and early fall; so they expected to see that abundance come back as well. But since that point, in August and September biomass have been averaging 800,000 through a million pounds in Narragansett Bay.

As part of their progressive approach to manage menhaden in Narragansett Bay, they have two million pound biomass threshold, so commercial harvest remains closed until their biomass estimates from the spotter pilot data exceeds that two million pound threshold. With biomass averaging levels that were below that threshold, they haven't reopened Narragansett Bay to harvest. As a result, no directed landings have occurred with the set-aside even though they saw that biomass earlier in the year.

Now I'm transitioning back to the program; and so what is the procedure for unused set-aside? Well, if an episodic event is not triggered by that September 1 date, the quota immediately gets rolled back into the overall quotas for all the states and gets redistributed based on the historical allocation that we originally allocated all the TAC with.

But because in 2013 an episodic event was triggered in the state of Rhode Island, any unused set-aside at the end of the calendar year will remain unused and will not be rolled over into the coast-wide quota. The justification for this measure is that Amendment 2 does not currently allow for quota rollovers because Atlantic menhaden is experiencing overfishing.

As another reminder, the set-aside also has a payback provision. If the set-aside is exceeded, any overages would be reduced from next year's set-aside. In terms of overall review, working with the subcommittee before this meeting, we discussed the program and all of the information that I just went through a couple moments ago.

Remember that this program has flexibility in it in which the board can change or edit the program through board action or the adaptive management addendum process. Back at our May meeting this year, when we approved this program, there was a motion to initiate an addendum to fully develop the program for 2014 and beyond.

That got postponed until we had some information on how the pilot program was going to run, so we are now reconsidering that postponed motion at this meeting as directed; not only from the program but also from postponing of the motion. When I worked with the subcommittee before this meeting, they recommended extending the pilot program as is because it was difficult to evaluate the effectiveness after only one year. That is a general review of not only the set-aside and the provisions but also how 2013 went, and I would be happy to answer any question.

CHAIRMAN BOYLES: Are there questions for Mike? Bill Adler.

#### **DISCUSSION OF REPORT OF EPISODIC EVENT SET-ASIDE PILOT PROGRAM**

MR. WILLIAM A. ADLER: Mike, did you indicate or I thought I heard you say that if an episodic event happens, then you don't get the rollover back into the group. There was no episodic event other than Rhode Island looked for one; but from what I read here, they never needed it or used it in the end. It wasn't used, I think; and if it's not used, then why couldn't it get rolled over? I didn't understand how that worked.

MR. WAINE: It is sort of a hindsight condition in the sense that we now know that those fish as of today have not returned back to Narragansett Bay as was anticipated. The date for that rollover was September 1. In expectation that a biomass that Rhode Island had observed earlier in the spring and early summer, they were expecting those fish to come back, which is why they opted into participating in the program.

Now that we know that – or as of right now those fish haven't returned; we've gone past that September 1 rollover date. To answer your question, there were no directed landings from the episodic event set-aside, but there was a state that opted into the set-aside; and so up until this point we were expecting landings to occur.

MR. HIMCHAK: My questions are on the same line, so I guess we're handicapped by the date

because – well, I mean what is the likelihood of fish showing up in Narragansett Bay; this is the end of October? Just the fact that they declared in essentially removes the option of redistribution, I guess that is what you're saying. I guess we have bigger problems than that to resolve.

CHAIRMAN BOYLES: That is the way I read it, Pete, as well. Are there further questions for Mike? David.

MR. DAVID V.D. BORDEN: Since I wasn't part of the process when the board adopted this; I was kind of interested in the term "unusual abundance" that is used in defining an event. Did the board characterize that? Is there a definition of what constitutes that in the plan and addendum?

MR. WAINE: A question that seems to be coming up quite regularly; the way it's written is the states are monitoring their individual state quotas and using those quotas as recognition of whether an episodic event is triggered in combination with information that menhaden are in their state waters in higher abundance than historically occurred.

There are no defining estimates of what that threshold is; but like I said, in the state of Rhode Island specifically there are thresholds that they've used to indicate whether the commercial fishery is open or not, and so they have a mechanism to decide whether they are seeing menhaden in higher abundance than they normally occur.

There is certainly some inherent responsibility within the state to acknowledge whether from their understanding of how landings have occurred historically; is this year an episodic one or not. There is certainly an inherent trust in the program that the states are able to do that effectively.



## DISCUSSION AND POSTPONED AND SUBSTITUTE MOTION

CHAIRMAN BOYLES: Are there further questions for Mike on the episodic event review for 2013? Seeing none; I think what we have to deal with from a parliamentary perspective, if nothing else, is there is a posted motion that postponed by this board that we agreed to postpone until we had data on what an episodic event looked like.

That postponed motion was to initiate an addendum to fully develop the episodic event program for 2014, for the next fishing year. That is the postponed motion. We also have a recommendation from the working group that has been looking at this, that we simply extend for one more year the pilot program that we've got.

If that is the recommendation of the working group, if the board wishes to go in that direction, we would need to recall the postponed motion and perhaps make a substitute motion. Is there any interest in doing that; to dispose of the postponed motion? The postponed motion was to initiate an addendum to fully develop the episodic event program for 2014. Pat.

MR. PATRICK AUGUSTINE: Mr. Chairman, with your help we'll do that. I move to remove the motion from the table.

CHAIRMAN BOYLES: How about a substitute, Pat?

MR. AUGUSTINE: Okay, move to substitute the motion that is on the table with the following motion – now your words, Mr. Chairman.

CHAIRMAN BOYLES: I'm going to look to Mr. Stockwell over there because I think he has worked with this. Terry.

MR. STOCKWELL: Thank you, Pat, for starting to tee us off. The working group did have several discussions, as Mike reported, and is recommending to the board that the pilot set-aside episodic event program be extended for at least another year. I just thought that we were going to move the tabled motion, and I was

going to make a motion to substitute. Is that the correct verbiage?

CHAIRMAN BOYLES: That would be in order, yes.

MR. STOCKWELL: Okay, then I move to substitute –

MR. DENNIS ABBOTT: You have got to remove it from the table first.

CHAIRMAN BOYLES: We were substituting a motion that is brought back on the floor, so we are looking for a substitute motion.

**MR. STOCKWELL: Okay, so then I move to substitute to extend the pilot episodic event set-aside program until the 2015 annual meeting or further board action.**

CHAIRMAN BOYLES: Motion by Mr. Stockwell; Pat Augustine seconds. The motion is to substitute – it is a substitute motion to extend the pilot episodic event program until the 2015 annual meeting or further board action. Is there any discussion on the motion? Mr. Abbott.

MR. ABBOTT: Mr. Chairman, I don't want to be a pain like I always am, but I think our first course of action should have to remove the motion from the table so that is now active; and then after we vote on to remove it from the table, then the motion that Mr. Stockwell made is perfectly in order. We just really don't have a motion prior to this that we're dealing with.

CHAIRMAN BOYLES: I'm sorry, Mr. Abbott, there is a motion that is in the minutes from our meeting in May. That motion was postponed until this meeting when we had data. A substitute motion is in order. Mr. Stockwell.

MR. STOCKWELL: I'll provide a little rationale on behalf of the working group and specifically why we're recommending until 2015. Given the gyrations that Rhode Island

went through this year and the fact that Maine didn't even have an opportunity to trigger an event, we came to the conclusion it will probably be several years until we can actually test and evaluate the program. Should the board determine that we need to have further action before 2015, the board would then, if this motion moves ahead, have the opportunity to respond at any time.

MR. BORDEN: Is the extension of the program a regulatory action; does it require an amendment to the plan? That's the first question and then maybe a statement after that if I can get an answer.

CHAIRMAN BOYLES: I believe under adaptive management, by this board action we can extend this. Mr. Stockwell, I understand this would be for up to two fishing seasons?

MR. BORDEN: Okay, and the one point I would like to make is the one aspect of this I'm a little bit uncomfortable with is this issue of having this program operate, the fish don't get caught, and they don't roll over, so essentially we're depriving the constituency of the value of the fish. If the same circumstances arise and if there is a way to accomplish that, I think it would be worthwhile for the commission to flesh that out. Thank you.

REPRESENTATIVE CRAIG A. MINER: Mr. Chairman, this would mean at the annual meeting in 2015 or at any time prior to that there was further board action or anytime after that there was further board action?

MR. STOCKWELL: Before.

MR. ADLER: Mr. Chairman, if we pass this, which I'm in favor of, what happens to that part I brought up before and which Dave brought up? Is that stuck that way if we pass this or is there room in the existing addendum that can adjust that date?

CHAIRMAN BOYLES: My understanding to David's question – and, Mike, I'll look to you to correct me – my understanding is the addendum specifies that fish left in the water and not

rolling over was the intention of the management board, and so that is what is in the addendum now. A change from that direction would be a new addendum. Is that correct, Mike?

MR. WAINE: Let me just back up a couple of steps and say as written in Amendment 2, there is the flexibility for the board to adjust any provisions of the set-aside program through either board action or the adaptive management process. That is specifically written into Amendment 2; that flexibility.

Now, to answer the question about the rollover, as it is currently written in the program, if no states declare participation in the episodic event set-aside by September 1, then the set-aside gets immediately rolled into the same year and allocated based off the same allocation that we used for the other 99 percent of menhaden.

If a state declares participation before September 1 or any number of states that are eligible in the New England states, then unused set-aside at the end of the calendar year remains unused. The justification for that was that the menhaden stock is currently experiencing overfishing and there is no rollover provision in the overall amendment for the other 99 percent of the TAC. If there is an overage that occurs – just to take it one step further, if there is an overage that occurs from the set-aside, there is a payback provision to pay back that from the next year's set-aside. That is just to bring it full circle.

MR. RUSSELL DIZE: Mr. Chairman, I would just like to know is September 1 set in stone?

MR. WAINE: The board has the flexibility to change that date through board action or the adaptive management process. As it is written right now, it is September 1.

MR. DIZE: I just think that is fish lost to the commercial fishery. In other words, if New England states one by one declare, then

that is lost because evidently we can't get what we need by September 1 so it won't be rolled over. You're talking about 17 million metric tons of menhaden; is that correct?

MR. WAINE: It is 1,700.

MR. DIZE: 1,700?

MR. WAINE: Yes, 1,708 metric tons is the set-aside; 1 percent of the overall TAC.

MR. DIZE: And as I understand it, it would be divided up between bait and reduction if it went back into the fishery?

MR. WAINE: Yes, it would be allocated using the exact same allocation table as contained in Amendment 2 that we use to allocate the rest of the TAC.

DR. LOUIS B. DANIEL, III: I guess just a question because I'm confused now. I thought from my recollection that we said that there was a date certain in the calendar year where the New England states would have to declare for an episodic fishery; and if that date came and went, the 1 percent would go back into the coast-wide fishery and redistributed to the other states, so there would be no loss to the industry of those fish. There seems to be confusion as to which way it goes. I don't recall us saying that it is a use it or lose that 1 percent. We need to get that clarified before we move any farther I would recommend, Mr. Chairman.

MR. WAINE: Louis, you're exactly right. If no states that are eligible actually declare into the set-aside by September 1, immediately that 1 percent set-aside rolls into the overall quota for every state.

Now, if a state declares participation, which is what happened in the case of Rhode Island, and through harvesting off of that set-aside they don't end up harvesting the entire set-aside, or in this situation it happens to be there weren't any directed landings because those fish that they had seen in the early summer didn't return, under the provisions of the pilot program, because that state opted in and they were expecting to land off of that set-aside, any

unused set-aside at the end of the year does not get rolled over. The justification for that as written in the program was there aren't rollovers for the rest of the quota because menhaden are currently experiencing overfishing.

DR. DANIEL: To that point, Mr. Chairman, thanks for that clarification, Mike. That is an issue and I think we just need to figure out – I mean are there fisheries that occur, say, November/December? I would think there would be. There has got to be a time certain when the New England states know they're not going to catch fish, and there is going to be a couple of months lag period of time that they could catch that 1,700 metric tons or whatever it is.

We have a management plan in place to end overfishing, right, because we're not overfishing because we have the management plan in place. We may be overfished but we're not sure, but we're not overfishing with our management plan in place. I don't think we can say no rollover because of overfishing.

The 1,700 metric tons needs to somehow or whatever portion of the 1 percent that is not caught, 1,000 metric tons, 1,200, need to go back to the industry and re-divided up amongst the states. It is not much but for those of us that don't have a whole lot, anyway, it might mean a few extra trips here and there.

MR. HIMCHAK: Mr. Chairman, boy, I'd like to go back and reread the pilot study language because my impression was that if it was not used by September 1<sup>st</sup>, then it would be redistributed; and the September 1<sup>st</sup> date came from the Gulf of Maine, the days of the IWP's. That was an episodic event; that was history. My recollection is that on September 1<sup>st</sup> we'd be divvying it out in the percentages of each state's bait allocation.

MR. AUGUSTINE: I'll take it one step further, Mr. Chairman. What is the

likelihood of a state having several episodic events in a short period of time, what would the impression be by other states who are not participating in the 1,700 metric tons? I'm not sure how you answer that question, Mike, but I'm not sure what our control mechanism is here.

I went back and I tried to find the definition for an episodic event and when it is reported. Maybe I just missed it; but if you could clarify that one more time, I would appreciate it. Again, the real question is if an area has several episodic events in a very short period of time; does the flag go up and say, whoa, whoa, what is going on here. I think we need to know how to address that.

MR. JACK TRAVELSTEAD: Mr. Chairman, I wanted to speak to Louis' last issue that he brought up. It seems to me that last year when we set up this episodic event, none of us contemplated the situation that has occurred this year; that is, a state declared an episodic event, but then ended up not catching anything.

I think we all thought once that event was declared, something would be caught and we would follow through with the rest of the management plan, but we're sort of in an in-between situation this year. It seems to me we need another date upon which to act; that is a state declares an episodic event and then by some date ends up not catching anything and then at that point the 1,700 tons gets redistributed as we had originally anticipated. It seems to me to be a fairly simple solution there. Thank you.

MR. STOCKWELL: The intent from at least northern New England was that 9/1 was the trigger date. We would know by that point whether or not an episodic event was going to be declared. I would like to amend this motion to add some language I think that will address the issues that I've heard around the table.

It would be following "further board action" would be "if an episodic event is declared before September 1<sup>st</sup> and not used fully used, any remaining quota will be redistributed to the other

states and jurisdictions." I think that would address the issues that I'm hearing around the table.

CHAIRMAN BOYLES: Terry, I think you're further clarifying the motion. The question is when is that second magical date that Mr. Travelstead referenced; how does the board wish to deal with that? Bob.

MR. ROBERT BALLOU: Well, one approach would be to redistribute in the following fishing year, but that would seem contrary to the anti-rollover provisions that apply to the coast-wide quota in Amendment 2, but that would be certainly easier from a logistical standpoint. I think one of the challenges here is redistributing either the full amount, 1,700 metric tons, or some portion thereof in a proportional way late in the season I understand could be a logistical nightmare for staff, and we could be talking about a few hundred pounds of fish for some states.

I think that was one of the reasons why it was decided to go the route that the pilot program went. Given Mr. Stockwell's suggested motion, which I realize hasn't been seconded so maybe I should stop talking until there is a second and then I would like to perhaps revisit it.

CHAIRMAN BOYLES: I was going to work to see if we could get it fleshed out because this is a substitute motion as it stands. Dr. Pierce.

DR. DAVID PIERCE: To your question, Mr. Chairman, in light of what was mentioned earlier on about when might be the last day by when an episodic event would occur, I would think it would be by the end of October; so I would suggest as a friendly amendment that the motion to substitute could say after "any remaining quota and not fully used by October 31<sup>st</sup>, any remaining quota will be redistributed", so that would provide a two-month period basically for the quota to be used. If it is not, then it gets redistributed in time for

November and December and therefore can be used by other states who have active menhaden fisheries at that time. That is a suggestion to the maker of the substitute as a friendly amendment.

CHAIRMAN BOYLES: Thank you, Dr. Pierce. I think where we are, then that gives the two-month window. Let's handle it this way. We've got a postponed motion which has been substituted and we have talked about some of the issues with this kind of halfway point where we are with declaring an episodic event but not harvesting any of that 1 percent, the available 1 percent.

**Mr. Stockwell, might your motion need to substitute to extend the Pilot Episodic Event Program until the 2015 Annual Meeting or further Board action. If an episodic event is declared before September 1 and not fully used by October 31, any remaining quota will be redistributed to other states and jurisdictions.**

MR. STOCKWELL: If you're good with that as a friendly or perfection, I'm good with that. My intent was to amend the motion to substitute and not to substitute the substitute.

CHAIRMAN BOYLES: Understood. Pat.

MR. AUGUSTINE: I'll second it, Mr. Chairman. I like your change and it makes it cleaner, Mr. Stockwell.

MR. DAVID SIMPSON: I think this is a good idea and I just wonder from a technical perspective, the bookkeeping, do we feel that we'll know what is available by the end of October to redistribute it in the two months remaining? I think if we're under an episodic event, we have weekly reporting so we should be in pretty good shape to turn that right around and redistribute it and still provide two months of fishing time for the other states.

MR. WAINE: Yes, the provision is daily reporting under this episodic program. I guess just from a staff perspective – and correct if I'm reading this motion wrong – is regardless of whether an episodic event is occurring or not,

when October 31<sup>st</sup> hits, whatever is remaining would be redistributed; or is it if there an actual episodic event occurring, then it wouldn't get redistributed. That's the only thing that is unclear to me. We have been in a gray area before and I'd rather just get it on record now.

MR. SIMPSON: That is what I was anticipating. I was trying to flip through the assessment and the report to look at landings by month. I couldn't find them but I think the sense is if it hasn't happened by the end of October, it is not going to happen, so any balance gets shifted and the episodic program is over.

CHAIRMAN BOYLES: That is the intention of the motion. Walter.

REPRESENTATIVE WALTER KUMIEGA: Mr. Chair, I think that is correct. I think October 31<sup>st</sup> gives us plenty of time. I think this being a pilot program, the onus is on the states that are participating, that want to participate, if they want this program to become permanent, then they have to make sure that it works and that the reporting is done. Otherwise, they've got to pay the quota back the following year or the board is just not going to renew the program when we get to two years from today and we lose it.

MR. G. RITCHIE WHITE: If an episodic event is in process and being harvested but not completed and not fully harvested on October 31<sup>st</sup>, what happens?

MR. DOUGLAS E. GROUT: With this motion, the way I interpret it is if you haven't landed it by October 31<sup>st</sup>, your episodic event is over and you can't land anymore.

CHAIRMAN BOYLES: I'm seeing heads nodding around the table, so the episodic event effectively ends Halloween. Representative Abbott, you thought you were being a pain; you were really trying to help me, weren't you? My hat is off to you;

I apologize. Is there any further discussion on the perfected substitute motion?

I will read it. The motion is move to substitute to extend the Pilot Episodic Event Program until the 2015 Annual Meeting or further Board action. If an episodic event is declared before September 1 and not fully used by October 31, any remaining quota will be redistributed to other states and jurisdictions. Motion by Mr. Stockwell; seconded by Mr. Augustine. Doug.

MR. GROUT: Just for staff; let's say we have an episodic event in Rhode Island and they have daily reporting; are they reporting that to staff on a daily basis so you'll have a record on October 31<sup>st</sup> of what can be – who is going to do the redistribution and get the other states aware that there is a redistribution and you have X amount of extra quota available?

MR. WAINE: We haven't really put this to the test, but the way we handled it this year is the state of Rhode Island was submitting weekly reports to me, but they had daily reporting. They just were submitting it to the commission on a weekly basis. I guess I would advocate for that approach; implement the daily reporting within your state, compile those landings on a weekly basis, send them to the commission. I will track that set-aside quota; and when we come up against that October 31<sup>st</sup> date, I will know what is left.

MR. STEPHEN R. TRAIN: Mr. Chairman, I'm slightly concerned – I like the concept here, but I'm slightly concerned with what Ritchie said. I mean, Narragansett Bay is far different than Casco Bay; and if they are fishing October 30<sup>th</sup> in the middle of a large school of menhaden, we're going to shut these boats down and give that quota to another state? Is there any way we can allow them to finish fishing on that? I mean that to me does not make sense if their episodic event started and they're in the middle of fishing it; and we're going to come out at midnight and say, "It is all done, guys. We know you've still got quota available, but we're going to give it to New Jersey."

MR. BALLOU: If I were to look at this through a different lens and perhaps be one of the states that would be reallocated unused set-aside on or about November 1, given the proportional amount that we'd receive, it would be so small – and I'm wondering if actually Mike could run through the range of values that we're talking about here.

In other words, if the full 1,700 metric tons were not used, what are states looking – what is the range of reallocated amounts that the states are looking at. The point I'd like to make is I can't imagine how Rhode Island could reopen a menhaden fishery on 150 pounds of menhaden or whatever it might be.

I think it is going to be a value of something like that. It is going to be in the hundreds or thousands of pounds for many states. Just for the board's edification, I would just note the obvious I think which is the difficulty of managing a very small amount of menhaden that are going to be reallocated on November 1. Thank you.

MR. WAINE: The simplest way to answer that would be it would be either 1 percent or less than 1 percent of your quota. If you want specific numbers on how much you would get back, it is either 1 percent, because that's how much you gave up for the set-aside, or less than 1 percent, depending on how much was harvested during the set-aside or the episodic event.

Obviously, that is going to mean different numbers for different states because of what the allocation was based off their historical landings. I don't know the specific numbers, but, yes, like you said some states are going to be relatively small because their allocations weren't relatively big to begin with.

MR. BALLOU: And just a quick followup; so as I understand it, a 75,000 pound quota for Rhode Island would mean 750 pounds back, if I've got that right, so that just over a

daily bycatch allowance. I'm sorry; it is way below a daily bycatch allowance, which is 6,000 pounds. We're talking about such a small amount of fish that I just want to make it clear that for many states.

While I understand the purpose and I'm prepared to support the motion, the practicality of it I think is going to be a challenge in terms of what happen. Actually what might happen is there still will be fish left on the table at the end of the calendar year, meaning the states were not able to open their fishery, use the reallocated amount, that sort of thing. If that is the case, then so be it. Thank you.

MR. ABBOTT: Mr. Chairman, this whole thing, as I remember, started when Mr. Stockwell wanted to ensure that if the menhaden came to Maine, that he'd have an opportunity to catch them. Now, it seems like it has expanded and I'm not understanding – I don't know what happened or what method allows you to put a placeholder to have those, in this case, 1,700 metric tons allotted to, say in this case, the state of Rhode Island.

After you did that and got that allocation available to you, which you didn't use, what would have happened if Mr. Stockwell came along some days later and said, "The menhaden are in Penobscot Bay and I would like to catch the fish that I had put provisions in the plan for", but you, as the other state says, "No, I own those fish right now." Am I misinterpreting all of that? I am glad that I am if I am, because I seem to lose the equity of the whole thing.

MR. STOCKWELL: Yes, good question, Dennis. Actually any of the states that are qualified to participate in an episodic event, which will be using the criteria that Mike laid out in his earlier presentation, would have access to that additional quota. Using the scenario you just described, if Rhode Island requested access to the episodic event, Maine or Massachusetts could do the same.

MR. ABBOTT: And they would have access to the 1,700 until it is caught?

MR. STOCKWELL: Correct. This has sure has been an issue we have beat to death for a number of different meetings. We didn't expect this year's scenario to come to pass. Lord knows what is going to happen this next year. It is a pilot program. I'm comfortable with this motion because it addresses the angst that a number of the board members have about this experiment that frankly Bob and I have been working on. In order to keep the pilot program alive, I'm prepared to support the motion on the board.

MR. ADAM NOWALSKY: This would be a question directed to Rhode Island because I'm not wholly familiar with the constraints of the Narragansett Bay Menhaden Management Program. It would seem at least in reading the Rhode Island information they provided that if not for the constraints of this program, a lot more fish would have been harvested under the episodic event program, that pilot project that we've put together here.

Perhaps there can be some information provided about is this program that they have in place an impediment to the harvest of the fish at this point? Is that something that could be changed because it seems to me we wouldn't be having this much discussion if Narragansett Bay hadn't been closed since August a lot of those fish would have been harvested already.

MR. BALLOU: Yes, Mr. Nowalsky is absolutely right. Had we not had a self-imposed conservation mandate via our Narragansett Bay Menhaden Management Program, which is an ecosystem-based approach to guarding against localized depletion in Narragansett Bay, we would have not only accessed the set-aside but probably harvested all of it. In a way I would like to suggest that Rhode Island should be given credit for not extracting every last pogie from Narragansett Bay even though it could have under this program. Thank you.

CHAIRMAN BOYLES: Is there further discussion on the motion? Do you need to caucus? All right, in favor of the motion please raise your right hand; opposed raise your right hand; abstentions; null votes. **The motion carries sixteen to zero to zero to zero. The substitute motion now becomes the main motion.**

Is there further discussion on the main motion? Do you need to caucus? All in favor of the main motion signify by raising your right hand; opposed raise your right hand; abstentions; null votes. **That motion carries sixteen to zero to zero to zero.** Bob.

MR. BALLOU: Just because sometimes these things do get lost down the road, it seems absolutely clear to me that the intent of the board in supporting this motion is to redistribute in accordance with the proportions that are laid out in Amendment 2. It doesn't say that, but I think it is clear that is what everybody understands. I just think it would be helpful to put that on the record. Thank you.

CHAIRMAN BOYLES: Thank you; that's a good suggestion; yes, in accordance with the distribution schedule in Amendment 2. Pete.

MR. HIMCHAK: I had a question for Robert. I was very happy to see you have aerial surveys and a management program for Narragansett Bay and biomass estimates. Does all this incorporated into the coast-wide stock assessment?

MR. BALLOU: Well, I believe so; I hope so; it should. I'm not actually sure about that, but I certainly hope it does.

CHAIRMAN BOYLES: Let me make sure that we're square. On November 1<sup>st</sup> of this year we will reallocate this unused 1,700 metric tons in accordance with Amendment 2? I'm seeing heads nodding around the table. Okay, so be it. The next item on the agenda is the technical committee report on the benchmark stock assessment update. Mike.

## **BENCHMARK STOCK ASSESSMENT PROGRESS REPORT**

MR. WAINE: As requested at a prior board meeting, we are giving quarterly updates on the progress of our benchmark stock assessment for Atlantic menhaden. In your briefing materials you received a memorandum regarding information that I'm presenting. We are scheduled for a SEDAR Review and a menhaden benchmark stock assessment in late 2014.

We have had seven meetings so far, four webinars and three in person. The following list is all the topics that the stock assessment subcommittee jointly with the technical committee have been working on during these meetings. We've established the terms of reference for this assessment, which the board has approved.

There were preliminary discussions of alternative models, a preliminary review of data sets. We have both fishery-dependent and fishery-independent subgroups within the committees that are working specifically on all of the data sets that we've identified for Atlantic menhaden. The progress being made is towards the data workshop where the official vetting of those data sets will occur.

We've gone over life history parameters. I say "we"; whenever I say "we", I'm referring to the technical committee and the SAS. We've looked at the historic tagging project which we received funding to make electronic and use of this in this upcoming assessment. The one in-person meeting that occurred since the last progress report was the September meeting that specifically dealt with life history parameters.

All age, length and weight data were evaluated for growth and selectivity. We did review maturity and fecundity at age data; discussed multiple methods for estimating natural mortality; reviewed the progress toward the tagging data base; and discussed potential analysis pathways for



that information. We assigned a task list for the data workshop.

The next steps here are as we head into 2014, our assessment year, from January 13<sup>th</sup> to the 16<sup>th</sup> we have scheduled the data workshop. That location is still to be determined, and we will be sending a press release regarding the exact location. We will follow up with an assessment workshop in the summer of 2014 in preparation for the December peer review through the SEDAR. In 2015, if we stay on this course, the results from that benchmark stock assessment will be presented to the board at the February board meeting. Thank you, Mr. Chairman.

CHAIRMAN BOYLES: Are there questions on the status report, the technical committee update from Mike? Okay, seeing none, you've got one more thing?

**REPORT OF  
BIOLOGICAL ECOLOGICAL  
REFERENCE POINTS WORK GROUP  
(BERP WG)**

MR. WAINE: I'm also briefing the board on a task from our board chair regarding the review. This is actually for the Biological/Ecological Reference Points Working Group that is a spin-off of our Multispecies Technical Group. They are continuing their progress on the ongoing task to quantify the amount of Atlantic menhaden biomass necessary to sustain the forage needs of striped bass, bluefish and weakfish predators at their threshold biomass levels.

In pursuit of that task, it was recommended to review a recent study that estimated the biological reference points for the nutritional status of the Chesapeake Bay striped bass. That was a Jacobs et al paper. The BERP Working Group had a call to discuss this. They concluded that the science has the potential to evaluate management performance through establishing thresholds for the nutritional status of the predators.

There have been nutritional reference points for striped bass developed for the Chesapeake Bay. When I say "nutritional reference points", this is looking at basically the lipid content of

individual fish based on consumption. The working group and Striped Bass Technical Committee should outline a sampling approach to measure nutritional status on a broader scale.

The measuring of this could be incorporated in the fishery-independent monitoring as another indicator for management evaluation. For example, as the management board moves towards managing menhaden using an ecosystem-based approach, evaluating the nutritional status of predators that are foraging on menhaden, could be an indicator of how management changes from this board are relating back to the nutritional status of the predator. It could be one mechanism to measure the progress. This approach will be further examined at upcoming meetings in preparation for the 2014 benchmark assessment. Thank you.

CHAIRMAN BOYLES: Are there questions about the biological/ecological reference points, the BERP Work Group? Louis.

DR. DANIEL: Is this because we don't have anything else to do?

CHAIRMAN BOYLES: No, the information was provided to me in the context of as we continue to move down the road of ecological indicators and trying to manage this species and the next step as we've taken with Amendment 2, so the technical committee is looking at it.

DR. DANIEL: I guess the thing that just jumps out at me is – I'm not going to say anything about bluegills, but the first thing that comes to my mind is red drum, king mackerel and cobia. There are going to be more questions than answers with that information. We're scrambling to get a peer-reviewed benchmark stock assessment done and now we're adding sort of ethereal stuff. I'm trying to figure out is that the best use of our time, effort and money of our staff, too, and our resources to do.

We've already talked about probably spending more money than 1,700 metric tons of menhaden are worth to manage them, and now we're – I mean, again, I bring this up every time we talk about this BERP stuff and it doesn't seem to do any good. Again, I'm not seeing the bang for the buck here.

CHAIRMAN BOYLES: Are there further comments? Pat.

MR. AUGUSTINE: I'll be the bold one. Along with what you said, Dr. Daniel, we're looking at ecosystem approaches and why are we going there? Your point exactly; we're worried about the food chain; and I would hate to say it, but wait until MMP gets involved where we look at the – if any of you have looked at the viral film that was out there with what was happening to very large schools of bunker off of Montauk, you would have a heart attack.

You would have a heart attack. Do any of you know what a bluefin whale is; you know, finbacks? Two of them going through schools of bunker and you cannot imagine the devastation in one swoop, and we're going to start thinking about that. The real question is, are we working with single-species management and predator-prey relationships and are we going to start getting into real ecosystem management?

I think he is absolutely right; our dollars are so tight for everything we have to do. This is a very worthy approach, but is it necessary. If I can derail this thing, you will second it, I'm sure; how do we do it? How can we pull that out at least for this time around for the importance of this stock report, Mr. Chairman, and is it doable?

CHAIRMAN BOYLES: Louis, I didn't respond to it. If you look at the term of reference for the benchmark stock assessment, it is a term of reference; and so the question I have for the board is if we don't want to look at that as a term of reference, then we can go to the technical committee and say ignore this BERP. We've established a term of reference and I don't know how to start going down that road.

Louis, I appreciate your concern about the resource constraints that we're dealing with. My sense of things is that we are challenged constantly, daily, weekly, monthly, quarterly, to look at some of these issues. We have turned a big corner with Amendment 2. We have made an explicit decision that we will manage menhaden differently.

I don't know how else to continue to go down that road if we can't start looking at these things. I appreciate everyone's sensitivity to overloading the technical committee. The benchmark stock assessment is the priority. This is a term of reference in the stock assessment. Walter.

REPRESENTATIVE KUMIEGA: I appreciate what was said about overloading the technical committee and resources, but we've got scheduled three and a half hours to talk about striped bass tomorrow. I have got, I don't know, a dozen e-mails from people wanting us to reduce mortality of striped bass.

Reducing mortality does no good unless the striped bass have enough high protein food to eat. I think it is not just about menhaden. It is about everything else that we have to manage. I think if we don't start looking at things on ecosystem-based management, we're never going to get anywhere.

MR. WHITE: I totally agree; and if you remember back to our meeting in Baltimore, there were a lot of people there, and that is what they want. I agree that there is only so much effort that we have from the technical committee, but I think this is important stuff.

MR. WILLIAM J. GOLDSBOROUGH: Mr. Chairman, I just want to note that we've actually been committed to developing ecological reference points for menhaden for several years ago. The progress has been challenged and, of course, it has been hard as it is a new concept. We adopted interim MSP-based reference points in Amendment 2, but we also said we were going to

continue on a parallel track of developing ecological-based reference points for the long term. That is how I see this is just continuing that commitment. Thank you.

CHAIRMAN BOYLES: Are there further comments. We're down to the other business items on the agenda. Jim Estes.

### OTHER BUSINESS

MR. JIM ESTES: Mr. Chairman, I realize this is probably going to be a can of worms. In fact, I've learned that any can that says "menhaden" on it is likely to be a can of worms. We've made a request for consideration of a conservation equivalency. Let me give you a little background. I hear everybody talking about 1 percent of 1,700 metric tons. Our TAC is 70,000 pounds.

Of course, our TAC was calculated from the landings that we had from 2009 to 2011. I think that was a large underestimation apparently because we had a lot of underreporting that hopefully we can talk about a little bit later. In 1994 our citizens passed a constitutional amendment that limited our nets in our inshore and nearshore waters to 500 square foot.

What essentially did was it turned a bunch of fisheries for our bait from gill nets to cast nets. We allow our fishermen – because of that amendment and rules we passed subsequently, we allow our fishermen to use – the largest thing they can use a 13-foot cast net. Our landings from the eighties and since the net amendment in the mid-nineties have decreased by over 90 percent.

We didn't send this equivalency request in until the first week of October and haven't had a chance for the technical committee to look at it yet. What I'm asking is if it would be all right if we scheduled it for our February meeting, and I could with the technical committee to work out the details about what their recommendation might be.

CHAIRMAN BOYLES: Are there questions for Jim on the request for conservation equivalency?

Under our process, it again goes to the technical committee. There it is; we are resource constrained. Pete.

MR. HIMCHAK: We're kind of like in the same dilemma. Do you have mandatory reporting for cast netters now; do you have any idea of the magnitude of what the catch is?

MR. ESTES: We have mandatory reporting for our cast netters, but they have not been reporting. They claim if they didn't report back in the early eighties and seventies, they have never reported.

We have talked to a big slug of them in the last two or three months, and now they are starting to report. Next year when we open things up, because of the reporting, they're going to blow through their quota in just a little while.

MR. HIMCHAK: Well, I think this is symptomatic of a number of states. I'll let Jim Gilmore speak for himself. I mean, he has already brought it to our attention about they're stuck with a TAC based on the landings in 2009 through 2011. That is the hand we were dealt. Yes, we're going to lot a lot once we start implementing these TACs.

This is a great lead into problems that states are encountering in staying under their TACs and were the original TACs really very credible to begin with. In New Jersey we've got 42 million pounds and 39 percent is easy to track because it is the purse seine fishery; and we can open and close them in a couple of days and stay under that, but it is all of the other people – menhaden as currency on the dock. Underreporting, boy, it has coming out to haunt us big time.

That is what I wanted to hear from other states. We're going to get by this year with this – yes, you reach your TAC and then you've got this 6,000 pound bycatch, which isn't really a bycatch, and it doesn't count against your TAC. Well, that amount of

poundage could be very substantial. I think we're going to have to start looking at what credible bait landings are in the states.

I know in New Jersey we had laws passed – we've got a pretty good system, electronic checks and balances, landing license, dealer license; and then it is like we've got all these gill netters that caught menhaden. They had gill net licenses and they were commercial crabbers, and there is no reporting on any of them. They've got some substantial landings; so all of a sudden what do we do? We tried to come up with a personal-use, no-sale license.

It has got to count towards our TAC, but then again our TAC was not very realistic if all these people never reported any landings. Cast netters; we haven't even gotten there yet. It is going to take a couple of years for all the cast netting landings to come in. I think other states; yes, how much money are you going to invest to chase after cast net landings in order to track your TAC? I think you're going to have to.

CHAIRMAN BOYLES: Are there further questions for Jim on Florida's request? Dave.

MR. SIMPSON: I don't know if it is a question as much as just for clarification. I mean how I've been looking at it, Connecticut has a similar quota to Florida's, 0.02 percent. A directed fishery under this plan is not explicitly defined, but implicitly it is any fishery that would take more than 6,000 pounds a day.

The way I envision managing our fishery is that every pound from the beginning of the year until we catch our quota counts toward the quota. After that we have a 6,000 pound limit and you can't come in with more than 6,000 pounds. Unless a cast net fisherman was taking more than 6,000 pounds, it wouldn't affect his operations.

Maybe they are, and hats off to them if they are, but I think the big thing for us now is we need to do that better accounting, because that stuff feeds into the stock assessment and the estimate of biomass. Now, hopefully, this amendment will not only control mortality but also helps us

get a better estimate of removals and a better estimate of the stock. With that, is there something I'm not understanding about Florida's situation?

MR. ESTES: What we did is we met our quota I think in August this year, and we closed the fishery and we allowed a thousand pound bycatch, but I think that is a little bit still – this is a cast net fishery, and I don't know who around here could say that wasn't a directed fishery. We did that just so we could get on top of things.

MR. SIMPSON: But to that point, under the plan you only need to limit them to 6,000 pounds; and you can keep on recording those landings, faithfully report them so we know what is really being removed from the ocean so we get a better estimate of what the stock is. I think the one thing we all agree on is we're underestimating how much the removals are and how big the stock is.

DR. PIERCE: Well, the treatment of the 6,000 is becoming a little bit confused, I think. We have move forward with the development of our strategies for living within our quota with an understanding that the 6,000 is the bycatch. Therefore, we don't say, "All right, fishermen, you can catch your state quota; then after that it is 6,000 pounds; go to it even if you're directing."

No. we've said it is a bycatch. That is what has made it challenging for us to develop what we accomplished and then implemented. If you're cast netting for menhaden, that is not a bycatch, it's a directed fishery and it should not be allowed. I recognize the problems that states are having living within small shares translated into very small allocations.

I recognize that because we, in going over our data base and learning more about our fishery after we adopted the menhaden plan, we discovered that potentially we would have some real problems living within our quota, so we had to be extremely careful

with what we did, very careful with what we did, and we ended up with an underage, which, by the way, we're transferring to the state of New York in order to deal with their problem.

We can do that under the conditions of the plan. Unless every state now is saying and the plan is being interpreted as the 6,000 is actually something you can take, bycatch or not, once you take your individual state quota – if that is the case, then it makes my situation in Massachusetts a lot easier when I deal with the fisheries in the fall that are relatively small in nature, because they're small purse seine, what have you. Unless I'm wrong – and I think I'm right; it is supposed to be a bycatch and not a directed fishery.

CHAIRMAN BOYLES: Thank you, David; that is a good suggestion. The plan reads "a bycatch allowance", just as you pointed out for a non-directed fishery. Pat.

MR. AUGUSTINE: To Florida, so what are your folks doing for bait; are they having to buy it out of state; is it coming in from another source; are they just going without? I know what our people are doing. They're catching them and hoping they don't get caught. I hate to say that, but that is the reality because our quota is so damned small. What are you folks doing; are they going begging or what?

MR. ESTES: They tell me that they are buying them I think mostly from Virginia.

MR. AUGUSTINE: Okay, so here we are and you're asking for conservation equivalency. I really don't call it conservation equivalency. We should be asking for coast-wide measures because conservation equivalency state by state is killing us all. Now, the arguments we heard last year, we heard the environmental community – plus we knew what was going on with the stock. It was in some trouble. So we reacted and we went ahead and somewhere through that meeting a motion boiled over and we ended up going state by state. One state, Virginia gets 80 percent of it. In the meantime, because our other states,

including New York, have been lax in doing our reporting, we're all holding the bag.

We're seeing people who were using bait locally now having to pay twice or three times as much for exactly the same bait from another state that has to come to come into our state, and that's wrong. This is not the time to make a motion to go ahead and create another addendum, but it has got to happen sooner or later because we're going to have a tremendous amount of illegal activity going on.

Unless we have the reporting, we're never going to get a handle on what is happening to that stock. Mr. Chairman, I don't know what the action is that we have to go down that road. You know how I am; I am very aggressive with trying to create new things. If it requires me making a move to initiate an addendum to go back and review and readdress what we did with state by state, I would like to do that before this meeting is over. I do not want it to fall in the cracks.

CHAIRMAN BOYLES: Let's do this, Pat; our ISFMP allows a state to request conservation equivalency. Those conservation equivalencies go to the technical committee. It is one of the things that the technical committee does for us. I think the first order of business is we've had a formal request from the state of Florida for conservation equivalency.

I think we've got to let our process play out with that. We'll get a report from the technical committee at our February meeting. Before we go down the other road, are there further comments on Florida's request or questions of Jim or the state of Florida about their request? Okay, Jim, we'll get something from the technical committee in February and the board will mull it and contemplate it and seek collective wisdom. Is this on the Florida thing, Tom, or is this on other states' catch accountability, underreporting?

MR. THOMAS FOTE: Well, it has to do with cast nets; and if you're basically going to look at cast nets as a certain thing; Pat said illegal fisheries. They weren't illegal fisheries. They were fisheries that were basically being promulgated for years and nobody was bothering to report. A lot of it was for personal use or a lot of it was for trading for different things or using them for your own bait for crab traps and things like that.

It was not an illegal fishery. It was a fishery that we didn't require reporting. We have adjusted these facts and anytime we deal with fisheries we all of a sudden – and I find that every time in the last 30 years that we have gone to a species and all of a sudden we find landings that we never knew before. It happens to every state on every species that we deal with.

We should trade it; we should figure out how to basically accommodate those facts. What is interesting is that we never basically accommodate the stock assessment for all those underreporting landings that were in those stocks to begin with that we never saw. Although that fishery was going on for years, we were underestimating the stock because that's where they are. That is what I always say when I look at these things.

My fear is when we find out and finally get good recreational statistics on a lot of these – if MRIP ever does it job properly and we get to money to NMFS to do that properly, we will wind up with finding that maybe a lot of fishes are underfished, but I would assume that some of them are going to be overfished to a great extent, and they have been for the last twenty years, and yet we haven't accommodated that.

I have asked for a workshop on this for years on how do we deal with these problems on the stock assessment part. It ain't meaning that a state goes over quota; it is that the state never reported this so the quota was smaller than we were estimating that the size of the stock was smaller to begin with. I'll leave it at that.

CHAIRMAN BOYLES: The next item of other business, Pete, you had asked for – my word – a

Round Robin from the states on some of these issues?

MR. HIMCHAK: Well, I just wanted to bring up the point that I think in many states – and again it is not just New Jersey. We had the purse seine fishery, and as I said 95 percent of our quota is easy to monitor. It is that other 5 percent that probably everybody else in here has some kind of variation on; small gill netting, cast netting, beach seining, whatever it is.

I think from learning from all the pitfalls that we're encountering in putting in our 5 percent of the quota and monitoring it, that I think there has just been an overall underestimation of these bait landings and the importance of them in other fisheries. It might be appropriate at the February meeting, after everybody has gone through – I mean, putting a quota in the middle of the year is like really insane, but even February might be too early.

At some point, yes, we have to sit down and figure out what this 6,000 pound allowance is. I mean, our gill netters, we can get our 5 percent and they can go out gill netting and say, "Well, I'm targeting bluefish and I just happened to catch all menhaden." "I threw a cast net out for mullet. It is not a directed fishery for menhaden and I just caught menhaden." I think a lot of these things have to be evaluated probably in a future addendum; no time soon. I think we're still learning here under this first year.'

DR. DANIEL: It does concern me what I'm hearing around the table because nobody has even mentioned the 12,000 pounds if you have two license holders on the boat. We're managing in precisely the way Dave described is that we've got a directed fishery that's primarily going to be a trawl fishery in the late winter or early spring; and then through the summer, when it is primarily the pound net fishery, we would never close and they would be able to bring in 12,000 pounds.

I think Tom's idea or at least trying to get a handle on consistency – but I did want to point out, and I'm not trying to be argumentative, but what was brought up in this discussion is precisely my concern about the previous topic is that we don't even have the landings' data right yet. As I was telling Bill, we're going on separate tracks I understand with the ecosystem's approach, but we don't have a safe road to travel yet. That was my point, but I think we do need to get a clear understanding around the table, because it sounds like some folks are disadvantaging their fishermen and other states are not. If that were happening in my state, I'd be in trouble.

MR. JAMES J. GILMORE, JR.: Louis, just to your point before about spending effort on maybe unnecessary things, that is part of the dilemma we have had, and I think hearing from the other states we're putting so much effort into a relatively small percentage of this fishery. The whole idea was to essentially reduce harvest by 20 percent and we're looking at – I mean if I'm looking at believing the numbers I've got right now, I reduce my fishery by 80 percent, and that wasn't the intent of this.

Eighty percent on 1 percent of coast-wide landings; I mean, is that doing anything? But, anyway, I think we've been on record. I think the problem was the addendum went into place too quickly. We didn't have the data, but we decided to play the game. At least I can give you a little update of what we did because we followed the rules and we implemented rules as an emergency rule in July to start getting landings and essentially given our ability to do quota management.

So, that went into effect, but at the same time we were trying to rebuild our records from the time period for 2009 through '11; so we sent out over 2,000 letters to all the permitted holders, whatever, to try to recreate that data. We got 12 responses; and two of the permit holders were actually good data. The other two was really stuff that was pretty suspect. Eight of them made it up out of a shoebox, whatever, so the data was really completely useless.

The other thing we did was essentially we were letting the fishery go because, again, what Dave brought up before is we never really had a good definition of a directed fishery. And, quite frankly, the thing he said before about any gear that would take more than 6,000 pounds a day, and under that wouldn't be, so most of mine is a cast net fishery, so I don't think I could call it it's not a directed fishery.

It is so poorly defined and we're trying to come up with what makes sense, and we just don't have the data at this point. Anyway, we've tried to follow what we put in the addendum. It is just not working; so I let my fishery go and I'm up to about 700,000 pounds of harvest based upon our new rules.

And thanks to the state of Massachusetts, they're going to help us out to get through this year, but we really need to like revisit this whole thing. From what I've heard around the table, most of the states are having the same problem, and we are not getting at the goal of what we originally tried to do. I think it is a little premature for initiating an addendum at this point; but I think when get to February and when we get all the data, we're going to have to look at that.

EXECUTIVE DIRECTOR ROBERT E. BEAL: I don't know if Mike and I are going to say the same thing or not, but it seems like there are two dimensions to this question. One is further defining the 6,000 pounds; what is that; is it bycatch only; is it directed; is it not directed; is it gill nets, not gill nets, all those things.

There seems to be – the wording in the plan clearly says it is a bycatch allowance, but I think there is interpretation beyond that. The other part of that is figuring out how many fish or what is the poundage of fish that was landed in this first year of Amendment 2 under that 6,000 or 12,000 pound provision?

I'm not sure of the reporting rate or reporting requirements within the state, but if staff could get a handle of those landings from each of the states before the February meeting, come back in February and give a summary of what happened under the 6,000 pound 12,000 pound provision. I think that would be a pretty good foundation for board discussion on what is the impact here.

This bait landings' issue and underreporting kind of cascades into the stock assessment. If there was 50 percent, 100 percent, 150 percent more bait landings than we have on record, if you just apply those to the last couple of years and a big spike in bait landings, then your F rate is going to spike. That is really not the reality probably.

Bait landings are probably higher throughout the time series, so I think that cascades into the technical committee considering this as a sensitivity type run as they do the next assessment. I think there are a lot of dimensions to this 6,000 pound thing and the bait issue; but getting a handle on how it went this year and characterizing the catch is probably step one for the board discussion.

CHAIRMAN BOYLES: I think that is a good suggestion. Is there any objection to that approach, to be looking at that in February? I see heads nodding. David.

MR. BORDEN: Mr. Chairman, not an objection but I just want to ask Bob is that also going to include this – it seems like it is a core issue of consistency of the application. In other words, some states have interpreted that one way and done one thing and other states have handled it a different way. I think it would help inform the board's judgment if you knew how each state had handled that issue.

EXECUTIVE DIRECTOR BEAL: Yes, I think that makes sense; clearly spell out how each state handled the 6,000 pound provision this calendar year. I guess the other part of my plea would be for the states to try to get the best handle on those landings before mid-January or late January. That is going to be tricky for some

states due to the reporting timelines and those sorts of things, but the most complete picture we can have for the February meeting would be helpful.

MR. WAINE: Bob addressed a lot of what I was going to say; but as of right now compliance reports for the species are due on April 1<sup>st</sup>, and so we would be talking about getting this information together prior to that date if we wanted to have that discussion at the February meeting.

Going back to Bob's point, the stock assessment team would really like to have the 2013 landings as early as possible for incorporation into the benchmark stock assessment as they move forward in 2014. They would like to include 2013 as a data year in the assessment; so I think the overall take-home message is if the states can submit that information as soon as possible in 2014 regarding the 2013 fishery, that would be the most useful to evaluate all of these things.

CHAIRMAN BOYLES: I'll look to the administrative commissioners to take the lead to ensure that we get that so that we have an informed discussion in February. Dr. Pierce.

DR. PIERCE: All right, so this informed discussion in February potentially would lead to a board decision that in 2014, once a state's quota is taken, fishermen can land menhaden in 6,000 pound limits? In other words, that is what some states are doing right now and they're being very liberal with their definition of bycatch; frankly, I think too liberal and inconsistent with the plan.

I look for a very distinct – a very definite clarification early next year because if it goes the way I think it's going, we're going to have to modify our regulations in Massachusetts to allow, after we take our quota, the landing of 6,000 pounds maximum in the fishery whether it is directed or not for menhaden, because the cast net fishery directed towards menhaden



– as menhaden directed and not a bycatch. I'm assuming that is going to be the outcome very likely, so I guess we'll wait and see.

MS. LYNN FEGLEY: Well, I guess I have a comment and a question. The first one is I'm listening and I'm a little – I guess I just wanted to clarify that from Maryland's standpoint. It was our impression that the 6,000 allowance was for gears that are non-directing. In the state of Maryland any gear that can move a gill net or a trawl or a haul seine does not have a 6,000 pound allowance. That allowance is only going for pound nets.

The other thing I guess in this February meeting, there was a motion on the table from our last meeting stating that the 12,000 pound allowance for the two permittees on board would not go forward unless there was specific management action by the board. I think that is what that motion said, if I remember, something to that effect. It seems to me that's the other thing that we need to address; what are we going to do with that 12,000 pound allowance?

CHAIRMAN BOYLES: Are there other comments or discussion? I look forward a vibrant discussion in February. We will put some time aside in February for spirited discussions. Is there any further business to come before menhaden? Terry.

MR. STOCKWELL: Mr. Chairman, it is sure not a surprise to me that there are a number of growing pains related to the implementation of this amendment. We have discussed a number of the issues today. The one I referred to earlier is from a state dependent upon menhaden for bait but recently unable to land any of our own. Quota monitoring is important to us.

I talked to Mike about this briefly earlier in the season about adding a capacity to our webpage to monitor the quota so that, for instance, if a state is about to – such as New Jersey, which Maine gets a tremendous amount of bait from, is about exceed its quota, we have some advance notice. I think it would also be helpful for the board to know a little bit more about these

episodic events and whether or not we're triggering them and at what level.

MR. ABBOTT: Mr. Chairman, knowing the toll being chair of this board has taken, have you been out seeking a vice-chair yet?

CHAIRMAN BOYLES: No, but I think we'll put that on the agenda for February as well. We'll be recruiting here in Georgia. Pete.

MR. HIMCHAK: To Terry's point, boy, I wish we had known that, that could have been easily accommodated; because when we did close the purse seine fishery, we did it with a very conservative projection. It was closed and then everything settled down and then we were able to reopen with 2.8 million pounds and we had another week's worth of fishing. Given the number of calls that we get from people in Maine that want to know about availability, we could just send that letter of opening and closing to the ASMFC for distribution.

MR. TRAIN: I'm not sure who this question is directed to, but I've been using menhaden for bait for 25 years, and this year we're seeing pogies about four and a half to five inches long. I never used to see them, and I don't know if this is a result of our actions that the states that are allowed to keep fishing are fishing on a smaller fish than we used to see or what. To me this is something that will be detrimental to what we're doing if now because some states have more quota than others, the states that are fishing are fishing on a smaller fish and the older fish are dying of old age in the ocean. I have never used pogies this small and I don't know why that's happening.

REPRESENTATIVE KUMIEGA: Mr. Chair, reading between the lines on Mr. Abbott's question, I'm wondering if he is not volunteering for that position.

CHAIRMAN BOYLES: We'll note that one as well. Bob.

EXECUTIVE DIRECTOR BEAL: A question for Terry. Terry, were you making a request that ASMFC keep sort of an up-to-date accounting on the commission website of where everyone stands relative to their state quota?

MR. STOCKWELL: I don't have a specific request. It is just a thought in process as we're continuing to work out the kinks here. Mike is busy enough and I'd hate to task him with too much more, but perhaps as Pete suggested just copying the letter so it is accessible either on the webpage or directly copied to the other states would be sufficient.

EXECUTIVE DIRECTOR BEAL: Yes, including closure notices and that sort of thing on our menhaden section of our webpage we can definitely do that. I think we may be able to work with ACCSP; and depending on the percentage of menhaden landings that come through the SAFIS Program, we could look into some accounting sort of tables and then evaluate where the states are relative to their quotas.

Since menhaden reporting is pretty new, I'm not sure how accurate that would be. I don't want to send out sort of a false signal that looks like we know what is going on with the landings; and there is a lag in reporting and our website looks a lot more optimistic than things really are. We will look into that and get back to you.

MR. STOCKWELL: Any help would be terrific.

MR. HIMCHAK: Just as an FYI on the bait size, you could tell where they're coming from by the age at sampling that is done on the resource. What we're seeing on the contrary and what our gill netters are flooding us with, they want these 18-inch bunker. They're catching humongous fish right now in gill nets. We keep this up in our lab. There is a picture of what they call a mammy shad. This thing was a world record, I think. It is 3-1/4 pounds. We're catching an unusual number of large fish and that's good. We're making sure that we get enough samples and sending them down to Beaufort.

## ADJOURNMENT

CHAIRMAN BOYLES: Is there further discussion? Seeing none; we will stand adjourned.

(Whereupon, the meeting was adjourned at 4:50 o'clock p.m., October 28, 2013.)