

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

**Crowne Plaza Hotel Old Town  
Alexandria, Virginia  
August 13, 2007**

Approved October 29, 2007

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2. **Motion to approve proceedings of May 7, 2007** (Page 1) Motion by William Adler; Second by Pat Augustine. Motion Carried. (Page 1)
3. **Motion to approve the FMP Review.** (Page 1) Motion by Patton White; Second by Pat Augustine Motion Carried. (Page 1)
4. **Motion that the Atlantic Herring Section recommends to the ISFMP Policy Board that the state of Maine be found out of compliance effective September 24, 2007,** for not fully and effectively implementing and enforcing Amendment 2 and Technical Addendum I to the Interstate Fishery Management Plan for Atlantic Herring. Motion by John Nelson, Jr.; Second by Vito Calomo. (Page 2)

The state of Maine has not implemented the spawning restriction, Section 4.3.2, contained in the plan. The spawning restrictions are necessary to protect the spawning aggregations that are highly susceptible to fishing in order to ensure continued improvement to the stock. In order to come back into compliance, the state of Maine must implement the spawning restrictions as detailed in Amendment 2 and Technical Addendum I.  
Motion carried. (Page 7)

5. **Motion to adjourn.** (Page 13)

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**ATTENDANCE**

**Board Members**

George Lapointe, ME (AA)  
 Pat White, ME (GA), Chair  
 Dennis Damon, ME (LA)  
 John Nelson, NH, (AA)  
 Rep. Dennis Abbott, NH (LA)  
 David Pierce, MA, proxy for Paul Diodati (AA)  
 William Adler, MA (GA)  
 Vito Calomo, MA, proxy for Rep. Verga (LA)  
 Mark Gibson, RI (AA)

Gil Pope, RI, proxy for Rep. Eileen Naughton (LA)  
 Eric Smith, CT (AA)  
 Lance Stewart, CT (GA)  
 Pat Augustine, NY (GA)  
 Karen Chytalo, NY, proxy for Gerald Barnhart (AA)  
 Peter Himchak, NJ DFW, proxy for D. Chanda (AA)  
 Erling Berg, NJ (GA)

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

**Ex-Officio Members**

**Staff**

Vince O'Shea  
 Robert Beal

Chris Vonderweidt  
 Brad Spear

**Guests**

Bruno Vasta  
 Stephen W. Heins, NYS DEC

The Atlantic Herring Section of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, August 13, 2007, and was called to order at 5:00 o'clock p.m. by Chairman Eric Smith.

### CALL TO ORDER

CHAIRMAN ERIC SMITH: Good afternoon. Would you take your seats, please, for the Herring Section Meeting. I want welcome you to the meeting of the Herring Section for the summer ASFMC meeting week. For your edification, the voting members of the section, there are seven; Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey.

### APPROVAL OF AGENDA

We have an agenda and proceedings from the May 7<sup>th</sup> meeting. We also have a new policy that I'll go through briefly regarding public comment. Essentially, we'd like you to sign in at the beginning of the meeting so we get a sense of how many people want to speak. We don't have any subjects today that were out for public hearing, in which case we might take no public comment and simply it would be spectator sport.

But, today, because the only issues coming before us are new and haven't benefited from public comment, I will take some public comment. The audience seems light and we have enough time, so with some latitude, we'll allow people to comment on the issues as they see them.

### APPROVAL OF PROCEEDINGS

Are there any items to add to the agenda? Seeing none, is there a motion to approve the proceedings?

MR. WILLIAM A. ADLER: So move.

CHAIRMAN SMITH: Moved by Bill Adler; seconded by Pat Augustine. Any objections? Without objection, we'll take the approval of the proceedings as approved.

### PUBLIC COMMENT

Public comment on the issues unrelated to our agenda items? Is there anyone in the audience who would like to bring an issue to our attention that is not otherwise on the agenda?

Seeing none, then the first issue on the agenda is the update on the Fishery Management Plan Review. This is an issue that requires final action, and Chris Vonderweidt is going to carry us through that issue.

Hang on one second, we moved on before we had a chance to deal with the public comment. Jeff Pike, you had signed up; do you want to speak on the agenda item later or do you want to speak in general now on things not on the agenda?

MR. JEFF PIKE: On the agenda.

### 2006 FMP REVIEW

CHAIRMAN SMITH: Okay, thank you. Seeing no other public comment, we'll move on to the FMP Review.

MR. CHRISTOPHER VONDERWEIDT: Thank you, Mr. Chairman. At the May Section Meeting, the plan review team brought forward the Fishery Management Plan for Herring for 2006. At that time Massachusetts had not submitted a compliance report. They have since submitted it. The plan review team has found it to be in compliance with all of the fishery management plan and recommend going forward with approval of the Fishery Management Plan Review.

CHAIRMAN SMITH: Okay, is there a motion to approve the FMP Review? Motion made by Pat White; seconded by Pat Augustine. Any discussion on the FMP Review? Seeing none, without objection, we'll call the FMP Review approved.

### AMENDMENT II COMPLIANCE UPDATE

We'll move to Agenda Item Number 2. This Amendment 2 Compliance Update. Chris will carry us through this issue as well.

MR. VONDERWEIDT: Okay, it's staff's intention to basically provide an overview of the facts surrounding the zero tolerance spawning closure. Just as a little refresher, in Technical Addendum I to Amendment 2 of the Herring Plan, the zero tolerance rule reads: "Any vessel is prohibited to fish for, take, land or possess herring from or within a restricted spawning area, except for the incidental bycatch and transiting provisions of Section 4.3.2.3."

What those transiting provisions say is that a vessel has to have its gear stowed if it's directing its fishing towards herring and transiting through a closed area. Now, Maine, on April 17<sup>th</sup>, 2007 – and you may

remember from the plan review team presentation, they had in motion regulations that would bring them into compliance with Amendment 2.

It was supposed to begin on January 1<sup>st</sup>, but upon hearing it, the section said that's fine. What this zero tolerance provision would have read is that it shall be unlawful to – and the underlined is “including”. Before it didn't say “fish for or take”, but it would now say, “It shall be unlawful to fish for, take, possess, transfer or land any catch of” and then it used to say “spawned herring, which are defined in Gonadal Figures 4 and 5,” meaning that if the fishermen tested and they didn't find any spawned herring in a group, they could direct their catch on the group of herring harvested from the ASMFC spawning closure areas.

Obviously, this is a synopsis. That was filed on April 17<sup>th</sup>, 2007. Now, the Maine Administrative Procedure Act of 1976 says that the Department of Maine Resources Advisory Council basically has to approve any regulation before they can be adopted by Maine's commissioner. I'll let you guys just look at that, but the highlights are that they must receive the advice and consent of the Department of Maine Resources Advisory Council.

Rules may not be adopted by the commissioner without an affirmative vote of the DMR Advisory Council. What happened? The rule was voted down on June 20<sup>th</sup>, 2007. Now, on the CD you were provided with an APA summary. You might notice on the second page that it has an emergency rule-making criteria. This doesn't fall under the emergency rule-making criteria, and it requires advisory council approval.

So, Maine has gone back. They have talked to their advisory council. It was kind of a case that non-compliance didn't seem like it would be a big deal, like there wouldn't be any ramifications. Upon that meeting, on August 3<sup>rd</sup>, with the industry representatives, they seemed to want to come into compliance with the ASMFC. Last Saturday, on August 12<sup>th</sup>, there was a voluntary closure, and I will let Mr. Stockwell discuss that or a representative from Maine.

On August 13<sup>th</sup>, a hard copy was mailed to the herring permit holder list. On August 15<sup>th</sup>, public notice will be published; September 4<sup>th</sup>, public hearing; and September 14<sup>th</sup> the written comment period will close. Staff is going to pass around that regulation right now. It is identical to the first regulation that they tried to put through.

What is happening right now is that industry has agreed to voluntarily not fish; and assuming everything goes according to plan, they should have regulations in place that are compliant with Addendum I to Amendment 2 of the FMP. I don't know if the Maine commissions would like to address that or if Terry would.

CHAIRMAN SMITH: The suggestion has been made that we have a motion first, before we debate. John Nelson.

MR. JOHN R. NELSON, JR.: Thank you, Mr. Chairman. We've obviously debated this type of issue for many years and had finally come to an overall agreement. I realize the state of Maine did have problems with the overall consensus that the commission had come up with the last time we met on this particular issue.

But, the fact that the commission adopted something is what we all then have to abide by, and unfortunately I don't think we can make exceptions for states or commonwealths that don't come into compliance for issues that are mandated by us.

Therefore, Mr. Chairman, I move that the Atlantic Herring Section recommends to the ISFMP Policy Board that the state of Maine be found out of compliance effective September 24<sup>th</sup>, 2007, for not fully and effectively implementing and enforcing Amendment 2 and Technical Addendum I to the Interstate Fishery Management Plan for Atlantic Herring.

The state of Maine has not implemented the spawning restriction, Section 4.3.2, contained in the plan. The spawning restrictions are necessary to protect the spawning aggregations that are highly susceptible to fishing in order to ensure continued improvement to the stock. In order to come back into compliance, the state of Maine must implement the spawning restrictions as detailed in Amendment 2 and Technical Addendum I.

CHAIRMAN SMITH: Motion made; is there a second.

MR. VITO CALOMO: I'll second it.

CHAIRMAN SMITH: Vito Calomo. Discussion on the motion? George LaPointe.

MR. GEORGE LAPOINTE: Thank you, Mr. Chairman. The whole issue of the spawning restrictions has been a tough one for the state of

Maine. Everybody knows that. It has been a tough one for commission as a result of that. We had, after the technical addendum, as Chris said, the regulation to put this in place and it was turned down by our advisory council on the 20<sup>th</sup> of June.

I think it's important for the commission to understand why, and you may get some folks talking about it as well. I think the state of Maine still believes that we need to revisit the spawning provisions of the plan, but this is not the way we wanted it to happen. We'll do that in the future, but right now we did put forward the regulation, and it was turned down, and that's why we're here today.

We did hold an industry meeting on the 3<sup>rd</sup> – I'm losing track – a while ago. We had some 40 people there, people in the herring industry, people who rely on the herring industry, and to a person they thought that we should get the regulatory process before this meeting. So we got that started whatever the following Monday was – I think the 8<sup>th</sup> or the 7<sup>th</sup> – and that process runs through the date that John Nelson put in the motion, the 24<sup>th</sup> of September.

Our APA process requires a 30-day comment period; our advisory council meets on the 19<sup>th</sup> of September; and then when the regulations are filed on the 19<sup>th</sup>, they go into effect five days later. That is why the motion is the way it is. I just wanted to give some context to folks for what has happened in the state of Maine.

DR. DAVID PIERCE: I think George just answered one of my questions, and that is the date of September 24<sup>th</sup> is when you have your public hearing, so the expectation would be that your council would review this again; and after public hearing get back in compliance. Is that the logic behind the September 24<sup>th</sup>? If you can't answer that question, I suppose I should turn to John to get his rationale for that date.

MR. LAPOINTE: The 30-day comment period runs – Chris may have had the date – runs out before the meeting on the 19<sup>th</sup>, and that's day my advisory council meets. That's the group that has advice and consent. The comment period will be done, staff will compile those comments, go to the DMR Advisory Council on the 19<sup>th</sup>. Assuming an affirmative vote, my staff will file the approved regulations with the Secretary of State. That's on the 19<sup>th</sup>, and they become five days later. That's why the 24<sup>th</sup> is put there.

DR. PIERCE: All right, thank you. Obviously, I support the motion. It makes a great deal of sense. It

has to be made. It certainly would not be appropriate for any other states' vessels to not be fishing and Maine vessel to be fishing. I certainly appreciate the problem that George had regarding his council. I understand why the council did what it did.

It is a controversial measure and it has caused emotions to run high within in the industry, not just in Maine but elsewhere. On my left and on my right, I have members of my Marine Fisheries Commission in Massachusetts, so they certainly understand the dynamics that exist between commissions, councils and state agencies.

I understand where you're coming from, George, and I appreciate the fact that you are moving this forward, and I hope that the council, after public comments are received, will, indeed, change its mind. What has impressed me the most, however, has been the initiatives by your office, by you, Terry, and others within your office, to work with the industry to get the fishermen – and I understand you've got something like 95 percent of the fishermen signing an MOA that would have them voluntarily not fish in the areas when they're closed.

It's another example how well the sea herring industry, region-wide, works with fisheries managers despite the fact that we do cause them a great deal of grief at times. Certainly, this last go around has been very difficult for the industry. And as one individual in the audience told me not too long ago, it has made them very testy.

Indeed, that is the case. So, again, thanks for that effort. It's made it certainly easier for us to deal with the next few weeks, the rest of August and certainly through the middle of September, with the understanding that it's highly likely, if not a lead-pipe cinch, that the MOA will be adhered to, and we won't end up with some states' fishermen, like Massachusetts fishermen, objecting because someone is in there fishing and they can't. So, thank you for that. So, with all that said, Mr. Chairman, I will certainly be supporting this motion.

CHAIRMAN SMITH: George, did you want to respond to a point he made before I go to Bill?

MR. LAPOINTE: When I was talking about the technical aspect, I glossed over and I should have added the voluntary compliance by the industry, and at some point if we can have Terry go to the microphone at the end of the table and talk to us about that, because he has taken the lead. Importantly, this came from the industry at our

meeting, as well, because they realized that they needed to put forward a show of good faith, and I believe it is that. So, at the appropriate time, if Terry could come up, Mr. Chairman, that would be great.

CHAIRMAN SMITH: Okay, as Terry is walking to the microphone, Bill, do you want to offer your comment?

MR. ADLER: Thank you, Mr. Chairman. I'm glad you've worked this thing out, I think. The voluntary got me until you explained that there is an MOA, whatever it is, and I don't know how controlled that is. What if they sign the thing and then they change their mind? I think the spawning closure has started or will have started before all the public hearings and everything. I just was wondering what was the voluntary and then the MOA; what does that bind them to in your state?

MR. LAPOINTE: It binds them to the good behavior they're agreeing to, Bill. Terry has the exact language. It is a commitment on the part of those members to abide by the provisions that would be in place.

MR. ADLER: And if I may, Mr. Chairman, you said most of them. Does that mean that the ones that didn't agree are going to run out there?

MR. LAPOINTE: I think at this stage we should ask Terry to go through what the agreement says and who signed it, and I think you'll find that if you look at the fishermen in Maine, the vast majority of them will have signed; and those that have signed will – and, again, Terry can correct me if I'm wrong – represent a huge proportion of the landings, but that's my thought.

CHAIRMAN SMITH: Okay, since you obviously don't know what you're talking about, I'll have Terry --

MR. LAPOINTE: Absolutely.

CHAIRMAN SMITH: Sorry, only kidding. Terry, do you want to clarify some of that?

MR. TERRY STOCKWELL: Sure, thank you, Mr. Chair. Terry Stockwell, Maine DMR. As George indicated, we did have a meeting with the herring industry and the lobster industry on August 3<sup>rd</sup>. It was well attended. They did voluntarily bring forward the concept of a signed MOA. We have a similar precedent for a gear conflict issue we have

between seiners and lobstermen in the Sequin Island Area in mid-coast.

We're taking them on faith value. I'll read you the preface to it, which is the language we worked out with the industry. It's an agreement between the Maine herring fishermen and the Maine Department of Marine Resources as of August 6<sup>th</sup>, 2007.

“While the Maine Herring Industry strongly opposes zero fishing in the spawning area provisions specified in Technical Addendum I to Amendment 2 of the Interstate Fishery Management Plan, and request that the ASMFC Atlantic Herring Section immediately begin work on investigating alternate conservation equivalencies, the Maine Herring Industry fully understands the gravity of noncompliance and voluntarily agrees to maintain compliance with the zero fishing in the spawning area provisions contained in the DMR Proposed ASMFC Herring Compliance Rule 36.01”, which are identical to what you folks have around the table here.

Somebody asked and in fact the Eastern Maine closure is effective yesterday; and as of last night, I consider it a great success that nobody went fishing. I have in this binder here about 20 FAX signed agreements. We don't have all the industry members yet, but perhaps sitting at the office back in Hollowell are additional signatures.

It is a voluntary program. It's going to be self-policing by the industry, both the herring and the lobster industry who do not wish to see a closure in place. I don't have too much more to add. Chris did an excellent job summarizing our rule-making process.

CHAIRMAN SMITH: Thank you, Terry. John Nelson.

MR. NELSON: Thank you, Mr. Chairman. I do give credit to the state of Maine to work with the industry to come up with them understanding the gravity of the situation and then working out something that hopefully will be okay for the time being. I would just like to add, though, to the gravity of the situation, when this was first made known to us about the advisory council not moving ahead, not only was the noncompliance issue immediately being considered and going to be put forward at this meeting, but also there was the issue of lawsuits by the other states or commonwealths to deal with that.

Naturally, we don't want to go that way, but that certainly was going to be a very, very active



consideration. I think most of us felt that there was a total – and these are my words – breach of trust that took place. We have worked very closely with the industry over the years. We've tried to make sure that we've done whatever we could to accommodate both them and make sure the resource was taken care of properly.

I think overall it's worked out very effectively. I think we were very much caught by surprise at something like this happening, and you know what happens when you get a surprise. You probably don't like it too much unless it's a birthday or something. So, very seriously, there were a lot of serious considerations that I hope we don't have to go to deal with this.

This is bad enough, and there are certainly other things we could have been doing than to deal with a noncompliance issue for the state of Maine. But, going the legal route was not something that we really wanted to do, but that was a distinct possibility. Again, I'm just stating that from the fact of this is very serious, and we need to make sure that we're all working in sync, as we have been over the years. And, just because somebody doesn't like something, it doesn't mean that you can just do whatever you want to do.

CHAIRMAN SMITH: Well said. Vito Calomo.

MR. CALOMO: Thank you, Mr. Chairman. First, I want to thank George and Terry, especially Terry for communicating with me. I am the chairman of the Massachusetts Fisheries Commission, along with Bill Adler, who sits at this table today with us. A lot of pain has been given to me, especially me, from our industry of what Maine was threatening to do. We've had some meetings.

Terry has kept me in close contact, and I've tried to soothe it over as much as we can, but, again, Mr. Chairman, I won't go through the whole deal again, but this was a long battle. It's gone on for years, and more votes than I can remember us taking on any issue. So, it's pretty clear and precise. I agree with John Nelson, what he just reiterated, and David Pierce. Thank you.

CHAIRMAN SMITH: Thank you. Not seeing hands, other than a couple of repeat folks, I'd like to get a couple of audience comments. We did have two people that signed up, and I'd like to hear comments from them. We'll come back to the board after that. The first one was Jeff Pike and then Mary Beth O'Tooley.

MR. PIKE: Thank you very much. My name is Jeff Pike. I'm here today on behalf of Stinson Seafood, Bumble Bee, which owns and operates the last cannery of sardines in the United States. The issue you're addressing under this agenda item is not new. I believe last year we didn't speak; we weren't allowed to, but we listened at some great length about whether this was a technical amendment that was done or a small modification, but that's history.

I am really here today to tell you a couple of things about this issue. One is 85 percent of all herring landed is connected with lobster and lobster bait; so, from a sardine production standpoint, we're extremely limited in the amount of herring that is available to our plant to produce value-added food quality.

Secondly, the fact that the Gulf of Maine has gone purse seine only, and the fact that we now have zero fishing in closed areas further reduces supply of available fish, and that's of great concern to us. There is no fish currently being caught in the western part of the Gulf of Maine, there is no fish on Georges, and we have no local source; yet, we have 140 employees at the plant.

I guess in terms of confidence building, first of all, it's no mystery that either the industry or the state of Maine did not agree with the no fishing at all. A year ago at this time, there was a discussion about that, and we felt that the zero tolerance wasn't an acceptable policy because the closed areas were so large, that we couldn't move off of spawning fish. It seemed that the issue evolved more into whether we were trying to protect spawning fish or restrict fishing on juvenile fish.

It's our view that this issue is not going to go away even if the state of Maine acts as they're pledged in the next weeks, and that really what is needed is to put some science back into this. It would be our hope and our request that the section ask the technical committee to basically look back at the biological justification for these spawning closures, and are they designed to protect spawning fish or juveniles?

Are the spawning closure areas, two in coastal Maine and one in coastal Massachusetts, which are very large, and because of their size may be unnecessarily restricting fishing in areas where there is no spawning occurring, and perhaps as an alternative we need more discreet areas that could be closed and perhaps adopt a rolling closure scenario, which is done in the federal waters for groundfish.

Again, from the science, try to find out whether, from a biological standpoint, the effectiveness of what we're all trying to do, which is to protect spawners, would be increased by having additional but more discreet closed areas. Lastly, from a biological standpoint, does the mortality of juvenile fish negatively impact the fishery more than the mortality of adult spawners?

So, if the section thought it worthy to seek some technical advice, we would hope that we could start now in looking at these questions; so that when this issue is revisited next year, that we can put some science into it. Thank you very much, Mr. Chairman.

CHAIRMAN SMITH: Thank you, Jeff. Marybeth.

MS. MARY BETH O'TOOLEY: Thank you, Mr. Chairman. My name is Mary Beth O'Tooley, and I am with the Small Pelagics Group representing vessels from Gloucester, Massachusetts, and Rockland, Maine, and the O'Hare Corporation out of Rockland, Maine. Certainly, we have been discussing spawning regulations for a number of years with a lot of disagreement.

The industry or the people that I represent do not support the zero tolerance measure or the zero fishing measure. However, a good number of us also do not support being out of compliance with the plan, so we support this motion. I would also just like to add one thing is we have had one person from the Maine industry who has not signed the agreement, but he has given a verbal agreement to honor the no fishing, and he certainly did last night, and we hope that continues. Thank you.

CHAIRMAN SMITH: Thank you. Other comments? We'll take the point that Jeff raised after we take the motion; separate issues. David.

DR. PIERCE: Just a couple of very quick points. The first one is that the National Marine Fisheries Service has not implemented spawning closures in federal waters. The states have had to do it. This goes back quite a long time. For a number of reasons, they decided not to go in that direction; we did. So, there is a lot at stake with regard to spawning closures and making them effective.

I just wanted to make that point that we, indeed, as a group of states are demonstrating that we're serious about making this work despite the fact that the federal government is not following us relative to this measure.

I just wanted to point out, as well, that if, indeed, the MOA doesn't work well, although I think it will – I really have great faith in the industry that they will live by this MOA. My personal experience within the Commonwealth of Massachusetts is that gentlemen's agreements do actually work; not forever, but they do actually work, and I believe this will work at least for this season.

But there is another option that we can pursue if, indeed, it doesn't work, and that's additional days out of the fishery. As a group of states, we can do that. I would not want to go in that direction, because that potentially would be worse than the spawning closures themselves. So, it's an option we can pursue, but I don't think we will have to because the MOA should hold, and I believe Maine's council will, indeed, follow through and adopt this measure.

CHAIRMAN SMITH: Other comments? Vito.

MR. CALOMO: Thank you, Mr. Chairman. I take exception, Mr. Chairman, to a statement that was made recently in not being able to speak. I don't believe the ASMFC, during all the deliberations of spawning closures, has not allowed the public to speak. I recall one person from Maine who you had to rule out of order because he wanted to speak so much. But, I have never heard that, and I take exception to that statement, Mr. Chairman, for the Atlantic States Marine Fisheries Commission because I am a voting member. That's number one.

Number two, Mr. Chairman, it was the state of Maine that introduced localized depletion, and so, you know, we're trying to keep – if there's such a thing as – which I don't believe in, Mr. Chairman. I want to make myself clear on that, but if there's such a thing, we're trying to keep that spawning biomass, let's say spawning biomass, giving them a chance to spawn, so if there is such a thing as localized depletion, which I don't believe in, will be there forever for everybody to enjoy.

It was also the state of Maine, purse seiners in the state of Maine, lobstermen that supported eliminating the mid-water trawlers that come out of Massachusetts to do this fishery in the Gulf of Maine until a certain time date. So, if there is a lack of bait, I don't blame it on anybody but the state of Maine at this time.

I know we're being very kind, because I truly do, also, appreciate George. We have been friends for a long time, but when I get accusations from the state of Maine that he represents, it bothers me somewhat,

Mr. Chairman. I appreciate the opportunity to speak. Thank you.

CHAIRMAN SMITH: Thank you. Hopefully defusing the first issue a little bit, I seem to recall that when we dealt with the technical amendment alone, I did limit debate because it was an issue for the board to debate as opposed to a wide-scale public. I understand your passion on that, and maybe it's true in other cases, but in this case I think that was an accurate statement.

Would you like to vote on this or would you like to comment more? I think we understand the sense of motion and it has been read into the record once. So, a moment to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN SMITH: Okay, if you've concluded your caucus, you see the motion on the board. All those in favor, raise your hand, 6; all those opposed, 1; abstentions; null votes. The motion carries 6 to 1.

The other issue that arose in the public comment, what is your pleasure on charging the technical committee to revisit the scientific basis of the areas to answer the kinds of things that Jeff Pike asked; is it spawning area closures; is it spawning fish; or is it juvenile fish? I'm just looking for a sense of the group. John Nelson.

MR. NELSON: Mr. Chairman, I don't object to that being a work project. The only issue I think that we have is that we have a work plan for this year; and so if we're going to suggest this, then I suggest the recommendation from the Chair to the staff for consideration of the next year's work plan, which should still provide us with the opportunity to have that investigated as part of the overall action plan, and decide, number one, if we have the money and resources to do that; and if we do, then, fine.

CHAIRMAN SMITH: For 2008.

MR. NELSON: Yes, for 2008.

MR. LAPOINTE: Thank you, Mr. Chairman. I think John's approach is a good one. I think that it would be best for the jurisdictions that make up the section to express their views about whether they like or don't like the spawner closures, to give the technical committee something to address, saying here is what I think is important or not, and all the other jurisdictions to do that.

Otherwise, we'll put the technical committee in an unenviable position of trying to figure out what we meant, and I think that's unproductive thing to do. I think the states and the commonwealth should say here is why I think we should keep spawning area closures, and they're effective, and here is why I think we shouldn't and we aren't. Then that gives the technical committee some specific points to address rather than a vague do we like them or don't we.

CHAIRMAN SMITH: Well, I agree with not giving them an open-ended, vague type of a charge. The question, as I understood it, was are the spawning closures protective of spawning fish or are they protective of juveniles? It's a slightly different purpose in mind, and maybe we have to get at that by going back and saying what do we intend to accomplish as a section. All the more reason why I think we need to develop this a little bit more before we put it onto an action plan agenda. Okay, other comments? David Ellenton, do you want to add another other business item?

MR. DAVID ELLENTON: I apologize for not signing your sign-up sheets there, Mr. Chairman. I didn't realize there was one available. I just wanted to bring up the point that as far as I know the only vessels that are landing herring at the moment are purse seiners, because the only place that herring is being found is inside Area 1A. The information that the industry gets as far as landings has changed as to where we get that information from these days.

The latest information that we get is that the landings from Area 1A are just over 11,000 metric tons, and I think that's up to about a week or ten days ago. Now, the landings to the end of May were somewhere near 8,000 tons, and it's not comprehensible that only 3,000 tons has been landed since that time. I wonder if any of the commissioners could throw any light on possible underreporting or non-reporting by any of the vessels?

CHAIRMAN SMITH: I have no idea, but I suspect most of us are not competent to actually answer that with respect to your question about whether it's underreporting or what else.

MR. STOCKWELL: Thank you, Mr. Chair. I have a quick answer to Dave's question. As of 8/7, the fleet has landed 19.1 metric tons, approximately 38 percent of the quota.

CHAIRMAN SMITH: Okay, thank you. Mary Beth.

MS. O'TOOLEY: Thank you, Mr. Chairman. Not to go backwards, but I didn't get my hand up quickly enough when you were talking about how to move forward with spawning regulations. I did not state that I supported Jeff Pike's comments earlier, and I did mean to do that. I also think that it would be really helpful for us to be able to go back to the state of Maine and be able to say how we are moving forward.

There was a great deal of frustration, and certainly some of the conversations that I had with people on the dock on Friday, they said, okay, if we're going to do this, and this is going to affect our bottom line and have a severe impact, how are we going to move forward? So, if we were able to go back and say that the section had a discussion about it and that, you know, they intend to revisit the spawning regulations and their purpose, the size of the boundaries, and many other things that accompany those regulations, it would certainly be very helpful.

CHAIRMAN SMITH: Thank you. I understand, but it's also one of the things that has to be on a work list and dealt with. It's not the kind of thing you're just going to stick a bunch of people in a room once say tell us what you think and have that be satisfactory to anyone. It's an analytical need that is going to need staff allocated to it, and I think that's why we have the action plan development over the years, to deal with those things in a more rigorous way.

So, unless the section wants to recommend that we charge a redirection in 2007 – and I didn't get that sense before – it needs to go on the agenda for the next time that we revise the work plan. It would be at the annual meeting in October. George.

MR. LAPOINTE: I think, again, my comments and my thought is it's my intention to go back to folks in Maine and have some of those conversations -- I know it's not on the work plan – to give people some idea of what the thinking is, which will help clarify the discussion as we engage in the next year's work plan. I think that will help in terms of giving the section information and showing the industry where we're committed to having that examination occur.

CHAIRMAN SMITH: Thank you. Other comments? David.

MR. ELLENTON: Thank you, Mr. Chairman. The only point I was trying to bring home as far as the quantity of landings being reported is that the ASMFC has agreed that if we get to a certain level of landings, there will be an extra day taken out of the

fishery. Now, if 10,000 tons or 9,000 tons suddenly appears to be reported by people who have not been reporting, how on earth are we going to know when that number is arrived at? I would just encourage those of you who do know something about herring to encourage the fishing participants to report their landings in an accurate and timely manner.

CHAIRMAN SMITH: Thank you. Basically, report accurately because it could hurt you later is the bottom line. David.

DR. PIERCE: I don't expect it now, but I would and I think the section would appreciate some explanation as to how we ended up with this gap, this significant gap in reported landings. As David Ellenton indicated, he and the industry was under the impression that X amount was landed, and Terry, God bless him, was able to provide an updated value.

I know we have changed the way in which landings are being reported now. Maine DMR used to do it through your staff and now I believe the Service has the major responsibility. Well, what happened? If the Service has the major responsibility now and we're getting inaccurate reporting or at least delayed reporting, yet before we had timely reporting, what happened in the transition? This is a very significant issue, as indicated by David Ellenton, so I would like a better explanation as to how we ended up with this delay in reporting.

CHAIRMAN SMITH: I have no idea, but the numbers that Terry described are on the National Marine Fisheries Service Website, so that is the updated information. Isn't that what you just showed me? Yes, they are. Well, it's on their website as of today, so that's the official record, I guess. Why there is a perceived or a real more of a delay in getting it relative to past years, who knows.

## OTHER BUSINESS

Okay, other business?

## ADJOURN

Seeing none, then we stand adjourned.

(Whereupon, the meeting was adjourned at 5:45 o'clock p.m., August 13, 2007.)

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