

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

**Webinar  
October 18, 2021  
Approved August 2, 2022**

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2. **Move to approve proceedings of February 2, 2021** by Consent (Page 1).
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Motion by Megan Ware; second by Ritchie White. Motion carried (Page 6).
4. **Motion to adjourn** by Consent (Page 8).

**ATTENDANCE**

**Board Members**

Megan Ware, ME, proxy for P. Keliher (AA)	Eric Reid, RI, proxy for Sen. Sosnowski (LA)
Steve Train, ME (GA)	Justin Davis, CT (AA)
Cheri Patterson, NH (AA), Chair	Bill Hyatt, CT (GA)
G. Ritchie White, NH (GA)	John Maniscalco, NY, proxy for J. Gilmore (AA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)	Emerson Hasbrouck, NY (GA)
Melanie Griffin, MA, proxy for D. McKiernan (AA)	Joe Cimino, NJ (AA)
Raymond Kane, MA (GA)	Peter Clarke, NJ, proxy for T. Fote (GA)
Sarah Ferrara, MA, proxy for Rep. Peake (LA)	Asm. Eric Houghtaling, NJ (LA)
Conor McManus, RI, proxy for J. McNamee (AA)	Allison Murphy, NMFS

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

**Ex-Officio Members**

Renee Zobel, Technical Committee Chair	Delayne Brown, Law Enforcement Representative
Jeff Kaelin, Advisory Panel Chair	

**Staff**

Robert Beal	Tina Berger	Dustin Colson Leaning
Toni Kerns	Kristen Anstead	Savannah Lewis
Laura Leach	Emilie Franke	Kirby Rootes-Murdy
Lisa Carty	Lisa Havel	Sarah Murray
Pat Campfield	Chris Jacobs	Caitlin Starks
Maya Drzewicki	Jeff Kipp	Deke Tompkins

**Guests**

Karen Abrams, NOAA	Tom Fote, NJ (GA)	Lindsey Nelson, NOAA
Max Appelman, NOAA	Jeanne Fuller, Boothbay Harbor, ME	Jeff Nichols, DE DMR
Coly area, RI DEM	Pat Geer, VMRC	Gerry O'Neill, Cape Seafoods
Pat Augustine, Coram, NY	Emily Gilbert, NOAA	Derek Orner, NOAA
Sarah Bland, NOAA	Lewis Gillingham, VMRC	Nick Popoff, FL FWS
Deidre Boelke, NEFMC	Jay Hermsen, NOAA	Justin Potter, NOAA
Jeff Brust, NJ DEP	Matthew Heyl, NJ DEP	Craig Pugh
Thomas Burrell, PA F & B	Jaclyn Higgins, TRCP	Jill Ramsey, VMRC
Matt Cieri, ME DMR	Mike Luisi, MD DNR	Bradley Schondelmeier, MA DMF
Heather Corbett, NJ DEP	Chip Lynch, NOAA	Melissa Smith, ME DMR
Jessica Daher, NJ DEP	Dan McKiernan, MA (AA)	Renee St. Amand, CT DEEP
Lennie Day	Nichola Meserve, MA DMF	Mary Beth Tooley
Jeff Deem	Steve Meyers	Ashley Weston, NOAA
Russell Dize, MD (GA)	Roy Miller, DE (GA)	Wes Wolfe, <i>The News-Leader</i>
James Fletcher	Brandon Muffley, MAFMC	Chris Wright, NOAA

The Atlantic Herring Management Board of the Atlantic States Marine Fisheries Commission convened via webinar; Monday, October 18, 2021, and was called to order at 12:45 p.m. by Chair Cheri Patterson.

### **CALL TO ORDER**

CHAIR CHERI PATTERSON: Good afternoon, and welcome to the Atlantic States Marine Fisheries Commission Atlantic Herring Management Board. I am Cheri Patterson, Chair Person, and I would like to call the meeting to order.

### **APPROVAL OF AGENDA**

CHAIR PATTERSON: With the Board's consent, I would like to approve the agenda.

MS. TONI KERNS: I have one hand from Megan Ware.

CHAIR PATTERSON: Go ahead, Megan.

MS. MEGAN WARE: Thanks, Madam Chair. I just wanted to slide one item under Other Business.

CHAIR PATTERSON: Thank you, Megan. Okay with that change to the agenda, is there any opposition to approving the agenda?

MS. KERNS: I have no hands.

### **APPROVAL OF PROCEEDINGS**

CHAIR PATTERSON: I would like to move next to approving the proceedings from the August, 2020 meeting. Is there any opposition to moving for the approval of these proceedings?

MS. KERNS: I see no hands in objection.

### **PUBLIC COMMENT**

CHAIR PATTERSON: Thank you. Is there any public comment that does not pertain to this meeting, if you could raise your hand?

MS. KERNS: I have no hands up.

### **SET QUOTA PERIOD FOR THE 2022 AREA 1A FISHERY**

CHAIR PATTERSON: Next on the agenda we will be looking to set the quota period for the 2022 Area 1A Fishery, and we'll start with Emilie Franke to provide us with a presentation and a catch up. Thank you, Emilie.

MS. EMILIE FRANKE: Thank you so much, Madam Chair. I'll start out the presentation today with a brief review of the 2021 through 2023 specifications that were approved by the Board earlier this year. I'll then review the quota period systems established by Amendment 3. As Madam Chair just mentioned, the Board action for consideration today is to Consider Setting the Quota Period for the 2022 Area 1A Fishery. Then also at the request of the Board Chair, I'll provide a brief summary of the postponed Draft Addendum III.

This was brought up in discussion last month during the last Days Out Call regarding quota periods. Just as a reminder, final action on this Draft Addendum was postponed last year, so I'll just provide a brief overview to refresh the Board's memory on this postponed addendum. I'll start out with the specifications and the quota periods.

In February of this year, the Board adopted the 2021 through 2023 Atlantic herring specifications, as outlined in the New England Council's Framework 8, and the Board approved these specifications in February, contingent on a final rule being published by NOAA Fisheries. In March, on March 29, NOAA Fisheries did publish an interim final rule to implement Framework 8, including those specifications.

There was one change from the Council's recommended specifications regarding the 2021 research set-aside. The original recommendation was a 3 percent research set-aside for 2021, and a 0 percent research set-aside for 2022 and 2023. However, it was determined that the research set-aside participants would not continue their project for 2021.

The NOAA interim final rule set that 2021 research set aside at 0 percent. Shortly thereafter, via an e-mail vote, the Board approved that change for the 2021 research set-aside to 0 percent for 2021 to align with the NOAA Fisheries interim final rule. Here we have the specifications for fishing years 2021 through 2023.

You can see that in 2021, this year, the Area 1A sub-ACL was set at 1,391 metric tons, and for 2022 and 2023 the Area 1A sub-ACL is set at 1,184 metric tons for each of those two years. As a reminder, if the catch from the New Brunswick weir fishery in Canada is less than the specified trigger amount, then 1,000 metric tons of the management uncertainty buffer would be added to the Area 1A sub-ACL.

Moving into the quota period systems. Per Amendment 3, quota periods shall be determined annually for Area 1A, and specifically, the Board can consider distributing the Area 1A sub-ACL using a bi-monthly, a trimester, or a seasonal quota period to meet the needs of the fishery. The Board can also decide whether quota from January through May would be allocated to later on in the fishing season.

Then finally, any underages may be rolled from one period to the next within the same year. Here on the screen are the three quota period options that are outlined in Amendment 3. It's important to note that these allocation percentages are fixed, and they can only be changed through an addendum.

Up top on the screen is the bi-monthly quota period, and those have a couple different options. In 2019 the Board allocated the Area 1A sub-ACL using that middle bi-monthly option, with no landings prior to June 1, and with June as a one-month quota period. The next option down in the left-hand corner is the trimester quota period option, and those trimesters are set as January through May, June through September, and October through

December. Finally, there is the seasonal quota option on the right bottom side of the screen. For the last two years 2020 and 2021 fishing years, the Board has allocated the Area 1A sub-ACL using the seasonal quota period with no landings prior to June 1st. With 72.8 percent allocated for June through September, and 27.2 percent allocated for October through December.

As a reminder, the Board's action for consideration today is to consider setting the quota period for the 2022 Area 1A Fishery from those three types of options that I just outlined, the bi-monthly, trimester, or seasonal quota period options. Again, the sub-ACL for 2022 for Area 1A is set at 1,184 metric tons.

As I mentioned earlier, just to wrap up my presentation here, I'll provide a brief summary of the postponed Draft Addendum III. Again, this postponed draft addendum was brought up in discussion last month during the Days Out call, so the Board Chair asked that I provide a brief summary to refresh the Board's memory, since it was last discussed last year in May, 2020.

This is intended to be a brief summary of the draft addendum, as a reminder of the types of options that were developed through that process. In October, 2019, the Board initiated Draft Addendum III to consider new approaches for managing the Area 1A Fishery under low quota scenarios specifically.

The Board specified that the Draft Addendum should include an option which allocates 100 percent of the Area 1A quota to the months of June through December. The Board also specified that the Draft Addendum should consider expanding days out provisions across different permit categories.

This action was in response to the challenges in managing these reduced sub-ACL quota levels, based on the 2018 benchmark stock assessment. Here is a timeline for the postponed Draft Addendum III. Again, the Board initiated the draft addendum in October, 2019. The Plan

Development Team then developed the Draft Addendum III in February, 2020.

The Board approved Draft Addendum III for public comment, and a public comment period took place between February and March of 2020. Then in May, 2020 the Board postponed final action on Draft Addendum III, until a final rule for the Council's Amendment 8 was published, which was published later in January of this year, and until the Council and Commission can meet to discuss coordination of herring management.

As far as the options that were included in the Draft Addendum III for public comment. Starting with the quota management section, the status quo option would be no changes to the current quota period option, so maintaining those three quota period systems of the bi-monthly, the trimester, and the seasonal quota periods.

Option 2 would add an alternative seasonal allocation option, which if the Board decided to allocate 0 percent of the quota prior to June 1st, the Board could then choose to allocate 100 percent of the Area 1A sub-ACL from June through December. Then Option 3 put forward an alternate timeframe for trimester management, where harvest could be concentrated during the peak availability of the resource, so 80 percent allocated from June through August. Then both of these options were developed to be added to the existing suite of quota period options in the status quo option.

Moving on to the options that were developed in this postponed addendum for Days Out permit provisions. The status quo options here would be that only Category A permits are subject to landing day restrictions and we do landings limits from June through September. Then Option 2 that was developed with that all category C permits would also be subject to the same days out measures as those that would apply to Category A.

These options were intended to address Category C permits that were not accounted for through the small mesh bottom trawl program. This option was developed to implement the same days out measures for 99.9 percent of the vessels that were responsible for herring landings in recent years when this draft addendum was developed.

Then finally to wrap up here. Draft Addendum III also included options for weekly landing limits. The status quo option was weekly landing limits that would apply only to Category A permits from June through September. Option 2 that was developed would be similar to that status quo, but it would remove the notifications for Category A permits 45 days prior to the start of the season.

Then finally, Option 3 that was developed, all vessel permit categories could be subject to weekly landings limits, and those limits could be specified throughout the entirety of the season. That wraps up my presentation. Again, just covering the specification and quota periods, followed by that brief summary of postponed Draft Addendum III, and again the Board action for consideration today is to consider setting the quota periods for the 2022 Area 1A Fishery. With that I am happy to take any questions.

CHAIR PATTERSON: Does anybody on the Board have questions for Emilie?

MS. KERNS: Megan Ware.

CHAIR PATTERSON: Go ahead, Megan.

MS. WARE: This is a question for staff. I'm just curious if there is any guidelines or rules at the Commission about how long kind of that differential time between a public hearing and a final action is. If there were continued conversations on Addendum III, would that have to go back out for public comment, or is there any guidance or rules about that for the Commission?

MS. KERNS: Cheri, I'm going to let Bob take this one, if that's okay.

CHAIR PATTERSON: Yes, thank you.

EXECUTIVE DIRECTOR ROBERT E. BEAL: Thanks, Toni, what a favor. No, I'm just kidding. Megan, we don't really have clear guidance on exactly how long we can wait between public hearings and final decision by the Board. It's really up to the Board. I know it's just a little bit of a cop out answer, but if the Board feels that situations have changed or there is new information, or the public comment that you have received is stale for any reason, then we should go back out for another round of public comments. It's not exactly defined as a 6-month, 10 months, you know 2 years, whatever it might be. But it's really up to the Board.

If you think you would get different perspectives by going out to public comment again, then you probably should go back out to public comment to see what the public thinks at this time. But if you feel the opposite, which you know conditions haven't changed, and you're likely to get the same comment that you got last time, then the Board would not have to go back out for public comment.

CHAIR PATTERSON: Do you have a follow up, Megan, or are you all set?

MS. WARE: No, that was helpful. I guess I have another question, but I can get in the back of the line if there are other people with their hands up.

CHAIR PATTERSON: No, go ahead and ask your second question, that's fine.

MS. WARE: Okay, thank you. I know in the motion to postpone Addendum III, part of it was conditioned on Amendment 8, and part of it was conditioned on kind of these Council/Commission conversations. I was just curious, have those ended? Have we satisfied both conditions of the postponement, or are those conversations still ongoing?

MS. KERNS: Again, I'm going to go to Bob. I can say that the Amendment 8 condition was met. But I'll let Bob speak to the other.

EXECUTIVE DIRECTOR BEAL: Yes, Megan, obviously Amendment 8 is set, except there is a law suit in the background, I guess. But as far as the conversations between the Council and Commission go about some of the jurisdictional questions that have come up. Council and Commission leadership have met a few times via conference call.

We also have met with NOAA attorneys, talking about the legal requirements and opportunities within the Atlantic Coastal Act and the Magnuson Stevens Act. That last conversation with the attorneys was, I think it was close to a year ago now, so it's been quite a while. We've kind of lost momentum on that. I think a number of other events overtook the group, and we lost momentum.

One of the ideas that was out there is to pull together a white paper, or some sort of strawman document that would sort of define the roles ASMFC would play and the roles the Council would play, and sort of divvy up the responsibilities that are associated with herring management. That project has not really been started; we've talked about it a couple times.

The group hasn't followed through on that. There is not a lot of activity right now. ASMFC in our draft action plan has a very generic line. Under herring it says, "continue to improve coordination and collaboration with New England Council." If I remember right, I think New England Council has a similar sort of generic placeholder task in their draft priorities for next year that kind of talks about coordination between the Council and ASMFC. Yes, we both are sort of still contemplating it, but it doesn't have a lot of momentum right now, I guess is the best way to respond.

CHAIR PATTERSON: Any follow up, Megan?

MS. WARE: I'm all set, thank you.



CHAIR PATTERSON: All right then, I was made aware that there is a motion that is proposed for the Board's consideration. Would the maker of the motion please move forward with a motion?

MS. KERNS: Cheri, that is Megan.

CHAIR PATTERSON: Yes.

MS. WARE: Thank you, Madam Chair. This is a motion for setting the 2022 seasonal split of quota. **Move to allocate the 2022 Area 1A sub-ACL seasonally with 72.8 percent available from June to September, and 27.2 percent allocated from October through December. The fishery will close when 92 percent of the seasonal period quota has been projected to be harvested, and underages from June through September shall be rolled into the October through December period.**

CHAIR PATTERSON: Thank you, Megan, is there a second to the motion?

MS. KERNS: Ritchie White has his hand up.

MR. G. RITCHIE WHITE: Yes, I'll second.

CHAIR PATTERSON: Thank you, Ritchie. Discussion among the Board. Please raise your hand if you would like to discuss.

MS. KERNS: I have Melanie.

CHAIR PATTERSON: Go ahead, Melanie.

MS. MELANIE GRIFFIN: I don't really have anything to discuss, other than just to say that I support the status quo motion.

CHAIR PATTERSON: Thank you, any other Board members?

MS. KERNS: No other Board members, but a member of the public/our AP Chair.

CHAIR PATTERSON: Okay, thank you. Yes, I'll go out for comment from the public now.

MS. KERNS: We have Jeff Kaelin.

CHAIR PATTERSON: Go ahead, Jeff.

MR. JEFF KAELIN: Thank you, Madam Chair, and I just wanted to say that I appreciate Megan and Ritchie's motion. I really think this was sort of the outcome of where the Federals/Commission discussion, you know ended up, because it provides access to federally permitted trawl boats in the fall. We're all in a very different core position relative to the quota, there is no question about it. I think this is a very fair motion, and I just appreciate it. I didn't know what to expect today, frankly, thank you.

CHAIR PATTERSON: Thank you, Mr. Kaelin, is there any other public that would like to make comment?

MS. KERNS: I see no other hands, Cheri.

CHAIR PATTERSON: The motion on the board is to allocate the 2022 Area 1A sub-ACL seasonally, with 72.8 percent available from June through September, and 27.2 percent allocated from October through December. The fishery will close when 92 percent of the seasonal period's quota has been projected to be harvested, and underages from June through September shall be rolled into the October through December period. Motion by Ms. Ware, and seconded by Mr. White. Is there any opposition from the Board on this motion?

MS. KERNS: I see no hands raised in opposition.

**CHAIR PATTERSON: Motion is approved by consensus.** Thank you very much.

#### **OTHER BUSINESS**

We'll move on to Other Business. Megan, you had some other business to bring forward?

MS. WARE: I did, I also just had a comment on the Addendum III process, because I think at some point, we're going to have to deal with that, if that's okay.

CHAIR PATTERSON: Go ahead.

MS. WARE: I think since it was postponed to kind of like a specific condition and not indefinitely. I do think at some point this is going to come back up to the Board, and we're going to have to figure how to deal with this. My sense is that changing the percentages in the quota period is a very controversial topic, with some people in favor and some very much opposed, and so that can create challenges. I will just say I think something that is at least worth a conversation in that addendum is the trip limit, particularly in the fall period.

I'm thinking specifically to kind of what we're facing now, where we have very low metric tons and we've set zero landings' days, even though we still have fish in the bank, so to speak, because we just don't think the fishery can be open and stay within that amount. It may be that we're at such full levels that a weekly landing limit wouldn't help in that situation. But it may be that if we have small increases in quota, the weekly landing limit would give us a bit more ability to forecast the landings. I'm just throwing that out there as, I think something that is at least worth a conversation at some point.

CHAIR PATTERSON: Thank you, Megan. I think as Bob had mentioned that one of the two criteria for moving this forward has been met. In order for the second part to be met, the Council and ASMFC leadership would need to continue forward with that white paper. Are you recommending that they have a time limit to do that?

MS. WARE: No, I think rightly so, other things have come up, including COVID that has changed people's priorities. I don't think there needs to be a time limit. I just kind of wanted to provide some thoughts on how we move forward with that Addendum, because I think it could be a tricky one.

CHAIR PATTERSON: Thank you, did you have other business other than that?

MS. WARE: I did, I'm sorry. I just wanted to flag that right now Maine DMR through ACCSP has funding for herring sampling. Depending on this week, either that will have one more year or this will be the final year. I'm not trying to focus on that decision, but I just wanted to flag for the Board that in the near future that funding is going to end. The sampling Maine DMR supports is in multiple states.

I think a challenge we're going to have is once that funding goes away, I don't think Maine DMR is going to have the state funds to support sampling in other states. I just want to flag this as maybe something we can talk about with the state agencies over the next year or so. My understanding is that sampling is really important for the stock assessment, so I think it would be good to start thinking about some of those issues ahead of time. Thanks.

CHAIR PATTERSON: Thank you for bringing that forward to us. Is there any other discussion or business to be brought up before the Board?

MS. KERNS: Madam Chair, I don't see any other hands up, but I do have a question for NOAA Fisheries if you will.

CHAIR PATTERSON: Sure, go ahead.

MS. KERNS: I think Emilie touched on this before during her presentation that right now, and I think Megan did as well, that we have zero landings' days right now for this Period 2 fishery, even though we do have fish in the bank, but that fish in the bank is so low that we didn't feel like we could open the fishery without having to close it within the same day, and have the potential for going over. But I wanted to see if we had any updates from NOAA on the potential for a transfer on the Canadian weir fishery. I see Alli Murphy with her hand up.

CHAIR PATTERSON: Go ahead, Alli.

MS. ALLISON MURPHY: Thanks, Madam Chair. We're still in the process of finalizing the information, but we do anticipate having an in-season adjustment published fairly soon, based on the information we have now, so keep your eyes open for that.

CHAIR PATTERSON: Thank you, Alli. Is that the full amount or is that partial amount?

MS. KERNS: Alli has her hand up again.

CHAIR PATTERSON: Go ahead, Alli.

MS. MURPHY: I'm just looking at the regulations right now, and they read, "If NMFS determines that the New Brunswick weir fishery lands less than about 3,000 metric tons of herring, NMFS will subtract 1,000 metric tons from the management uncertainty and reallocate that to the Area 1A sub-ACL." My read is that it's an all or nothing thing.

CHAIR PATTERSON: Okay. All right.

MS. KERNS: Based on that I would say that we would perhaps be on the lookout to put together a days-out meeting relatively soon, so just keep that on your radar. Then I'm not sure, Jeff Kaelin had his hand up here, Cheri.

CHAIR PATTERSON: Go ahead, Jeff.

MR. KAELIN: How much is left of the, 1184 is next year, how much is left of the 1A quota? How many tons?

CHAIR PATTERSON: Renee, do you have that information or Alli?

MR. RENEE ZOBEL: This is Renee. Jeff, I'm looking at the quota monitoring site that was updated from NOAA as of the 14th and about 1300 metric tons approximately out of the 1579 for the whole period for this current period. For the previous, what we have minus the thousand was about 180 metric tons remaining before the 92 percent would close it down.

MR. KAELIN: Okay, thank you. I could have looked at that myself, I appreciate that, just in terms of thinking it through. It's a disaster for everybody. I don't think it's down to the 3 has a lottery in it. You know where we don't have ITQs, maybe there is some kind of quota lottery like has been used in scallops in the past that could allow a boat or two of some kind go to take these fish. Thanks for letting me say that. It is a tough situation for everybody, but it's good to have an open forum like this to discuss it. Thanks again.

CHAIR PATTERSON: Thank you. Is there any other business before the Board?

MS. KERNS: I see no additional hands.

CHAIR PATTERSON: All right, could I get a motion to adjourn and a second?

MR. STEPHEN TRAIN: So, moved, Steve Train.

MS. KERNS: And a second from Conor McManus.

CHAIR PATTERSON: I'm sorry, you got a second? I missed that.

MS. KERNS: Yes, from Conor McManus.

#### **ADJOURNMENT**

CHAIR PATTERSON: Okay, thank you. Thank you, Steve and Conor, so with that the meeting is adjourned, and thank you very much.

(Whereupon the meeting adjourned at 1:15 p.m. on October 18, 2021.)