

DRAFT

PROCEEDINGS
of the
ATLANTIC STATES MARINE FISHERIES COMMISSION
SHAD AND RIVER HERRING MANAGEMENT BOARD

October 18, 2000
Adam's Mark Hotel
Clearwater Beach, Florida

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| Accept the agenda | 1 | Carried | 1 |
| Accept the Minutes | 1 | Carried | 2 |
| South Carolina Finding of Non-Compliance be withdrawn | 18 | Carried | 37 |

ATTENDANCE

Board Members

| | |
|--|--|
| Lance Stewart, Connecticut Gov Appte. | Pete Jensen, proxy for Eric Schwaab (MD) |
| Ernie Beckwith, Connecticut DEP | Tom Fote, proxy for Sen. C. Louis Bassano (NJ) |
| John Miglarese, South Carolina DNR | John Connell, New Jersey Gov. Appte. |
| David Cupka, South Carolina Gov Appte. | Bruce Freeman, New Jersey DFW |
| Frederick Rice, Pennsylvania Gov. Appte | Brian Culhane, proxy Sen. Owen Johnson (NY) |
| Susan Shipman, Georgia DNR | Byron Young, New York DEC |
| Jaime Geiger, USFWS | Pat Augustine, New York Gov. Appte. |
| Paul Perra, NMFS | Lew Flagg, Maine DMR |
| Bill Goldsborough, Maryland Gov. Appte. | Vito Calomo proxy for Rep. Anthony Verga (MA) |
| Roy Miller, Delaware DFW | Paul Diodati, Massachusetts DMF |
| Melvin Shepard, proxy for Rep. David Redwine | Bill Adler, Massachusetts Gov. Appte. |
| Damon Tatem, North Carolina Gov. Appte. | Ron Michaels, Georgia DNR |
| Preston Pate, North Carolina, DMF | Jack Travelstead, Virginia MRC |
| John Nelson, New Hampshire DMF | David Borden, Rhode Island DFW |
| A.C. Carpenter, PRFC | Bob Palmer, proxy for Russ Nelson (FL) |

Ex-officio Members

| | |
|----------------------------|--------------------|
| Patricia Jackson, AP Chair | Russ Allen, NJ DFW |
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ASMFC Staff

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| Heather Stirratt | Dieter Busch |
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Guests

Charles Lesser, DE DFW

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

Shad and River Herring Management Board

October 18, 2000

SUMMARY OF MOTIONS

1. Move to approve the agenda.

Motion made by Mr. Augustine, Seconded by Mr. Adler.
Motion carries.

2. Move to approve the minutes from February 9, 2000.

Motion made by Mr. Augustine, Seconded by Mr. Adler.
Motion carries.

3. Move that the Shad and River Herring Management Board recommend to the ISFMP Policy Board and the Commission that the determination of non-compliance by South Carolina with the Shad and River Herring FMP be withdrawn in that South Carolina has met the 10-fish creel limit compliance requirement of the FMP for all its watersheds except one and this one watershed has met the 10-fish creel compliance requirement through the imposition under state law of management measures which provide for conservation equivalency.

Motion made by , Seconded by
Motion passes (15 in favor, 2 opposed, 1 abstention)

**ATLANTIC STATES MARINE
FISHERIES COMMISSION**

**SHAD AND RIVER HERRING
MANAGEMENT BOARD**

**Adam's Mark Hotel
Clearwater Beach, Florida**

October 18, 2000

The Shad and River Herring Management Board of the Atlantic States Marine Fisheries Commission convened in the Ballroom of the Adam's Mark Hotel, Clearwater Beach, Florida, October 18, 2000, and was called to order at 2:00 p.m. by Chairman Ron Micheals.

CHAIRMAN RON MICHEALS: Good afternoon, everybody. Let's go ahead and get started. This meeting is now called to order. Just one friendly reminder before we get going on the agenda items is that we have a Bluefish Management Board Meeting at 3:00, so if we can stay on track as well as we did at the previous meeting in Alexandria, Virginia, we should have no problem concluding on time in one hour. Now we will have the roll call from Heather, please.

(Whereupon, the roll call was taken by Ms. Heather Stirratt.)

MS. HEATHER STIRRATT: Mr. Chairman, you have a quorum.

CHAIRMAN MICHEALS: Thank you, Heather. As we move along, I will try to notice everybody's hands being raised up, and I notice that we are so spread out I can't hardly even see some of the people at the other end, so just keep waving and I will recognize you. With that, the next order of business is approval of the agenda. Does anyone have any changes to the agenda as it is presented?

MR. PATRICK AUGUSTINE: I move to accept the motion.

CHAIRMAN MICHEALS: Okay, we have a motion to accept it from Pat; second from Bill

Adler. All in favor say aye; opposed. The agenda is approved. Next is approval of the February 9, 2000, meeting minutes. Hopefully, everyone has had a chance to review them before now. Are there any corrections to these minutes? Pat.

MR. AUGUSTINE: I move to accept, Mr. Chair.

MR. WILLIAM A. ADLER: I second.

CHAIRMAN MICHEALS: Motion by Pat Augustine and second by Bill Adler. All in favor say aye; opposed. It is going great so far. The minutes are accepted. At this time, I would like to open the floor to any public comment on issues related to Shad. Do we have anyone from the public who wishes to speak? Hearing none, let us move on to the next agenda item, which is the state compliance and the 2000 FMP review by the PRT.

MS. STIRRATT: Good afternoon. I would like to make sure that everybody is aware of the materials. Most of you sitting around the table, again, have received the materials via CD-rom. For those of you in the back of the room, there are meeting materials located on the back table. Please feel free to pick them up at your leisure. The PRT report is what I am going to be focusing on at this point. The plan review team convened via conference call on August 31 of this year to discuss the status of state compliance. Discussion of the annual reports confirmed that all states with the exception of South Carolina are in compliance with Amendment 1 for calendar year 1999. South Carolina's compliance status will be discussed in detail later today. Given that the 2001 reports will cover the calendar year 2000, which follows the full implementation of Amendment 1. The PRT has noted areas where states need to pay additional attention in reporting for 2001. Copies of this report will be forwarded to the Technical Committee and the Advisory Panel following this meeting so that they may take those suggestions as an advisement. In addition to states' compliance and reporting, the PRT discussed the phaseout of the ocean intercept fishery and the bycatch of Atlantic sturgeon in shad and river herring fisheries. Relative to the ocean intercept fishery, the PRT recommends

that the Management Board request the technical committee or an appropriate body to develop a detailed protocol for gathering information on mixed stock contributions to ocean landings before the ocean intercept fishery is phased out. As you may recall, this body indefinitely deferred the ocean tagging requirement in Amendment 1 per the request of the technical committee. As a substitute, the Management Board strongly encouraged the states required to fulfill this ocean tagging experiment to collect an archive otolith for future microchemistry analysis. The Technical Committee developed a protocol only for the year 2000 for storing and archiving this information and privately funded the microchemistry analysis for this year. I won't go into much detail because I believe Russ Allen is going to provide an update as to what has been done this year. However, I would like to mention that if, in fact, the Board wishes to continue with the microchemistry analysis, the PRT recommends that a long-term protocol and a time line are necessary to give staff and the necessary bodies appropriate direction. In discussing the state reports, the PRT also noted that many of the states continue to lack reports on Atlantic sturgeon bycatch. Such bycatch reporting is a requirement under Amendment 1 to the interstate fishery management plan for shad and river herring. The PRT recommends that states include a line item on their report forms or their logbooks for the collection of sturgeon bycatch data. Mr. Chairman, that concludes the PRT report.

CHAIRMAN MICHEALS: Thank you, Heather. Does anyone have any questions or comments to Heather regarding this report she just presented to everybody? Ernie?

MR. ERNEST E. BECKWITH, JR.: Yes, Heather, maybe you can help me out. We do so many reports that I lose track of what we did and when, but didn't we just submit a Shad Report recently in the past three or four weeks?

MS. STIRRATT: Yes, you did.

MR. BECKWITH: And that was for?

MS. STIRRATT: Calendar year 1999. It is a 2000 report but it covers the previous calendar year.

MR. BECKWITH: So what the PRT looked at couldn't have been that report. It had to be the one from the previous year?

MS. STIRRATT: No, it was this past year. It was 1999. The report covered the calendar year 1999 for the fisheries during that year and also the management programs.

MR. BECKWITH: They met during August?

MS. STIRRATT: They did.

MR. BECKWITH: I don't think we submitted the report until after August.

MS. STIRRATT: No, it was received in time.

CHAIRMAN MICHEALS: Paul.

MR. PAUL DIODATI: Heather, is there some standardization or criteria for this recreational CPUE that I see is called for in a number of areas?

MS. STIRRATT: All of the requirements that may have been listed are commented on by the PRT fall in Tables 2 or 3 in Amendment 1. If you look, the states are -- let me find it. It is actually on Pages 42 through 45 and it goes through the mandatory fishery dependant and independent monitoring programs which are required by the states. Massachusetts was required to provide information on CPUE. Now again, the amendment wasn't fully implemented until January 1 of 2000; therefore, if it wasn't in your report, it is not a big deal for that year, but it will be a big deal next year. It will be a mandatory reporting requirement.

MR. DIODATI: Exactly what measurement is expected of the PRT for that? Is that a creel survey?

MS. STIRRATT: It is a sport creel limit, a sport creel CPUE, and there is also catch per unit effort that is needed for the commercial fisheries as well.

CHAIRMAN MICHEALS: Bill.

MR. WILLIAM GOLDSBOROUGH: Thank you, Mr. Chairman. Under status of state

compliance in the report, I see no explicit reference to compliance with the five-year phase out, and I am quite sure that is because there is nothing really that is required yet, but I think it would be helpful, or it certainly would for me, if we could have a statement on the record of exactly what will be required when with respect to the phaseout.

MS. STIRRATT: To that point, Bill, there has been an official request by the Technical Committee to send a letter out to the states forming the time line specifically which has been detailed by Amendment 1 and letting the states know exactly when that 40 percent reduction needs to take place and then when the 100 percent reduction needs to take place, and I plan on doing that as soon as we get back to the office.

MR. GOLDSBOROUGH: Thank you. I will look forward to seeing that.

CHAIRMAN MICHEALS: Bruce.

MR. BRUCE FREEMAN: Thank you, Mr. Chairman. Several questions, Heather, relative to the ocean intercept fishery. There was discussion of a tagging and then the substitute of the otoliths for that tagging effort, and then you go on to indicate that there should be protocols be developed containing estimates of sample size, time lines, and funding. Who is that to be done by? Was that for the Technical Committee?

MS. STIRRATT: The PRT's recommendation initially went to the Technical Committee; however, if there is a more appropriate body, in your opinion, then perhaps we should be looking at that. I would note, as I did in my summary, that we did develop, the Technical Committee and I did develop a protocol for archiving and storing and collecting for this year. For this year it was 50 otoliths per state per riverine system, I believe it was, and that was just for this year. As I noted, the microchemistry analysis was not sponsored by the ASMFC. In fact, Russ Allen is going to give you more detail on this, but initial analyses have begun and it has been privately funded, but it is my understanding that that analysis is not going to cover the entire coast. It is focusing on the Chesapeake Bay areas, so it is certainly --

because we are not sponsoring it, it may not fully reflect the coastwide analysis that was originally discussed here.

MR. FREEMAN: My question, I think you answered, was is the Technical Committee Report going to cover this issue and Russ, I guess it is. Okay, and then the Atlantic sturgeon bycatches, your comments or the Plan Review Team's comments were the need to report the sturgeon bycatch in the shad fishery, but then it goes on to say in every other fishery under the jurisdiction of the state. I am just curious so far as the plan statement that says at the end of five years the coastal intercept fishery is to end for shad; therefore, there would be no need to get the incidental fish of sturgeon because, theoretically, it won't exist in that fishery; is that a correct understanding?

MS. STIRRATT: Bruce, I would like to defer that question to Russ as to whether or not Atlantic sturgeon would be incidentally caught in the river systems.

MR. FREEMAN: Okay, I guess we will have to wait for Russ' report, then.

CHAIRMAN MICHEALS: Okay, I guess we will wait until Russ's report. The FMP review is next, Heather.

CHAIRMAN MICHEALS: Roy.

MR. ROY MILLER: Mr. Chairman, in regard to the state specific areas of concern, Heather, is it my understanding, did I hear you right that for those states that must report on recreational CPUE and stock composition, that has to be done in 2001?

MS. STIRRATT: That is correct. It is a compliance item.

MR. MILLER: I should note that both New Jersey and Delaware were so designated, but I am curious why Pennsylvania -- was that an oversight why Pennsylvania was not included in that, because it was the intention of the three basin states to engage in a cooperative study of recreational catch and effort.

MS. STIRRATT: Roy, it is my understanding -- and again, I apologize, and I

don't have the report open and I am having to go from memory, but it is my understanding that Pennsylvania has no commercial fishery. Is that true?

MR. MILLER: It says sport CPUE.

MS. STIRRATT: I am sorry, sport. Well, there are two requirements. There is both an ocean and a commercial aspect to that. I am sorry for the --

MR. MILLER: I am focusing on the sport aspect.

MS. STIRRATT: I will have to review that, Roy. I need to go back to the plan and make sure there wasn't an oversight there.

CHAIRMAN MICHEALS: Lew.

MR. LEWIS FLAGG: In response to Roy's question, I think the reason why Pennsylvania isn't included there is because I believe they had de minimis status and there are not required under de minimis to report. There are a number of states in that situation.

MS. STIRRATT: That is correct, Lew.

CHAIRMAN MICHEALS: Roy.

MR. MILLER: Can you help me with my memory in that regard. I don't recall us agreeing that Pennsylvania was a de minimis state when it came to recreational fishing for shad. Actually, it is my understanding that they have a fairly large recreational fishery for shad.

MS. STIRRATT: Roy, according to the calculations that the PRT reviewed, they were below de minimis status.

CHAIRMAN MICHEALS: A.C.

MR. A.C. CARPENTER: I would like to go back to this sturgeon bycatch issue. In next year's report, since we all have a sturgeon report that we have to file each year, can we just simply reference the sturgeon report to meet the compliance requirements of this one, or do we have to do it all over again?

MS. STIRRATT: A.C., I think that is fine. The problem has been is that those states that haven't reported on sturgeon bycatch in the past haven't reported in either report and that is a problem. Just to note here, the Atlantic sturgeon reports were due October 1st and the PRT has not had the opportunity to review those yet, but based upon what I saw come through the door, I am kind of concerned because in the Atlantic sturgeon report, that is a compliance item. Just a word of warning.

MR. CARPENTER: I have one more question regarding the Table 2 that has the Potomac River Fisheries Commission, and under the sport creel limit it has an "NA" for not applicable. We have a total moratorium on the possession or fishing for the -- doesn't that qualify as meeting the creel limit requirements? Then, under the sport CPUE analysis, we are listed as a "P" for partial, and I am not sure what we did to get the partial rating.

MS. STIRRATT: Partial ratings were given when there was more information that the Committee was looking for. I would be happy to discuss that with you following this meeting, A.C.

CHAIRMAN MICHEALS: Ernie.

MR. BECKWITH: Are we talking about Table 2 now?

MS. STIRRATT: Table 2 in the FMP or Table 2 in the PRT report?

MR. BECKWITH: Table 2 in the PRT report.

MS. STIRRATT: Sure, we can discuss that.

MR. BECKWITH: The reason I mention it is I believe A.C. was making comments about it; and if that is open for discussion, I have got a few comments about Connecticut's report here. I see that we have a "P" for the sport fishery CPUE analysis; and if I recall, I had asked to have the table in the plan changed so we would only be required to monitor the recreational fishery every other year, and this was an off year where we are monitoring this year.

MS. STIRRATT: Okay. Thank you.

CHAIRMAN MICHEALS: Russ.

MR. BECKWITH: The other comment I want to make is about the sturgeon bycatch report. I was mixed up because when I asked my question before, Heather, I know we did something a couple of weeks ago and that was the sturgeon report that we completed, and I recall we had a bycatch estimate in there for the American shad fishery and that is how I got mixed up with the reports, but we have included the sturgeon bycatch in the shad fishery in the sturgeon report. Just to go back to A.C.'s question, should we put it in both reports or can we just reference one or do you have a preference?

MS. STIRRATT: I guess my preference would be that you include it in the shad report first; and then if you want to reference the shad report when you turn in your Atlantic sturgeon report, that is fine. That way I am not waiting a month or a couple of months because the shad report is due in July. It is due July 1st and the Atlantic sturgeon report is due on October 1st. That way it clears things up from the very beginning.

CHAIRMAN MICHEALS: Roy.

MR. MILLER: Mr. Chairman and Heather, I apologize for pursuing this issue further, but if we could quickly dispose of it, that would be desirable. But in regard to de minimis, if memory serves, we discussed de minimis in regard to both commercial landings and de minimis in regard to recreational. Now the state of Pennsylvania couldn't possibly be de minimis in regard to recreational; whereas the state of Delaware could because we have almost no recreational fishery in the Delaware system for shad. Can you refresh my memory on de minimis?

MS. STIRRATT: Roy, the way that the de minimis status requirement reads in the FMP is that states report recreational or commercial landings of American shad that are less than 1 percent, so it is either/or, not both.

MR. MILLER: I think I understand that.

MS. STIRRATT: That is my interpretation. If I am wrong, someone please advise me.

MR. RUSS ALLEN: To follow up on that, Roy, the last survey that was done on the Delaware system I believe had about 15,000 or 16,000 fish harvested between New Jersey and Delaware, and I am not real sure --I can't understand how Pennsylvania would get de minimis status either.

MR. MILLER: Again, Delaware has no recreational shad fishery, so if something was reported to that effect, it was in error. I would have believed 15,000 between Pennsylvania and New Jersey.

MR. ALLEN: Right, that is what I meant, Pennsylvania and New Jersey. It was about 15,000 fish and that was in 1995, I believe. I am not real sure how Pennsylvania got de minimis status, and they do have a very viable recreational fishery.

MS. STIRRATT: Roy, I will follow up on that. I will double check; and if it is incorrect, I will make sure that it gets revised.

MR. MILLER: Thank you, Heather.

CHAIRMAN MICHEALS: Yes, Bill.

MR. GOLDSBOROUGH: Thank you, Mr. Chairman, on the same point, correct me if I am wrong, but doesn't a state have to request being classified as de minimis which leads to the question -- which I would be surprised if there was a positive answer to this actually -- as to whether Pennsylvania did request that for shad. Not to put Fred Rice on the spot since I don't see Dick here, do we know whether they did?

MS. STIRRATT: I have not received a formal request. I would need to go back and double check the records, but to my knowledge there isn't one.

MR. FREDERICK RICE: I am not aware that they did request that; however, I do know that we have a good fishery on the Delaware, the technical term I am not sure.

CHAIRMAN MICHEALS: Paul.

MR. DIODATI: Just a quick question. Is Table 2 specific to the year 1999 or --

MS. STIRRATT: Yes. it covers calendar year 1999.

MR. DIODATI: So if there is something that is not applicable, does that mean just for 1999 or it may become a compliance issue in 2000?

MS. STIRRATT: No, it should be a continued non-applicable unless the reason that the not applicable was put in there, say for those states that don't have a commercial fishery. There were some reasons that were put in -- some "NA's" that were put in there for those types of reasons. So, if the status of the commercial fishery and or the recreational fishery changed, then those may be adjusted as well.

MR. DIODATI: I see that for Massachusetts, that under specific areas of concerns that the PRT provided, it does indicate that you are looking for stock composition information next year, but on Table 2 that is not the case. Nothing has changed with our fishery; we have no commercial fishery and a minor recreational one.

MS. STIRRATT: I will make sure that oversight gets corrected. Thanks, Paul.

CHAIRMAN MICHEALS: Okay, let us move on, please. Do you want to go ahead with the FMP Review?

MS. STIRRATT: The FMP Review has been updated with the new information for calendar year 1999. The updated FMP Review contains the PRT's recommendations to find all states in compliance with the exception of South Carolina; the commercial and recreational landings for all four species, including American shad, hickory shad, alewife, and blueback herring; the status of research and monitoring and the status of the management measures that currently exist.

CHAIRMAN MICHEALS: Questions? All right, that brings us to Agenda Item Number 6, which is the discussion of South Carolina compliance. What I would like to propose, if it

pleases the Board, would be to begin by giving an opportunity to South Carolina to make a presentation addressing this issue, followed by the Technical Committee's report, and then followed by a second opportunity for South Carolina to make any clarifications or to provide additional information if necessary. David.

MR. DAVID CUPKA: Actually, John is going to start off.

MR. JOHN V. MIGLARESE: Thank you, Mr. Chairman. Again, my name is John Miglarese, and I am relatively new to this process, so bear with me. This is our formal petition to this Board and ultimately into the Commission for rescinding the finding of non-compliance to the shad and river herring management plan. Very quickly, I am going to go through these as quick as I can, just to remind you all that 1998 had the amendment with the 10-fish recreational creel limit and in March of 2000 the state undertook -- David and I worked very hard in revising all of the coastal fishery laws in South Carolina. As a part of that large bill there was a 10-fish creel limit in there. The General Assembly did not go along with that and included a 20-fish creel limit. That bill was signed into law effective July 1. On June 8, we came before the commission and were found out of compliance because of that creel limit. After the finding of non-compliance, we came back into our General Assembly in a special session that was quite unprecedented. We were able to work with the leadership of the General Assembly in which they did in fact review the shad portion, the creel limit portion of the coastal fisheries law, and they passed Bill 4864 which established a 10-fish creel limit for all the waters of South Carolina except for the Santee River. Unfortunately, at that time there was another rider attached to it that included a provision that was very objectionable to us on striped bass. It had nothing to do with this plan, but in order to deal with the objection, the governor delayed the signing of the bill. In August, I reported back to you in the letter from the governor to this commission indicating his willingness to sign that bill. On September 22nd, he, in fact, signed it and now we have a bill in place, a signed law that includes a 10-fish creel limit for South Carolina in all waters except for the 20-fish creel limit in the Santee. Under the fishery management plan, under Section 4.4, there is an

alternative state management regime section. It gives us an alternative strategy. In the shad fishery management plan, a state may, with approval, vary the regulatory specifications so long as that state can show, to the Management Board's satisfaction, the target fishing mortality rate or the overfishing definition will not be exceeded. We sent in the appropriate materials, through the process outlined at the last meeting, into the Technical Committee and the Advisory Committee and what we would like to do today is to formally make our presentation on that management alternative scheme as a conservation equivalency proposal. David Cupka, who directs the Department's Office of Fisheries Management, is intimately involved in this fishery management scheme and will make the actual technical presentation. David.

MR. CUPKA: Thank you, John. I hope that all the commissioners have had an opportunity to review our conservation equivalency proposal that was sent out to you by the Commission on the CD-rom for this meeting. We believe that as a result of some actions that have been taken recently, that we are now in compliance with the shad FMP. Before I give you my presentation, I would like to point out that it would have been better had we been able to call a meeting of the Technical Committee. If that could have occurred before today's board meeting, but unfortunately, the timing was such that staff was unable to convene such a meeting, and so the Technical Committee members were asked to submit written comments on our proposal. I do believe that if such a meeting had occurred, that our Technical Committee representative would have been able to address most, if not all, of the questions raised by the other members of the Technical Committee. You will be hearing more about this later on, I believe, when Russ makes his report. However, I was provided comments or copies of the comments from the Technical Committee members; and in reading through them, my count on it was that seven of them supported our proposal, three of them had problems with it, and two of them could have gone either way. So, they heard back from 12 Technical Committee members and that, at least, was my reading on where they stood. Copies were also sent to the Advisory Panel. I understand that there was one comment received back or I had a copy of one comment, and I am sure that Patty will have more to say about this in

a minute, but actually that particular AP member did not really review it from the standpoint of our conservation proposal. He actually looked at some of the laws that were included in there and commented on what he thought about those laws. It really didn't address the issue, unfortunately. Moving on, the shad and river herring FMP provides for alternative management measures or conservation equivalency. This is important to remember. We are not proposing anything that is not already in the shad and river herring FMP. As John said earlier, it does provide for conservation equivalency. For the benefit of any new commissioners that may be here, I just want to quickly review conservation equivalency. The definition of conservation equivalency results from actions taken by a state which differ from the specific requirements of the FMP, but which achieve the same quantified level of conservation for the resource under management. In other words, if we implement regulations that provide for a decrease in the mortality on shad in the Santee River that is at least equivalent to what would be achieved by imposing a 10-fish creel limit, then we would be considered to have conservation equivalency. Now, in July of this year, we did implement other measures in the Santee River System which resulted in a reduction in fishing mortality on the Santee River shad stock. What these changes were specifically were the number of fishing days for the commercial sector was reduced during the week from five days to four days and the season was shortened by two weeks. What we did was go back and estimate the commercial harvest and the recreational harvest for this past season based on tag return data that we had and also reported commercial landings. What we did was, 98 percent of our tag returns this year were from commercial fishermen and 2 percent from recreational. We knew how many fish were caught by the commercial fishermen, so we said that represented 98 percent of what was taken, and we were able to come up with a number for what we thought the recreational catch was. Again, remember this was for this past fishing season, when there was no creel limit in place. Also, some of the comments that we got back from the Technical Committee members, they were a little concerned that we were basing this allocation, 98/2, commercial/recreational based on one year's tagging data. In fact, we did some additional tagging back in 1991 and 1992. In

1991 the breakdown was 4.8 percent of recreational and the balance was commercial. In 1992 it was 2.7 percent. We have three years' worth of tagging data within the last 10 years that shows that the mortality on shad in the Santee System from the recreational fishery was less than 5 percent. We also used this tag return data to distribute the estimated catch within the Santee River. We looked at tag returns from the upper part of the river, the middle part of the river, and the lower part of the river. The reason we did this was because the new laws that were passed in July of this year impact different parts of the river differently, so we wanted to be able to assign a reduction to those particular river sections. The reduction in fishing effort, based on those three sections of the river, the lower portion of the river effort would have been reduced 42 percent; the middle part, 48 percent; and under the new law passed in July, the upper portion of the river would have actually increased 9 percent. However, most of the tag returns, 94 out of 100, 7 came from the lower part of the river, 12 came from the middle part and only 3 were from the upper. Those parts of the river where we see the most fishing going on, based on tag returns, were also those parts of the river where the fishing effort was reduced the most. Using the legislative changes which became effective on July 1 of this year -- and those were reduction in the fishing days and season and a 20-fish creel limit that went into effect for the Santee -- we then reestimated what the 2000 harvest would have been had those laws been in effect. This was to give us a feel for what the reduction would have been and the kind of reductions that we might be able to expect in the 2001 season. The result of the re-estimation, based on the figures that we had, was a reduction of about 18,000 shad in the commercial fishery. We could estimate under this law what the reduction would have been in the commercial fishery. What we didn't know was what the catch in the recreational fishery would have been since our estimate of the recreational catch was based on a period when there was no creel limit. However, we do know what that number was and we said that instead of looking at what the catch would have been under the 20-fish creel limit or even a 10-fish creel limit, let's take the worst case scenario. Let's say that there was a zero creel limit. In other words, the recreational fishery was closed. Then, what would have been the reduction in the shad catch under a zero fish

bag limit? It would have been, at the most, 892 fish. In actuality, it is probably somewhere even less than that. This number of approximately 900 fish is only 5 percent of the reduction, or 18,000 fish, that would have been achieved through the changes made in the commercial fishing laws. Another way to look at this is we actually took actions and implemented some measures which we think are going to decrease mortality in the Santee River on the shad stocks by 20 times what it would have been had we implemented a 10-fish bag limit. We think not only have we achieved conservation equivalency, we have more than achieved conservation equivalency. The more restrictive commercial fishing regulations, including a shortened season, a shortened fishing week, a limit on the maximum gillnet length, a limit on the number of gillnets per license holder and nets that can no longer be set within 75 feet of the confluence of any tributary, as well as the imposition of a reduced daily creel limit from unlimited creel limit to 20 fish, will greatly reduce shad catches in the Santee River during the 2001 fishing season. I know that some people are going to say that if you shorten the season, all they are going to do is fish harder; however, I want to remind you of the other changes we made. This is the first time we have had a limit on the maximum size of gillnets. They are now restricted to 600 feet in freshwater and 900 feet in salt water. Previously, it was unrestricted. They could fish any size gillnet they wanted to. Also, now they are restricted to one license or one gillnet per license holder, where before they were not. Also, there are some areas in the river where they can't fish anymore, so it is going to be hard for them to make up this difference in any way. The only way that you might see them make up for even part of that would be if we were to see a huge influx of new fishermen into the fishery, which is not going to happen. We think the changes in the commercial fisheries laws will more than reduce fishing mortality on the Santee River shad stock in equivalent amounts of that which would be achieved by a 10-fish creel limit. In addition to that, there are some other considerations I just want to remind you of that are separate from the conservation equivalency proposal; the first being that the Santee River shad resource is not overfished according to our latest stock assessment by this Commission, and this was even in the absence of a creel limit and

we now have a 20-fish creel limit in place. Secondly, the recreational fishery in the Santee River is quite small, accounting for less than 5 percent of the total harvest. Third, fish counts that we have taken at the fish lifts at St. Stephens between 1989 and 2000 indicate an increasing trend of abundance for the shad stock. Fourth, the observed fishing rate for female shad on the Santee River during 2000, we estimated at slightly less than 12 percent. That was for commercial and recreational combined. This was based on adjusted tag return rates and is well below the threshold of a 40 percent fishing rate as established in our fishery recovery plan. The tag return data that we used to calculate this fishing rate was adjusted for post-tagging mortality. We assumed 5 percent post-tagging mortality, 1 percent tag shedding, 4 percent straying; that is, after fish are tagged, they get disoriented and they move back out of the river, and underreporting 15 percent. That is what gave us the 11.8 percent fishing rate. We went back after we got some of the comments from the Technical Committee and pushed those percentages up even higher to levels we thought were really pushing kind of a crazy level. We went back and we adjusted our post-tagging mortality. We increased that from 5 percent to 15 percent. The tag shedding mortality, we increased that from 1 percent to 10 percent, the straying rate from 4 percent to 20 percent, and underreporting of tag returns from 15 percent to 30 percent. When we ran the numbers again and calculated the fishing rate, even making these, what we thought were very general and liberal allowances for adjusting these tagging rates, the fishing rate was still only 21 percent or about half of the fishing rate that we are allowed under our recovery and FMP. We think that based on all available evidence, the Santee River stock continues to be healthy and on the increase. In summary, we believe that the data clearly indicates that the Santee River shad stock is not being overfished, and that the recently implemented changes in the commercial fishery laws for the Santee River provide a greater measure of conservation equivalency than would the imposition of a 10-fish creel limit. Let me just close in saying that we would have liked to have had more data, but every state sitting around this table would have liked to have more data to look at their shad fisheries, but I also will remind you that that was one of the primary reasons why we implemented Amendment 1 to

the shad FMP. It was supposed to address some of the paucity of data for most river systems and so we will, all of us, will be getting more data. Again, I want to remind you that the Santee is one of the few rivers on the Atlantic coast for which we have stock assessment data, and it is also one of a much smaller number of river systems for which the data indicate that overfishing is not occurring. Two of the major concerns, at least the way I read it from the Technical Committee -- and I am not trying to put words in their mouth -- but it seemed to me there was concern about the amount of data that we had for our proposal. As I indicated, we had tagging data not just for one year, but actually three years and, in fact, we did a creel survey in the Santee River in 1992, and the recreational catch from that creel limit was about 1,300 fish, which is certainly in line with the estimated 900 fish that we calculate for this year. If we would have calculated 9,000 or 90,000, I would have been concerned, but it is certainly in line with that, and again points out the fact that it is a minor fishery and is not imposing very much mortality on the shad stocks in the Santee River.

Mr. Chairman, that concludes my presentation and I would be glad to try and answer any questions about it. However, before doing so, and before you call on the chairpersons of the Technical Committee and the Advisory Panel for their input on this issue, I would like to make a motion on behalf on the state of South Carolina and John Milgarese and myself. I am sure that you will want to get the other input before acting on the motion, but I do want to get the issue on the table. Our motion is as follows, Mr. Chairman: I would move that the Shad and River Herring Management Board recommend to the ISFMP Policy Board and to the Commission that the determination of non-compliance by South Carolina with the Shad and River Herring FMP be withdrawn in that South Carolina has met the 10-fish creel limit compliance requirement for the FMP for all its watersheds except one, and this one watershed has met the 10-fish creel compliance requirement through the imposition under state law of management measures which provide for conservation equivalency.

CHAIRMAN MICHEALS: Do we have a second to that motion?

MR. AUGUSTINE: Second.

CHAIRMAN MICHAELS: We have eight seconds to that motion. Bill.

MR. ADLER: Before we get started on this, Heather, in the plan for shad and river herring, does the plan include a conservation equivalency provision?

MS. STIRRATT: Bill, at the time that the plan was written, it doesn't word it as such. What it words in Section 4.4 is an alternative state management regime; and under 4.41 it is a management program equivalency. It is the same idea and the language is consistent with that of other plans for conservation equivalency.

MR. ADLER: So we do have the ability to do this if we so desire?

MS. STIRRATT: Yes.

CHAIRMAN MICHEALS: Before I recognize anybody else, we will go ahead and open the motion to discussion, but for the sake of time, it is already ten minutes of three, if there are any questions that would be best addressed to the Technical Committee or AP reports, just wave at me and we will defer those questions to the time of those presentations. John.

MR. JOHN I. NELSON: Thank you, Mr. Chairman. David, thank you for your presentation. It answered a lot of the questions that I know our technical representative had, and I think the only thing that I need to get a little more clarification on was when you talked about the gillnet restrictions as far as length that you are imposing, 700 I think you said in freshwater and 900 feet in saltwater?

MR. CUPKA: Six hundred and nine hundred.

MR. NELSON: Six hundred and nine hundred, thank you. Did you have a basis to understand that that was a reduction from what they were previously fishing?

MR. CUPKA: Yes, several of them are fishnets much larger than that, so it is truly a reduction, and it certainly keeps the effort from

increasing since they can't go beyond that. It caps that upper level.

MR. NELSON: One last question is are you planning to monitor the Santee recreational catch for future years?

MR. CUPKA: That was another recommendation from some of the Technical Committee members; that if the Board were to approve this, that we do some kind of a creel survey.

Again, I would remind the members of the board that under Amendment 1 to the plan, that there are mandatory fishery-dependent monitoring requirements and one of them is to do creel surveys.

If I were a betting man, I would bet that as soon as we get staffed up, that the first river we are going to do that on would be the Santee River.

MR. NELSON: I am not going to bet against you. Thank you very much, Mr. Chairman.

CHAIRMAN MICHEALS: Lew.

MR. FLAGG: Thank you, Mr. Chairman. Just one bit of clarification, if I may, from David. My understanding is that this fishery is principally an in-river fishery, too, and that the fishery is focused primarily on Santee/Cooper stock; that there is not a likelihood that there is a mixed stock fishery where this fishery occurs?

MR. CUPKA: That is certainly our understanding, yes.

CHAIRMAN MICHEALS: Ernie.

MR. BECKWITH: Yes, there's a couple of questions for Dave. Dave, you made a comment, you said it wasn't likely or probable that a number of commercial fishermen would increase. Do you have a cap on licenses?

MR. CUPKA: We don't at the present time, Ernie, but the legislature also gave us permission during this last session to permit fishermen if we so choose, and we can condition those permits, including the number of permits that we issue.

Given the magnitude of the reduction we have achieved, I just can't picture enough people getting into that fishery who haven't historically been in it to capture all those fish or make that difference. Certainly, if it looked like that was going to happen, we could do that, but I would be very surprised if it did.

MR. BECKWITH: Just two other follow-up quick questions. Just out of curiosity, Dave, why did your state put in these new rules on the shad fishery?

MR. CUPKA: You recall, previous to this, we didn't have any creel limits. There were no restrictions at all. When we started working on the coastal fisheries law rewrite, we knew this was going to be an issue we were going to be facing, and we wrote our law in such a way that there was a 10-fish bag limit in there. Unfortunately, when it got into the legislative process, there was one legislator who had no problem with the bill as long as we left it 20 in the Santee. We were faced with the decision do we buck him and lose the 10-fish creel limit in all the other rivers, or do we go along with this and try and address it through some other mechanisms such as reductions in other areas. Unfortunately, I don't have the luxury of some of the people sitting around this table to do things through regulation. We are very much a legislative state and it sometimes takes only one legislator to do that. I also thought if there was any particular river that they were going to want to hold it at 20, the Santee was the best one because of the stock assessment we had and the fact that it wasn't overfished with no creel limit. At least now, we would have a 20-fish creel limit. Between the imposition of that creel limit that we didn't have before and these other measures that we took, I felt like we could deal with it, and there wasn't any sense in fighting him and losing all the other rivers where he was willing to go with ten.

MR. BECKWITH: One final quick question. Your 20-fish creel limit, is this a combination hickory and American shad?

MR. CUPKA: Yes, this all shad, hickory and American.

CHAIRMAN MICHEALS: John and then Paul.

MR. JOHN W. CONNELL: Somewhat similar to Ernie's question. In most other fishery plans, we are presented with the dilemma where the increased availability means increased participation on the recreational level, yet you indicated you didn't feel that there would be any increase on the recreational level?

MR. CUPKA: We haven't seen any in the last decade, at least not from the tag returns that we have. From the data we have, it has been 5 percent and less for all three of those years within the last 10 years that we have data, so I wouldn't expect it to. But again, as I said under the FMP, we are required to do creel surveys and the Santee will definitely be the first one that we will do it in. We will be keeping an eye on that and certainly, if it becomes a problem, we have the ability to take actions to deal with it.

MR. PAUL PERRA: My question is one of process. Before we vote on this motion, are we going to hear a short report from the Chairman of the Technical Committee?

CHAIRMAN MICHEALS: That is next and the AP. Pat.

MR. AUGUSTINE: Thank you, Mr. Chair. Let's assume this passes in some form, maybe as it is -- after we hear the Technical Report, there may be some changes, but if it passes, has your ability through legislation been made such that if you feel there is going to be an overage next year or there is an overage next year, based on the structure that you are using, closed season, open season, 20-bag limit, that you will be able to address that quickly to stay within the confines of conservation equivalency? In other words, if what you are doing and what you have said here does not work when you do your assessment at the end of the year, have you been given authority to change it the following year or will you have to come back to this body again for redirection?

MR. CUPKA: I would have to go back to the legislature and get it changed, but I guess one of the reasons why I feel so comfortable is the numbers -- and we have run it a couple of times. We even went back and ran it one time assuming that the commercial catch was underreported by 50 percent. We went back and doubled the

commercial catch to see what the impact would be.

It still reduced fishing mortality on shad by a factor of eight. The very fact that in a worst case scenario, we are down to about eight and the scenario we presented is somewhere about 20. That is a lot of leeway in there. I wouldn't expect anything to happen for us to exceed that. I don't think it is going to happen, but that is for you all to decide. I think there are plenty of safeguards built into it. I think the estimates are such that -- if it was a lot closer or if the reduction in the commercial fishery was going to be 1,200 fish and we estimated creel were to, say, 900, yes, then I wouldn't feel very comfortable, but not when you are talking about a factor of anywhere from eight to twenty times. I just don't see it happening.

MR. AUGUSTINE: Thank you. That helped me a great deal. I wanted to make sure that there that there was no possibility that you would find yourself in a similar dilemma in the future, and your presentation didn't bring out that point about the eight times and I think it helps clarify your position. Thank you.

CHAIRMAN MICHEALS: Let's go ahead and move along and listen to the Technical Committee and AP reports.

MR. ALLEN: David, I was glad to see the presentation that you gave to the Board. I was very disappointed that the Technical Committee did not get this same presentation. It has caused a little bit of grief on the Technical Committee, as you mentioned before. I would like to say that I am not happy personally and many members of the Technical Committee were not happy with the way this process has been handled. The methodologies done in the proposal look sound on the outside, but we really didn't have the techniques and assumptions that were used behind the numbers, and I will give you a quick example. I don't want to go through every Technical Committee comment, because we don't have enough time, but Table 4 in the proposal -- a couple of us tried to reproduce the numbers you came up with and we could not do it and that was very disappointing. We didn't have Billy McCord to answer our questions as we needed to do and that was disappointing. One other thing that I will mention real quick is

that I was also disappointed in the amount of Technical Committee members that commented on the proposal. We have at least 19 voting members and only 13 presented comments on this proposal, which I thought was very disappointing. One of the things you mentioned in your presentation just now is that you thought that 50 percent underreporting was the worst case scenario, and I would just like to state for the rest of the members of the Board that in the 1991 and 1992 years that the tagging was done and estimates were made for the recreational fishery that you were talking about that you have now, underreporting was considered to be 424 percent and not 15 to 50 percent, and I just wanted to clear that fact up because that was very disturbing. That is in a stock assessment that was approved by this Board. There were many questions regarding the reporting rate of the tagging, for one, and also as the commercial fishery in their actual landings reportings. There were a lot of questions from the Technical Committee on that. We are really not in agreement upon the efforts that will done in the commercial fishery and whether or not that will reduce any actual harvest through time, and you mentioned the time series data. We had one year of data to go with, which is not nearly enough to do any type of assessment work. This proposal probably should have gone to the Stock Assessment Committee, also. They never got to see this, which was very disappointing. You have all had a chance, I hope, to look at the Technical Committee's comments. If there are some things in there you don't understand, I will be glad to try to clear them up. There is no sense in me going through them piece by piece. I would be happy to do that. I think that would be the easiest way to go with it now, due to the time constraints.

CHAIRMAN MICHEALS: Speaking of time constraints, I just got a message and a very good suggestion. If it is all right with the Board, we are going to take Agenda Items 7 through 9 and defer them to the next shad meeting, so that we can concentrate on finishing up on this very important agenda item. David.

MR. CUPKA: Thank you, Mr. Chairman. This certainly is a very serious thing and we are well aware of that. It is something that shouldn't be taken lightly, and we were disappointed also that the Technical Committee didn't have a

chance to sit down as a group, because I think we could have addressed, like I said, most if not all of the concerns that they had. We certainly were disappointed in that, but again that was the way it worked out. It wasn't our doing. I do think on something this important that we have to make sure somehow that we don't allow this to happen, but given the constraints, physical constraints this Commission has and the time and everything, I don't think staff had any other alternatives. It is not the way we would have liked to have done it; and like I say, I think if there would have been a sit-down meeting of the Technical Committee, that we could have addressed a lot of these issues. And I would also like to comment on Russ' comment about the underreporting. Back in '91 and '92, I know that statement was made. Our staff could not believe that the underreporting was anywhere near that high. There is no doubt but that there was underreporting; however, since that time, we have implemented not only mandatory dealer reports, but also mandatory fishermen reports and the fishermen now, for the last several years, have been required to report their landings individually, and I can tell you we take that very seriously. When we don't get a report from a licensed fishermen, it is not very long before law enforcement is out there making sure that we get that information and that they comply with that requirement. Again, I don't claim to be documenting every single fish that is caught. I don't think there is anyone sitting around this table that can claim that there isn't some degree of underreporting in all their fisheries. I think we have come a long way when we instituted mandatory reporting not only at the dealer level, but at the individual fishermen level, and I can tell you that our law enforcement people take it very seriously. I don't think that is near the problem that we had 10 years ago.

CHAIRMAN MICHEALS: Pete.

MR. W. PETE JENSEN: I'd would like to review a couple of things that certainly South Carolina has made a sincere effort to bring us something, but I am a little concerned about process and precedent, because I was struck by the rather uniform but independent responses of the different Technical Committee people that reviewed their proposal. The letter has gone to the Secretary; is that true? The Secretary has not acted yet?

MR. PERRA: Should I answer? The Secretary has declared a moratorium and given the state of South Carolina until December 15th to comply.

MR. JENSEN: Okay, then it seems to me, Mr. Chairman, that South Carolina has some time to make a presentation to the Technical Committee, and so I am going to propose that we favorably consider their proposal subject to satisfying some of the Technical Committee concerns that have been expressed. I won't propose that as an amendment, I just put that forward as a possible way to approach this.

MS. STIRRATT: Pete, in response to that, I simply would like to provide the Board with a little bit more information than what has been provided to date relative to why no conference call was held and why no meeting was held. Right now, with the shad and river herring budget status, we have about \$900. That simply does not cover a full Technical Committee meeting. A full Technical Committee meeting would cost on average about \$8,000. That is not to say that this doesn't deserve that type of face-to-face discussion. I truly regret that we could not do that for you, David. In addition to that, I would simply say that the turn-around time after the governor signed the bill made it almost near impossible to coordinate any effort for Technical Committee comment outside of written comments submitted to staff. I do regret that again. If, in fact, it is the intent of this body to have a discussion with the Technical Committee face to face at a meeting, than I need a little bit more direction as to how we will be able to fund that event.

CHAIRMAN MICHEALS: David.

MR. CUPKA: Thank you, Mr. Chairman. I certainly know that staff had no control over the way this happened and we didn't either, really. We had to wait until the governor did what he was going to do, but I guess I am a little bit unclear as to what the process would be if something like that would occur. We have until December 15th, I think it is, Paul, to resolve this issue or the moratorium becomes effective in January. I am not sure how this would work. I am not sure how the Secretary would view an action like this and whether this Board would

have to come back and take action on it or not. If they did, I don't see how that would happen before this went into effect, but maybe Paul could address the timing issue if we were required to do something like this and what the Secretary's reaction would be.

MR. PERRA: Well, I can't tell you, exactly. I could tell you the process. If the Commission notifies the Secretary that the state has complied, then we have to look at what was done and do a decision memo, basically, that says we concur, and then it is a fairly quick publishing in the Federal Register that we withdraw the moratorium. It doesn't take that long, but it does take a little bit of time to process, so you need to give yourselves some lead time when you notify the Secretary.

MR. CUPKA: If I may, Mr. Chairman?

CHAIRMAN MICHEALS: David.

MR. CUPKA: I am also wondering, it is still not clear to me how this would work. It would seem to me that -- I am trying to figure out exactly what it is you are proposing here, Pete. You are going to approve this contingent on us getting back and the Technical Committee being all right with it? You are going to let them decide whether it is approved or not or does this Board have to get back together?

MR. JENSEN: Essentially, my suggestion was that I think you have made a sincere effort to meet the Board's requirement of then fish and that there were some substantial points raised by individual Technical Committee members without the benefit of them sitting and discussing it, and I guess what I am suggesting is that we would consider this favorably and vote favorably on it, but with the condition that you make an equally sincere effort to get information back to the Technical Committee to answer their concerns. It is only because I don't want to set a precedent, personally, of having a Board approve this without getting Technical Committee review, that is all.

CHAIRMAN MICHEALS: Heather.

MS. STIRRATT: David, to your question and to Pete's suggestion, Jack Dunnigan and I discussed this a little bit prior to this meeting in

terms of this being an option that the Board may choose to go, or at least a route that the Board may choose to go on. There are really three options that can come out of this particular body. First of all, this Board needs to vote a withdrawal of non-compliance or keep it the way things are now. If this Board decides that they need additional information from the Technical Committee, then this is the process that could occur. The Management Board would leave here, the Technical Committee would be convened, either via conference call or via meetings if there is money available. They would come to some type of a consensus and report back to the Management Board. The Management Board at that time can take three different options. They can either listen to that information in a report format and mail in a vote, yes or no, withdraw compliance or do not, or we can convene the Management Board on a conference call to listen to a verbal report from the Technical Committee and the AP; or, this body as well as the ISFMP Policy Board could provide the Chair with the option of representing the Management Board and their various opinions by making the final decision. Is that not correct, Jack, that those are our options?

EXECUTIVE DIRECTOR JOHN H. DUNNIGAN: Yes, Heather, I think that are all potential ways of going about doing this. I was just looking at the charter and the charter also allows on withdrawals, a determination for the Commission to make its decision by fax or mail ballot. There may be some other way of doing it. All of these are possibilities, but they are not necessarily very clean ways of doing it. If you have some serious concerns about it, compliance is like being pregnant, you are or you are not, and being conditionally or pending a review out of compliance muddies up an area that is already very difficult for equal sovereign states to have to handle in their relationships with each other. It seems to me that if -- clearly, the inability of the advisors and the Technical Committee to have as full an opportunity to consider this as we would like is too bad. Nevertheless, I think you may conclude that South Carolina has made a major effort and a substantial presentation and it may be that the cleanest way for you to do it would be to let this process go and withdraw this determination of non-compliance and then at the earliest opportunity have the Technical Committee and the advisors review the program.

At that time, they will even have more information as the state begins to implement the efforts that it has. If at that point it appears that something is wrong, the Board always has the option of reinitiating the process; and with all the work that we have done already, I don't think it would be very hard to get us there. That is another option in addition to the ones that Heather suggested that might be a little bit cleaner.

CHAIRMAN MICHEALS: David and then Ernie.

MR. DAVID V.D. BORDEN: Thank you, Mr. Chairman. A couple of comments. First off, David, when is your legislative session and if, in fact, there was a problem with this set of regulations, and we discovered that as a result of some type of technical review, what would be the first opportunity you would have to propose to propose a legislative change? Is that January?

MR. CUPKA: Yes, they go into session the second Tuesday in January.

MR. BORDEN: Thank you. I guess now the comments and observations. First off, I agree with a number of the previous speakers, particularly Pete Jensen. I have major reservations about the process that we have followed here, and I don't really think that we should be following this type of process on an issue that is this serious. Having said that, I also believe that the state of South Carolina has made a good-faith effort on a fishery that is essentially within its state boundaries. It doesn't have a mix of other stocks involved. And in view of that factor, I, personally, would prefer a much cleaner set of scenarios where we basically find them in compliance with at least the intent of our regulation, refer their whole technical analysis to the Technical Committee. If that technical analysis over the next few months ends up resulting in a conclusion that they really were not in strict compliance, I think at that point the Board can go back, make some recommendations to the state of South Carolina. At that point, their legislative session is in progress and they can try to remedy the situation. I think it is just cleaner to do it that way as opposed to the way that I think Pete suggested, which is basically pass the motion subject to some type of technical review, which I kind of

view that as clouding the non-compliance issue. I think it is just cleaner to find them either in compliance or out of compliance and then go on with the process. Thank you.

MR. BECKWITH: Yes, I also agree with David that we should take a very clean approach. Before I could make a decision, I would like to know, David, when does your commercial and recreational season start for O1? When do they actually start fishing?

MR. CUPKA: It is a winter fishery and it will start in late January or February.

CHAIRMAN MICHEALS: Jaime, Susan and Bill.

DR. JAIME GEIGER: Mr. Chairman, I appreciate David's presentation, and I certainly appreciate the position they are in. I think they have, indeed, made a good faith effort, but I also share the concerns of Mr. Jensen about process. Again, I am very uncomfortable right now approving this motion until this has been fully and completely vetted through the Technical Committee. Right now, the Technical Committee individuals have provided comments and related concerns. I would like the state to have an opportunity to meet with the technical committee or else otherwise engage in some kind of forum to resolve those concerns, and I particularly like the option, at least as I understand from Heather, that if the Chair of the Management Board had the authority, all right, that pending a resolution of these ongoing technical concerns, the Management Board Chair can make the determination that, yes, the state is indeed in compliance, the Technical Committee has rendered its judgement in support of that. I think that is probably the cleanest process that we can hope for under this situation and still meet the December 15th timeframe. Thank you.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Chairman, if I can just comment on that. That is not really a clean process, okay? We are putting that together. The cleanest process is for the Commission to make a decision, especially when the state is coming in for a conservation equivalency proposal, and it would be the Chairman of the Commission was what we suggested and not the Chairman of the Management Board. The way the process

works, again, if the state does what they are asked to do, then the Chair of the Commission has the authority to withdraw the determination of non-compliance. That is like we hope we are going to be able to do for horseshoe crab. If they do something else under conservation equivalency, the Commission is supposed to listen to the presentation of the state and the Commission then makes the decision. Now, we are trying to be creative here, but that does not make it clean. That is why it would not be my recommended way for you to go about it.

CHAIRMAN MICHEALS: Susan, then Bill, then Jack.

MS. SUSAN SHIPMAN: I agree with our executive director and with our chairman, Mr. Borden. I think we ought to take action on this. I think the information that has been presented to us, I am satisfied that the actions South Carolina has taken are adequate to conserve the stock in the Santee River. That is a key element to compliance. You have to say or be able to definitively state how the failure of the state to take whatever actions fails to conserve that stock. I truly believe that stock will be conserved by the actions that they have taken. I have read through the Technical Committee notes and minutes and comments and there are disagreements in there, but there are there are disagreements in the Shad Technical Committee with any issue we take to them, and I am not convinced that they may come back to us with us with a total consensus on this issue anyway. I am comfortable with the information that I have been presented and I am prepared to vote for the motion.

MR. ADLER: I think that I would prefer what Dave Borden had said is the clean process, and I think that that would work that way. As with what Susan had indicated, I read the Technical Committee thing, too, and basically even there it looked like a six to three to two, or six in favor, two opposed or not convinced, and three that were basically okay but -- Based on that, I think that -- and the fact that South Carolina plans to explain the glitches or the questions that those that were doubting were going to get together on that, anyway, I think that Dave's proposal to pass this motion would be the best way to go and I am going to move the question.

CHAIRMAN MICHEALS: We still haven't heard the AP Report and that still needs to be done, so if we could squeeze that in right now.

MR. FREEMAN: Mr. Chairman, I have had my hand raised for a number of minutes and have not been recognized, and I have something to say on this issue and I would ask to be recognized.

CHAIRMAN MICHEALS: Go ahead.

MR. FREEMAN: I have difficulty. As I understand the report from the Technical Committee Chairman, that issues presented to the Board were unfortunately not presented to that Committee. If, in fact, as has been suggested this motion is passed and we find afterwards that for some reason some technical issue is of great importance that we are not familiar with, but the Technical Committee then brings this forward and we are convinced that it doesn't meet the requirements, then we are in a position of already approving what has been presented, but find out that is in error. I am not certain how we go back and make that change. If we present that information to the Service, we have already then committed to making that judgement, and I have grave concerns about approving this until we follow the process that we have agreed to. If we believe that there is dissent at the Technical Committee level and we have problems with that, we should just abandon the technical committee process. We have this problem, perhaps of disagreement, but I see no difficulty with that, but I do have grave concerns about moving this process because we are essentially violating what we have already agreed to do. Whether it is cleaner or not, I am not convinced. It may be cleaner from a procedural standpoint, but from a process that we have agreed to, I find it very contrary.

CHAIRMAN MICHEALS: Russ.

MR. ALLEN: I am hearing a lot of comments about the votes that were taken in favor and against the proposal. One problem I have is the comments that you have were not meant for this Board. They were meant for the Technical Committee Chair and then Heather Stirratt at ASMFC. There were comments that I thought that I was supposed to present to this Board. Now you have them already. They weren't in

any particular order. A couple of them said, "Here are my reservations. If the Management Board approves this, I am okay with it if" -- there were stipulations put on there. Also, one of the problems were that those who voted for it didn't have a chance to argue their reasoning for it. They just said, okay, I believe this is okay. That is part of the process that was missed in this whole conversation, and I think that if the Technical Committee had gotten together, David may be right, we may have said that it looks fine. I don't think there was any dissent among the Technical Committee members about this. We just didn't have a chance to review it completely without talking to the technical rep from South Carolina. I don't understand where the dissent from the Shad Technical Committee came from. Sometimes the Board listens to the Technical Committee and other times it hasn't. And the ocean intercept mixed stock evaluations that were all done, basically this Board did listen to what the Technical Committee had to say, but in this issue I am not so sure that is happening.

CHAIRMAN MICHEALS: Since we are running very late, I propose that we hear the AP report and then we are going to have to make a major decision. We are either going to vote on that motion, amend it, or withdraw it and come up with another option. We could talk until midnight and not get any closer, so with that, let us hear the report from the AP.

MS. PATRICIA JACKSON: Thank you, Mr. Chairman. Although you only have one written comment from an AP member in your packet, after talking with Heather, since we only had nine days to respond to South Carolina's proposal, I felt it was important to try to reach as many of the advisory panel members as possible. I called as many as I could and I was able to hear back from about six members all together, which is just about a third of the AP, so we didn't have as good a rate as the Technical Committee, but at least it helped me in being able to give you a report today. I think that we would like to reflect, also, the concerns about not having sufficient time to review the proposal and talk as a committee by conference call, at least, in terms of being able to benefit from each other's opinion. That being said, I think the consensus of the AP members was that they felt that the recreational creel limit of 20 was excessive and that 10 should be sufficient.

Several people said in their state it was even less than 10. Nobody could really quite understand why anyone would want to catch 20 shad. There was also some concern about the numbers presented and the accuracy of those numbers. I think that is reflected somewhat in the Technical Committee comments as well; things like the underreporting rate and that there were only two tag returns to determine the sport fishing rate. I think there was a consensus among the AP members that did respond that if the numbers are correct, that there would be an expectation that the conservation equivalency proposed by the limits on the commercial fishery that South Carolina has put forward would achieve conservation of the fishery. That being said, we didn't, obviously, have a quorum of the AP, but that is the best that I can do in terms of giving you a sense of where folks are on it. There are two members here of the advisory panel. I know we are running over, but Clyde Roberts from Delaware has asked if he could address the Board and Joe Fletcher is also here. I don't know if he has any comments, Mr. Chairman.

CHAIRMAN MICHEALS: Clyde.

MR. CLYDE ROBERTS: I am Clyde Roberts from Delaware. I serve on the Advisory Panel with Pat. I am going to just ask a few questions. The first thing I want to mention is that my first feeling in speaking on behalf of commercial fishermen is that it is not a question of the target of the stock reduction being met, but the means which is employed to meet it. Now, one of the things that I would like to direct to Dave is that what do you anticipate will be the response of the commercial fishermen who have to take a reduction to accommodate the excessive recreational creel limit?

MR. CUPKA: I am sure like everyone else, they won't be thrilled about it, but that is a decision that is up to our legislature and that is the way they decided they wanted to deal with it. Rather than close down a fishery or impact a small fishery, they decided to go to where most of the fishing mortality was and deal with the issue, so that is probably not -- had I had the authority to do regulations, I wouldn't have done it the same way, but again, we are a legislative state and what they do, we have to live with and try and make the best of it.

MR. ROBERTS: I can envision it in the future, maybe, could this scenario be reversed? Could we penalize, say, the recreational fishermen to give the commercial fishermen something, what they desire? That is just a rhetorical question. You don't have to answer that, but anyhow, there is one more thought I would like to bring before you is that conservation equivalency. I didn't know that it actually included penalizing one member of the fishery to accommodate another member of the fishery. I thought that conservation equivalency was to be evenly applied to both recreational and commercial and be just. Those are just a few thoughts and I bring them out in behalf of what I am sure is every commercial fishermen would like to have brought before you and also answered, maybe. Thank you very much.

CHAIRMAN MICHEALS: The question has been called. Caucus and at which time Heather will be doing a roll call vote. Okay, Heather.

MS. STIRRATT: Starting with the state of Maine.

MAINE: Yes.

MS. STIRRATT: Joe, that is yes. New Hampshire.

NEW HAMPSHIRE: Yes.

MS. STIRRATT: Massachusetts

MASSACHUSETTS: Yes.

MS. STIRRATT: Rhode Island.

RHODE ISLAND: Yes.

MS. STIRRATT: Connecticut.

CONNECTICUT: No.

MS. STIRRATT: New York.

NEW YORK: Yes.

MS. STIRRATT: New Jersey

NEW JERSEY: No.

MS. STIRRATT: Pennsylvania.

PENNSYLVANIA: Yes.

MS. STIRRATT: Delaware.

DELAWARE: Yes.

MS. STIRRATT: Maryland.

MARYLAND: Yes.

MS. STIRRATT: Washington, D.C. (No Response) Potomac River Fisheries Commission.

POTOMAC RIVER FISHERIES COMMISSION: Yes.

MS. STIRRATT: Virginia.

VIRGINIA: Yes.

MS. STIRRATT: North Carolina.

NORTH CAROLINA: Yes.

MS. STIRRATT: South Carolina.

SOUTH CAROLINA: Yes.

MS. STIRRATT: Georgia.

GEORGIA: Yes.

MS. STIRRATT: Florida.

FLORIDA: Yes.

MS. STIRRATT: U.S. Fish and Wildlife Service.

U.S. FISH AND WILDLIFE SERVICE: Yes.

MS. STIRRATT: National Marine Fisheries Service?

NATIONAL MARINE FISHERIES SERVICE: Abstain.

MS. STIRRATT: I have fifteen in favor; two oppositions; one abstention.

CHAIRMAN MICHEALS: With that, the motion passes. Question from Vito.

MR. VITO CALOMO: Yes, you have the motion made by David, but you have eight people that seconded the motion. Don't you need a name for a legal motion?

MS. STIRRATT: The seconder of the motion was Pat Augustine.

CHAIRMAN MICHEALS: Is there any other business? David.

MR. BORDEN: I just want to make sure that we haven't left the issue of having the Technical Committee complete a full and thorough review of this, hopefully by the mail, since we don't have \$8,000 to host a meeting and then formalize a position on it. I think it is worthwhile. If, in fact, the proposal strictly meets the standards, we ought to know that. If it doesn't meet the standards, I think we should know that. If that is the case, what I would hope is the next time this Board gets back together again, it will make a recommendation to the state of South Carolina as to how it can change those regulations to bring it into compliance.

CHAIRMAN MICHEALS: John and then Ernie.

MR. MIGLARESE: Mr. Chairman, I just want to thank everybody for your attention and the forthright discussion. As I said earlier, I am new to the process, so I am a little bit confused to the process since we thought we were following the process. So I have got a lot to learn, but I was going to comment on the same issue that David said. Let us don't forget to come back with the technical review. In the future, I have to tell you from sitting in from my perspective and the first time here, it is like we are going through a compliance process on the fly. And, as important as this is and the moratorium issues that could result out of this, if, in fact, there is going to be a very defined process for the Technical Committee to respond, it is not outlined in the documents that I was given. I think there have probably been experiences where Jack told me in the past that there have been meetings, but in nothing that I saw was there an indication that there had to be a meeting and there had to be a vote. It was a

requirement of comment, so Pete's comments earlier on were right on target, and I would just like to say from a new comer's standpoint that defining that process a little bit more would be most beneficial.

CHAIRMAN MICHEALS: Ernie then Dieter then Bruce.

MR. BECKWITH: I have got a question for Jack about process. Jack, based on the vote that the Board just took now and in recognition of David's comments that the issue is going to be sent back to the Technical Committee, what kind of action is the Commission going to take in reference to the Secretary of Commerce; and if you are going to take an action, when is that going to happen? Are you going to wait until we get some kind of comments from the Technical Committee?

EXECUTIVE DIRECTOR DUNNIGAN: The Management Board has approved a recommendation from the Policy Board and the Commission. That will be taken up by those two bodies tomorrow. If the Commission determines tomorrow to withdraw the determination of non-compliance, we will report that to the Secretary of Commerce and Interior in short order. I think just from a staff standpoint, we will also make sure that this issue is on the docket for the Technical Committee to work with as soon as we can get that set up, and it will end up at that point coming back to the Management Board if there are any problems.

MR. DIETER BUSCH: Just in replay to Mr. Miglarese's concern, the normal process is for the Tech Committee to have the chance to review this, but because of the restrictions within the state of South Carolina and waiting for this to pass and information to come in, the normal process was interrupted. This is not really how we would like to work and both the Tech Committee and the staff were rather frustrated by this, but it is really not anybody's specific fault.

CHAIRMAN MICHEALS: Bruce.

MR. FREEMAN: The issue that South Carolina has indicated it would -- at least my understanding is that they would comply with; if there are other requests by the Technical Committee to monitor this fishery or in some

other way satisfy some of the concerns they would be willing to do so. My concern is that the Technical Committee now is charged with reviewing this with all the additional information that South Carolina will provide them, which they did not have the opportunity originally. My concern is when will that meeting take place, and my concern is based upon the fact that, David, as you indicated, your fishery will begin in February or late January. I would expect that based upon the Technical Committee review, if they had additional questions or requests for monitoring, for example, that you would be able to put them in place; and then if these requests come after the fishery is underway or over, I see it as being unfortunate. So, my concern is from the staff, if Dieter or Jack can answer, is when, in your opinion, could the Technical Committee be charged with getting all the information provided to the Board here today so they can consider and enter their deliberations and findings? Is that going to be by conference call soon or are we talking about next January or February? I would like to get clarification of that.

CHAIRMAN MICHEALS: Dieter.

MR. BUSCH: I would expect this to be a continuing effort. The effort has been going on for the last six weeks or so; and as already mentioned, the monies at the time were not there to have a face-to-face meeting. We do have a few hundred dollars left that could be either used for a conference call between all Tech Committee members, or we might even want to be somewhat adventurous to see if maybe the Chair of the Tech Committee and a couple of people could get together in a cost-effective way and really make sure that they understand this information and then feed this information back to the Tech Committee. All along, as we were looking at the information and as the Tech Committee and Heather were trying to digest information that was dribbling in from the various Tech Committee members, new information was being provided by South Carolina. I think that flow probably has pretty much been completed for this round. It is a matter of understanding this and asking some questions for clarification and finishing this up. N I expect to have this analysis done in the next couple of months, I think, and then report back to the Board probably by mail.

MR. FREEMAN: Again, I would certainly encourage staff to have those meetings and deliberations and recommendations, if there are any. It appears in my take of the conversation or the presentation by South Carolina, they are certainly willing to do anything within their power. And, I realize the extreme conditions under which they are working, but I would like to see any recommendations be able to be carried out this season.

MS. STIRRATT: Bruce, to that point, I think I could probably convene a conference call within the next two weeks and give the members advance notice so that they can all plan for attending that conference call, and we can get adequate interface between the various members to bring back a committee recommendation; probably not before next January when this Board might be scheduled to meet. That is the best that we can offer.

MR. FREEMAN: Again, as I heard David say and I respect his position that they would do everything possible, and I certainly know David to be an honorable person and will do everything in his power to do it. I just want to make certain that the Commission doesn't come up with recommendations after their season is over and have criticism of this whole process. Our objection from the New Jersey side on this vote was not what you are doing in South Carolina, but it was the process. We are simply leaving out a process that we have been obligated to use in every other plan. That makes us very uncomfortable.

CHAIRMAN MICHEALS: I would like to entertain a motion that we adjourn. Motion by Pat and seconded by Vito. We are adjourned.

(Whereupon, the meeting was adjourned at 3:50 o'clock p.m., October 18, 2000.)
