

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

**Crowne Plaza Hotel  
Alexandria, Virginia  
August 21, 2008**

Approved October 23, 2008

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## INDEX OF MOTIONS

1. **Approval of Agenda by Consent** (Page 1)
2. **Approval of Proceedings of May 5, 2008** by Consent (Page 1)
3. **Move to refocus Amendment 3 to focus the commission activities where our strengths lie, focus on coordination of the interstate monitoring of at-sea bycatch; advocating for effective fish passage, both upstream and down; preserving the current management goals in terms of F-30 and the other five objectives of the current plan; and leaving it to the individual affected states of the river system in question to determine that level and to manage their in-river fisheries** (Page 8). Motion by David Simpson; second by Pat Augustine.  
**Friendly Amendment:** Add a sentence at the end, “The board will annually monitor states’ progress on reaching these management goals” (Page 11). Proposed by R. White.
4. **SUBSTITUTE MOTION: Instruct staff to use the 18 items listed in the PID on Page 17 and 18, along with the recommendations of the advisory panel, to prepare an amendment for the board to consider for sending out to public comment** (Page 13). Motion by Jack Travelstead; second by Bill Cole. Substitute motion carried on Page 18.  
**Friendly Amendment:** In drafting this amendment, the PDT include the concept that would allow individual states to tailor solutions for in-river fisheries to meet the goals and objectives of this amendment (Page 18).  
  
**Main motion now reads as follows:** Move to instruct staff to use the 18 items on Page 17 and 18 of the PID and the AP comments to draft an amendment for board review and to include the concept that would allow individual states to tailor solutions for in-river fisheries to meet the goals and objectives of the amendment. Motion carried on Page 18.
5. **Move to take the draft amendment to public hearing** (Page 22). Motion by William Adler; second by Jaime Geiger. Motion carried (Page 23).
6. **Motion to adjourn by consent** (Page 28).

## ATTENDANCE

### Board Members

George Lapointe, ME (AA)	Roy Miller, DE, proxy for P. Emory (AA)
Pat White, ME (GA)	Bernard Pankowski, DE, proxy for Sen. Vanables (LA)
Sen. Dennis Damon, ME (LA)	Tom O'Connell, MD (AA)
Doug Grout, NH, proxy for Nelson (AA)	Bill Goldsborough, MD (GA)
Rep. Dennis Abbott, NH (LA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
Ritchie White, NH (GA)	Jack Travelstead, VA, proxy for S. Bowman (AA)
Paul Diodati, MA (AA), Chair	Catherine Davenport, VA (GA)
William Adler, MA (GA)	Michelle Duval, NC, proxy for L. Daniel (AA)
Vito Calomo, MA, proxy for Rep. Verga (LA)	Bill Cole, NC (GA)
Mark Gibson, RI (AA)	Jimmy Johnson, NC, proxy for Rep. Wainright (LA)
David Simpson, CT (AA)	John Frampton, SC (AA)
James Gilmore, NY (AA)	Robert Boyles, SC (LA)
Pat Augustine, NY (GA)	Malcolm Rhodes, SC (GA)
Erling Berg, NJ (GA)	John Duran, GA, proxy for Rep. Lane (LA)
Tom McCloy, NJ, proxy for D. Chanda (AA)	William Orndorf, FL (GA)
Gilbert Ewing, NJ, proxy for Asm. D. Fisher (LA)	A.C. Carpenter, PRFC
Frank Cozzo, PA, proxy for Rep. Schroder (LA)	Steve Meyers, NMFS
Douglas Austen, PA (AA)	Tom Meyer, NMFS
Eugene Kray, PA (GA)	Jaime Geiger, USFWS

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

### Ex-Officio Members

Bob Sadzinski, Technical Committee Chair

### Staff

Vince O'Shea  
Brad Spear  
Toni Kerns

Bob Beal

### Guests

Terry Stockwell, ME  
Harry Mears, NMFS  
Marek Topolski, MD DNR  
Lara Slifka, CCCHFA  
Jack Music, VIMS  
Jeff Kaelin, Ocean Spray Partnership  
Shaw Sprague, Ofc. of Sen. Collins, ME  
Jeffrey Pierce, Alewife Harvester of Maine  
Mark Alexander, CT DEP  
Sean McKeon, NCFCA  
Dave Ellenton, Cape Seafoods, Inc.  
Michael Luisi, MD DNR

David Pierce, MA DMF  
Dick Brame, CCA  
Dewey Hemilright, Wanchese, NC  
Kelly Schoolcraft, Hatteras, NC  
John Tulik, MA Environ. PD  
Bill McWha, DE  
Jim Cummins, ICPRB  
Arnold Leo, Baymen's Assn.  
Pam Gromen, NCMC  
John Berry, DE Shad Fishermens Assn.  
Jay Odell, The Nature Conservancy

The Shad and River Herring Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, August 21, 2008, and was called to order at 8:00 o'clock a.m. by Chairman Paul Diodati.

### **CALL TO ORDER**

CHAIRMAN PAUL DIODATI: Welcome. This is the Shad and River Herring Management Board Meeting. We don't have much time on the schedule for today. We only have an hour and a half meeting, so we're going to move somewhat quickly through this agenda.

### **APPROVAL OF AGENDA**

Beginning with that, I'll ask are there any comments or questions about the agenda, additions to it? Okay, seeing no comments, questions or additions to the agenda, I'll move that it's approved.

### **APPROVAL OF PROCEEDINGS**

The proceeding of our last meeting, which was on May 5<sup>th</sup>, questions about that, comments. Seeing none, those minutes are approved.

### **PUBLIC COMMENT**

Public comment; as always there is opportunity for public comment. Is there anyone in the public that would like to – okay, I see a list of people that we'll begin with. Mr. Cummings.

MR. JIM CUMMINS: Hello, I'm Jim Cummings. I'm with the Interstate Commission on the Potomac River Basin. I'm here to comment on Amendment 3, but I'm not quite sure of the procedure. I understand that maybe after Section 4 is completed there will be a chance for public comment. I'd like to wait until that point.

CHAIRMAN DIODATI: That's fine. Everyone will have that opportunity. There are a number of other people that have signed up. If you would like to comment on something that's not on the agenda, now would be a good time to do that. Okay, there will be opportunities during the meeting after each topic discussion by the board for the public to comment. I'm going to turn this over to Toni, who is going to review the PID for Amendment 3.

### **PID FOR AMENDMENT 3**

MS. TONI KERNS: Thank you, Mr. Chairman. Quickly I'm going to go through what the public

information draft for Amendment 3 for American shad stated, and then I will go through all of the public comment. Just to be clear, this is the amendment for American shad, and then the next amendment we will go through is for river herring, to keep all of our amendments straight.

The anticipated timeline that we have for this document is that in February we will review a draft of Amendment 3. This is slightly different from the original timeline. Since we will have a new staff member taking on American shad and river herring, it will take a little bit of time for him to get going on the issues within the document. Since there is such a short period of time between now and the annual meeting, we want to make sure there is a good product that goes out. Then in March and April we will have public comment on the draft. The board will review that comment in May, and then final action and approval of the amendment in August of 2009.

The history for this management plan is the original plan was approved in 1985. The first amendment was in 1999, which closed the ocean intercept fishery and established an F-30 for the overfishing definition. There is a ten-fish recreational creel limit and some monitoring requirements.

The purpose of the PID was based on the results from the 2007 stock assessment, which showed that stocks had declined and that coast-wide harvest has declined. This document was initiated to address the concerns and recommendations from the assessment. The assessments show that all stocks are highly depressed.

Maine, New Hampshire, Rhode Island, Georgia, the Hudson River, Susquehanna, James and Edisto Rivers are all in decline. Massachusetts, Connecticut and Delaware, the Upper Chesapeake Bay, Florida, Rappahannock River and some South Carolina stocks are low, but have stabilized at that low level. Then the Potomac River had shown some rebuilding.

The first issue that we went out for public comment was whether or not we should incorporate the benchmark and restoration goals from the 2007 assessment. This goes from the F-30, which we had for several of the river systems, to a new proposed Z-30 change. Z-30 will look at total mortality instead of just fishing mortality. Some of benchmark goals for some of the rivers where Z-30 was not an appropriate number, there were population counts or minimum numbers of fish per haul.

The second issue for public comment was whether or not we should increase directed fisheries for American shad, and the last issue was whether or not we should restrict fisheries operating on stocks where the total mortality was increased and the relative abundance was decreasing. Again, the current management is the closed ocean intercept fishery, not exceeding an F-target and the recreational creel limit.

### **PID FOR AMENDMENT 3: PUBLIC COMMENT REVIEW**

MS. TONI KERNS: For the public comment we received 59 comments. Twelve of those were from agencies, groups or organizations. The public comment closed on July 25<sup>th</sup>, and we held 13 hearings. Being passed around right now is a letter from the U.S. Fish and Wildlife Service that somehow was left off of the CD, but the comment was received during the comment period.

On Issue 1, whether or not to include the biological reference points and restoration goals from the stock assessment, the majority of the commenters did not favor the new reference points because they were either inappropriate or not conservative enough. Many would like to see all sources of mortality parsed out separately, and there was some support for individual stock management.

Concerning Issue Number 2, to not increase fisheries, there was a slight majority of those that did not want an increase in fisheries, although some felt opening on recovered stocks was okay if there was conservative management. Regarding Issue Number 3, whether to restrict fisheries when total mortality was increasing and relative abundance was decreasing, there was a split belief felt you should and half felt you should not.

About of those that commented thought we should close all fisheries and about a quarter felt we should allow catch-and-release fishing. If a fishery were to open, the state or jurisdiction should have to prove that the stock is healthy enough to be fished on. There were some commenters that wanted to see a stopping of all the mid-water trawls.

The commenters on general concerns dealing with bycatch, predator interactions; some people would like to see the recommendations of the benchmark assessment put in place; people would like to see more cooperative work with Canadians, to include data from Canada in our assessments. Then there were several comments on the cause of the decline of the shad, including predation, habitat loss, global

warming, dams and barriers to migration, flooding, development, bycatch issues, overfishing, cooling water intakes and invasive species.

There were comments on the research and monitoring of the fishery. Individuals felt there should be standardized data collection protocols, ID of bycatch and harvest in Canada, validating aging procedures, and to determine how low juvenile abundance relates to adult spawning runs. There were habitat comments, including maintaining water quality and suitable habitat for the fishery; developing fish passage, which could include removal of dams and barriers; maintaining water flows; and characterizing the passage of efficiency for fish.

In terms of comments on shad themselves, that they are a very important forage fish and we should investigate the impact of predation on the population declines. Lastly, there were some commenters that felt the PID made it look like the commission is okay with status quo management; decreased landings are not an indicator of stock health; and that some stocks are in worse shape than the stock assessment describes. Those are the public hearing comments, and Bob Sadzinski is going to go through the TC comments. Then I will go through the AP comments.

CHAIRMAN DIODATI: Okay, before we go to Bob, are there any questions for Toni? Okay.

### **PID FOR AMENDMENT 3: TECHNICAL COMMITTEE REPORT**

MR. BOB SADZINSKI: Thank you, Mr. Chairman. The TC was requested to comment on the PID. The little management history that Toni went over I will not cover again. As she concluded, the 2007 American Shad Stock Assessment concluded that stocks are highly depressed and gave the 18 recommendations for restoration and recovery. These included management, monitoring and habitat recommendations.

The PID for American shad, like I said, incorporated these three things, which I won't go over again. Toni covered them. The TC would recommend that the biological reference points are incorporated through measuring and controlling total mortality through the implementation of stock assessment recommendations, controlling directed fisheries, restricting fisheries where the Z is increasing, identifying and reducing bycatch, also characterizing passage effects.

The TC would recommend incorporating the restoration goals with the implementation of stock assessment recommendations of collecting recreational fishery data, examining tag-based estimates, monitoring juveniles and verifying age classes. The TC would recommend not increasing directed fisheries with the implementation of the following stock assessment recommendations, including identifying and controlling bycatch, expanding to Canada, identifying mixed stock fisheries, instituting controls, collecting recreational fishery data and continued tagging.

The TC would recommend restricting fisheries where Z is increasing and relative abundance is decreasing through measuring and controlling Z. This would involve implementing stock assessment recommendations, including identifying suspect fisheries, expanding again to Canada, identifying remaining mixed stock fisheries and instituting controls and also addressing habitat issues; the passage, flow and water quality, which would include direct influence within state agencies, actively pursue partnerships with other local, state and federal groups; incorporate the diadromous species habitat source document.

To track the effectiveness of these actions, continue stock monitoring and would include annually updating the stock assessment data bases; developing, reviewing and updating river management plans. Also, the habitat needs to be useable and would involve ASMFC's Habitat Program. And as far as the action, we can encourage state and federal agencies, local and public groups to improve and correct habitat issues, encourage partnerships.

To summarize the technical committee's recommendations, the TC recognizes that a critical opportunity for advancing the restoration of American shad presently exists. The recently completed stock assessment reveals a dismal state for American shad nearly coastwide. The TC believes we need affirmative action by ASMFC, its partners, state and federal agencies and the interested public to restore American shad populations and their ecological, economic and social functions and values.

The three PID issues integrate management, which involve 21<sup>st</sup> Century ecosystem-based fishery management, and management needs to be proactive; monitoring, cooperatively monitor stocks; and habitat, building partnerships with habitat managers and other regulatory agencies. The ASMFC vision is to promote better utilization of the fisheries of the Atlantic Seaboard by the development of a program

for the promotion and protection of such fisheries, prevention of physical waste from other causes.

As far as ASMFC's vision is for a healthy, self-sustaining population for all Atlantic coast fish species for a successful restoration well in progress by the year 2015. In closing, I want to kind of highlight the peer review summary advice that's found in the Peer Review Report on Page 25; that American shad has lost its place as the dominant east coast species. It's dropped out of commonplace memory in America.

In the 21<sup>st</sup> Century American shad could become a bellwether of ecosystem health managed not only for fisheries but also to indicate the status of the connectivity in environmental quality of watersheds in coastal rivers. Thank you very much, Mr. Chairman.

CHAIRMAN DIODATI: Thanks, Bob. Questions for Bob.

MS. KERNS: Okay, we'll quickly go through –

MR. VITO CALOMO: Bob, I'm Vito. Bob, good morning. Do you have any percentage of the disappearance of these shad through pollution that we, the humans, have caused into the rivers and estuaries for maybe – well, probably longer than I've been alive, but at least in the last 30 years that I have been tracking this type of pelagic that has been disappearing are more attributed to pollution than almost anything else.

I know the dams – I've learned, you know, what we've done with dams and destruction, but, still, I've looked at the – and closely looked and followed NOAA in the Bay area, how that has been polluted to a large effect where we've lost shellfish there and other species, but it's turned the corals or the bedding in that area pure white, like if you was to put a bleach down, a chlorine or bleach or something like that.

So, can you give us any insight on my question of is it a percentage that maybe that's why it seems to be disappearing? I mean, there is no – we have no directed fishery on it like we had years ago, and it's been laid off as a directed fishery for years and years and years from our end, anyhow. In Massachusetts we just kind of stopped it all, especially on the alewives and stuff like that. I guess I'll let you answer my question. I could ramble on, I guess.

MR. SADZINSKI: I think you highlighted one of the major problems with doing the assessment is that we

just don't know a lot. The TC is requesting that we actually get the data and actually figure out where what we call the missing bodies are.

CHAIRMAN DIODATI: I think I can add to that a little bit. I mean, this is a fishery that in its heyday was over 50 million pounds a year, and we're down to, what, a million right now. Thirty years ago, I would think that we began to see a cleanup of rivers beginning 30 years ago, but a few hundred years ago our rivers were substantially tainted, to the point where decisions were made to block them completely with dams.

So, certainly, that has a tremendous effect on what we're seeing today, but the population was much larger after those things took place and continued to sustain itself for quite a few years before we saw these large changes in terms of decreases in the population.

### **PID FOR AMENDMENT 3: ADVISORY PANEL REPORT**

MS. KERNS: Okay, next, we'll go through the advisory panel comments. Last week we had an advisory panel meeting. As you can see, there was a fair number of advisory panel members presents; a larger majority representation from the north than the southern states. Looking at the first issue, the AP found it difficult to make a recommendation regarding the reference points due to the lack of sufficient data for shad stocks and the fishery and the lack of understanding of the basis behind Z-30.

The AP is strongly supporting the rebuilding goals that would rebuild shad stocks but just can't determine if Z-30 would be the most successful rebuilding goal. They are concerned that the Z-30 may not be conservative enough to successfully rebuild shad stocks. And to that, the AP recommends that there is standardized monitoring, where possible, and data collection programs be developed for the fishery and make sure that it's a compliance criteria of the FMP.

They also recommend that M be estimated for each river system; and to have to good estimates of M, they recommend stomach content studies to determine what species prey on shad in order to quantify predator-prey relationships. They would like to see the commission work cooperatively with Canada and exchange of data to report on the status of the Canadian shad runs in the fishery.

For Issue 2, the AP supports the continued closure of the ocean intercept fishery. They believe that there could be expansion of the shad fishery for river systems that are rebuilt, but only in the areas of the river where there is no mixing from other river systems that are still rebuilding.

Regarding Issue 3, they do believe that fishing should be restricted in areas where total mortality is increasing and abundance is decreasing. Both recreational and commercial fisheries should be restricted. The measures to decrease non-fishing sources of mortality should also be addressed, especially when this mortality is the highest percentage of the total mortality. If a stock is not meeting its rebuilding goals, then additional measures should be put in place to improve the rebuilding.

The AP also supported and concurred with the recommendations from the 2007 stock assessment, and they placed emphasis on a couple of those in order to rebuild. Because Bob went through most of those, I'll just say that they placed emphasis on those recommendations regarding bycatch, observer coverage, passage, water quality and habitat. They strongly believe that all stocks should have a fishery management plan and habitat goals. Any questions on the AP?

That being said, the next step is for the board to give guidance to the plan development team so that they can come up with options to include in a draft amendment, so that's what we are seeking from you today.

CHAIRMAN DIODATI: Before we go to that, Bob, Z-30 is the recommended target that the technical committee is offering, Z-30?

MR. SADZINSKI: Well, the Z-30 is the target mortality rate, and it varies by system or by area.

CHAIRMAN DIODATI: Okay, does the board have sufficient understanding of Z-30? Is that something you can do in about 30 seconds?

MR. SADZINSKI: Let's just say that Z-30 is the threshold, and it does vary somewhat by river system. I know for Chesapeake stocks it's 0.43, and right now the present mortality rate is about 0.9, almost double that. We'd like to decrease mortality, and the problem is we could not parse the Z into fishing mortality and natural mortality. We found that's basically the threshold. Once we get above that Z-30, then we know that the stocks are experiencing excessive mortality, but we don't know the source.

MR. DAVID SIMPSON: Thanks. Yes, this is really the heart of the whole amendment, and the question for the commission or the understanding that needs to occur is that fishing may or may not be a large part of that Z-30, and it's entirely conceivable that you could close what is left of the fishery, because we've already closed the interstate part of the fishery, so now it's just the in-river fishery largely that occurs.

You hear the term "leverage" used sometimes. We could close the fishery and have no measurable, even, effect on Z-30. I think that's an awful large leap to make the fishery responsible for all of the mortality that's occurring with American shad when you think about – and that's the directed fishery – make it responsible for all of the mortality that's occurring from the kinds of things that were pointed out by the public, the increased predation, by problems with fish passage.

The fish passage workshop was very interesting to me. I started my career with American shad and Atlantic salmon. It was a brief tenure there, but that's where I started, so I needed a little refresher. George LaPointe put it most succinctly, as he often did, if a shad has to pass over two or more dams, they poached. I think that's a major point here not to be missed.

I think in the Connecticut River one of our major perceived problems is not upstream passage of fish but downstream, and that shows up as this lack of repeat spawners because once a fish passes up over that dam, its chances of getting back down alive are small. With increased predation of striped bass in our river systems – and we have a lot of big bass feeding, where you can imagine, at the base of the dam, where fish are held up, and they're just easy prey to predation.

There are big fish well up the Connecticut River feeding on these shad with abandon in some respects. I'm really concerned that the commission keep focused on what we have control over, be an advocate for improving fish passage, but we really don't have control over that. All we have control over is the fishery, and I just hate to see us go down a path of accepting that the fishery is responsible for every shad that dies whether it gets eaten by a striped bass or is lost in the downstream – in the attempt at downstream passage. I'll probably make a motion later on, but I'd like to hear what other people think about this issue.

## **PID FOR AMENDMENT 3: DISCUSSION**

CHAIRMAN DIODATI: Thank you, Dave. We'll take more comments from the board, but I want to remind board members to speak loudly and clearly into the mike so members of the audience can hear what is being said by you. Jim.

MR. JAMES GILMORE: Thank you, Mr. Chairman. In early June of this year Governor Patterson announced a Shad Restoration Plan for the Hudson, and there was a commitment to try to get at the problem on a lot of things of what Dave is talking about. There is a suggestion for studies in the tune of several million dollars. We don't have all the funding yet; however, the first chunk money we're going to get is for an ocean observer program to at least start looking at the bycatch issue.

Obviously, New York is going to go out and do that, but it would be, I think, more productive if we did that with some that other states and expand that effort. I can get that information to Toni for the board and then maybe we can have some further discussions. We hope to essentially, even with the tough fiscal times, essentially get money through the state to do a lot of in-river programs and look at habitat, predator-prey, and those types of things, so we're throwing some money at it now and hopefully that will help answer some of the questions. Thanks.

CHAIRMAN DIODATI: That's excellent. The Hudson is obviously a key area for shad and we look forward to that leadership. Vito.

MR. CALOMO: I really appreciated just now what David Simpson had to say. I think he hit the hammer on the head of the nail. I think you see the cormorants, the stripers, the seals more than we've ever seen, and they line up and they're very smart fishermen themselves, actually. I think that's taken its toll along with what I said, but we can do our part in controlling some of the fishing, though.

As far as a total ban, like we've done in Massachusetts, I don't know if that's needed in other areas, but our commercial fishermen – and I'm one of them that come from the commercial industry – we know that there are hot spots. There are times of the year that the migration of the alewives, the shad, river herring, whatever you want to call them, bluebacks in my area, are migrating either upstream or downstream.

What we can do as managers is work on a joint collaboration with the fishermen – I'm talking about

the commercial fishermen, I guess all fishermen, but I'm speak more from the commercial end of it, although I supported many sports fishermen – that we should actually control those areas at times, again working with the fishermen, let them be part of the problem-solving.

To catch a million pounds of these other species, alewives – again, I don't have to repeat them, but we're in the shad right now – out of a total of, say, maybe 200 million pounds is a small amount, but yet it's an amount we don't want caught. I think we can cut that drastically from our commercial fishing by letting them know or letting us know when there is a hot spot; that we need to keep them vessels away from there.

Whether it be a 15-foot vessel or a 150-foot vessel, we need to keep them away from there at the time when they pass by and then you could open that area. I think there would be a better unification of management and the fishing industry as we work together. And one more small thing, Mr. Chairman – and I've been a little talkative this week – I've had luncheon with my friends from New Jersey, and I've gathered a lot of information by listening to them.

It falls to the way I've thought for years with a person like John Nelson from New Hampshire and others that have taught me a lot about having a long-term fishery instead of a short run. I come from the commercial fishing industry, but I understand more now because I've hung around with people like yourselves for years, to learn not to fish for today but fish for tomorrow as well, and I've become an advocate to have fisheries sustained throughout our lifetimes and beyond for our children.

We need to work more with the fishing industry and not hit them in the head with a hammer like other managers have done in the past. I feel that this is the group – and I wholeheartedly feel that this is the group that can do it, and I think we should lead the way. Thank you, Mr. Chairman.

MR. A.C. CARPENTER: I'd like to make a comment on a specific part of the document. It's on Page 7 under the monitoring and enhancement programs. The third paragraph, last sentence reads, "If restoration milestones are not achieved within five years after they have been established, the shad and river herring plan review team will recommend to the management board appropriate regulatory changes for implementation."

What I'm concerned with is from some experience that we have had on the Potomac, five years is an extremely short period of time to try to achieve a restoration goal. We had a moratorium for over 20 years before we began to see any change at all, so a five-year time period here is extremely limiting.

I think wording that if the milestone – if you can show annual progress toward the milestone – you may still have the right milestone; you just may have a too short a period of time, so I think some adjustment there. If you can show that you're making progress toward it during that five-year period, I don't think you need to necessarily change; you may just need to wait until the fish mature. These fish don't even mature until they're five and six years old.

CHAIRMAN DIODATI: Thank you, A.C. I think that language is a carryover from the previous amendment and probably why we're going into Amendment 3, because the measures in place or with the measures that we currently have in place are not delaying decline in the stock. In fact, there is a continued decline over the past five years. Jaime.

DR. JAIME GEIGER: Yes, Mr. Chairman, I guess one of the things that – again, I appreciated what David Simpson has said, but I think of the things that we increasingly have more control over is certainly habitat. Again, I think we are accepting more and more responsibility for improving habitat in addition to, obviously, influencing the fishery. I guess I have a question for Toni. Toni, are we incorporating habitat information from the diadromous source document into Amendment 3, to the best of your knowledge? I see bits and pieces but I don't necessarily see a lot.

MS. KERNS: There has not been, to my knowledge, that recommendation from the board. That work was done originally for the river herring amendment, but was taken out of the river herring amendment because it was causing confusion of what fishery was being addressed in the river herring amendment. The work has already been done; all we would need to do is incorporate it if that is the pleasure of the board.

DR. GEIGER: Okay, Mr. Chairman, with that information I would strongly recommend or request that the habitat information for both hickory shad and American shad be included into Amendment 3 from the diadromous source document. I think given all our effort and all our work on the fish passage workshop, all the information we're focusing on in habitat and the importance of habitat, I think we'd be

doing ourselves a good, good service by including this information. I would strongly recommend it be included. Thank you, Mr. Chairman.

CHAIRMAN DIODATI: Other comments from board members? Go ahead, Doug.

MR. DOUGLAS GROUT: Thank you, Mr. Chairman. The state of New Hampshire has spent probably the last 30 years trying to restore American shad stocks. During this 30 years, I was very heartened when this commission decided to try and tackle the ocean intercept fishery where mixed stocks were being harvested. From a state that was in the process of trying to spend a lot of money or spending a lot of money trying to rebuild these stocks, that was something that I thought was going to be the thing that was going to start showing progress.

Well, in our particular case we haven't seen progress despite the ocean intercept fishery being closed. In our state waters we virtually eliminated any harvest of American shad. Instead of a ten-fish creel, we have had a two-fish creel for years. We have a maximum gill net size restriction within our bays and estuaries that would prevent American shad from being captured in gill nets. We limit the bycatch.

If you look at our commercial harvest records, it's virtually nothing. I am sort of at a loss of where to go here with this from our standpoint. If we were to, say, implement something that would require us to put further restrictions, well, we've essentially closed it without actually saying no harvest of shad.

We would be required to put in some new regulations that wouldn't have any effect on our harvest here. Also, in-river regulations being put on or being mandated by this board doesn't affect the shad stocks in the Connecticut or in New York, and so I think in-river regulations still need to be the responsibility of the states. I certainly would love to have more bycatch monitoring, but right now, to be honest with you, I don't know where I'm going to get that money.

I wish I had the funds that New York had to be able to monitor the bycatch in all of our fisheries. I am sort of on the same boat as Dave is. You know, we have already done an awful lot in our state to try and bring these things back, and at this point I'm not sure what would come out of this particular management plan for our particular stocks that would really improve anything that we're doing right now outside of if I can come up with some funds someplace to start looking at the bycatch in other fisheries.

MR. WILLIAM GOLDSBOROUGH: Thank you, Mr. Chairman. I certainly think that habitat is a huge part of the problem here. I have been an advocate for fish passage, water quality, et cetera, for a long time; but just speaking to the fishery side of it for now and having been involved in the phase out of the ocean fishery here, I do believe that even though we haven't seen the kind of response we thought we would from doing that, that that was the right thing to do.

I think it still has to be maintained because, as we found then, and I think maybe it was the '98 assessment or something that recommended river-specific management of these kinds of stocks, that that is a fundamental point that has to be maintained, that mixed stocks in the ocean are simply unmanageable when they're of different status. I suggest that be key to whatever strategy we put forward on the fishery side, river-specific management of these stocks.

Having said that, it seems to me that the other ocean component that is a big question mark and appears to be looming over everything we do, that being bycatch in ocean fisheries has to receive a lot of attention. I don't have the answer to that. It sounds like New York, with their observer program that is proposed, is going down that road; and if we can somehow do that more comprehensively along this coast, I think that would help us in a big way. Thank you.

CHAIRMAN DIODATI: Any other board comments?

MR. CRAIG SHIREY: When I attended the public hearing in Delaware, we had a fairly lively discussion, as you can imagine, with a fairly good turnout of commercial fishermen. They listened very intently to the presentation; and at the end they said, "Well, what is the problem, why are the stocks declining?"

The take-home message was we don't know, and they said, "Well, is it fishing, is it the high fishing mortality rates?" And they said, "Well, we don't know that." And when faced with that, their natural reaction would be you want to restrict fisheries further even though you do not know that is the cause of these declines, but they said, "We can show you the cause of the decline."

It was fairly obvious to them that the striped bass were eating everything. We have good reproduction in the Delaware. We have young fish, these fairly large cohorts leaving the estuary, and they just don't come back. It's obvious to the fishermen that the

striped bass and other predators are consuming them all, but I think the board should really focus on the offshore bycatch in offshore fisheries and perhaps we can answer some of these questions of where these young fish are going without pinning the tail on the striped bass. Thank you.

MR. SIMPSON: To that whole point, I'm going to make a motion that we refocus Amendment 3 to focus the commission activities where our strengths lie, focus on coordination of the interstate monitoring of at-sea bycatch; advocating for effective fish passage, both upstream and down; preserving the current management goals in terms of F-30 and the other five objectives of the current plan; and leaving it to the individual affected states of the river system in question to determine that level and to manage their in-river fisheries.

CHAIRMAN DIODATI: Did you have that written down, Dave, probably not?

MR. SIMPSON: It didn't sound like it, did it? No.

CHAIRMAN DIODATI: No, but I see that staff was trying to record that; and while you're reviewing what is on the board to make sure it's consistent with your motion, Mr. Augustine wants to second the motion. The comment has been good; it's to the point. I think we all recognize that dealing with a species like American shad is going to be very difficult for us to come up with very specific actions that are going to halt the decline.

I think that the assessment work in 2007 was pretty clear in suggesting that changing environmental conditions over the past half decade at least seems to have some factor in decline. Predation has been identified as another ominous factor in decline, potential for bycatch. I think, if anything, the directed fishery seems to be a subordinate player but continues to be a factor somewhere in this, but we are fisheries managers and lead this initiative so I think this is a good motion to get us started in that direction. We do have a motion and a second, and I'm going to take more questions, comments and discussion on this from the board before we go to the audience. I will start with Mr. Abbott.

REPRESENTATIVE DENNIS ABBOTT: Thank you, Mr. Chair. This morning we've heard a lot of talk about fish passage, and obviously that's a major contributor to our problem. I was wondering if, hypothetically, our technical committee or someone could answer the question of what would be the effect of removing a particular dam in a river; what

would that do to our recruits; what would that do if we knew so that it gave us a talking point?

We know oftentimes below dams that we close fishing within X number of feet of a dam, but the striped bass, you know, they don't pay attention to it so there's obviously a lot of mortality. It's funny how Massachusetts always laughs when we talk about striped bass over there, Mr. Anti-Striped Bass Adler.

But, really, you know, it would provide us some sort of a talking point where we could say that, you know, this dam is causing us this much mortality, this dam is doing this. We can talk also about removing dams, but if you don't have the fish to go up the dams it's really a moot point, but if you could just hypothetically tell people, hey, remove the dam and studies prove that our fish stock would increase in that river X percent, it might be helpful. Just a thought I had.

CHAIRMAN DIODATI: Before I go to the technical committee to respond on that, I think I can offer my own reflections because the Commonwealth of Massachusetts has a substantial amount of dams in the Commonwealth, probably over 300 I think it was. As a result over the past seven years we have been pretty busy building fishways. We've got a lot of cement in our state and in our rivers to aid passage, but the very best passage facilities that we have usually result in about a 60 percent transfer of fish up the river.

Unfortunately, it typically results in a second, a third, a fourth barrier as you go up. Most of our passageways weren't built to be the best or the most efficient. Some of them miss by quite a bit in terms of attracting entry to them, which is the basic. So, on average, overall, we're probably in that 20 to 30 percent range of being effective in terms of passage up the river. These facilities often don't allow for any downstream passage.

So, clearly, dams are a major obstacle, and, again, in Massachusetts, at least, we've identified dam removal as our principal tool for aiding fish passage, and that's been a policy for about ten years now in Massachusetts. I think we've also removed about four or five dams in that time because of the difficulty in doing that.

Some of the dams actually have historical significance now. They were built in the industrial era, and the communities that have grown around them are really attracted to the new but artificial

environment created by those dams. I don't know if that answered your question or if Bob wants to add to it.

MR. SADZINSKI: Thank you, Mr. Chairman. I guess it should be noted that some of these river systems do not have dams on them. You look at the Potomac, the Hudson which is dammed way upriver, or even the Delaware, and they're still seeing declines. The Potomac is relatively stable, but we have seen declines in the last two years.

The other problem is that each dam is unique for that river system, and individual studies need to be done for that dam. I work on the Susquehanna and we do have quantifiable dam losses, which are fairly significant. Approximately 60 to 80 percent of the fish lifted will die because of turbine loss.

CHAIRMAN DIODATI: A.C., did you have your hand up earlier?

MR. CARPENTER: That point that the Potomac really doesn't have any dams, if you want to look at Figure 11 in your text, where is the impact of the dam, you know, that shows what you have to deal with when you don't have any dam at all. Now, we did close in 1982, by regulation, which accounts for the flat line since then, but something was happening in the sixties and seventies that we can't account for.

CHAIRMAN DIODATI: Good points. Mark.

MR. MARK GIBSON: Thank you, Mr. Chairman, two points I wanted to make. First, in relation to what Representative Abbott asked, I think there is a way to examine that question. When I was doing some stock assessment work with Victor Crecco many moons ago, we started looking at the relationship between shad population sizes and the amount of spawning area available, and we did it for river herring as well. It was very clear that not surprisingly big rivers had big shad populations, and small rivers had small ones. The same thing holds for Pacific salmon or small mouth bass in lakes.

Big bodies of water have bigger fish populations than smaller ones. And there is also, I think, some case studies in the South Atlantic – and my southern colleagues could help me with it – where additional spawning habitat has been accessed and there were large increases at least at the time in the run size.

So I think there is an ability to examine all of that information and develop relationships between the amount of spawning area or juvenile production area

that's available and the resultant population sizes, and those relationships could be used to project what happens when you remove a dam on a major river system that opened a whole bunch more habitat. I think there is some ability to do that; and if this motion were to pass, that could be an exercise that's done to focus on habitat access, dam removal and so forth.

The other point I wanted to make is I'm continually frustrated by these boards that there seems to be a pervasive view that fishing mortality rates don't impact fish stocks, particularly when other factors are intervening. It happens over and over again for all the different species when in fact it's just the opposite.

There are recent papers that have been published that have shown that when things like climatic variability, predator-prey relationships, whatever the intervening external factors are, fish stocks become less resilient to fishing and they don't stay the same in terms of their resilience, so you can't – I hope we don't get to the point we're saying we're not going to manage fishing mortality wherever it occurs, whether it's in river or continuing discards in state territorial seas or bycatch mortality in the EEZ, because it really does matter.

It's quite important and it's more important now than it was before when other factors intervene. We should clearly say that when we calculate Z, we're not attributing it all to fishing mortality. We shouldn't be foolhardy enough to do that, but we have to make sure we articulate that mortality does matter, particularly fishing mortality, in the presence of other factors that are intervening to raise total mortality rates. Thank you.

CHAIRMAN DIODATI: I'll continue to take comment from members of the board, but as I do that, I think you should be paying attention to Page 17, the 18 or 20 recommendations from the assessment that might help focus us in terms of providing guidance to the PDT. Michelle.

MS. MICHELLE DUVAL: Just to add quickly to the discussion on dams – and this is cited I think in the river herring amendment – we do have some ongoing studies looking at increased passage upstream from removal of a dam on the Neuse River, so we're obtaining information on that. It's clear that there is more striped bass, more shad and more river herring that are now moving past where that obstruction was.

I also wanted to add my support to what Mark just said about not discounting the impact that fishing mortality does have on some of these stocks when they're depressed. I think North Carolina, with regard specifically to river herring, if there was any way that we felt that we could have kept that fishery open, we would have done that even though fishing effort had declined quite a bit, but in order to give the fish every opportunity to rebuild, we felt that was unfortunately a necessary measure.

MR. G. RITCHIE WHITE: Thank you, Mr. Chairman. To the motion, I guess I want to understand that allowing individual states to manage in-river fisheries, does that mean that those states will be accountable to try to reach the F-30 and the five objectives, so that will be something that the states will have to show over time that whatever plans they come up with will try to meet those goals; and is that something that, then, the commission has to check that over time and see if that is taking place?

CHAIRMAN DIODATI: Did you want to respond, Dave?

MR. SIMPSON: Yes, that's exactly what I intended, the states that share that resource – just as we do now with boards, states that share that resource would work together. We're actually in a good position with river herring in terms of monitoring. There are probably more monitoring requirements for these species than any other.

Certainly, the Connecticut River we have – because of our interest in those species, we spend a disproportionate amount of our staff, resources and money on these species. We certainly are not – this motion is not to shirk responsibility or pretend that fishing mortality doesn't matter. It's just that I think it's best judged system by system based on the local expertise and conditions and recognizing the unique issues that face each system.

Certainly, the commission remains a resource for reviewing work and so forth, but I think given the difference of opinion of what we can know – the range and ability from system to system and what can be known, the amount that's available, I think we need the latitude to work on an individual basis. Again, I want to emphasize this is not an attempt to step away from fisheries management.

Connecticut, five or six years ago, closed its alewife and blueback herring fishery, just as other as other states have done, out of concern for those stocks, so we're deeply concerned, as concerned as any state

about these resources and want to preserve them. I just think this is the more appropriate way to go for the commission.

CHAIRMAN DIODATI: I'll let you think about that, Ritchie, and whether or not the motion needs a perfection while we continue with a few more. Gene and then Bill.

DR. EUGENE KRAY: Mine is a very quick point of clarification. They have F-30 up there; we've been talking about Z-30. Should that be F-30 or Z-30? Dave.

MR. SIMPSON: What I'm saying is we should preserve the current management objective, which is F-30, which again talks about just fishing and doesn't attribute all mortality to the fishery in terms of trying to solve the problem of dams and striped bass predation and everything else that's going on.

CHAIRMAN DIODATI: I'm going to ask Bob or someone to think about a clarification between F-30 and Z-30 so that the board understands that. He can think about that while I take a few more questions. I'll go to Bill and then Jaime.

MR. WILLIAM A. ADLER: Thank you, Mr. Chairman. I'm a little bit confused as to where we're going here. We have a public information document with, like, three issues. We have a motion on the floor to do something in, I guess, an amendment. Then we have these pages here, and I just don't know how we're – what are we going to accomplish here right now? Are we going to set up the makings for an amendment; is that what we're trying to do today?

CHAIRMAN DIODATI: Yes, we want to leave this meeting providing the guidance needed by the PDT to draft an amendment. It will come back to us before it goes out to public hearing. The motion on the board, it's my impression that this gives us some basic guidance, but I think we need to provide more guidance to the PDT in terms of specific options. We'll expand this discussion. I know we don't have that much time scheduled today. We haven't even got to river herring yet, and it's nine o'clock, but we're going to keep moving ahead here and do the best we can. Jaime.

DR. GEIGER: Thank you, Mr. Chairman. Like Bill, I'm a little confused, but at the same time I guess I'd ask David a question. You know, we have numerous recommendations from the 2007 stock assessment, we have numerous recommendations from the technical committee, we have numerous

recommendations from the advisory panel, all of which are very good and appropriate and worthwhile.

How does your motion put those in some kind of a multi-phased process to deal with American shad declines and somewhat of an ecosystem-based approach versus what you have put in your motion? You know, with all due respect, I think you're hitting the highlights of what we need to do, but there are also numerous other recommendations that out there and on the table that I think also are equally important, depending upon what river system you may be in. David, if you could possibly clarify or maybe amplify the intentions in your motion, please.

MR. SIMPSON: Yes, where we are is we went out, we got some advice on a general, you know, coast-wide basis for what really constitutes dozens of stocks that all have different characteristics, but share some common elements that the commission can deal with. That first step was to get a reaction from the public on the direction we were going in, and I think what we heard pretty clearly was that the commission needs to focus on what it does best, and we can't simply say, gee, stocks are declining, there are a number of factors that probably contribute to that, the commission can only deal with fisheries; therefore, we'll deal with it exclusively through fisheries.

That's my concern. I think a number of good points were brought out in the assessment. My view is that those kinds of issues are best dealt with on a system-by-system basis by the states that share that resource since ocean intercept fisheries, as they may be called, have been closed for a number of years, so the commission has taken its interstate role in ocean waters.

I think a remaining piece of it is the bycatch. There is a great deal of legitimate concern about what might be happening in non-directed fisheries. Time and place, as Vito suggested, we need to focus there and find out if there is a problem.

If there is, where does it occur, what can we do about it to make modifications to those fisheries with interactions, and focus our efforts there and rely on the local expertise on these systems to develop strategies for managing their fisheries on a local basis. I simply want to bring that piece of it back to the local area where it's best understood and customize to the specific conditions of those systems.

CHAIRMAN DIODATI: I'm going to go back to Bob to see if he can offer a distinction for the board between F-30 and Z-30.

MR. SADZINSKI: Thank you, Mr. Chairman. This is one issue the TC has grappled with, what is fishing mortality? Most of us on the TC agree that fishing mortality is man-induced losses. These would include bycatch and dam losses. That's how most of the people on the TC distinguish. I know that there some assessments that don't distinguish that; and, obviously, when we have total mortality, that would also include natural mortality, which would be predation. Thank you.

MR. TERRY STOCKWELL: Thank you, Mr. Chair. I'm supportive of the concept of this motion; however, I'm troubled by a couple of things, and that's the resources available to the states for coordination of interstate monitoring and the ability to manage the fisheries on a state-by-state basis. Similar to New Hampshire, we haven't had the windfall that New York has had.

We're struggling to do what monitoring we have and additional responsibilities and burdens just like we're going to be talking about in River Herring Amendment 2 will be troublesome for us. I'm perhaps a little bit more comfortable working with the umbrella of the whole commission so that we move forward in some sort of holistic way.

MR. R. WHITE: Thank you, Mr. Chairman. I have a friendly amendment I'd like to offer to see if it is friendly. I would add a sentence at the end, "The board will annually monitor states' progress on reaching these management goals."

CHAIRMAN DIODATI: That is a friendly amendment.

MR. SIMPSON: Yes, that's acceptable, thank you.

MR. GROUT: Hearing Bob's response concerning what F-30 is and having it include losses to the dams, I'm now wondering whether that actually should be Z-30. From a standpoint of I heard from the stock assessment that they didn't really have the ability to tease out what natural mortality was in most rivers; now, if that's changed, obviously, it makes it much easier to manage F than it is to manage Z because of what you've said, Dave, because now you're lumping everything in there.

I'm wondering do we have the ability to measure F. I know I don't even have the ability to measure Z despite what is in here. You know, we've got a graph, but the sample sizes of our Z measures of 30 fish, and that's only kidding the public that we have the ability to measure Z.

MR. PATTEN D. WHITE: Just quickly, in followup to Doug's point, I'm a little confused by what Bob just said because I thought our focus in fisheries management was primarily F, because it seems that we could control, but I don't see that we have any control over what happens with dams. It's perplexing to me that somehow through this interpretation it becomes our responsibility.

CHAIRMAN DIODATI: I think the motion is concentrating on F for the time being, right"

MR. P. WHITE: I understand that but now dams are included in it.

CHAIRMAN DIODATI: Okay, right. A.C.

MR. CARPENTER: I don't think I can support the motion because as I read the motion it's more of what we have been doing and what we've been doing hasn't worked. We do need to take advantage of the 2007 stock assessment that was done. There are a number of things that are listed in there that could be incorporated into a new amendment or an addendum, either way. This doesn't have enough specificity to it. It simply says "do nothing" to me, and I'm not going to be able to support the motion.

CHAIRMAN DIODATI: So you view this as status quo management; that's what the motion is telling you?

MR. CARPENTER: That's how I read it, yes.

CHAIRMAN DIODATI: Okay, I'm going to ask David if that was his intent before I take another question.

MR. SIMPSON: No, of course not. What I'm saying is if there is a system that's of concern to you, I think the focus of responsibility should be on the states and entities that share that resource to work to manage it effectively. I'm at a little bit of a loss to understand how the technical committee could decide that turbine losses are fishing mortality and the fishery is responsible for them.

I'm at a little bit of a loss here, and I understand the difficult situation the technical committee can get in when they don't have as much data as they would like, but that's just wrong, and I think the board needs to make that determination themselves that turbine mortality is not fishing mortality and cannot be managed as such. That is beyond our control except to advocate for more effective fish passage, as I said.

With respect to Terry's comment, I wasn't suggesting that monitoring requirements costing tens or hundreds of thousands or millions of dollars is a piece of this. I view it as we continue to work as partners. The National Marine Fisheries Service has obligations to provide adequate bycatch monitoring.

The standardized bycatch reporting methodology was developed in the councils and the National Marine Fisheries Service arena to give us an idea of how much coverage we need and what fisheries so that we can understand where our shad and river herring are going, among other things. That is what I meant, is focus on that.

I don't picture Maine being responsible for developing and hiring three people and doing all the sea sampling. That's not what the commission does. It's just recognizing we need to know a little bit more, have more focused monitoring of suspect fisheries. We had a good presentation, was it yesterday or two days ago – I've lost track – of some new information, mid-water trawl, sure, but there are also some small-mesh bottom trawl fisheries out in ocean waters that are of concern, potentially.

It looked like they were taking over a million river herring. Let's focus on the when and where of that and try to do something to address that. This is in no way backing off from very proactive, very aggressive but smart fishery management on a local scale where it's best understood.

Certainly, I think we need to be really clear that as a board that we cannot make the fisheries responsible for what is happening at dams. There are other entities that are responsible for that. We have some level of control to influence that, but we are not responsible for managing it, and it's just an unacceptable position to put fishermen in.

CHAIRMAN DIODATI: Thank you, Dave. I think it's important that the board is going to be able to distinguish whether or not this actually in effect is status quo or not. I think A.C.'s view probably hasn't changed after hearing that, but I'm not going to answer for A.C., but it sounds to me like although local control always has the opportunity of being more conservative than what this commission offers as guidance, we aren't really suggesting anything different in the current amendment.

I think that is critical for everyone to understand, that it doesn't say things like we're going to require that all states with in-river fisheries maintain current levels of fishing; that there is no increase, for

instance. That would be a little bit different, I think, than status quo.

MR. SIMPSON: Again, remembering where we are, we had a first cut at a public information document, get a sense of what the public thinks, give ourselves a chance to think about what it is we're doing here, so recrafting the amendment certainly can include some of these concepts in there, go back out and get a sense from the public of whether these things make sense in this context here, and then make a final determination after we've heard from the public on it.

MR. JACK TRAVELSTEAD: Thank you, Mr. Chairman. I guess what we're about this morning is providing guidance to the staff so that they can prepare an amendment. I'm not sure, personally, what this motion means, although I'm leaning toward Mr. Carpenter's interpretation of it, that's it's more or less status quo.

What I would have preferred would have been a motion that looks at those 18 issues that the technical committee has identified on Pages 17 and 18 and instructs the staff to divide those up into those measures that apply to fishery management and those that apply to research and monitoring and those that apply to habitat and instruct the staff to proceed to develop an amendment along those lines, perhaps incorporating some of the concerns of the advisory panel. I guess my question at this point is how does staff interpret the current motion; what do they see in the way of guidance?

CHAIRMAN DIODATI: Jack, before Toni answers that, you might want to think about what you just said; and if you want to craft a substitute motion, that's certainly going to be entertained.

MS. KERNS: Being less familiar with the Shad and River Herring Plan, I will do my best to see how I see this. I do know that currently in the Shad and River Herring Plan there are few requirements on fish passage, so that would be something new if these become requirements. If they're just recommendations, then obviously that's not much of a change except for just giving some guidance to states on ways to incorporate fish passage into their plans if they choose to do so. There is some guidance on monitoring, so, again, if that's still a recommendation, then it wouldn't make it be too much different than status quo. But beyond that, then, it's not too much of a change.

CHAIRMAN DIODATI: Dave, I'm going to go back to Jack and then I'll let you respond.

MR. TRAVELSTEAD: Mr. Chairman, with your suggestion, I guess I would offer a substitute motion, but I do so with this in mind. We have some pretty strong advice from our technical committee. We have some pretty good advice from the advisory panel that has looked at this. We've received a lot of public comment. All we're doing today is beginning to draft an amendment.

We're not making any final decisions here, but I think we owe it to the public to put out a document that is broad in nature and identifies a number of potential strategies to improve this resource, so that's where I would be coming from with a motion that would be, as I had indicated before, that instructs staff to use the 18 items listed in the PID on Page 17 and 18, along with the recommendations of the advisory panel, to prepare an amendment for the board to consider for sending out to public comment.

CHAIRMAN DIODATI: Okay, Mr. Cole seconds. Jaime.

DR. GEIGER: Thank you, Mr. Chairman. I really appreciate what Jack just did and I fully support what Jack just proposed. That is the way I think we need to go, and I certainly agree with looking at a broad approach; certainly at the stock assessment recommendations, technical committee, AP recommendations. I think that's a document that's going to give us a good head start on doing an amendment.

And, again, David, I really appreciate you stimulating this discussion, and I really appreciate the thoughts that you have laid on the table, but I think Jack's approach will offer us some more flexibility and dimension to this issue. Thank you.

MR. SIMPSON: Well, timing is everything. I was going to suggest that the only word in the 18 items that would need to be changed to satisfy the change I was proposing is in Number 2, where it says, "Restrict fisheries operating on stocks where" – currently it says, "total mortality is increasing and relative abundance is decreasing," and I would simply change that "total" to "fishing". I think it still makes sense to not increase directed fisheries for American shad and to do all the other 18 things that are proposed here under the framework of the motion that I made.

CHAIRMAN DIODATI: I don't think I see any objection to that kind of change around the room. Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. I was just trying to see if David's idea was still alive even with Jack's motion, and I think David basically said it was, right? Thank you.

MR. GROUT: One concern that I would like to see, and I would offer a friendly amendment to this, and that is this concept of allowing individual states to manage in-river fisheries within the guidance of developing this plan. Let's see where we can add this.

CHAIRMAN DIODATI: Doug, are you commenting on the substitute motion?

MR. GROUT: Yes, on the substitute motion. I'm offering a friendly amendment – if you see it as friendly, that we have that concept of allowing individual states to manage in-river fisheries.

MR. TRAVELSTEAD: This is an interesting concept because you should all recall that Virginia has been before this board for the last three years seeking permission for a small bycatch fishery in our rivers, and, quite frankly, you've given us a lot of grief on that issue. I don't object to that; but I think the group is more wise than individual states at times. I wouldn't accept that as a friendly amendment. I think sometimes we do need oversight to keep us in line.

MR. GOLDSBOROUGH: Thank you, Mr. Chairman. I'm going to defer to Tom on the point I was going to make.

MR. THOMAS O'CONNELL: I just want to go back to a comment that David made in regards to Point 2 of the technical committee recommendations. What I heard, Dave, is you're saying is that if we have a situation that a stock is decreasing due to some increases in natural mortality, that we would not restrict the fisheries.

I understand the point that's trying to be made, but I think it would be irresponsible for us to not examine further restrictions, getting back to the point that Mark had made earlier that the stock may be less resilient. Mr. Chairman, you had indicated that there was agreement with that from the board, and I'm not sure if that was the case. That may be worth some further discussion.

CHAIRMAN DIODATI: All right, let's have some of that discussion and decide whether or not we'll formally change that characteristic, and then I'm going to ask for a vote on the substitute motion to

make it the principal motion, and then we'll go to the audience for some comment before you get to vote on it. I am going to go to Jack and then A.C. and then Mark Gibson.

MR. TRAVELSTEAD: I think in the interest of time, there is plenty of time to deal with these issues down the road. I think we ought to stick with the language right there on Pages 17 and 18, the way they are now, let the staff do their work to draft the amendment. It comes back to us and we can debate the issues individually at that point.

MR. CARPENTER: I'd like to endorse that exactly the same.

MR. GIBSON: I would only support this motion if it's identical to the 18. With the change that David had suggested, one word is a bombshell change as far as I'm concerned. It seemed to escape the board and I appreciate Tom bringing that back. If Number 2 continues to stay "total mortality", I'll support it. If it's changed to "fishing", I wouldn't.

CHAIRMAN DIODATI: Okay, I'm going to ask the board for a vote on the substitute motion. Do you need a minute?

(Whereupon, a caucus was held.)

CHAIRMAN DIODATI: Go ahead, Roy.

MR. ROY MILLER: Mr. Chairman, it's unclear to us at this point whether the motion includes the term "total mortality" or "fishing mortality".

CHAIRMAN DIODATI: At this point it's my impression that it's going to remain as is on Pages 17 and 18. The language will remain as it is. I think that staff, as they prepare the document for you to look at at our next meeting, we can determine whether or not both of those characteristics need to be included to go to public hearing or not, but for now it stays the way it is.

Okay, with that, everyone ready to vote on this substitute motion? All in favor, raise your right hand; all opposed, same sign; any null votes. The motion passes 17 in favor; 1 opposition. Doug.

MR. GROUT: Mr. Chairman, if you'd be willing, I'd like to offer an amendment to this motion that we've just passed; and that is in drafting this amendment, the PDT include the concept that would allow individual states to tailor solutions for in-river

fisheries to meet the goals and objectives of this amendment.

CHAIRMAN DIODATI: Is that acceptable as a friendly amendment to the makers of the original motion?

MR. TRAVELSTEAD: I think what Mr. Grout is doing is simply offering an alternative that the staff would include in the amendment for consideration, so in that light I have no objection to its inclusion.

CHAIRMAN DIODATI: Okay, we're not going to vote it. This becomes the amendment. Members of the public, there are a number of you that have signed up asking to speak. Bill, before I go to the audience.

MR. GOLDSBOROUGH: Sorry, Mr. Chairman, just as a matter of procedure, do we have to do anything to the original motion?

CHAIRMAN DIODATI: This becomes the main motion now; the substitute motion is the main motion. Okay, members of the audience, I have Mr. Cummings. Would you like to speak now, sir?

MR. CUMMINS: Again, I'm Jim Cummins; I'm with the Interstate Commission on the Potomac River Basin. Just to be clear, we're a different organization than the Potomac River Fisheries Commission, but we have been working with PRFC, with the Fish and Wildlife Service, Virginia, Maryland and D.C. on shad restoration in the Potomac since 1995.

I think the Potomac is a good case study for you all. In the discussions you've had today, again, the Potomac has no dams on the main stem. It has been closed since the 1982. The problems that are going on with shad – and we've seen some recovery in the Potomac, but it has been hampered. The recovery is hampered; it's muted. Principally it's not by water quality. The Potomac has cleaned up a lot.

It's not by striped bass. We have a large striped bass population. It's something that's going on out in the ocean. I think you've got a great set of recommendations, those 18 recommendations. I am surprised, though, that you all haven't prioritized for the staff those recommendations. Importantly, I think recommendations three through five are the most important ones because they deal more with the ocean issues that I think are the real problem with the recovery of the American shad.

Now that the amendment is passed, I encourage you to direct the staff to look more closely at those

bycatch concerns that are out in the ocean. Principally, I'm concerned with the Mid-Atlantic Herring Fishery and the effort to enhance the observer programs. It needs that greatly. I mean, we have a wonderful observer program for the Pacific salmon; we have very little for the Atlantic and American shad, and I don't understand why the American shad has risen to the same level of concern as the Pacific salmon.

I also think that Amendment 3 and Amendment 2 are closely linked. The reason the shad aren't doing well besides bycatch is probably predation. If the Potomac, which has been doing pretty well, is the only fish out in sea to be eaten, it's being heavily predated on, that is a concern. Again, I would stress that I sort of characterize what I'm seeing here today is everybody walking calmly out of the theater but nobody is calling the fire department to report the fire. That's the end of my statement, so thank you very much.

CHAIRMAN DIODATI: Procedurally staff will put together a draft amendment, it will come back to this board, and the board will refine options, perhaps prioritize options as suggested. I'll continue to take a few more comments from the audience as long as the audience recognizes this isn't a public hearing. This document will be prepared and adopted for public hearing by this board at its next meeting likely. Everyone will have an opportunity to take a look at it at that point. Mr. McWha.

MR. BILL McWHA: I pronounce it Smith. Fifty-eight years of people asking me how I say my name, I say Smith. Good morning, everyone. I want to speak to you today about mid-water trawls as many of you probably have already guessed. I wrote a short letter here. In 1376 Cornish fishermen petitioned the British Parliament to brand the wonder chum, if I'm saying that right, an early version of the beam trawl.

Three centuries Scottish longline fishermen petitioned Charles I to protect them from the great destruction made of fish by a net, now called the trawl. In 1883 the Royal Commission declared that because of trawling under new steam-powered vessels, the North Sea was now dead. Further commissions concluded the same in '02 and '04. I borrowed most of this information from a book called *The Last Fish Tale*.

After World War II, technology advances made it possible to catch and eat all the fish. The greatest and most ancient of all fisheries, the fantastic

swarming of cod, off of Newfoundland finally collapsed in 1992 after 500 years of fishing. As all of you know, it is predicted that by 2048 all exploitable fish stocks on the globe will be depleted.

In a recent article about Atlantic herring and mid-water trawlers, a NOAA scientist stated that the Atlantic herring are not overfished, and in fact only 5 to 10 percent of the biomass is harvested every year. Taking issue with the report, if only 5 to 10 percent of the Atlantic herring are being taken, then what has happened to nearly 100 percent of the river herring, and why are the American shad counts so drastically low? As you now know, there is much speculation that river herring and juvenile shad are being caught as bycatch in the trawl nets.

NOAA states that Area 3 has 1,800,000 tons of herring stock. The Canadians estimate that Area 3 has 600,000 tons, one-third of NOAA's estimate, and that's quite a discrepancy. In comparison to those estimates, the counting window at the Holyoke Dam has no estimates. They counted 310,000 blueback herring in 1992, and in 2006 they passed 21 blueback herring.

Now, mid-water trawls effectively started in '92, and they started to take off, peaking in 2000. In 1992 fish stocks in the Connecticut River and the Holyoke Dam began to crash. In 2000 they really crashed – 2001. From 310,000 bluebacks in '92 to 21 in 2006 is quite a drop. You can estimate all you want for what there is in the ocean, but what comes past that window in Holyoke is what is real.

I don't think you need to study where the fish are or what is going on. They're just not here anymore. Here is another one. Recently a report from UMass has documented that Atlantic salmon are undernourished there in their first few months at sea. Could it be that they're starving? Obviously!

We have spent billions on waste water and sewage treatment plants. We have spent millions on fish restoration. The Connecticut River is so clean that trout swim in its water, but river herring and American shad numbers are diminishing. The Open Ocean Shad Fishery has been closed, but still shad numbers continue to be far less than satisfactory. In 2006 herring and mackerel landings in Gloucester totaled 129 million pounds for a sum of \$9.1 million or seven cents a pound.

So we spend billions on treatment and restoration only to let the fish, salmon, shad and herring, migrate to sea to be caught by mid-water trawlers, ground up

for fertilizer or lobster bait at seven cents a pound. As many of you know, I have sent e-mails concerning mid-water trawls in an effort to raise awareness in the fish community because I have found that there a number of people who are unaware of this fishery.

The following reply was received actually on August 12<sup>th</sup> from Dr. Boyd Kennard – does everybody know who Dr. Boyd Kennard is – “Bill, I was unaware of this fishery and am very concerned that in the face of drastically declining shad and river herring stocks in recent years, something about responsible agencies have apparently dropped the ball once again.” Now in parentheses he pulls back just a little bit, and he says, “At least that is my first impression.”

Now, that's Boyd Kennard's gut response to what has happened to shad and herring. He back me up and he backs everybody up. That's his gut response that the fish are not coming back because they're being caught at sea.

CHAIRMAN DIODATI: Okay, Mr. Smith –

MR. McWHA: I'm not done yet.

CHAIRMAN DIODATI: I know you're not, but I'm getting close to it. I think I'm getting the idea that you want the board to pay particular attention to bycatch specifically in the mid-water trawl fishery.

MR. McWHA: Right.

CHAIRMAN DIODATI: Okay, is there anything more in your comment other than that, because I think we have that understanding.

MR. McWHA: Okay, I just want to make sure it's – you know, I just –

CHAIRMAN DIODATI: It's crystal.

MR. McWHA: This is new to me, you know, so I –

CHAIRMAN DIODATI: Not new to us.

MR. McWHA: I know it's not new to you, but it seems to be new to a lot of people. There is more than just Boyd Kennard who never knew of this fishery in the northeast and probably on the east coast.

CHAIRMAN DIODATI: Right, I think it would be beneficial if you provide what you have in writing – it seems like you've written out your statements – to

the board and then submit them even again during the public comment period. That would be very helpful.

MR. McWHA: All right, thank you.

MR. JIM BERRY: Thank you, Mr. Chairman. I represent the Delaware River Shad Fishermen's Association. We thank you very much for allowing us to submit our public comments. Last year at this same meeting we distributed a suggested shad restoration plan to be used for each of the natal rivers. I hope that the staff and the organization can report that now, over one year later, that they have been adopted for each of the natal rivers because it seemed to be a good idea, it seemed to be a good model.

I would ask the staff to research that with the member states. I think rather than belabor so many of the obvious things and very significant things that have actually gone on, someone mentioned, while we were sitting back there listening to your suggestions, that perhaps John McPhee is writing a sequel to his book *The Founding Fish* and entitling it *The American Shad, the Foundering Fish*, and then he plans to follow that with a third sequel, which is *The American Shad, The Forgotten Fish*.

And, really, I want to just concentrate on education. I think that the ASMFC does a wonderful job. They publish and promulgate the public input. I would suggest that if you're going to encourage the maximum public input, that perhaps you schedule your public input meetings closer to those natal rivers so you can actually get more public participation and input rather than have them two hours or three hours, in some case, away, because you cut down on attendance and you cut down on what you're trying to achieve, which is public input.

Education – I want to compliment the Pennsylvania Fish and Boat Commission. They have been a partner, a proactive partner, and a sponsor of two educational programs that I'd like to recommend to all the member states here at this organization; one a shad symposium, which they sponsored last year which brought in the experts from four of the most progressive and proactive states, Delaware, New Jersey, New York and Pennsylvania, to discuss the plight of the American shad and river herring.

It was attended by 89 people, very well attended, and we'd like to see that continued. I would like to see this organization recommend that as a program for all the member states. I brought along some of the items that were discussed. I'll submit that. I also brought along the very excellent program that, again, the Pennsylvania Fish and Boat Commission helped us

with, *The Wildness Conservancy*, and that was our Shad in Schools Program.

We sought to emulate the success that Jim Cummins and the Interstate Commission on the Potomac River Basin came up with, because we have a real public image problem when it comes to the American shad and the river herring. Most kids don't know about it. As a result their parents really don't know about it, and we need to get this program. I brought you a video of this program and videos of the shad symposium, which I'll leave for the staff.

I think they ought to be replicated, duplicated and sent to all of the member states because education I think is the greatest challenge, and our public image needs to be repaired and very quickly. On the item of fish passage, I would only add that if Johnny Cochran was alive, that wonderful attorney, he would look at this fish passage thing after all we've heard, and he would say rather, I think, eloquently, certainly more eloquently than I, "If they can't improve, they must remove." I would like that in the record.

I would also like one other item in the record. I think you've got to adopt a river that has both uninhibited passage, upstream and down, that's 377 miles of undimmed, unpolluted river water which sustained the Atlantic States greatest shad and river herring fishery and now is listed as a stable but unsatisfactorily low river, and that is we want you to be aware and adopt, be aware of the Delaware River.

That adoption and investment of our resources in the Delaware River I feel would yield the highest return not only of the spawning shad population but to this whole shad and herring restoration, because it would be a bellwether for the entire program that all you distinguished gentlemen are trying to make successful. Thank you.

CHAIRMAN DIODATI: Thank you. Mr. Berry, I think one of the board members may have a question for you. Ritchie.

MR. R. WHITE: Thank you, Mr. Chair, just a comment that the commission does not select the sites of the public hearings. The individual states do, so if you have a request, then I would contact the state directly.

MR. BERRY: Yes, then may I suggest that the commission suggest to the member states that they do that. Thank you.

CHAIRMAN DIODATI: Thank you, Mr. Berry. One last speaker is Mr. Kaelin.

MR. JEFF KAELIN: Thank you, Mr. Chairman. I'm Jeff Kaelin from Winterport, Maine. I'm here for Ocean Spray Partnership. We own and operate the Fishing Vessel Providian in Portland, Maine. It's a hundred-foot mid-trawl or seiner in the herring and mackerel fishery. It's been active in the herring fishery since the mid-nineties. To the motion, I wanted to say that I appreciate the list of options on Page 17; specifically, the approach that it takes to bycatch where it asks that the bycatch in all fisheries where river herring and shad – well, where shad bycatch occurs.

I think that's the right approach. The same approach is taken on Page 75 of the document you haven't reviewed yet, but you will, which is the Draft Amendment 2, where it asks that all small-mesh mobile gear fisheries be examined for bycatch, including herring, mackerel, whiting, squid, shrimp, scup and so forth because that's really what is happening out there.

The vilification of the mid-water trawl that happens to be the flavor of the day I think is inappropriate. We've been monitoring this process and attending the PID meetings and the PDT meetings and so forth, and we think that your scientists have taken this bycatch issue appropriately and identified the fact that it's occurring in an awful lot of fisheries.

The last thing I'll mention is that in both Scotland and Britain the pelagic trawl and seine fisheries for herring have been certified by the Marine Stewardship Council, and we're very interested in having the Atlantic Herring Fishery certified as well. There is an effort in Maine to have the lobster industry certified, and we think it's appropriate for the lobster bait source to be certified as well. We hope that we can gain certification for our operations.

We appreciate the commission, its staff and each of the individual state staff in looking at the bycatch issue appropriately, and that is across all small-mesh fisheries and not just single out one gear type. Thank you very much.

CHAIRMAN DIODATI: Thank you. Board members, you have a motion on the board. I'm going to ask you to take a minute to caucus and then I'm going to call for a vote.

(Whereupon, a caucus was held.)

CHAIRMAN DIODATI: Jack, go ahead and read the motion.

MR. TRAVELSTEAD: Move to instruct staff to use the 18 items on Page 17 and 18 of the PID and the AP comments to draft an amendment for board review and to include the concept that would allow individual states to tailor solutions for in-river fisheries to meet the goals and objectives of the amendment.

CHAIRMAN DIODATI: Okay, all in favor of the motion, signify by raising your hand; all opposed, same sign; null votes. The motion passes 18, no nays, no nulls. Thank you. We're scheduled to move into our river herring session of the meeting, which we will do. I am going to ask Toni to begin with a review of the Draft Amendment 2, which you should all have. It's a lengthier document.

## **DRAFT AMENDMENT 2**

MS. KERNS: Thank you, Mr. Chairman. I will try to go through this document as thoroughly as and as quickly as possible. Okay, the anticipated timeline for this document is for us to go out for public comment over the winter, come back to the board in February with a review of that comment and then to review the draft amendment, have staff make any changes that the board directs them to do, and then have final approval in February of 2009.

The statement of the problem in this document is that stocks have been identified that many populations of river herring along the Atlantic coast are in decline or depressed at stable levels. The lack of fishery-dependent and independent data makes it difficult to ascertain the status of the river herring stocks coastwide.

The closure of river herring fisheries by the Atlantic Coastal States and observed declines in river herring abundance have led to questions about the adequacy of the current management of the species to promote healthy fish stocks. Amendment 1 made no changes to management regulations for the river herring because it was assumed that they could keep F low enough to ensure survival and enhancement of depressed stocks or maintenance of the stable stocks.

Again, the stock assessment showed decline. The board asked that habitat description be included in this document. It has been done very well and very thoroughly. Most of the information from the habitat section came from the diadromous document with current updates. I'm not going to specifically go

through those issues because the board saw the diadromous document and approved it through the Policy Board.

There is both a commercial and recreational fishery description. Each description is from a state also gives an economic analysis of the value of their landings. There is also a description of substance fisheries, non-consumptive factors, bycatch and ocean fisheries and data from the National Marine Fisheries Service and the states.

Ocean bycatch is largely undocumented and unreported. It occurs in small-mesh mobile gear and pound net fisheries. The observed bycatch in the Atlantic Herring Fishery has increased over the years, and is at its highest level in 2007, 121,246 pounds. In the information that was reported yesterday, the bycatch fisheries equal all commercial river herring fisheries.

The goal of this document is to protect, enhance and restore migratory spawning stocks of river herring in order to achieve stock restoration and maintain sustainable levels of spawning and stock biomass. The objectives are to prevent further declines in river herring abundance; to improve our understanding of bycatch mortality by collecting and analyzing bycatch data; to increase our understanding of river herring fisheries, stock dynamics and population health through the fishery-dependent and independent monitoring; in order to allow for evaluation of management performance; to retain existing or more conservative regulations for American shad and hickory shad – requirements for the American shad and hickory shad regulations and monitoring are detailed in Amendment 1 – and to promote improvements in degraded or historic alocine critical habitat throughout the species range.

The management unit is the entire east coast of the U.S. landmark. Alocine populations are not included in this management unit. The monitoring programs throughout Section 3, which begins on Page 71, are drafted as requirements of the plan, so all of these would be compliance criterion as drafted. States and jurisdictions must identify three sentinel rivers with alewife and blueback herring within their management authority to monitor.

Exemptions would be granted to states or jurisdictions with fewer than three river systems with alewife and blueback herring runs. This would be necessary to achieve Goals 2 and 3 of the plan. A minimum of one river system must be monitored through fishery-independent data collection. For

fishery-independent data collection, a juvenile abundance index shall be reported as geometric means and there be annual monitoring of at least one of the systems.

Sampling protocols would be consistent over the period of the indexes that would be used, and any states implementing new programs must prepare a report for the commission to be reviewed by the technical committee and submitted as a recommendation to the board, that they accept or reject that new sampling program.

If any JI shows recruitment failure for at least three consecutive years, then the appropriate action would be recommended to the management board by the technical committee. For assessing adult populations, annually monitor spawning populations of at least one river system. As part of the spawning stock survey, states would be required to take representative samples of adults to determine sex, age composition, repeat spawning for states north of South Carolina and size distribution of each stock and species as they are monitored.

On fishways where passage is monitored, states would enumerate passage of alewife and blueback herring and passage inefficiencies would be reported when possible. States would report annually on the hatchery contribution for percent wild versus percent hatchery and submit these reports to the board annually. Any state wishing to initiate a stocking program would present a program description for commission review and approval.

For fishery-dependent monitoring, states would be required to monitor river herring commercial fisheries operating within their state. The technical committee would review the results of the fishery-dependent monitoring and review progress made to the goals and objectives of the plan. States would be required to report numbers, weight and location and effort for commercial fisheries.

Sub-sampling of the commercial catches for length, weight, age, sex, repeat spawning and species composition would be conducted. For a recreational fishery, states would be required to monitor recreational catch and effort within their three sentinel rivers. For bycatch states and jurisdictions would be required to report harvest, bycatch and discards for both river herring species in all fisheries.

That includes at sea, inshore, estuarine and in-river, including all small-mesh mobile gear fisheries in New England and the Mid-Atlantic; for example, the

herring, mackerel, whiting, shrimp, squid and scup, as well as pound net and other fixed gears.

States and jurisdictions must implement increased observer coverage in ocean fisheries to allow reliable estimates of time/area bycatch of river herring and portside sampling, as well, to evaluate the bycatch of river herring in pelagic fisheries. States would also have surveys that focused on both consumptive and non-consumptive data and would be conducted periodically.

Now to the management measures that are being proposed by the plan, which begin on Page 77. The management program could include more than one strategy or a combination of strategies possible for the plan. Option 1 would be to remain status quo, and that would be that states would have to keep in place at least at minimum the regulations from 1999 as stated in the current plan.

Option 2 looks at reducing commercial effort. The first option within that is to have area closures in-river. There would be eliminating commercial fishery activities in areas where river herring are aggregated and vulnerable to high levels of exploitation; for example, at the base of spillways, dams or on spawning grounds.

Option B is to require an escapement provision in river systems. States will be required to implement regulations in their commercial fisheries to allow for a period of time or a mechanism for escapement of river herring to the spawning grounds. This mechanism would allow for an acceptable number of fish to migrate to the spawning ground. The acceptable number is not defined, though.

Option C would be to reduce landings by river system. That would include implementing regulations that reduce the current level of commercial landings by river. It must include a component of monitoring catch and effort, and states will be required to manage the fisheries within their states to not endanger the status of any other existing stocks.

Option D is to reduce state landings overall. Limited access states will be required to establish limited entry or access programs to their commercial river herring fisheries to reduce effort from current levels.

There are a series of options under Option E to regulate bycatch. Option A is to establish limits on bycatch of river herring. Bycatch of river herring on the commercial in-river fisheries must be restricted to

20 alewife and blueback herring in aggregate per day. States and jurisdictions may either limit commercial ocean bycatch river herring on a per trip basis or on a fishery-wide basis.

Examples could include river herring bycatch from ocean waters could not exceed a maximum level to be determined, or they could establish fishery-wide caps for bycatch within specific fisheries. Management programs with a bycatch limit for river herring must include a component of monitoring.

Option B is to require mandatory reporting of bycatch and discards; not much different than what I reported before. Option C is to have time-and-area closures. States would implement time-and-area closures to limit bycatch of river herring in other commercial fisheries. Areas could be closed or where gear must be restricted during the spring spawning runs. At any time that data indicate there are high levels of bycatch, area closures and gear restrictions would have to be implemented.

Option D is to look at gear restrictions to reduce bycatch. Under this states would just implement gear restrictions to reduce bycatch of river herring in other commercial fisheries. Option 4 looks at closures with exemptions for systems with sustainable fisheries. Under this option, states would close all commercial fisheries, but exemptions will be made on a system-by system basis. States would have to demonstrate their alewife or blueback herring stocks could support a commercial fishery for those exemptions. The last option is a moratorium on the river herring fishery.

Next are management measures for the recreational fishery. Status quo is to maintain the management measures that were in place in states in 1999. Option 2 is put in a recreational license or permit. Option 3 is a series of options looking at ways to reduce effort. A is to limit the days of the week in the recreational harvest. B would have a coast-wide creel limit. C would put in place gear restrictions that could be used in the recreational fishery. D would look at area or season closures within river systems.

Option 4 is to close the fishery with exemptions for river systems for sustainable fisheries. Again, states would have to demonstrate that their river system could support a recreational fishery. Option 5 is a complete moratoria.

The document then goes on to make recommendations for habitat conservation and restoration, which, again, are consistent with those that are included in the diadromous document. I am

not going to read the list of all those in the interest of time. The plan then goes through the commission's standard program for alternative management; going through the general procedures that any time a state can submit a proposal for change through our process, also including de minimis.

It is noted de minimis is an option within this plan but would have to be determined once regulatory requirements were put in place, and then the board would decide what exemptions de minimis states could put in place.

For adaptive management the following measures would be able to be subject to change for adaptive management using addenda: the habitat section, the overfishing definitions, rebuilding targets and schedules, both fishery-dependent and independent monitoring requirements, the bycatch monitoring and reduction requirements, reporting requirements, effort control, area closures, gear restrictions and limitations, catch controls, fishing year and season, possession limits, quotas, bycatch limits and reporting, observer requirements, closures, regulatory measures in the recreational fishery, recommendations to the secretary for complementary actions in federal jurisdictions, de minimis specifications, compliance report due dates and any other management measures currently included in the Shad and River Herring Interstate Fishery Management Plan.

The document also allows for emergency procedures which the board can authorize or require action not covered by the provisions within the plan. The document then describes the different board's technical support teams, as standard in most of our commission documents, makes a recommendation to the secretary for complementary action in federal waters.

Then there is a section on compliance. The sections that would become compliance criterion would be Section 3, which are the monitoring and reporting requirements I went through, and Section 4.1 and 4.2, which are both the commercial and the recreational fishery management program.

All of these have a compliance schedule, which is set forth in Section 5.2 of the document, and that's that all states must implement the provisions of the plan as determined by the schedule of the amendment and that compliance reports are due no later than July 1<sup>st</sup> each year.

Changes in this program would be required by the board, and any changes that a state made to their monitoring program without approval by the board would be subject to a compliance criterion. The mandatory elements of the plan include regulatory requirements, monitoring requirements, law enforcement and the compliance schedule. The research and habitat requirements are recommendations and not regulatory. That is my quick go-through of this amendment document.

CHAIRMAN DIODATI: Nice job, Toni. Okay, we have a draft amendment. I'm going to immediately recognize that the board's concerns that were shown for the shad amendment probably relate quite well to this one as well. I'm going to recognize that you have concerns over your lack of control of Z, total mortality; that monitoring programs, especially in-river systems within states are costly and you'd like to see them under the control and administration of the states.

In the audience, at least, I know that bycatch in all fisheries, at-sea fisheries in particular are of concern and need to be looked at. I understand that those concerns exist. I think they translate over to river herring. It would be great to get a motion to accept this document to go to public hearing, and then I'd entertain some discussion on it.

The only question I have for Toni is that I know that there was a river herring-specific data workshop held recently, and we heard a little bit about preliminary information from that. I'm going to assume that there is going to be a presentation at some point to the board to assist them in making management decisions here with this amendment, so we're going to have an opportunity, I hope, at the next meeting.

Okay, at our next meeting, the October meeting, we'll hear a detailed report from the individuals that were involved in that, and I think that will help the board in moving forward with the final decisions on this amendment. Let me go to Bill and then Jack.

MR. ADLER: Mr. Chairman, I'll make a motion to take this draft amendment to public hearing.

CHAIRMAN DIODATI: Jack, were you going to make a comment?

MR. TRAVELSTEAD: Yes, just one brief comment.

CHAIRMAN DIODATI: I'll take your comment before we entertain a motion.

MR. TRAVELSTEAD: Okay, Toni, in your description of Option 5, the moratorium, you made a number of statements that were descriptive of that option that I don't see on Page 79, and I was just going to suggest that your description be included under that option. I was hoping you had that written down, what you said.

MS. KERNS: Well, there are two options that look at closing the fishery. One option closes the fishery with an exemption for states that can prove that their river can sustain a fishery, and then there is a second one that has a complete moratoria.

MR. TRAVELSTEAD: Perhaps I confused the two.

MS. KERNS: Option 4 is the exemption; Option 5 is complete moratoria with no harvest, possession, nothing.

CHAIRMAN DIODATI: Okay, Mr. Adler has made a motion. It's not on the board, but it's a motion to accept this document to go out to public hearing. Is there a second: I'll take the second from Dr. Geiger. Discussion. Doug.

MR. GROUT: Thank you, Mr. Chairman. My first point here I think concerns some of the mandatory nature of the monitoring, which, as I take it, would mean that a state would be out of compliance if they didn't have the resources to implement these. This is from a state that probably can comply with 70 percent of these requirements very easily, and it comes down to the fisheries-dependent bycatch monitoring.

While I totally support trying to implement with the best resources we have, one of our available resources is a bycatch monitoring system that would apply to all fisheries within our states, I believe we went through this struggle with striped bass recently and decided not to make it a mandatory requirement. My concern is going out for public comment on this when it may not be a financially viable option to have it mandatory for all fisheries.

CHAIRMAN DIODATI: So, it sound to me like you would like the document that goes out to public hearing to be modified to be a little bit more moderate than that or to be more ambiguous than that?

MR. GROUT: Or at least to have an option, a second option that would have it as a voluntary or something that we – I'm trying to think of the word that would say that we strongly recommend that states explore

the possibility or the financial possibility of implementing bycatch monitoring systems in their fisheries for river herring.

MS. KERNS: Doug, are you suggesting specifically for Section 3.3, bycatch monitoring and reduction, but no other sections be recommended under monitoring or the whole monitoring section.

MR. GROUT: That is my primary concern from my own standpoint, and as I said probably all the other things that we could – we already do all the other monitoring things within our personal state – within New Hampshire we can comply with. I don't have a problem with that, but it's the other jurisdictions that may have a concern about that that may want to have another option with it. I'll let the other states speak. I understand why these are in here. This is what, in an ideal world, you would like to have to monitor your river herring resources. If I was designing a system, I would design it like this.

CHAIRMAN DIODATI: So the other option might be to maintain status quo on monitoring programs for bycatch? Is there an objection to include that? I don't see any objection so staff can make that modification. Any other comments or questions before we go to a vote on this? Jim.

MR. GILMORE: Thank you, Mr. Chairman. Toni, I kind of share Doug's concerns. I mean, there is a lot of indication about commitments of state resources that we may or not have to do this monitoring. Is there just a rough schedule of when this would all come to fruition, because right now, if we had to do it, I think a lot of us wouldn't even come close to even half of what was suggested in the document.

MS. KERNS: When developing an amendment, the board typically approves the implementation schedule once all of the options have been chosen so that it would be a part of the final approval of the amendment in February that you would put together a schedule when all of these measures would have to be implemented. It can vary by – you could put one schedule for monitoring and another schedule for management measures if deemed necessary by the board.

MR. GILMORE: Just a ballpark, though, are we talking about a year, five years, that type of thing, because, again, what we're looking at right now is a problem. Who knows what is going to happen two years from now.

MS. KERNS: One has not been suggested by the board currently. I can tell you that the technical committee would say as soon as possible because this information is necessary to put together adequate stock assessments for river herring. Typically, with amendments, it's within a year's time of adoption of the amendment, but, again, that's the prerogative of the board.

CHAIRMAN DIODATI: Anymore questions or comments from the board. Vince and then Terry.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thanks, Mr. Chairman. You know, at this stage of the process, Mr. Chairman, I think with the suggestion to include a status quo option, what the board is setting themselves up for is a full range of options on that issue to be developed down the road, and it's not necessarily binding that all fisheries be monitored, and it gives the board the flexibility to back off from that all the way down to the status quo option.

MR. STOCKWELL: Thanks, Mr. Chair. Taking that into consideration, my only specific comment here for staff is under the fishery-dependent bycatch, "increase the observer coverage to allow for reliable estimates for the small-mesh fishery," "reliable" to me might be quite different than what it is to you, increase from nothing to what? So, if staff can think about that as we move ahead, I'd appreciate that. Thank you.

MR. GROUT: Just a question for the staff and maybe some other board members concerning the de minimis aspect of this; in past management plans, after we've gone to public comment and we set the standards for de minimis, my only question is do we need to bring that forward to the public for public comment saying that it's a state with less than 1 percent or whatever standard we have of the landings would be eligible for de minimis; or can we do that from a process standpoint after we have gone to public comment?

MR. ROBERT E. BEAL: Thank you, Mr. Chairman. Just to that point, Doug, in the past the boards have gone through the process as it's outlined here, which is not necessarily including a percentage in the public hearing document, but when the board gets back together to approve that, they establish the criteria for de minimis as well as the measures that de minimis states would need to implement or would be relieved from, and we have not gone back out to public hearing.

CHAIRMAN DIODATI: More questions or comments? Seeing none, I'll go to the audience. Again, we've already heard from a number of people that expressed concerns relative to the shad amendment. I'm just going to assume that those concerns apply to this document as well, so there is really no need to hear those issues again, but if there is anything new or a different issue you want to comment on, now would be a good time to do that.

MS. LARA SLIFKA: Lara Slifka, Cape Cod Commercial Hook Fishermen's Association. I'm sorry, but I couldn't hear Doug's comment that he made earlier. Could you repeat that?

MR. GROUT: Which one, the one about de minimis?

MS. SLIFKA: Prior to that one.

MR. GROUT: My comment concerning that was I was concerned about having the fiscal resources to be able to implement a bycatch monitoring system for all the fisheries within our state; and under the draft plan, right now the way it has is the only option is mandatory, which, from what I understand, if it's mandatory and we can't do it, then we're out of compliance and then the river herring fishery and not the other fisheries that may be causing the problem could cause a problem.

So, the bottom line was I think what we ended up doing was adding in an option that would have status quo which would provide a range of options on all the monitoring aspects from status quo all the way up to mandatory for all of them.

CHAIRMAN DIODATI: All right, you need a minute to caucus? Okay, all in favor raise your hand; all opposed, same sign; null votes. The motion passes, 18 in favor.

## **OTHER BUSINESS**

CHAIRMAN DIODATI: Other business that needs to come before the board.

## **ADJOURN**

CHAIRMAN DIODATI: Seeing none, we're adjourned.

(Whereupon, the meeting was adjourned at 10:25 o'clock a.m., August 21, 2008.)