

Atlantic States Marine Fisheries Commission

Shad & River Herring Management Board

February 19, 2013
2:45 – 4:15 p.m.
Alexandria, Virginia

Draft Agenda

The times listed are approximate; the order in which these items will be taken is subject to change; other items may be added as necessary.

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| 1. Welcome/Call to Order (<i>M. Duval</i>) | 2:45 p.m. |
| 2. Board Consent | 2:45 p.m. |
| • Approval of Agenda | |
| • Approval of Proceedings from October 22, 2012 | |
| 3. Public Comment | 2:50 p.m. |
| 4. Review of NOAA Fisheries Possible Endangered Species Act Listing of River Herring (<i>K. Taylor</i>) Possible Action | 3:00 p.m. |
| 5. Review of MAFMC Amendment 15 Development (<i>K. Taylor</i>) | 3:50 p.m. |
| 6. Consider Georgia proposed American shad stocking plan (<i>M. Dionne</i>) Action | 4:10 p.m. |
| 7. Other Business/Adjourn | 4:15 p.m. |

The meeting will be held at the Radisson Plaza Warwick Hotel 220 South 17th Street, Philadelphia, PA (215) 735-6000

Healthy, self-sustaining populations for all Atlantic coast fish species or successful restoration well in progress by the year 2015

MEETING OVERVIEW

Shad & River Herring Management Board Meeting

February 19, 2013

2:45 – 4:15 p.m.

Alexandria, Virginia

Chair: Michelle Duval (NC) Assumed Chairmanship: 02/12	Technical Committee Chair: Mike Dionne (NH)	Law Enforcement Committee Representative: Bridi
Vice Chair: Terry Stockwell (ME)	Advisory Panel Chair: Pam Lyons Gromen	Previous Board Meeting: October 22, 2012
Voting Members: ME, NH, MA, RI, CT, NY, NJ, PA, DE, MD, DC, PRFC, VA, NC, SC, GA, FL, NMFS, USFWS (19 votes)		

2. Board Consent

- Approval of Agenda
- Approval of Proceedings from October 22, 2012

3. Public Comment – At the beginning of the meeting public comment will be taken on items not on the agenda. Individuals that wish to speak at this time must sign-in at the beginning of the meeting. For agenda items that have already gone out for public hearing and/or have had a public comment period that has closed, the Board Chair may determine that additional public comment will not provide additional information. In this circumstance the Chair will not allow additional public comment on an issue. For agenda items that the public has not had a chance to provide input, the Board Chair may allow limited opportunity for comment. The Board Chair has the discretion to limit the number of speakers and/or the length of each comment.

4. Review of NOAA Fisheries Possible Endangered Species Act Listing of River Herring (3:00 – 3:50 p.m.)

Background

- In August 2011 the National Resources Defense Council petitioned NOAA Fisheries to list alewife and blueback herring (river herring) as threatened under the Endangered Species Act throughout all or a significant portion of its range. Alternatively, the petition requests designation of distinct population segments (DPSs) of alewives and blueback herring and list each DPS as a threatened species.
- In November, NOAA Fisheries released a positive 90-day finding on the petition to list river herring under the ESA based on the fact that the petition presents substantial scientific information indicating the petitioned action may be warranted.
- In June and July 2012 NOAA Fisheries conducted a series of workshops to gather more information on the status and threats to river herring. The workshops focused on stock structure, extinction risk, and the potential impact of climate change.

Presentations

- Update on timeline for ESA status review of river herring by K. Taylor

5. Update Mid-Atlantic Council Amendment 15 Development (3:50-4:10 p.m.)
Background
<ul style="list-style-type: none"> The MAFMC has initiated the development of Amendment 15 to the SMB FMP to consider adding shad and river herring as a stock in the fishery. (Briefing CD).
Presentations
<ul style="list-style-type: none"> Update on Council Amendments by K. Taylor

6. Consider proposed American shad stocking plan in Georgia (4:10 – 4:15 p.m.)
Background
<ul style="list-style-type: none"> The state of Georgia has submitted a stocking plan for the Altamaha River. Per Amendment 3 to the FMP, any new stocking programs require TC review and Board approval (Briefing CD).
Presentations
<ul style="list-style-type: none"> Technical Committee Report by M. Dionne
Board actions for consideration
<ul style="list-style-type: none"> Approve American shad stocking plan for Georgia

7. Other Business/Adjourn

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

**Radisson Plaza-Warwick Hotel
Philadelphia, Pennsylvania
October 22, 2012**

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1. **Approval of Agenda by Consent** (Page 1)
2. **Approval of Proceedings of August 7, 2012** by Consent (Page 1)
3. **Move to approve the sustainable fishery plans for the states of Massachusetts, Virginia, Rhode Island and Connecticut with the recommendations from the technical committee** (Page 7). Motion by Pat Augustine; second by Bill Adler. Motion carried (Page 7).
4. **Motion to accept the Shad and River Herring FMP Review, the technical committee's recommendations and approve de minimis requests for shad from Massachusetts, New Hampshire and Maine** (Page 8). Motion by Pat Augustine; second by Bill Adler. Motion carried (Page 9).
5. **Move to adjourn by Consent** (Page 10).

ATTENDANCE

Board Members

Terry Stockwell, ME, proxy for P. Keliher (AA)
 Steve Train, ME (GA)
 Doug Grout, NH (AA)
 Dennis Abbott, NH, proxy for Rep. Watters (LA)
 G. Ritchie White, NH (GA)
 Mike Armstrong, MA, proxy for P. Diodati (AA)
 Bill Adler, MA (GA)
 Rep. Sarah Peake, MA (LA)
 Bob Ballou, RI (AA)
 Rick Bellavance, RI, proxy for Rep. Martin (LA)
 Bill McElroy, RI (GA)
 David Simpson, CT (AA)
 Lance Stewart, CT (GA)
 Rep. Craig Miner, CT (LA)
 James Gilmore, NY (AA)
 Brian Culhane, NY, proxy for Sen. Johnson (LA)
 Pat Augustine, NY (GA)
 Russ Allen, NJ, proxy for D. Chanda (AA)
 Tom Fote, NJ (GA)
 Loren Lustig, PA (GA)

Mitchell Feigenbaum, PA, proxy for Rep. Vereb (LA)
 Leroy Young, PA, proxy for J. Arway (AA)
 John Clark, DE, proxy for D. Saveikis (AA)
 Bernie Pankowski, DE, proxy for Sen. Venables (LA)
 Roy Miller, DE (GA)
 Tom O’Connell, MD (AA)
 Russell Dize, MD, proxy for Sen. Colburn (LA)
 Bill Goldsborough, MD (GA)
 Rob O’Reilly, VA, proxy for J. Travelstead (AA)
 Kyle Schick, VA, proxy for Sen. Stuart (LA)
 Cathy Davenport, VA (GA)
 Michelle Duval, NC, proxy for L. Daniel (AA)
 Bill Cole, NC (GA)
 Ross Self, SC, proxy for R. Boyles (LA)
 John Duren, GA (GA)
 Patrick Geer, GA, proxy for S. Woodward (AA)
 Jim Estes, FL, proxy for J. McCawley (AA)
 Wilson Laney, USFWS
 A.C. Carpenter, PRFC
 Steve Meyers, NMFS

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

Ex-Officio Members

Pam Lyons Gromen, Advisory Panel Chair

Larry Miller, Technical Committee Chair

Staff

Bob Beal
Kate Taylor

Mike Waine

Guests

The Shad and River Herring Management Board of the Atlantic States Marine Fisheries Commission convened in the Radisson Plaza-Warwick Hotel, Philadelphia, Pennsylvania, October 22, 2012, and was called to order by Chairman Michelle Duval.

CALL TO ORDER

CHAIRMAN MICHELLE DUVAL: I would like to call the meeting of the Shad and River Herring Management Board to order.

APPROVAL OF AGENDA

CHAIRMAN MICHELLE DUVAL: The first item on the agenda is approval of the agenda. Are there any additions to the agenda? Seeing none, the agenda stands approved.

APPROVAL OF PROCEEDINGS

CHAIRMAN MICHELLE DUVAL: The next item is approval of the proceedings from our August board meeting. Are there any changes to those proceedings? Seeing none, those proceedings stand approved.

PUBLIC COMMENT

CHAIRMAN MICHELLE DUVAL: This is the point in the agenda where we accept public comment from items that are not on the agenda. No one has signed up to provide any public comment. Is there anyone out in the audience who has not signed up to provide public comment that would like to address the board on items not on the agenda? Okay, seeing none, we will move on. Our first major agenda item is review of the possible Endangered Species Act listing for river herring, and Kate is going to give us a brief overview.

REVIEW OF NOAA FISHERIES POSSIBLE ESA LISTING OF RIVER HERRING

MS. KATE TAYLOR: As the board is aware, in August 2011 NMFS received a petition to list alewife and blueback herring on the endangered species list. Last October NMFS published a positive 90-day finding stating that the listing may be warranted. As a result, NMFS initiated three status review workshops in order to develop their proposed rule for the listing.

NMFS will be using the results of the workshops in conjunction with the ASMFC River Herring Benchmark Stock Assessment in the development of

the proposed rule. These workshops were held in June and July. Many state agency, technical committee and SAS members along with ASMFC staff were involved in these workshops.

The reports from these workshops were recently published on the NMFS Website, and I am just going to give a brief overview of the results from these three workshops. The first workshop that was held was focused on stock structure of river herring. The main objectives of this workshop were to determine whether there is evidence of stock structure and to provide an expert opinion on the extent of stock structure.

NMFS will use the information from this workshop to assess whether there are discrete and significant populations of alewife and blueback herring, which may warrant separate protections under their DPS policy. For alewives the stock structure hypotheses included a single stock complex for a stock complex as identified in the NRDC petition for a stock complex based on geographic breaks and management differences; a six-stock complex based on genetics; and also an individual river-by-river stock complex.

The hypotheses for blueback herring were similar to that. To assess the strength and weaknesses of each hypothesis, the workshop participants considered all available data including research on genetics, evidence of physiological differences, tagging studies, evidence of strain and homing behavior, growth rates, run timing and abundance of alewife and blueback throughout their range.

As an example of the genetic work that was discussed, participants in the workshop reviewed the preliminary results from Eric Palkovacs' work from Duke University. Many state agencies actually provided Eric with river herring samples for this work. His analysis identified five genetically distinct populations for alewife and blueback herring.

This is an example of the stock structure that was proposed in his research and is included in the stock structure reports. Based on the results of the study, his research suggests that there is substantial population structure at the drainage scale. The preliminary management recommendations from this research suggest that river drainage is the appropriate level for management for both species.

However, the authors noted a number of caveats for their study, including that this is preliminary analysis, hybridization may be occurring between alewife and blueback herring, and a longer time series would be

useful in the research. During the workshop, participants also focused other discussions on the genetic diversity in Maine rivers, the influence of stocking, marine migrations, landlocked populations of alewife and also identified major data gaps in the research.

I want to note with regard to the landlocked populations of alewife the petition focuses on anadromous populations and does not address landlocked populations specifically and NMFS has made a determination that the scope of the review pertains only to anadromous populations. The recommendations from the stock structure workshop were that there is evidence of regional stock structure for both alewife and blueback.

However, the exact boundaries of where the stock structure is occurring are difficult to distinguish. Additionally, the ocean phase should be considered a mixed stock, and there is evidence to support regional differences in the migration patterns for both species. The second workshop focused on the extinction risk for alewife and blueback herring.

For each species two hypotheses were examined to look at the extinction risk; a one-stock complex option, coast-wide option; and then also looking at five stock complex options for each species. However, going forward the analysis does allow for the possibility of combining the results of the different DPSs in the future.

No consensus was sought from the participants in the workshop and no results were provided in the report, but rather the report included data that would be used in the analysis and also a recommended methodology for completing the analysis. The report did include an attempted preliminary analysis using the NMFS fall and spring trawl survey data for the coast-wide population, looking at the next hundred years in trying to assess the extinction risk.

However, the analysis did not produce realistic confidence intervals and the model is being modified. I would just like to note this proposed extinction risk analysis is quantitative as opposed to the qualitative analysis that was completed for the sturgeon listing. The third workshop focused on climate change. Again, no consensus was sought by NMFS at the workshop, but rather the invited experts provided their individual opinion on the potential impacts of climate change on river herring.

Some of the results of the workshop were that there are limiting factors that vary across the full

distributional range for both species and that conservation of river herring will need to consider numerous factors other than the possible impacts from climate change. All three reports were sent for a peer review.

For the stock structure report the peer reviewers found that the report was based on the best available science. One of the quotes from one of the peer reviewers is that among the data sources the genetic evidence was the most coherent and robust available. For the extinction risk report the peer reviewers generally found that this was based on the best available science.

However, there were noted deficiencies in some areas of the reports and recommendations were made. Two of the peer reviewers also noted and discussed the landlocked populations of alewife and their consideration in the petition. The climate change peer review report has not been published yet; and when it is I will inform you of the results.

The current timeline; the proposed rule was expected on August 6th. The Service filed for and was granted an extension on the proposed rule. Just so the board is aware if the proposed rule does publish in November, the public comment period may not still be open when our February board meeting takes place. It is late in February next year. However, if it publishes after November, if it publishes in December – we have been told to expect it before the end of the year – then it would be open over our February board meeting. Thank you, Madam Chair.

CHAIRMAN DUVAL: Are there any questions for Kate about the workshops? Doug.

MR. DOUGLAS GROUT: Just a little clarification; as you were going through the stock structure you said that one of the options they looked at was a five-stock complex. Yet I also heard something in your report that said that the stocks should be at the river drainage level. There are a lot more river drainages than five, so could you clarify for me what they were trying to say there?

MS. TAYLOR: The work that Eric Palkovacs completed, his management recommendation suggests that the river drainage is the most appropriate level for management. However, the findings of the workshop participants recommended the regional structure as opposed to – or there was evidence of a regional stock structure. No recommendations were made in the report as to which should be used, but the findings of the

participants was that there was regional stock structure.

MR. JAMES GILMORE: Kate, when NOAA or the Fisheries Service was here last year when we met with them and we were talking about Atlantic sturgeon, we had asked them about the threats that I guess caused or were the biggest contributing factors to the listing at that point, and the two they said were climate change and population growth.

I think the concern at that point was, well, we'll just about list everything of those two. Now, that was not listed in any of these workshops, so are there other factors that they include in this and is population going to be one of them when they go through doing this analysis. Again, they had climate change listed here, but the one that they had mentioned last time was human population growth.

MS. TAYLOR: There are the five factors for the listing determinations. It includes the present or threatened destruction of habitat, overutilization, disease or predation, the anadromous existing regulatory mechanisms and other natural or manmade factors affecting their continued existence. In developing these workshops, NMFS had consulted with commission staff and technical representation on the data gaps that were not addressed in the stock assessment.

Our terms of reference were very focused. We were operating within the commission stock assessment process. However, for the listing determination the Service is required to provide additional information, including the population by ability analysis and effects of climate change. That is why they focused these workshops on those specific items because they were not addressed in the ASMFC stock assessment.

CHAIRMAN DUVAL: Are there any other questions for Kate on the workshops? Okay, seeing none, we're going to move on to our next item, which is an update on both the New England and Mid-Atlantic Council amendments that pertain to these species.

UPDATE ON NEFMC AMENDMENT 4/5 AND MAFMC AMENDMENT 14

MS. TAYLOR: As the board has been briefed previously, the New England Council's Amendment 5 and the Mid-Atlantic Council's 14, which both include management options to address river herring bycatch, those final EISs have been submitted. At the Atlantic Herring Section this morning, Toni

discussed the New England Council's Amendment 4 Federal Court Ruling and postponed the discussion until this board meeting.

I'm going to go through the updates that have occurred under that lawsuit right now. The lawsuit was filed in April of 2011. The claim was that NMFS was in violation of the MSA and the APA by failing to include shad and river herring as a stock in the fishery and to create catch limits for them. They also failed to adequately set up ACLs and AMs for Atlantic herring.

The federal court ruling orders that Amendment 4 was vacated or will be vacated effective one year from now, and the court will retain oversight of the agency's actions in this matter until the Service fully complies with the order. The ruling required NMFS and the New England Council to review the most recent science and consider a full suite of protections for shad and river herring. They gave the Service one year to take action in order to minimize the bycatch of shad and river herring.

This time period will permit the Service to determine whether Amendment 5, which has been approved and submitted by the council, if this minimizes bycatch to the extent practicable. The federal court ruling also orders the Service to consider new approaches for setting allowable catch for sea herring that accounts for its role as a forage species.

The federal court ruling also specifies a specific timeline the Service has to comply. Within one month of the ruling, NMFS was required to provide the court with an explanation of whether the Amendment 4 definition of stock in the fishery complies with the MSA. They have completed this. The Service was also required to send a letter to the New England Council recommending that the council consider shad and river herring as a stock in the fishery based upon the river herring and shad stock assessments and NMFS positive 90-day finding. They also completed this and those letters were included in your briefing material.

In a six months' timeframe NMFS is required to file a report with the court describing the progress on the actions ordered; and at the one-year mark in August NMFS will be required to provide the court with an explanation of whether the Atlantic Herring FMP minimizes bycatch for river herring and also to include a completed NEPA analysis for the specifications and management measures demonstrating that a hard look at the environmental

impacts of the remedial actions were taken. Thank you, Madam Chair.

CHAIRMAN DUVAL: Are there any questions for Kate with regard to the status of the New England amendments. I know several folks sitting around the table here sit on the New England Council and there might be questions from some of the other members of the board. All right, if not, we will move on to our update of Mid-Atlantic Council Amendment 15.

REVIEW OF MAFMC AMENDMENT 15 SCOPING DOCUMENT

MS. TAYLOR: The Mid-Atlantic Council has initiated the development of Amendment 15, which will consider the inclusion of shad and river herring as a stock in the fishery to the Squid, Mackerel, Butterfish FMP. The Mid-Atlantic Council could either manage shad and river herring through a new FMP, a separate FMP or could add shad and river herring to the current Squid, Mackerel, Butterfish FMP.

If the council directly managed shad and river herring under an FMP, then the required mandatory and discretionary provisions of the MSA would apply. Potentially blueback herring, alewife, American shad and hickory shad could go into the Squid, Mackerel, Butterfish FMP. The scoping document that was included in your briefing material was provided by council staff.

This is a draft document. It has not gone out for public comment yet although it is expected to be released for public comment very shortly. Council staff has advised that the draft will not change with any significance most likely. The council is requesting input in the scoping document.

They posed specific questions including is the existing management and framework sufficient for shad and river herring; could a federal FMP improve or maintain the condition of river herring stocks; could an FMP resolve competing interests and conflicts among user groups; are current efforts and plan measures by the council sufficient to address bycatch of river herring in federal fisheries; and additionally, what scale should management occur; what management units are appropriate; and if the Mid-Atlantic Council ends up managing shad and river herring, can the council and ASMFC fully accomplish management of river herring throughout its range without doing a joint FMP with the New England Council?

As I mentioned, the amendment was initiated in June. The scoping and public hearings are expected to run some time in the very near future, through the end of November or early December. This lays out the remainder of the timeline for the development of the amendment with the expected final rule effective January 2015.

The public comment period will most likely not occur during an ASMFC board meeting. It is expected obviously to be over before the February board meeting, so the board will need to determine if comments will be submitted to the council when the public comment period does open; and if so, how those comments will be developed if done outside of this meeting. Thank you, Madam Chair.

CHAIRMAN DUVAL: In the past we have used a workgroup approach to develop comments from this board in response to the New England Council Amendment 5 and Mid-Atlantic Council Amendment 14. I guess I would welcome some input from board members with regard to what you all feel might be the most efficient means to provide some comment on the scoping document.

I would think that the board might want to weigh in as to whether or not we would see joint management or complementary management as something that we would prefer should the council decide to move forward with either an amendment to the Squid, Mackerel, Butterfish FMP or a separate FMP for stocks, but I would welcome some input from board members with regards to how you would like to develop some comments on this. Terry.

MR. TERRY STOCKWELL: Madam Chair, I thought the approach you used on Amendment 5 and 14 were very helpful; but just as a point of information for the board, at next week's NRCC meeting the New England Council has forwarded a request for some discussion on the coordination of river herring management, particularly following up on Amendment 15.

The New England Council is at a point of impasse not knowing in what direction to go. It is somewhat reactive to the ongoing litigations, but it is of utmost importance to me and I hope many other members of the board that we have a coordination between the two councils and this board and not have one council take the lead.

CHAIRMAN DUVAL: Thanks for that, Terry. Are there other thoughts or comments around the table? Doug.

MR. GROUT: I would agree with your suggestion of getting some workgroups together in between the two meetings to develop comments for the scoping document and then have those comments approved via an e-mail vote before the comment period is up.

MR. THOMAS FOTE: After dealing with black sea bass, summer flounder and scup for these many years in a joint management plan, I find very little confidence in doing a joint management plan with either one of the councils anymore. I think we should coordinate, we should do things, but I don't want to be put under the restrictions of what the councils are doing; especially like in the case of black sea bass we have a fully recovered fishery that is not being – overfished or overfishing is taking place and yet we're still fishing at the level of a collapsed fishery with this being overfished and overfishing.

We have the summer flounder which is we spent the most money, as NMFS has pointed out many time, on studying summer flounder and yet when the SSCS look at it they still put it as a Tier 3. I'm going to say how much information do we have to get to get a Tier 1. That gives me grave concerns in doing joint management plans anymore because of what goes on in basically dealing with recovered fisheries. Now, we are going to be a long way from recovering river herring but it is just the principle of looking at these joint plans and getting locked into the federal guidelines.

MR. WILLIAM GOLDSBOROUGH: I just want to endorse your thought about having a workgroup work on comments. It seemed to work pretty well last time. Having served on that one, I would volunteer for this one if you go forward that way. One comment to Tom's point; obviously, I think the unifying factor with all these species is that they're all forage species. Having that in common I think there is great value in going down this road; but even having said that, we're going down it already. I think it behooves us to put together some quality comments.

MR. FOTE: River herring was not only a forage species, but it was harvested by a lot of my people to make pickled herring and things like that, and that has been shut down recreationally. It was important to be used for other things. Yes, I understand it is a forage species, but it still is a consumption species also in some ways. I would like to rebuild them to the point that people can go out and catch herring to pickle or use it in any way they want.

DR. WILSON LANEY: To Tom's point, I concur with him entirely. I will just make the point again and I have made it in the past, but river herring is important from an ecological perspective, from an economic perspective and hugely important historically from a cultural perspective, so I think there are three big reasons to try and push this one as a priority for restoration.

MR. MIKE ARMSTRONG: Just a comment; I am concerned the more federal involvement, the more we go that route – there is a problem with bycatch, but the main problems facing river herring occur in the rivers, occur in the headwater, ponds and occur in state waters, and that is the purview of ASMFC. I think our comments should reflect that we're in a better position to solve the really true problems that face river herring as opposed to just the bycatch issue.

CHAIRMAN DUVAL: I think there is agreement on that. If there are no other comments on this issue, this is the point where we start asking for volunteers. Bill Goldsborough has already graciously volunteered to do so. I see Doug Grout. Pam.

MS. PAM LYONS GROMEN: Madam Chair, I just would like to have the opportunity to reach out to the AP members, as before with the other working groups, and allow them to provide some feedback to the working group. Thank you.

CHAIRMAN DUVAL: So noted; I think that would be a good idea and we would do the same thing with the technical committee as well. Back to volunteers; we have Bill, Doug Grout, Terry Stockwell, Russ Allen, and Mitch. That would be five members plus myself plus input from both the technical committee and the advisory panel.

Unless anyone else has a burning desire to participate in that committee, I think that is probably enough cats to try to herd in terms of getting together for a call between now and then. Is everyone good with that approach? I will be getting in touch with those folks to have a call down the road and you should be expecting some e-mail correspondence from us between now and the close of the comment period. The next item on our agenda is review and approval of American Shad and River Herring Sustainable Fishery Plans. I think probably Larry is going to take us through that.

DISCUSSION OF AMERICAN SHAD AND RIVER HERRING SUSTAINABLE FISHERY PLANS

MR. LARRY MILLER: The technical committee received four plans for review and potential approval for sending along to the board. There were three shad plans; one from Massachusetts, one from Connecticut and one from Virginia. For river herring there was one and that came from Rhode Island. Since Kate actually took the better notes and speaks much faster than I do, I will leave it up to Kate go through the particulars for these plans.

MS. TAYLOR: The plan submitted by Massachusetts was a request to close all fisheries outside of the Merrimack River and the Connecticut River. In addition, they would lower the bag limit from six fish per day angler to three fish per day. The technical committee reviewed the plan and would encourage Massachusetts to implement research to document the presence of spawning shad above the Essex Dam. The technical committee recommended that the board consider approval of this plan.

The Connecticut Shad Plan proposed the continuation of the commercial and recreational fisheries in the Connecticut River. In all other systems in Connecticut, they are currently prohibited and will remain prohibited systems. Other than the Connecticut River for recreational fishing would become catch and release only. The technical committee recommended the board consider approval of this plan.

The Virginia Shad Plan is very similar to the bycatch request the board has previously approved from 2006-2011. This is a limited bycatch allowance for American shad through 2017. The technical committee recommended approval of the plan with a modification to lower the permit cap from 50 to 30 and also recommended monitoring the 500 fish harvest cap and adjust as necessary in future seasons.

The Rhode Island River Herring Plan that the board reviewed was for a 5 percent bycatch allowance in the Atlantic herring fishery. There was also a section for a freshwater proposal. However, Rhode Island removed this from the report. It was currently contained in the briefing material, but it has been removed.

The 5 percent bycatch allowance would require mandatory participation by the Atlantic herring fishermen in the current SMAST Monitoring

Program. The technical committee had recommended approval of this plan. Thank you, Madam Chair.

CHAIRMAN DUVAL: Are there any questions on any of the plans or comments on the technical committee's report? Rob O'Reilly.

MR. ROB O'REILLY: Madam Chair, I just want to point out on that slide for Virginia the board has approved the bycatch allowance from 2006-2012. I believe the slide said 2011.

CHAIRMAN DUVAL: Thanks for that clarification, Rob. I did just want to give the board a heads up while we're discussing sustainable fishery plans, North Carolina is probably going to, as a result of unfortunate timing, come back to the board for probably a fax poll before the end of the year. The board approved our sustainable fishery plan for shad in May.

That had to go through our state commission's public review and input process. Due to a number of other items that were already in the queue for the July public hearings, this was unable to be reviewed until our September public hearings. There was an advisory committee recommendation from one of our state advisory committees to modify that plan slightly; basically instead of a March start date for the season, move to a February 15th start date for the season in three of the river systems. We want to be proactive and so took that to the technical committee at their recent meeting, and they approved that, but we still have yet to present this to our state marine fisheries commission.

We were just trying to get ahead of the curve and allow some options for our commission. I have no idea what our commission is going to do. It is difficult to predict that. If they stick with the originally proposed opening date in the plan, we are good to go. But if they elect to change that from a March 1 to February 15th start date, we are going to need to come back to this board for approval of that modification.

The reason that is important is because our fisheries by rule in North Carolina open January 1 and run through April 14th. In order for us to issue a proclamation to make that season change, we would need approval prior to the end of the year. I just wanted to give folks a heads up that might be happening. Thank you for your indulgence. Mr. Augustine.

MR. PATRICK AUGUSTINE: Madam Chair, I would move that the board approve –

CHAIRMAN DUVAL: Wait, Pat, I think Bob wanted to make a couple of comments on Rhode Island's Plan, if you don't mind holding up. I'm sorry to interrupt.

MR. ROBERT BALLOU: Dare I jump in when Pat was about to make a motion to approve, but for the board's edification I think it is important with regard to the Rhode Island plan to note that it is more nuance provision than what is up there. The 5 percent bycatch allowance would pertain to landings from federal waters.

However, in state waters what we would enact is a state permitting program through which it would mandate participation in the move-along protocols that are part of the SMAST Program; and in so doing seek to minimize bycatch and maintain our zero tolerance standard. We would not be changing the state standard for state waters. We would be rather implementing a program that would help minimize bycatch in state waters. Thank you.

CHAIRMAN DUVAL: Are there any questions of Bob with regard to Rhode Island's Proposal? Okay, Mr. Augustine, I apologize for the interruption if you would like to continue.

MR. AUGUSTINE: **I move that the board approve the plans as submitted for American shad and river herring sustainable fishery plans for the states of Massachusetts, Connecticut and Virginia and Rhode Island with the recommendations suggested by the technical committee.** I believe they were on Virginia; you had two recommendations.

CHAIRMAN DUVAL: Okay, motion by Mr. Augustine to approve the sustainable fishery plans for the states of Massachusetts, Virginia, Rhode Island and Connecticut with the recommendations from the technical committee.

MR. AUGUSTINE: I want to tie the recommendations from the technical committee directly to Virginia, because Virginia had two recommendations on it. So if that would clarify it; could we move that up, Mike? Is that clear?

CHAIRMAN DUVAL: They have already taken care of that, I believe, so I think it is okay to leave it the way it is.

MR. AUGUSTINE: All right, let's take that off and just say Rhode Island and Connecticut.

CHAIRMAN DUVAL: And a second by Mr. Adler. Is there discussion on the motion? Is there any opposition to the motion? **Seeing none, that motion stands approved.** The next item on our agenda is the Fishery Management Plan Review, and I think Kate is going to take us through this.

FISHERY MANAGEMENT PLAN REVIEW AND STATE COMPLIANCE

MS. TAYLOR: The 2012 Fishery Management Plan Review looked at the 2011 fishery. The status of the stocks is where the 2007 benchmark stock assessment found that all stocks are current all-time lows. The status of hickory shad is currently unknown. The 2012 benchmark stock assessment found the stocks to be depleted.

The closure of the Ocean Fishery has lowered the coast-wide landings of American shad. In 2011 coast-wide total landings reported in the compliance reports from the individual states and jurisdictions was at about 650,000 pounds, which is a 14 percent increase from 2010. For hickory shad, in 2011 commercial coast-wide landings were just under 100,000 pounds is a 27 percent decrease from the 2010 landings.

For river herring, in 2011 landings were reported from Maine, New Hampshire, New York, New Jersey, Delaware, Maryland, PRFC, Virginia and North Carolina and South Carolina, totaling 1.2 million pounds, which is a 40 percent decrease from the 2010 numbers with the majority of the landings coming from the state of Maine.

De minimis requests were made from Maine, New Hampshire and Massachusetts. The plan review team found that the provisions of the de minimis standards were met. The plan review team made a number of recommendations; specifically that several states did not report all of the monitoring requirements listed under Amendments 2 and 3. These omissions included variance length frequency, age frequency and degree of repeat spawning.

The plan review team requests that this information be included in the future. The plan review team also requests that all states check with their law enforcement agencies and their freshwater counterparts when reporting poaching, bycatch or other losses. Additionally, the plan review team requests the board task the technical committee with

a number of items, including having the technical committee provide a spreadsheet on how to accurately determine the variance; a study on Connecticut sampling methods; a study on the minimum sampling size recommended in the survey design; a consistent definition of a repeat spawner mark; and standardization of the length frequency reporting. That is my report, Madam Chair.

CHAIRMAN DUVAL: And just to clarify in case I missed it, those de minimis requests were for shad?

MS. TAYLOR: For shad.

CHAIRMAN DUVAL: Okay, thank you. Mr. Adler.

MR. WILLIAM A. ADLER: What did you just say?

CHAIRMAN DUVAL: Okay, I was just clarifying that the de minimis requests from Maine was actually for shad as opposed to river herring and Kate confirmed that.

MR. ADLER: Okay, that was my point because we were talking about de minimis from Massachusetts, Maine and everything was for shad and not river herring, right?

CHAIRMAN DUVAL: That is correct. Are there any questions for Kate with regard to the FMP Review? If not, I think I may entertain a motion from the board to task the technical committee with those items that they requested to be tasked with. Mr. Augustine.

MR. AUGUSTINE: How do you want to word the motion? You could rattle it off and Joe could take it down. Let's see how we can do that. I move to accept the technical committee's report. What more detail do you want more than that?

CHAIRMAN DUVAL: I think it might be move to accept the fishery management plan review.

MR. AUGUSTINE: Okay, and that, too.

CHAIRMAN DUVAL: Second by Bill Adler. Is there any discussion on this motion?

MR. DAVID SIMPSON: I guess just a question about the sort of dual track in assessment and management that we're on now because Amendment 3 is shad, right. Amendment 3 is based on state or regional sustainability plans, which may or may not include some of the elements that – for example,

commercial catch characterization and biological sampling for the Connecticut River; we don't use that in our sustainability plan.

But the technical committee is going to spend time reviewing our use of proxy information from the Holyoke, Massachusetts, Dam to characterize our commercial fishery in Connecticut. So what you've got is a detail of stuff that we have done historically that has nothing to do with our sustainability plan and is stuff that we don't do.

It is collected from Massachusetts, if they collect it, and then we use it as best I can. I have made that sound a little more complicated but at what point do we say, look, what are we doing this for, how much technical committee time do you want to spend on it and what is its relevance in management.

CHAIRMAN DUVAL: Dave, I understand what you're getting at. We have directed the states to use the information that they feel is the most appropriate in order to properly manage their fisheries through a sustainable fishery plan. That may or may not include all of the required monitoring elements, so your question is where do these two things converge, more or less.

It is a great question. I don't know if Larry had any input on that. I guess from my perspective I think back to the beginning of Amendment 3 and all of the different monitoring requirements that were put into place and the belief from the plan development team that those were all of the monitoring elements that we ideally would want all the states and jurisdictions to be collecting as the appropriate breadth of information that would be necessary to properly manage these species; recognizing that not all the states and jurisdictions actually have the money to collect some of those and some have been just due to staffing shortages or funding shortages.

Some states have been in a situation where they haven't been able to collect those. There may be a time in the near future where those two things do converge. I think from my perspective the hope is that the sustainable fishery plans are going to continue to be works in progress. I know at least from North Carolina's perspective that as we continue to move down the road and hopefully collect more in-depth and appropriate information, that we may be able to update those sustainability targets that we have chosen and perhaps expand upon them and use more than the two or three that we have chosen for each of the systems.

MR. SIMPSON: I really point it out because it has been, what, five years since we have lost anadromous fish conservation money, so there is no federal support for – this is about managing a state budget and trying to do everything we can to be full partners in the commission process. But we were conscious in our development of the sustainable fishery plan to sort of be parsimonious and pick the most important things that we could develop at the least cost.

Recognizing we are using sportfish restoration money now to run our entire shad project, and you're talking about maybe four or five thousand fish that get caught recreationally and we spend \$100,000 just on our monitoring, so it sort of begs the question into the future of we're going to continue to do this as long as we can but you can foresee a day where it might be more difficult.

CHAIRMAN DUVAL: I understand that and can certainly feel that same pain. Are there thoughts from other folks from around the table in response to the comments that Dave had?

MR. MILLER: I think it was pretty much as Dr. Duval had described it. We recognized, when we were working on these different amendments, that each state had a limited amount of resources available and that they were the best entity to determine how to spend that resource in order to achieve what was the ultimate goal, which is the restoration of these fish species.

Also we did recognize that these were works in progress and that there is more than one way to skin a catfish and that maybe we could all learn something from what some other states are doing and that eventually they could adopt some new strategies into their plans in the future after they have reviewed and seen what worked and what hadn't worked.

That was the goal and I think that we're actually achieving that goal. I am seeing some very good plans coming out. A lot of thought, a lot of discussion at the technical committee meetings and a lot of ideas being exchanged, and I think that is exactly what we were hoping would happen.

MR. AUGUSTINE: Madam Chair, do we want to add to that and technical committee report?

CHAIRMAN DUVAL: How about technical committee recommendations?

MR. AUGUSTINE: Excellent; thank you.

CHAIRMAN DUVAL: Okay, the motion reads move to accept the Shad and River Herring FMP – okay, so we need to include de minimis requests in there as well. Okay, the motion now reads move to accept the Shad and River Herring FMP Review and the technical committee's recommendations and approve de minimis requests for shad from Massachusetts, New Hampshire and Maine. Motion by Mr. Augustine; seconded by Mr. Adler. Is there any other discussion on this motion? Is there any objection to this motion? **Seeing none, that motion stands approved.**

At this time I did want to take a couple of minutes since we actually do have a couple of minutes and thank Mr. Miller for his service on the technical committee. He is going to be stepping down as chair, which means that this is his last meeting for us. He was gracious and willing enough to step into that role as the chair of the technical committee when not a lot of other folks had the time or the inclination to do so. I think if everyone could sort of join me in a round of applause for Larry for his efforts. (Applause) Mr. Grout.

MR. GROUT: I had a question for Larry or Kate on the compliance reports. The question is are these items that are listed under each state; are they referred in detail back to the technical committee members so they understand what needs to change here because there are some things that I personally don't quite understand here and even why you're asking for them, like did not report variance on river herring. Well, we get absolute counts at ladders so why would there be a variance on that; but they know what they need to come up with and that is the important thing.

MS. TAYLOR: I inform the states of the compliance issues that were brought up after the FMP Review is accepted and then I also remind them when I send out the compliance report reminder.

OTHER BUSINESS

CHAIRMAN DUVAL: Are there any other questions? If not, I believe that was our last agenda item. Unless there is any other business to come before the board – Wilson.

DR. LANEY: Well, just a quick comment, Madam Chairman, to let the board know that the Fish and Wildlife Service has created a River Herring Team that covers the entire east coast. We can provide a list of who those numbers are. One of the things we're doing as part of the formation of that team is

conducting an inventory of all the national wildlife refuges on the east coast with a view toward identifying whether or not they host river herring habitat; and if so, whether there has been any monitoring done.

We do have an expanded inventory and monitoring program for the National Wildlife Refuge System, so there is the possibility that we might be able to allocate some funding toward river herring monitoring on national wildlife refuges. I just wanted to mention that and we can provide details to the technical committee later and to the board, too, if there is more interest in who is serving on that.

CHAIRMAN DUVAL: Thanks for that very much, Wilson. I think a lot of folks would be very interested whenever they hear the word “funding” especially with regard to our anadromous species.

ADJOURNMENT

CHAIRMAN DUVAL: Is there any other business to come before the board? Is there any objection to adjourning? Seeing no objection, the Shad and River Herring Board is adjourned.

(Whereupon, the meeting was adjourned on October 22, 2012.)



Atlantic States Marine Fisheries Commission

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Paul J. Diodati, (MA), Chair

Dr. Louis B. Daniel, III, (NC), Vice-Chair

Robert E. Beal, Executive Director

Healthy, self-sustaining populations for all Atlantic coast fish species or successful restoration well in progress by the year 2015

December 5, 2012

Dr. Chris Moore, Executive Director
Mid-Atlantic Fishery Management Council
800 North State Street, Suite 201
Dover, Delaware 19901

Dear Dr. Moore,

Please accept the following comments on behalf of the Atlantic States Marine Fisheries Commission Shad and River Herring (SRH) Management Board regarding the scoping document for Mid-Atlantic Fishery Management Council's (MAFMC) Amendment 15 to the Squid, Mackerel and Butterfish Fisheries Management Plan (SMB FMP).

Given the MAFMC has not yet determined whether it will move forward with Amendment 15 to designate shad and river herring as "stocks in the fishery", it is difficult to provide specific recommendations at this time. The Board is supportive of the development of a draft amendment, insofar as it is important to know what the proposed management alternatives and associated impacts are before a determination is made regarding the necessity of the management document.

In response to the questions posed in the scoping document, the Board offers the following comments and requests:

Effectiveness of Current and Planned Management

The ASMFC has invested a considerable amount of time and resources in the development and implementation of the Amendments 2 and 3 to the ASMFC SRH FMP. These amendments required states to close any state shad and/or river herring fishery that is not determined to be sustainable. To date, six of the seventeen ASMFC managed jurisdictions for river herring and nine of the seventeen ASMFC managed jurisdictions for American shad have sustainable fishing plans in place. The remainder of the jurisdictions will be closed for both species beginning January 1, 2013. It will take, at a minimum, three to five years to begin to evaluate the effect of these management actions.

With regard to the recent actions approved under the New England Fisheries Management Council's (NEFMC) Amendment 5 to the Atlantic Herring FMP and the MAFMC's Amendment 14 to the SMB FMP, ASMFC agrees it is not yet possible to determine the effects of these management actions and it will likely take several years to do so. Both of these amendments require management actions that have the potential to reduce shad and river herring bycatch in the Atlantic herring and squid, mackerel, butterfish fisheries to the full extent possible, while allowing these fisheries to remain operational. ASMFC supported the management actions in both amendments.



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Habitat Considerations

Impacts to shad and river herring habitat are of utmost concern for the successful restoration of these species. A determination of shad and river herring as stocks in the fishery would clearly require the designation of essential fish habitat (EFH) for these species. Section 305(b)(3)(B) of the Magnuson-Steven Act obligates councils to provide comment and recommendations to the Secretary and any federal or state agency regarding any activity that is likely to substantially affect the habitat of anadromous species under its authority. ASMFC requests the Council detail how it would address this requirement as well as designation of EFH should it move forward to include these species as stocks in the fishery.

Management Approach

The scoping document details the range of existing complementary and joint management approaches pursued for other Council/ASMFC managed species as potential options. However, the Board believes the unique life history of shad and river herring would require a new approach that acknowledges and preserves the Board's authority to manage in-river state-water fisheries. Similarly, the Board agrees it is the MAFMC's responsibility to control bycatch of these species in federal waters and has consistently appealed to them to do so. As such, the Board requests that the MAFMC address the following concerns should a draft Amendment be developed:

- Clearly detail the process by which Annual Catch Limits (ACLs) and Accountability Measures (AMs) would be set. ASMFC prefers that ACLs and AMs apply only to catch/bycatch in federal waters. If this is not legally possible, ASMFC requests that it be the responsible party for determining any in-river portion of ACLs.
- The impacts of inconsistent federal and state water regulations on existing river-system-specific conservation measures, or regional approaches being considered.
- The potential for an amendment that only addresses federal waters bycatch and EFH designation.

Finally, the Board recommends that the MAFMC bring this issue before the Northeast Regional Coordinating Council should it decide to move forward with Amendment 15. Additionally, ample opportunity should be provided for discussion between the MAFMC, NEFMC, and ASMFC, as well as relevant stakeholder groups.

As always, the ASMFC very much appreciates the opportunity to comment on actions being considered by the MAFMC. We look forward to working with you further on this issue.

Sincerely,

A handwritten signature in blue ink that reads "R. Beal".

Robert Beal

cc: ASMFC Shad and River Herring Management Board

American Shad Stocking Plan for Georgia

Altamaha River

Introduction: Cultured fish have been used successfully in the restoration of depleted American shad populations in several drainages and stocking efforts are now underway in several Atlantic Coast states. Stocking has been especially useful when combined with fish passage programs by re-establishing populations of fish to river segments upstream of recently breached or removed stream obstructions or above facilities where fish passage structures have been constructed (Hendricks and St. Pierre 2002). Segments of the Altamaha Basin have been completely uninhabited by American shad for well over a century due to the lack of fish passage at dams (Evans et al. 2012). The objective of initiating an experimental stocking program is to “jump-start” the recovery effort as a complement to ongoing efforts to obtain fish passage and increase the availability of spawning habitat above dams.

Goal: The long-term restoration goal for the Altamaha River is to re-establish self-sustaining spawning migrations that more closely approximate the historic range in the Altamaha River Basin. This goal will specifically entail the restoration of American shad spawning runs to nearly 6,000 acres of riverine habitat (Tom Litts and Joel Fleming, GADNR, 2007, personal communication) above existing dams. Based on the widely accepted planning level figure of 50 fish/acre as the estimated carrying capacity of restored American shad spawning runs (Hightower and Wong 1997), and complete access to available habitats above dams, the spawning run could eventually increase by approximately 300,000 fish (Evans et al. 2012). It is anticipated that several decades would be required to realize this objective.

Location to be Stocked: Restocking efforts will occur above blockages in the Altamaha basin to “jump start” the rebuilding process for populations within the basin. The number of fry stocked annually would be proportioned among stocking sites based on fry production and the amount and quality of available habitat.

Stocking Rate: Accepting Hendricks and St. Pierre’s (2002) recommendation that no more than 25 percent of American shad returns should be of hatchery origin, and calculating the harmonic mean of the Altamaha River census size for the 1982 – 2011 period of record as 134,600 (Don Harrison, GADNR, 2012, personal communication), the number of returning shad of hatchery origin should not exceed 33,600. Applying Hendricks (2006) model of approximately 300 fry stocked per return of one adult American shad, a maximum of 10 million fry could be stocked annually into a combination of sites within the Altamaha Basin. However, due to hatchery limitations, this level of stocking would not likely be feasible, at least in the initial years of the stocking program.

Brood Source: All adult fish will be collected from the Altamaha River during their annual spawning run.

Target Number of Broods: The number of broods to be used will be ≤ 300 adults, maintaining a broodfish sex ratio no greater than 1:3 female/male.

Marking Methods: Fry will be marked with oxytetracycline (OTC) in accordance with ASMFC requirements.

Evaluation: Information gathered during the culture phase will be used to refine and evaluate culture techniques. Sampling for YOY shad will occur in reservoirs and downstream river sections. Otoliths will be removed and examined for OTC marks to evaluate success of stocking efforts and evaluate downstream migration patterns. Data collected from these stocking efforts will provide useful information towards determining the feasibility of stocking above blockages and will be used to guide future shad management efforts in Georgia.

Targeted Start Date: The Georgia Fisheries Management Section will begin experimentation with Shad culture and stocking in the Altamaha River System in 2013.

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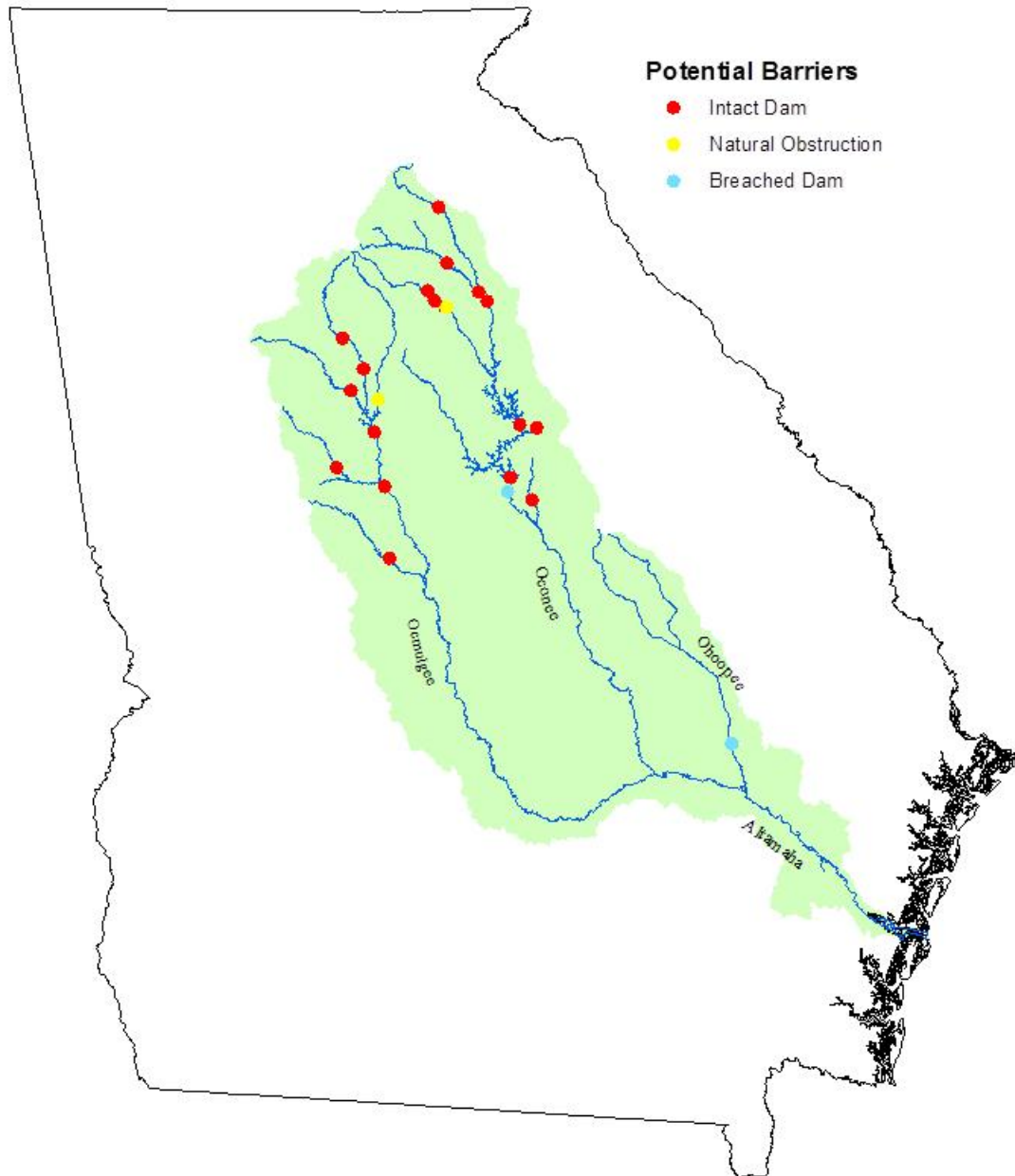
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Figure 1. Locations of known possible natural and manmade barriers to potential American shad spawning habitat in the Altamaha River Basin, Georgia.¹



¹ This map represents the results of a preliminary survey conducted in 2007 and other potential barriers to fish migration may be added in the future.