

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

**Crown Plaza Old Town
Alexandria, Virginia
August 20, 2009**

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1. **Approval of Agenda by Consent** (Page 1)
2. **Approval of Proceedings of May 6, 2009** by Consent (Page 1)
3. **Motion to approve Amendment 3 to go out to public hearing** (Page 10). Motion by Pat Augustine; second by Bill Cole. Motion carried (Page 12).

Move to amend to change the definition of overfishing in the document to the one used for river herring, which is to define a sustainable fishery as one that will not diminish potential future stock reproduction and recruitment and to add this definition of a sustainable fishery to the glossary in Amendment 3 (Page 10). Motion by David Simpson; second by A.C. Carpenter.

ABOVE MOTION REWORDED: Move to amend to include an alternative overfishing definition in Amendment 3 by adding the amendment to the sustainable fishery definition, which states the potential future stock reproduction and recruitment will not be diminished (Page 12). Motion carried (Page 12).

4. **Move the approval of the nomination of Jeff Kaelin for New Jersey's commercial representation on the Shad and River Herring Advisory Panel** (Page 13). Motion by Tom McCloy; second by Pat Augustine. Motion carried (Page 13).
5. **Motion to adjourn by consent** (Page 14).

ATTENDANCE

Board Members

George Lapointe, ME (AA)	Jack Travelstead, VA, proxy for S. Bowman (AA)
Terry Stockwell, ME, Administrative Proxy	Ernest Bowden, VA, proxy for Del. Lewis (LA)
Pat White, ME (GA)	Louis Daniel, NC (AA)
Sen. Dennis Damon, ME (LA)	Michelle Duval, NC, Administrative Proxy
Doug Grout, NH (AA)	Bill Cole, NC (GA)
Rep. Dennis Abbott, NH (LA)	John Frampton, SC (AA)
Paul Diodati, MA (AA)	Malcolm Rhodes, SC (GA)
David Simpson, CT (AA)	Robert Boyles, SC (LA)
James Gilmore, NY (AA)	Spud Woodward, GA (AA)
Pat Augustine, NY (GA)	Rep. Bob Lane, GA (LA)
Brian Culhane, NY, proxy for Sen. Johnson	John Durham, GA (GA)
Tom McCloy, NJ, proxy for D. Chanda (AA)	Jessica McCawley, FL (AA)
Tom Fote, NJ (GA)	Bryan King, DC F & W
Leroy Young, PA, proxy for D. Austen (AA)	A.C. Carpenter, PRFC
Craig Shirey, DE, proxy for P. Emory (AA)	Steve Meyers, NMFS
Gina Hunt, MD, proxy for T. O'Connell (AA)	Jaime Geiger, USFWS
Bill Goldsborough, MD (GA)	

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

Ex-Officio Members

Bob Sadzinski, Technical Committee Chair	Byron Young, Advisory Panel Chair
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Staff

Vince O'Shea	Brad Spear
Kate Taylor	

Guests

Raymond Kane, Chatham, MA	Ben Martins, CCCHFA
Larry Miller, US F&W	Wilson Laney, USFWS
Pam Lyons Gromen, NCMC	Arnold Leo, E. Hampton, NY
Jed Brown, DC F&W	Jeff Kaelin, Winterport, ME
Peter Himchak, NJ F & W	

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 20, 2009, and was called to order at 12:50 o'clock p.m. by Chairman Paul Diodati.

CALL TO ORDER

CHAIRMAN PAUL DIODATI: Welcome; this is the Shad and River Herring Management Board Meeting. I believe this is the last management board meeting for this week. We've had some new commissioners joining this week. If there are any here that have not yet been introduced, I'll take that time now. I think we're all set. We have an agenda, which I hope you all have – go right ahead.

MR. THOMAS McCLOY: Mr. Chairman, I don't see Tina right now, but I think there might be some AP nominations under other business or something.

CHAIRMAN DIODATI: Yes, we can do that under other business. Bill.

MR. WILLIAM GOLDSBOROUGH: Mr. Chairman, would it be appropriate to get a briefing on what transpired at the Mid-Atlantic Council in response to the letter we wrote on river herring bycatch?

CHAIRMAN DIODATI: Under other business, before the end of the meeting.

MR. GOLDSBOROUGH: And then consider whether or not any follow up is appropriate.

CHAIRMAN DIODATI: Thank you. Any other changes to the agenda or suggestions? Seeing none, I'll consider it approved.

APPROVAL OF PROCEEDINGS

CHAIRMAN DIODATI: Next is approval of the minutes from the last meeting of May 6, 2009. Mr. Abbott, so moved to approved. A second is not required. If there is no opposition, I'll consider those approved.

PUBLIC COMMENT

As always, we'll take public comment on the agenda items that are scheduled for today's discussion. If there is anyone in the public, come to the microphone now? Mr. Kaelin.

MR. JEFF KAELIN: Mr. Chairman, I'm Jeff Kaelin, and I represent Lund's Fisheries out of Cape May, New Jersey. We're members of the Sustainable Fisheries Coalition. We've talked to you about that Coalition before. We're organized to improve public outreach and education and awareness of the economic importance and environmental sustainability of the Atlantic Herring Mackerel Fisheries. What I've just had the staff hand out was a letter that we wrote to several members of congress in March. We haven't heard from any of them yet.

I'd like to read this very brief letter into the record. What we did is we sent a copy of a press announcement from the National Fish and Wildlife Foundation involving NFWF Marine and Coastal Conservation Initiative targeting the directed and incidental catch of river herring species with which we had serious concerns and still do.

At a recent meeting at the Boston Seafood Show with Dr. Anthony Chatwin, the MCC Director of NFWF, and representatives of the corporate partner featured in the press release, we have learned that the project is being developed with a combination of state and federal government resources – that project being the River Herring Initiative – funds from a seafood importing company and support from the EDF; although small-mesh fishermen in the region, who have a direct stake in the outcome of this project, have been invited into the process. That remains true today on August 20.

At our meeting on March 15th Dr. Chatwin could not provide us with an outline of his outcome-based project, which would use market-based and regulatory approaches to eliminate interceptions, would not provide us with a list of the board of advisors of his Marine and Coastal Conservation Board – this information is not available on the NFWF Website the last time we checked – and explained to us that a meeting had been held in February to being to develop this River Herring Initiative, inviting state and federal managers and scientists along with the EDF.

We also think the Nature Conservancy was at that meeting. No industry members from the New England Region were invited to participate in the meeting so that no one from the affected fisheries attended the meeting. For at least the two years, as I've explained to you in the past, herring fishermen and other small-mesh fishermen, including mackerel fishermen, have been working with you, the Mid-Atlantic Council and the New England Council to address concerns about the condition of some

populations of river herring species occurring in separate river systems from Cape Hatteras to the Canadian Border.

Contrary to the inflammatory language of the press release, which I have attached, Maine River Herring Stocks, primarily alewife, are not depleted. Instead these runs are carefully managed through state and local efforts to allow for the harvest of alewife to be used as an important source of lobster bait in the region's lobster fishery.

I think you've recognized that with the language in Amendment 2 that allows states to demonstrate the sustainability of their directed fisheries. We thought it was important to explain to members of congress that we're disappointed that the NFWF is using federal funds, in part, to develop conservation programs that could threaten important commercial fishing jobs in the Northeast and Mid-Atlantic Regions without involving the affected industry.

We have asked congress for their assistance in helping us to learn who sits on the MCC board of advisors, which Dr. Chatwin would not divulge to us and the details and costs of the NFWF River Herring Initiative. We have received no response from anybody on that letter. We also shared this communication in April with the Alewife Harvesters of Maine, the small-scale directed river herring fishermen.

They urged their members to communicate with the Maine Congressional Delegation, and they drafted a letter explaining their concern, also, that the small-scale river herring harvesters were not invited into the planning of the NFWF River Herring Initiative. I appreciate the opportunity to read that letter into the record and continue to look forward to working with you and the two councils. Thank you.

MS. PAM LYONS GROMEN: Pam Lyons-Gromen with the National Coalition for Marine Conservation. Also just passed out to you was a letter from our organization and the Massachusetts Striped Bass Association. I would like to just take a second to go over that with you and to draw your attention to it.

First of all, we congratulate the board for completion of Amendment 2. We feel this amendment marks major progress towards a comprehensive plan to restore river herring coastwide. We realize it is a result of a lot of work on the part of the staff and board. While we supported the decision to call in the federal councils and the Secretary of Commerce to monitor and minimize the impacts of ocean bycatch

on river herring populations, removing all the bycatch regulation options from Amendment 2 has resulted in a major loophole in the FMP, there continues to be on EEZ river herring catch limit and no explicit prohibition on directed ocean harvest as currently exists for American shad.

Because most of the blueback herring and alewives observed captured at sea are retained and sold, they technically do not fall under the Magnuson-Stevens Fishery Conservation and Management Act's narrow definition of bycatch. Therefore, federal councils are not required to minimize their catch under National Standard 9 of the Act.

This was brought up on August 4th at the meeting of the Mid-Atlantic Council's Squid, Mackerel, Butterfish Committee. We urge the board to act swiftly to initiate an addendum to Amendment 2 to correct this flaw in the FMP. We're very concerned that this loophole may affect how the councils choose to address the issue of river herring catch in federal fisheries.

Specifically, we'd like you to explicitly prohibit directed ocean harvest of river herring and to call on the Secretary of Commerce to implement a prohibition on directed fishing in the EEZ. Any river herring that is landed should be constrained to a scientifically determined bycatch allowance to be enforced by each state.

These bycatch allowances must take into account the wide range of holding capacities for vessels that regularly encounter river herring. For instance, a mid-water trawl vessel can hold around 600,000 pounds compared to a small bottom otter trawl may be 3,500 pounds. We should avoid using percents by weight bycatch allowances. We show that the 5 percent by weight bycatch allowance for American shad should be re-evaluated for this reason.

In addition, we urge the ASMFC to place greater emphasis on accurate species identification of alosines in its communication with the National Marine Fisheries Service and the Secretary of Commerce. We did pull some observer data and also some vessel trip reports and dealer data. The results of that are presented in a table for you. You should know that the data we analyzed between 2004 and 2008 were the observer data for hauls with observed alosine or unknown herring catch greater than 2,000 pounds.

We used 2,000 pounds to define our query because 2,000 pounds is currently what is used to define an

Atlantic herring trip, so we called these river herring trips. The catch of unknown herring comprised 69 percent of the bycatch that was kept, retained, and it was 69 percent of what we pulled. It also accounted for the two largest bycatch events in the five-year period; 408,000 pounds in 2006; and 350,000 pounds in 2008. In addition, observed bycatch of kept blueback in 2008 alone was 111,526 pounds – that’s just what the observer saw – compared to the dealer-reported landings of just 11,410 pounds for that year. Clearly, misidentification at sea and at the dock is a major obstacle to accurately assessing the impacts of bycatch on individual alosine species. Thank you very much for your consideration.

CHAIRMAN DIODATI: Is there anyone else from the audience that would like to come to the microphone at this time? Okay, we just received the letter that was just commented on this afternoon. Since one of the signatories is representing an organization from Massachusetts, I will respond directly back to that organization within the next week or two.

However, the larger issue and items that are addressed in the letter, I suggest that the board take a look at this, share it with your technical committee staff and maybe we can add it – I’m assuming we’re going to meet at the annual meeting, so I think we could add this as a possible discussion item for a board response at the annual meeting, if that is reasonable. I think it is. Okay, no one else from the public? Okay, our main task for this afternoon is to approve our Shad Amendment to go out for public review. I think Kate is going to begin the discussion with an overview of the materials and issues that are there.

**DRAFT AMENDMENT
(AMERICAN SHAD)
REVIEW OF AMENDMENT 3**

MS. KATE TAYLOR: To keep this presentation as short as possible, I’m only going to be covering the main text of the document, which are Pages 1 through 59. There are five appendices which I would direct your attention to look through, which contain information on economic considerations for American shad, coastal significance of American shad, habitat and threats and protected species.

The Draft Amendment 3 was initially developed last December. The board was originally scheduled to review a draft in February, but the technical committee and the plan review team requested additional time to develop the amendment, which the

board granted. The TC and the PDT met via conference call and in person to revise the amendment.

The amendment was supposed to go in front of the board at the last meeting in May, but due to time constraints this did not occur, so the board will be reviewing the amendment today; and if approved, it would be released for public comment in September and October and come back to the board again in November at the annual meeting.

The draft amendment was developed in response to the 2007 stock assessment, which found that stocks were at an all-time low and did not appear to be recovering to acceptable levels. It identified the primary causes for the continued stock declines as a combination of excessive total mortality, habitat loss and degradation and impediments to migration. Although improvements has been seen in a few stocks, many remain severely depressed compared to the historic levels.

As a result Amendment 3 was developed to address these concerns, and I’ll be going through these following sections of the document this afternoon. The goal in Amendment 3 differs from Amendments 1 and 2 and also from some other FMP documents within ASMFC. The text here in bold highlights the changes; the addition of critical habitat; the protection, enhancement and restoration of migratory stocks; as well as critical habitat of American shad in order to achieve levels of sustainable spawning stock biomass that are sustainable, can produce a harvestable surplus, and are robust enough to withstand unforeseen threats.

The objectives presented in the amendment are also new and differ from what is presented in Amendment 1 and 2. These include maximize of the number of juvenile recruitment emigrating from freshwater stock complexes; restore and maintain spawning stock biomass and age structure; manage for an optimum yield harvest that will not compromise the first two; and maximize cost effectiveness associated with achieving the first three.

The amendment also presents strategies to achieve these objectives, and this is something that also differs from Amendments 1 and 2 and is presented here for the first time. These strategies include quantify and effectively manage bycatch mortality and predation; restore and maintain access to historical spawning and nursery habitats; maintain total mortality of stocks at or below stock assessment benchmark levels; ensure that adequate monitoring

techniques are implemented to measure migratory success; collection of data to characterize stock status in response to management actions; achieve river-specific restoration targets for populations; ensure production of hatchery fish are used effectively during restoration; maximize cost effectiveness of data collection; and identify interactions between this plan and other ASMFC management plans.

Draft Amendment 3 also proposes a new overfishing definition. The previous definition that was presented in Amendment 1 defines overfishing as the instantaneous rate of fishing mortality from directed fisheries that was at or above a benchmark of F-30. This definition was deemed no longer valid according to the 2007 stock assessment because American shad are subject to a suite of threats including human-induced mortality from directed fishing, fish passage mortality at dams, river pollution, bycatch and discards from indirect fisheries.

In response the 2007 stock assessment proposed a new definition which takes into account that American shad stocks are affected by both fishing mortality and human-induced mortality. Therefore, they proposed this Z definition which equals the human-induced mortality plus the natural mortality; so, therefore the overfishing occurs when a given stock happens – overfishing occurs when fishing of a given stock happens at a rate that exceeds Z-30.

The monitoring section of the document contains modifications to some of the current requirements that states are required to do and all other requirements would remain compliance criteria. I would like to note that this document puts forth that jurisdictions which share a river or estuary are going to be considered equally responsible for monitoring.

Another item that is put forth is that states or jurisdictions should be required to add annual monitoring data to excel spreadsheets. That is similar to what now occurs in striped bass. That would be provided to the states by the ASMFC. This document proposes increasing coordination of data collection between freshwater and marine sections of agencies and that all data should provided to the ASMFC.

For fisheries' independent monitoring, please refer to Table 2 on Page 3, which gives a breakdown state by state of what would be required under a fisheries-independent monitoring. This amendment proposes juvenile abundance surveys, adult stock structure and abundance surveys and stock enhancement programs which would be requiring marking of fish.

One thing I would like to point out is that the recruitment failure definition for juvenile abundance is proposed to be changed. The initial definition that was given under Amendment 1 states that recruitment failure occurs when three consecutive JAI values are lower than 90 percent of all other values in the river-specific data set.

This document proposes that recruitment failure will occur when the JAI values are less than 75 percent of all other values in the stock-specific data series. This is a definition that is also used in striped bass. I would like to direct your attention to Table 3 on Page 27, which details the fisheries-dependent monitoring state by state.

The monitoring that is proposed includes commercial and recreational fisheries monitoring, and specifically it increases coordination and cooperative management between shared systems. A few systems have been added. States and jurisdictions may apply to the board for de minimis status.

The proposed bycatch monitoring in Amendment 3 includes that jurisdictions will be required to annually monitor bycatch and discards in fisheries that operate in state waters of river and estuaries, and that ocean bycatch and discards should be monitored cooperatively by coastal states through the commission in cooperation with the council and NOAA Fisheries.

In looking at the management measures, I'll start with the commercial fishery management options. There is a suite of options that are included in this amendment. The first option is to maintain the status quo, which would be the same management under Amendment 1 that states may institute more conservative regulations if they would like to.

Option 2 is reducing harvest, and states may propose approaches including gear and season restrictions, area closures, commercial trip limits and limited access programs. Harvest reduction is most appropriate for shad stocks exhibiting high or increasing total mortality and declining abundance.

Option 3 recommends the closure of all commercial fisheries with exceptions for those systems with a sustainable fishery. Jurisdictions would have to petition for a fishery and show that stock could support a fishery using available data with the final authority lying with the board.

Option 4 recommends the closure of directed fisheries on mixed stocks. Exceptions should be

made if the jurisdictions could show that such a fishery would not harm harvested stocks. The data to substantiate these claims would include but is not limited to repeat spawning ratio, SSB, Z, JAIs and a number of monitoring programs.

Option 5 is a coast-wide moratorium. Under this option states and jurisdictions would be required to implement regulations prohibiting the commercial harvest, possession, and landing of American shad within their jurisdictions.

Under the recreational fisheries management measures, there is a suite of options that are presented. The first, again, is the status quo, which regulations would be maintained the same as occur under Amendment 1, which is that jurisdictions should not exceed an aggregate of 10 fish per day in aggregate for American or hickory shad. The exception of that would be the Santee-Cooper Rediversion Canal where an aggregate 20-fish daily creel is in effect.

Option 2 requires reducing harvest through gear restrictions, coast-wide creel limits, area or seasonal closures or other methods. It is also highly recommended that lethal methods of recreational fishing are eliminated. Option 3 proposes a recreational license or permit, which should include a reporting requirement or allow for a survey of fishermen. Implementation can be achieved through existing state programs, federal registry or through specific anadromous alosine licensing and permitting programs that are already in place.

Option 4 recommends the closure of all fisheries with exceptions for systems with a sustainable fishery. Acceptance should be made on a case-by-case basis by jurisdictions requesting a fishery. The jurisdiction would have to show that the stock could support a recreational fishery, and the board would have the final authority to allow a fishery.

Option 5 would allow for all systems to participate in a catch-and-release fishery only. Current data suggests that the mortality rate of shad in catch-and-release fisheries is low. Option 6 is a coast-wide moratorium for the recreation fishery. Under this option states and jurisdictions would be required to implement regulations prohibiting the recreation harvest, possession and landing of American shad within their jurisdiction.

The draft amendment recognizes the importance of protection, restoration and enhancement of critical American shad habitat and identifies potential threats to American shad habitat that are listed on the screen.

The draft amendment makes recommendations to address these threats, focusing on dams, water quality, permitting projects, stocking programs among others.

In order to be successful in achieving the stated goals of Amendment 3 states will be required to develop implementation plans. These implementation plans will consist of two parts; the first being a review and update of fishing/recovery plans that are currently required under Amendment 1; and the second being habitat plans, which is something new.

Separate implementation plans shall be developed for those systems that are listed in Tables 2 and 3. States are encouraged to develop additional plans as feasible. The update of the Fishing/Recovery Plan Section will include a description of existing and plans monitoring and the existing and plans regulatory measures. If the states will be requesting a fishery, this where they would include a definition of sustainability, the benchmark goals and a proposed timeframe to achieve the objectives.

It is recommended that states have one year to complete the update of the fishing and recovery section of the implementation plan and that this section should be reviewed at least every five years. The Habitat Plan Section of the Implementation Plan should include a summary of current and historical spawning and nursery habitat, threats to those habitats and habitat restoration programs.

States and jurisdictions may focus on those threats which they deem most significant. It is important to note that implementation is not required of the Habitat Plan. This is just a summary of threats to current habitats. A recommended framework for these habitat plans is included within the document. The PDT proposes that states have three years to complete the Habitat Section of the Implementation Plan.

The board can approve an alternative management program such as conservation equivalency programs and programs for those states granted de minimis status. The board may vary the requirements specified in this amendment as part of adaptive management and they may authorize or require emergency action that is not covered by any provisions in Amendment 3.

States or jurisdiction will be deemed out of compliance if they fail to meet any of the following regulations. You can refer to Page 50 to get a closer look at those. The document also puts forth some

research and data needs for alosine habitat, life history and information for management. As I mentioned at the beginning, there is also a substantial appendices section, which includes economic trends that was developed by Ray Rhodes in the College of Charleston; a section on cultural significance, which details American Shad Festivals that occur coastwide; and information on American shad habitat, which is also information that can be found in the data resource document that was put out earlier this year. Thank you, Mr. Chairman.

CHAIRMAN DIODATI: Any questions for Kate? Doug Grout.

BOARD DISCUSSION OF REVIEW OF AMENDMENT 3

MR. DOUGLAS GROUT: Kate, on Table 2 on Page 21, it states that New Hampshire will be required to do a hatchery evaluation. I don't understand why New Hampshire was picked out for that particular requirement when no other New England state other than the state of Maine, which is actually stocking shad larvae, would be required to do a hatchery evaluation when we're not stocking shad. I assume that just probably was an oversight.

I know a number of years ago we did stock one little batch of shad in the river to see what kind of – and we did mark them, but that was part of a one-year experimental project that we did. Would it be possible to remove that from the document?

MS. TAYLOR: Yes, that was an oversight. Thank you for pointing that out. We can remove that.

MR. A.C. CARPENTER: I have the same issue on the Potomac; the hatchery evaluation. We don't do any hatchery work. As a matter of fact, we're supplying brood stock for other hatcheries. We would like to have that removed as well.

CHAIRMAN DIODATI: Does anyone else see a correction to Table 2 that they would like to bring to Kate's attention before this goes to public comment? Doug, did you want to follow up?

MR. GROUT: Yes, not a correction but just a question. In the case of New Hampshire we have a very, very limited amount of shad that come back here, and I noticed that in the recreational monitoring requirement it said "in-river studies". If we don't have a directed shad recreational fishery, are we still going to be required to implement an in-river

recreational monitoring program for each our rivers that might have a few shad in it?

The only place that there has ever been a directed fishery is in the border water with Maine, and most of the effort is over on the Maine side. We have a couple of people that climb down on some ledges occasionally on the side from New Hampshire at this point. But, again, that is very small and actually since the hydro-developer put in a fish passage there the fishery there has declined because the fish can get up past there.

I'm curious about what kind of monitoring requirements we'd have on a river-by-river basis. Typically under the current amendment we've been providing estimates of recreational shad catch and harvest via MRFSS, which is statewide, which we'll be glad to do, but potentially have to implement river-by-river recreational monitoring for essentially an undirected fishery because there aren't that many would be, in my opinion, burdensome. Is that a requirement?

MS. TAYLOR: On Page 22 it states that MRFSS would be an option for reporting of recreational fisheries.

MR. GROUT: But we wouldn't have to report MRFSS on a river-by-river basis; we could do it on total state basis and say that are ten shad that were harvested in New Hampshire?

MS. TAYLOR: Correct, you could present the MRFSS data as it is given to you by the Service.

CHAIRMAN DIODATI: Any other questions? Actually, we're not ready for a motion. We have a couple of more reports, but our objective today is certainly to approve this draft to go out to hearing. Once we finish the final report, I'll be glad to take a motion because this is the third time we're looking at this document, I think. A.C.

MR. CARPENTER: I have a question about the recreational license or permit issue being in the document. It seems to me that the new federal program is going to trump this, and I don't see any need for us to complicate our plan with their requirement.

MS. TAYLOR: The intent was the Federal Registry could be substituted for this requirement.

MR. CARPENTER: Well, then, why don't we just say that the only requirement is that the Federal Registry will cover it?

CHAIRMAN DIODATI: Okay, so you're suggesting modified language there, and I think that is appropriate. That could be done. Dave.

MR. DAVID SIMPSON: If I understood the point correctly, it would presume that the MRFSS System would pick up the Shad Fishery, which it will not in many jurisdictions.

MR. CARPENTER: From what I understand, the new requirement for a federal license of permit for every person fishing for anadromous wherever they're found is going to cover this thing. Why do we need to worry with it?

CHAIRMAN DIODATI: I don't think there should be confusion over this. Are you, Dave, commenting on A.C.'s point about licensing or Doug's point about using the MRFSS to estimate shad fishery activity? I think as far as the MRFSS go or MRIP, or whatever it is going to be called, that would satisfy most instances of reporting what fishery activity is. However, some states are going to have more intimate knowledge about a principal activity for shad in certain rivers of their state, and I suspect we would get those kinds of reports from those states. Dave.

MR. SIMPSON: Well, to use Connecticut and the Connecticut River as an example, the shad fishery occurs well north of the marine district, well north of where the creel agents go in their surveys. Therefore, they won't pick up any shad in the shad fishery, and there won't be any estimate of shad catch in the statistics. Even if those anglers are recorded in the registry required to be licensed, you won't see shad in the creel survey. I do think we need at least in Connecticut, it may not be the case everywhere, but I suspect there are other cases where we would still need to do something different than MRFSS.

CHAIRMAN DIODATI: To report the activity of those fisheries or to license individuals?

MR. SIMPSON: To capture the shad fishery in any way whatsoever. If it doesn't show up in the creel survey, it can't get picked up in the telephone survey.

MR. LARRY MILLER: My name is Larry Miller; I'm on the plan development team. This issue came up in the technical review when the technical committee took a look at it. How we addressed it

was in the implementation plan it is totally up to the states to describe how it is that they would address this particular requirement.

The idea was that they have the knowledge such as you were talking about, Dave, of their fisheries and how they're prosecuted and whatever programs they currently have in place, and they would be proposing those in the implementation plan. It allows the flexibility for the state to determine what would be the best way to fulfill this requirement and put it forth.

CHAIRMAN DIODATI: Any other questions? Tom.

MR. McCLOY: Mr. Chairman, I'm not looking to make extra work for anybody or delay this discussion, but I believe the registry requirement is to head of tide. There is a situation I know in the Delaware above head of tide you wouldn't be required to be registered at least for the federal program.

I would imagine in the case of New Jersey and Pennsylvania a freshwater license would be required up there, so that would be covered that way. How that actual survey ends up being done with that data set I'm not sure, but I'm an advocate for removing the discussion about license from the document because I think it is probably covered either by the registry or by freshwater licenses.

CHAIRMAN DIODATI: I know that A.C. wants to debate whether head of tide is actually part of the federal law, but I don't think that language actually exists in MSA for the requirement of a license. I think it does specifically say that it would be required for a person fishing for anadromous fish regardless of where they fish, so the head-of-tide language I think dissolved.

MR. SIMPSON: Yes, I think the final rule allowed the states to define what tidal waters are, and, of course, that would be part of the review process for an exemption, but it does not read the same as in the proposed rule.

CHAIRMAN DIODATI: I'm going to move to the technical committee report and then we'll have an opportunity for more questions about the amendment before it gets approved for public comment. Bob.

TECHNICAL COMMITTEE COMMENTS

MR. ROBERT SADZINSKI: Concerning Amendment 3, the TC would like to acknowledge the PDT for their extraordinary efforts in writing the draft amendment. In addition, the TC has made extensive edits to the document. It recommends management by Z, Amendment 3 does, rather than by F; requires state submission of implementation plan which includes monitoring, description of the fishery and habitat issues; also provides for detailed state and river-specific monitoring; requires bycatch monitoring; and juvenile recruitment failure defined, as stated, as 75 percent instead of the 90 percent.

It also requires states that share water bodies to share monitoring requirements. It is our recommendation to release Amendment 3 for public comment. But just to stress differences between Amendment 3 and Amendment 2; Amendment 3, the monitoring is river or stock specific where Amendment 2 monitoring applies to all rivers within that state.

So far as Amendment 3 for shad, river is shared sampling responsibility of all jurisdictions. Under Amendment 2, responsibility of one, there were no jurisdictions. Bycatch, under Amendment 3 it includes rivers and estuaries under state or jurisdictions. It also includes the ocean, which is a cooperative effort between the ASMC, the National Marine Fisheries Service or the Mid-Atlantic and the Northeast Council.

Under Amendment 2 there is no obligation for a state reporting bycatch. We do acknowledge that a letter was sent to the Secretary of Commerce. And as stated previously, the JAI failure was defined as 75 percent under Amendment 3, where under Amendment 2 it is 90 percent.

Under Amendment 3, also, based on peer review and accepted stock assessment; its implementation of stock recovery plan is to use stock assessment recommendations. It was also written and revised by the PDT with extensive review and input from the technical committee.

Amendment 2, on the other hand, was not based on data review. The stock status report came on after this. A river plan is required without targets for recovery. Amendment 2 was also written and revised by the ASMFC staff and was not reviewed either by the PDT or the TC.

Our recommendation, then, is to use the adaptive management which would bring Amendment 2 up to

the standards of Amendment 3, but after Amendment 3 is approved by the board through an addendum. Thank you, Mr. Chairman.

CHAIRMAN DIODATI: Questions about the TC Report. A.C.

BOARD DISCUSSION OF TECHNICAL COMMITTEE COMMENTS

MR. CARPENTER: The TC Report just said that there were extensive edits by the TC. Is that reflected in the document that we have before us today?

MR. SADZINSKI: Yes, it is.

CHAIRMAN DIODATI: Any other questions? Dave.

MR. SIMPSON: Yes, Kate touched on it, but I'd like to understand how the river herring plan that we just approved with its definition of overfishing and the Shad FMP that we're going out with that has a very definition, how that was resolved within the technical committee and why, if you know, the technical committee and the board went in one direction for river herring why we would go in a different direction just a couple of months later for a very related species?

MR. SADZINSKI: It was really based on the stock assessment for American shad. You know, at the time river herring, like I said we did not have that stock assessment, even the preliminary report. In the stock assessment for shad, like I said, we used that Z-30.

CHAIRMAN DIODATI: Any other questions? Go ahead.

MR. LEROY YOUNG: Questions on the language itself or just on the technical committee issues?

CHAIRMAN DIODATI: On the technical committee report. Terry.

MR. TERRY STOCKWELL: Could you go back to the differences between the shad and the river herring plan, please? Specific to the monitoring, I was just thinking through here. The motion on river herring was move that the board require existing monitoring requirements to be complementary. Why are they different?

MS. TAYLOR: The motion that was made at the previous meeting has the river herring monitoring

requirements in Amendment 2 be complementary to the monitoring requirements that are currently in Amendment 1. Amendment 3 makes some modifications and additions to those monitoring requirements, so it is kind of incremental steps.

MR. STOCKWELL: At least it was my intent and I don't know about others around the table here that we make the monitoring of both the shad and the river herring the same. I guess we can work that out through the comment period, but I would like to keep that thought alive.

CHAIRMAN DIODATI: Is there a technical concern why they wouldn't be the same? I don't think so. I don't think there are any technical reasons why they wouldn't be the same. I think we're talking about some language clarification in order to correct this, and your comments are well taken.

MR. STOCKWELL: Thank you; I'm not trying to duplicate our efforts.

CHAIRMAN DIODATI: More questions about the technical committee report? Doug.

MR. GROUT: I don't mean to appear to be a little paranoid about this monitoring, but the monitoring in Amendment 3 says river and stock specific. I just got an interpretation that for monitoring the recreational fishery in New Hampshire I could provide MRFSS at the state level. That to me is not river level, so as long as everybody is clear about it, because it also says under Table 4, "monitoring recreational by water body of landing". The whole state of New Hampshire is the water body of landing there. Okay, thank you.

MR. SADZINSKI: We realize that MRFSS is the best available data for some of those states.

CHAIRMAN DIODATI: I think it will be helpful if once the amendment is approved for public comment, that you actually write to Kate your specific concerns about these tables and requirements. We'll make sure they're clarified before this amendment is approved. Any other questions about the technical committee report? Okay, I think we're ready for the advisory panel report, Byron.

ADVISORY PANEL REPORT

MR. BYRON YOUNG: The advisory panel met in April and discussed both Amendment 2 and Amendment 3. You have a memo from us that gives our deliberations and our recommendations. We

focused more on the management side of it than on the technical aspects or the monitoring. I'll just briefly review those.

For the commercial fisheries management measures, the AP endorses Option 3, which is close fisheries with exceptions for systems with sustainable fisheries; and Option 4 to close directed fisheries on mixed stocks. In the recreational fisheries management measures, the AP endorses Option 4, which is to close fisheries with exceptions for systems with a sustainable fishery. For all other systems the AP endorses Option 5, allow catch-and-release only.

I think there is a question that comes up in my mind, being from the northeast, we're seeing lots of hickory shad, and I'm not sure if the fishing public is going to be easily able to distinguish between hickory shad and American shad if they're fishing for them. That is an issue that will probably come up during the public comment period.

Additional comment that the AP has had is the AP requests that their endorsement on the commercial and recreational fisheries management measures be included in the document released for public comment. I'm not sure if that's possible at this point. It can maybe be mentioned by each representative.

The AP fully supports the efforts of Amendment 3 to encourage cooperation and coordination between organizations that conduct monitoring and implementing management measures on American shad populations. One last thought that the AP hasn't discussed in an open meeting, but I've discussed it with some folks.

The AP would like to support, when appropriate, an addendum which would attempt to resolve any differences with the monitoring components between Amendments 2 and 3. That has been discussed here by the board, and I encourage that and would fully support that, and I'm sure the AP members would as well. I think that is about all I have to add.

CHAIRMAN DIODATI: Any questions of Byron? Jim.

DISCUSSION AND CONSIDER APPROVAL OF DRAFT AMENDMENT 3 FOR PUBLIC COMMENT

MR. JAMES GILMORE: Byron, just for clarification, my understanding is the TC hasn't had the opportunity to review the current version of

Amendment 2. You guys haven't reviewed that yet, so in terms of reconciling 2 and 3 you would have to do some formal review on that?

MR. SADZINSKI: We have not reviewed Amendment 2 as it stands now, but we have significant comments into Amendment 3. We noted this with Amendment 3 and we raised the bar significantly. That is what needs to be decided, whether to bring Amendment 2 up to Amendment 3.

CHAIRMAN DIODATI: Any other questions? A.C.

MR. CARPENTER: It is not specifically to the advisory panel report, but it is – before we get a motion on the floor, can we go back to the slide that had the new definition of overfishing on it.

CHAIRMAN DIODATI: The age plus M.

MR. CARPENTER: The age plus M slide.

CHAIRMAN DIODATI: I had questions about that myself. I didn't want to prolong the discussion and didn't bring it up, but let's go back to that.

MR. CARPENTER: If I understand what I think I see there, if we have a dam is a major source of mortality, we could be in a position where we could have a relative healthy stock but never allow the fishery and the dam would account for all of the mortality and you would never get to open a fishery; am I understanding this correctly?

MR. SADZINSKI: Yes, that is correct.

MR. CARPENTER: Is that everybody else's understanding of this new definition?

CHAIRMAN DIODATI: Yes, it struck me when I first saw it, but I think it's a recommendation to manage this fishery by Z or total mortality rather than what we commonly do using F or fishing mortality. I think that is the general intent. Clearly, if Z is going up considerably to the point where landings are being affected regardless of the source of the impact, I think we generally react to controlled fishing activity. I'm not sure it is going to make that much difference, but you're right that is the implication. Any other questions about this? Dave.

MR. SIMPSON: I guess not so much a question as I have the same deep concern. I'll just say at this point I kind of hearken back to Amendment 2 with the river herring and the definition there. I'm kind of

thinking ahead to when we begin to debate the draft itself.

CHAIRMAN DIODATI: Okay, I think I'm ready for a motion now to approve the amendment to go out for public comment.

MR. AUGUSTINE: **So move.**

CHAIRMAN DIODATI: Is there a second? Second by Bill. Discussion about this motion. Tom.

MR. THOMAS FOTE: Do we want to hear some public comment before we vote on going –

CHAIRMAN DIODATI: Well, we can do that but actually the vote is to send the amendment out for public comment, so in a sense it would be redundant. Dave.

MR. SIMPSON: **I would move to amend to change the definition of overfishing in the document to the one used for river herring, which is to define a sustainable fishery as one that will not diminish potential future stock reproduction and recruitment – this part is probably unnecessary – and to add this definition of a sustainable fishery to the glossary in Amendment 3, which has already been done.**

I will do that one again slower for Brad, who is typing, "define sustainable fishery as one that will not diminish potential future stock reproduction and recruitment". That is the definition used for river herring that we adopted at the last meeting.

CHAIRMAN DIODATI: Second to that motion to amend? Seconded by A.C. Comments on the motion to amend?

MS. GINA HUNT: Does the technical committee have any comment on that change in definition?

MR. SADZINSKI: As you can see, we have been chatting. There is no overfishing definition in Amendment 2. This is something that the TC is pretty firm on is going with a Z-30 based on H and M.

MR. BILL COLE: Mr. Chairman, does the motioner mean – is this to be a total substitute for the definition for something that everybody has put a lot of effort into or is this an additional alternative to be considered for public hearing?

CHAIRMAN DIODATI: I think the intent was to replace it, but the motioner is saying his intent was to replace it.

MR. L. MILLER: The reason that the plan development team actually undertook extensive analysis to look at a calculation of F versus Z was that we recognized that there were other sources of mortality that were human induced that weren't related to natural mortality and weren't necessarily just fishing mortality. Z is more easily redefined and actually estimated than even fishing mortality estimates would be.

It took into account all potential sources of human-induced mortality and natural mortality. It was kind of like taking the pulse of the fishery itself, determining whether or not it was healthy; and recognizing that if the pulse was off or the blood pressure was too high, that there was a problem and that we should begin to manage and treat the patient, so to speak, as though it was not healthy and take appropriate steps, of which the only ones that we could think of that we could directly affect would be to manage the fishery itself. It was just an attempt to be able to look at the potential for a problem, and that is how we settled on Z.

MR. PATTEN D. WHITE: Could Dave show us where this definition is if it is not going to be included in the motion?

MR. SIMPSON: The definition for a sustainable fishery is in the motion, one that will not diminish potential future stock – Kate is going to help me.

MR. P. WHITE: While they're talking, Mr. Chairman, he is saying "sustainable fisheries" in one breath and then "overfishing" in the other and maybe that is what some of our confusion is.

MR. SIMPSON: And that is what Kate pointed out; that rather than have a definition of overfishing, it is almost semantics, but the standard that you would need to meet is the sustainable fishery, so you couldn't fish harder than a sustainable fishery and you can't fish harder than an overfishing definition.

It's almost semantics but it is what we adopted in river herring in recognition that there are many different runs with different levels of information. I'm also deeply concerned that we're going to hold the fishery accountable for all sources of mortality and not take into account that very sustainable fishery can continue even though a dam is built fifty or a hundred miles upstream and changes what that

capacity is, but there is still a capacity to sustain a fishery.

I look at some of the analyses that we've done in Connecticut, and we've been working on river herring, including shad, for many years and calculations of the Z values going to back to 1968. Under this the definition of overfishing, we would have had to have been closed for most of the last 40 years.

That deeply concerns that I can look back and see that we would not have been allowed to have a fishery even during the best days of the healthiest of stocks. This should be of great concern to everyone. I think this same group adopted the sustainable fishery definition and it makes sense to be consistent.

CHAIRMAN DIODATI: I guess I'm puzzled why we didn't have this conversation earlier in the development of the amendment and let the technical committee make those kinds of very significant remarks on what the history would have been given the different definitions that are applied. Now I'm wondering if it is not more appropriate to have them both included as alternatives for this board to consider at a later date; and if you might want to make an amendment to your amended motion to do that.

MR. SIMPSON: Sure, that was my original instinct and then I moved from that because getting alternatives to the public has been criticized earlier this week. I will change my motion to say "include an alternative definition to an overfishing definition for the sustainable fishery definition".

CHAIRMAN DIODATI: Is that acceptable to A.C.

MR. CARPENTER: Yes, that's acceptable if they can get the wording right up there.

CHAIRMAN DIODATI: Bill, did you have something?

MR. GOLDSBOROUGH: That pretty much covers what I wanted to say, Mr. Chairman.

MR. B. YOUNG: Just a quick thought from the public's perspective; I think that the plan or the people making the presentations need to be able to present some clear examples of what each one of these motions mean. Dave mentioned dams; A.C. mentioned dams in the Z component of it. I think there are other issues that come to bear in that; power plants, water intakes, a whole host of things that need

to be brought to light. Likewise, when discussing the second option, what does mean in terms of how you deal with those other sources of mortality. I think the public has to understand some of that.

DR. WILSON LANEY: Mr. Chairman, just a little bit of elaboration here on I think the reasons that you're seeing differences between Amendment 2 and Amendment 3, possibly a large contributing factor is too few people trying to do a whole lot of work on some very important species all concurrently at the same time.

For Amendment 3 I think the TC was informed, as was the PDT, by having a peer-reviewed accepted stock assessment that gave us management advice and a very active stock assessment subcommittee that was able to take a look at all the sources of mortality and come up with what I think is a good approach to management of American shad stocks, and one that may be applicable to river herring as well once we have an approved stock assessment for river herring.

That is part of the problem I see here is while we have a formal, approved stock assessment for American shad, we don't have one yet for river herring. Thanks to the work done by your staff, we have sort of a preliminary stock assessment for river herring that gives us some idea of what is going on, but until we have a formal stock assessment I don't think we could fully evaluate whether the shad approach would be fully applicable to river herring.

With regard to those other sources of mortality that have been referenced by several board members, I think while the agencies represented around the table here may not have the direct regulatory authority to directly affect passage and survival at dams, they certainly participate in the processes that do have the authority to effectively improve survival rates at those structures.

I think that may have been part of the TC's thinking and certainly the stock assessment subcommittee's thinking is that if you go ahead and accommodate those sources of mortality in your management regime, that will hopefully encourage all of us, acting together, to effectively try and improve the habitat conditions out there and reduce those sources of mortality that keep these fisheries viable.

CHAIRMAN DIODATI: Okay, I would like to move the question on this amended motion. Is there a need for a caucus. Dave, would you want to read that into the record.

MR. SIMPSON: **Move to amend to include an alternative overfishing definition in Amendment 3 by adding the amendment to the sustainable fishery definition, which states the potential future stock reproduction and recruitment will not be diminished.**

CHAIRMAN DIODATI: Okay, I'm not seeing anyone having the need for a caucus on this. Everyone in favor raise your hand; all opposed, same sign; null votes, abstentions. **Okay, the amended motion passes 15 and zero.** Now we have the main motion. Bill.

MR. GOLDSBOROUGH: Just to keep the record straight, Mr. Chairman, I think the main motion as described on the screen or above that one on the screen actually has the wrong Bill down as the seconder. I think that was Bill Cole.

CHAIRMAN DIODATI: It was. Discussion on the main motion? Seeing none, any members of the audience want to have any final comment on this before it goes? Thank you. Do we need a caucus? No, okay. All in favor of the main motion raise your hand; opposed, same sign; abstentions; null votes. **The motion passes 15 to zero.**

MS. TAYLOR: Could I just get a show of hands quickly to see which states would be interested in holding public hearings? Okay, I'll be in touch, thank you.

CHAIRMAN DIODATI: We have a number of items for other business that were introduced earlier, and I don't know if we had any that were already on the agenda.

MS. TAYLOR: There was a request a brief description of the bycatch correspondence. Those letters were included in the briefing material. The ASMFC sent letters to both the Mid-Atlantic and the New England councils, and both councils responded to the ASMFC with letters of their own.

The ASMFC sent a letter to the Secretary of Commerce requesting emergency action, and both councils also responded and sent letters to the Secretary. A number of environmental organizations also sent letters. At this time no response has been received back from the Secretary of Commerce.

CHAIRMAN DIODATI: I will add that after seeing the letter from ASMFC, members of the Massachusetts State Legislature sent a similar letter to the Secretary of Commerce asking for virtually the

same thing in support of this commission and so forth. Pat.

MR. P. WHITE: There was also a nomination for the advisory panel.

CHAIRMAN DIODATI: Was that you, Tom?

MR. McCLOY: That was me. I don't see Tina and I don't see paperwork. It is coming around. In light of the paperwork coming around, **I would like to move the approval of the nomination of Jeff Kaelin for New Jersey's commercial representation on the Shad and River Herring Advisory Panel.**

CHAIRMAN DIODATI: And there is a second by Pat Augustine. **If I see no opposition to that, we'll consider that approved.** Any other business? Kate.

OTHER BUSINESS

MS. TAYLOR: I would just like the states aware that the National Fish and Wildlife Foundation has put out a request for proposals for river herring research and that proposal deadline is September 1st. The proposals require matching funds, but it is a substantial amount of money that they have within their initiative and would like to recommend states if they proposals ready to submit those to NFWF. You can direct technical committee staff to me if they have any questions on that.

CHAIRMAN DIODATI: Are there other AP nominations in this packet? What about the timing for the public hearings that we just talked about; what month do you anticipate those happening?

MS. TAYLOR: The public hearings will be held in September and October, and I will give a review of public hearing comment in November.

CHAIRMAN DIODATI: Okay, earlier this week I think we approved an addendum for striped bass that is going to have public hearings in September as well. Could they be done at the same time?

MR. ROBERT E. BEAL: I was going to bring this up during the Policy Board, but actually there were six documents this week I think that were approved for public comment; five addenda and now this amendment. There are going to be a lot of hearings between now and the annual meeting, and we will need to coordinate some of that work with staff as well as the states and try to lump these together and make them as efficient as possible. There may be some timing issues and we could talk about it during

the Policy Board probably rather than this board. We can talk about it then.

CHAIRMAN DIODATI: Any other business. Yes, Gene.

DR. EUGENE KRAY: Was it Bill who asked about a report from the Mid-Atlantic Council? I think we have sent a letter back from Dan Furlong. Is that correct, Kate, on the issue of the river herring from the Mid-Atlantic Council?

MS. TAYLOR: Yes, both councils did respond to the commission.

DR. KRAY: Well, I just wanted to comment that in addition to that the Research Set-Aside Committee was going over its priorities, which we have to do every year, which went out to the Federal Register for the applications for the research set-aside dollars. We have included wording to the effect of looking at ways – this was not the exact wording, but looking at the methodology where we could reduce the bycatch of river herring in the EEZ. Again, it is not the exact wording, but we have it in in terms of trying to get additional research on what is the issue and what can be done to prevent it. We had a lengthy discussion about that and the council approved those priorities.

MR. GOLDSBOROUGH: Mr. Chairman, I guess I was seeking a review or a description of what all transpired at the last council meeting on this. That is a very important piece of it, but was there not more discussion of bycatch and how it is defined under Magnuson, whether or not given that definition they felt obliged to take action pursuant to our letter and whether or not we need to follow up on that in any way?

CHAIRMAN DIODATI: I don't know if that discussion took place at the Mid-Atlantic.

MR. GOLDSBOROUGH: I wasn't there myself so I thought maybe this board could benefit from hearing a report on what did transpire there. Is there somebody that went?

CHAIRMAN DIODATI: I don't think we have that report to provide today, but perhaps we can certainly do that either in writing prior to the annual meeting or at the annual meeting.

MR. GOLDSBOROUGH: If I may, this speaks to the material that was in the letter from the National Coalition for Marine Conservation. When Pam Gromen presented that information at the public mike

earlier, I believe you indicated that we would attempt to follow up at the annual meeting, which is great. I guess I was thinking that maybe a little casual discussion of it now would pave the way for that, but if we don't have the report right now, that's fine.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, I was at the Mid-Atlantic Council, and I pulled up the report that they issued as a meeting summary. With your permission, I will read the one sentence that applies to this: "The council voted to begin the scoping process for Amendment 14 to the Squid, Mackerel and Butterfish FMP. This amendment will address river herring monitoring and/or mortality reduction strategy and catch shares for Loligo and Ilex Fisheries." Thank you, Mr. Chairman.

CHAIRMAN DIODATI: So there is not a lot for us to I think follow up on. Jeff Kaelin.

MR. KAELIN: Mr. Chairman, just briefly, I do know we've been talking with the Mid-Atlantic Council staff because we operate down there, too, obviously. We asked Rick Robins if he could have Amy Van Atten from the Federal Observer Program come in and present her data on river herring bycatch in the region.

I think that presentation is going to occur, and I think that would be an excellent presentation for this board to consider possibly when you meet at the annual meeting. She has got some good data and does a very good job with it. The New England Council has seen the same thing. I know that is coming to the Mid-Atlantic Council maybe at their December meeting. I just wanted to let you know that. Thank you.

ADJOURNMENT

CHAIRMAN DIODATI: Thank you. Is there any other business? Seeing none, I think we're ready to adjourn. Thank you, all.

(Whereupon, the meeting was adjourned at 2:06 o'clock p.m., August 20, 2009.)