

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

**Crowne Plaza Old Town
Alexandria, Virginia
August 3, 2010**

Approved November 2011

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4. **Move that the ASMFC Shad and River Herring Board recommend to the ISFMP Policy Board write a letter to the Joint International Commission with a copy going to the Marine Resources Committee of the Maine State Legislature, USFWS and NOAA urging a more aggressive and comprehensive plan for restoring alewives to their historic St. Croix River Watershed** (Page 5). Motion by Sen. Damon; second by Douglas Grout. Motion carried (Page 6).
5. **Move to Motion that the states are required to submit their sustainable fisheries management plans by July 1, 2011** (Page 7). Motion by Tom O'Connell; second by Jack Travelstead. Motion withdrawn (Page 10).
6. **Move to amend the submission date to January 31, 2011.** Motion defeated (Page 14).
7. **Move to appoint Perry Hubbard and Thomas Rowe of South Carolina to the Shad and River Herring Herring Advisory Panel** (Page 14) . Motion by Ross Self; second by Bill Adler. Motion carried (Page 14).
8. **Move to adjourn by Consent** (Page 20).

ATTENDANCE

Board Members

George Lapointe, ME (AA)	Leroy Young, PA, proxy for D. Austen (AA)
Sen. Dennis Damon, ME (LA)	Loren Lustig, PA (GA)
Pat White, ME (GA)	Craig Shirey, DE, proxy for P. Emory (AA)
Doug Grout, NH (AA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
G. Ritchie White, NH (GA)	Roy Miller, DE (GA)
Rep. Dennis Abbott, NH (LA)	Tom O'Connell, MD (AA)
Paul Diodati, MA (AA), Chair	Russell Dize, MD, proxy for Sen. Colburn (LA)
Bill Adler, MA (GA)	Bill Goldsborough, MD (GA)
Rep. Sarah Peake, MA (LA)	Steven Bowman, VA (AA)
Mark Gibson, RI, proxy for B. Ballou (AA)	Jack Travelstead, VA, Administrative Proxy
Bill McElroy, RI (GA)	Michelle Duval, NC, proxy for L. Daniel (AA)
Rep. Peter Martin, RI (LA)	Mike Johnson, NC, proxy for Rep. Wainright (LA)
David Simpson, CT (AA)	Bernie McCant, NC, proxy for B. Cole (GA)
Rep. Craig Miner, CT (LA)	John Frampton, SC (AA)
Lance Stewart, CT (GA)	Ross Self, SC, proxy for R. Boyles (LA)
James Gilmore, NY (AA)	Malcolm Rhodes, SC (GA), Chair
Brian Culhane, NY, proxy for Sen. Foley (LA)	Jessica McCawley, FL (AA)
Pat Augustine, NY (GA)	William Orndorf, FL (GA)
Pete Himchak, NJ, proxy for D. Chanda (AA)	A.C. Carpenter, PRFC
Tom Fote, NJ (GA)	Steve Meyers, NMFS

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

Ex-Officio Members

Byron Young, Advisory Panel Chair

Kathy Hattala, Technical Committee Chair

Staff

Vince O'Shea
Kate Taylor

Bob Beal
Toni Kerns

Guests

Joe Fletcher, D.C.
Arnold Leo, E. Hampton, NY
Michael Luisi, MD DNR
Bob Ross, NMFS
Ben Martens, CCHFA
Patrick Paquette, RFAMA
David Waters, NH Legislature
Pam Lyons Gromens, NCMC

Ken Stump, MFCN
Charles Lynch, NOAA
Dick Brame, CCA
Peter Burns, NMFS
Jeff Kaelin, Lund's Fisheries
Patricia Kurkul, NOAA
Kristen Cevoli, PEW Environment Group

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 3, 2010, and was called to order at 9:45 o'clock a.m. by Chairman Malcolm Rhodes.

CALL TO ORDER

CHAIRMAN MALCOLM RHODES: All right, I'm calling the Shad and River Herring Management Board Meeting to order. I would like to thank all the commissioners and guests that are here.

APPROVAL OF AGENDA

CHAIRMAN MALCOLM RHODES: Everyone received the agenda for this meeting, and I would like to move for approval of the agenda. We will move that with consent.

APPROVAL OF PROCEEDINGS

CHAIRMAN MALCOLM RHODES: You also received the proceedings from the February 4th meeting. Were there any additions or corrections to those minutes? Seeing none, we will accept the proceedings from the previous meeting.

PUBLIC COMMENT

CHAIRMAN MALCOLM RHODES: It is time now for public comment. Do we have any members of the public who would like to address the board? Seeing no one, I will move to Kathy Hattala for the **River Herring Sustainable Fishery Plans**.

RIVER HERRING SUSTAINABLE FISHERY PLANS

TECHNICAL COMMITTEE REPORT

MS. KATHY HATTALA: Good morning, everyone. The technical committee met back in June; and what we did is we ended up reviewing the five river herring sustainable management plans that were submitted. That's Maine, New Hampshire, D.C., North Carolina and South Carolina. We wanted to kind of develop – it's not necessarily criteria, but we wanted to have a criteria basis like does the plan include these basic tenets.

For instance, was a sustainable target identified and defined and were there supporting data for what they supported for their target. Do they have sufficient monitoring into future to maintain that target or know where they are in relation to it? Is the regulatory structure in place to maintain that and is there some

sort of timeline that they envision to either meet the target or a review timeline and/or to revise their targets?

That's criteria that we used to make sure that all these details were in the plan. There are two plans that the technical committee would like to recommend to the board for approval, and those are the two Carolinas. North Carolina is a minor research set-aside. Basically, it's a fairly small harvest. The set-aside set is actually 4,000 pounds. However, the harvest has been much lower than that.

This is a fishery that is centered around the Easter Holiday, and it's set in time, depending on when the holiday is. They have not exceeded it yet. One of the things I really would like to emphasize here is that the North Carolina Sustainable Fishery Plan is the only plan that was submitted based on a stock assessment because North Carolina did actually do their own stock assessment on river herring in 2005.

They have a variety of targets including their JI, the SSB and repeat spawning rate. They will again update this. They're planning an update of the assessment by 2012, which they will also revisit all the targets. Currently they are looking at a recovery timeline of anywhere from 12 to 24 years for the river herring stock in North Carolina.

The second plan we recommended for approval was South Carolina. There are two fisheries. The details are in the memo that I gave you in your packet of information. Basically, there are two rivers that South Carolina requested. That was the Santee-Cooper and Peedee. In the Santee the current harvest is actually fairly low to actual population size; so what we ended up doing is they developed a relative exploitation rate based on where their fishery occurs.

The fishery occurs in – for those who don't know the confusing Santee-Cooper System, this is the re-diversion canal from the Santee up to the lakes. Fish are also lifted at the lift at the northwestern end of the re-diversion canal. They developed a minimum population size from the lift and the harvest numbers.

However, that harvest is relatively low when you consider the entire population size. South Carolina did a whole series of population estimates for about ten years. There is a five-year overlap of the two time series of data. To make it more realistic, they created a scaler to actually move the exploitation rate into some realm of reality in relation to the actual population size of the herring run in the Santee. It is very low.

This is just an interim target of 0.5. They'll use a three-year running average. That is going to be re-evaluated after the current stock assessment is complete. The other river system is in the Peedee. Harvest, again, is extremely small. This is a very small subsistence fishery. They are going to start doing some biological sampling for the next three years, and then they're going to be reassessing it. Again, this will also be revisited at the completion of the stock assessment.

Those were the two plans that were approved by the technical committee. The next three following plans, which is Maine, New Hampshire and D.C.; there were a variety of questions which are detailed in the memo again. I don't really want to get into a lot of detail. Basically, what the technical committee is requesting from the board is that we had a lot of questions about the scope, the citing, understanding the way the systems work, et cetera, far too many to actually approve the sustainable plan as written.

We would like to request the board support the technical committee in asking for the additional information so that we can go back and revisit it. We also developed a short timeline. The states have their list of items that they need to address. I was talking to Doug Grout, for instance, and we talked to Mike Brown from Maine. They're working on the plans as we speak.

As far as I understand, D.C. is withdrawing theirs and they will go for closure. I just wanted to verify that. Anyway, we're hoping that the draft SFPs will be revised and resubmitted to the technical committee by September or earlier, if possible, so that we can review them again so we can submit them for approval to the board by November.

The next issue is that there are three I would say states and jurisdictions who have not yet submitted sustainable fishery plans. Among them is New York, Virginia and the Potomac River Fisheries Commission. They did not meet the July 1, 2010, deadline. Here the board would need to – since the next submission date is the July 1, 2011, which is with the compliance reports. It may not give the jurisdictions and/or state a sufficient amount of time to have a plan submitted, reviewed and approved by the board and regulations in place by the January 1, 2012, deadline.

The board would need to reconsider a submission deadline somewhere between now and July 1st of next year so that these states can move forward. That's

the sustainable fishery plan. Are there any questions, so perhaps I could stop there?

REPRESENTATIVE SARAH K. PEAKE: I know later in the agenda there is an agenda item regarding bycatch, but I'm just wondering if in these state plans, if there is any requirement to account for bycatch in EEZ that might be landed in the various states.

MS. HATTALA: The answer to the question is no. Amendment 2 does not address ocean bycatch, which I'll bring up right now. Jamie Courname, who is now part of the New England Fishery Management Council's Amendment 5 PDT, she came to the technical committee to give a brief update on the modeling work that she is doing, modeling the hot spots of river herring overlap, using the fishery-independent data from the National Marine Fisheries Service, with the fishery data itself.

This is something the New England Council has been working on. One of our concerns is that there seems to be two different definitions of what bycatch is. Some councils consider it just discards; some considers it catch, some consider it incidental catch. It is both and we would like the board to recommend and keep that in mind that it is all herring that are caught, whether they're landed or discarded.

Then we also need to have some information on exactly what is caught, what is kept and what is discarded. For instance, some of information coming out of the study that is being conducted by the states of Maine, New York and Massachusetts indicate that at least the American shad that are being sampled among the Atlantic Herring Fishery are very small, immature fish, which is probably is the worse possible thing you could be doing is killing them before they've had a chance to spawn.

There needs a good amount of biological sampling so we can characterize that in the catch, and then we can answer Ms. Peake's question about the impacts of ocean bycatch, but we're just scratching the surface. Kate is going to go into this in a little bit more detail. We also had a short discussion about the differences between Amendment 5 on the Atlantic Herring Plan and on Amendment 14, which is the mackerel, squid, butterfish.

Again, communication is imperative. The commission needs to be talking to the councils; the councils need to be talking to each other, and the definitions of bycatch need to be the same. It is incidental catch plus the discards. It is not one or the

other – the same thing about better sampling and to get a better level of observer coverage to lower the CVs.

Another issue that was brought up was the state of Georgia was put on notice by the National Marine Fisheries Service. There was a study done in the state of Georgia by Dr. Doug Peterson, who was looking at shortnose bycatch in the American Shad Fishery. There was the instance in one of the three years where the bycatch was deemed to be very high. The state of Georgia wanted to let me relay this to the board that any state that has an entanglement fishery, meaning a gill net fishery, whether it be for American shad and/or striped bass, and has a shortnose sturgeon population within the system may be put on notice with the National Marine Fisheries Service to do a Section 10 consultation. They just wanted me to give you guys a heads-up on that.

Then, finally, there are two other issues which are more of administrative but it's leading right into the stock assessment. There has been state participation and the stock assessment subcommittee has now decreased by two and a half. When I say two and a half, Gary Nelson is no longer the chair. That has defaulted now to Andy Kahnle. Gary said he will still try and participate as much as he can.

However, two other assessment members have dropped out; Christine Jensen from North Carolina and Russ Allen from New Jersey. This is getting a smaller and smaller group, and it's becoming more and more difficult as we all know well with shad; that with river herring, we're in the same boat where data is very difficult to gather from the state. We're getting less and less participation and we really need to be careful about that because it may lead to an incomplete or a very long-delayed assessment.

The other issue is on the technical committee. I took on the chairmanship last April. We still do not have a vice-chair. This kind of disrupts our continuity so now I'm doing both jobs of the chair and vice-chair, all the note-taking, all the summarizing. Kate has been a help there but it is still not enough.

We need someone in the wings as a vice-chair. They shall rename nameless, those that we tried to get to take the position and their board member said no. I'm leaving it to the board to ask for your help in trying to recruit a vice-chair for the technical committee because I'm not going to stay there forever even though I know you guys want me there. Thank you. Any questions?

DISCUSSION OF SUSTAINABLE FISHERY MANAGE PLANS

MR. JAMES GILMORE: Just to echo what Kathy said and to plea to the state directors, I've got two of my key people now. I've got Andy on the stock assessment and I've got Kathy on the technical committee. I'm in the middle of a retirement incentive right now, so we're in pretty bad shape. We're not going to be able to do this much longer; so you folks that have been approached on this, I would ask you to reconsider that and get some people on here so we can have some transition. Thank you.

MR. TERRY STOCKWELL: Thank you, Kathy, for a complete report. As you mentioned, Mike Brown and staff are working, probably as we speak, to resubmit the Maine Plan. I wanted to give the board a heads-up that Maine will include measures to monitor and minimize state territorial waters bycatch. That will be part of our plan.

CHAIRMAN RHODES: Thank you very much and thank you for the presentation. At this point, I believe we would be discussing the technical committee's recommendations. Would anyone like to speak to that issue? Mr. Adler.

MR. WILLIAM A. ADLER: Mr. Chairman, is it that you need a motion for the approval of the two plans that were presented that were okay with the technical committee; is that what you're looking for?

CHAIRMAN RHODES: Yes, sir.

MR. ADLER: **Then I shall make a motion to accept the technical committee's recommendation to approve the South Carolina and North Carolina plans.**

CHAIRMAN RHODES: Thank you very much. Is that a second, Mr. Fote? All right, any discussion? The motion is move to accept the technical committee's recommendation to approve the South Carolina and North Carolina Sustainable Fisheries Management Plan. The motion was made by Mr. Adler and seconded by Mr. Fote. If there is no discussion; all those in favor signify by raising their hand; opposed, same sign; nulls. **All right, passed 19 to zero.**

I think we had two other questions that were brought up; the timeline for resubmission for Maine and New Hampshire as well as to reconsider the submission deadlines for the other states had not presented; New York, the PRFC, and Virginia. Mr. Grout.

MR. DOUGLAS GROUT: I can't speak for Maine, but we plan on submitting before September 1st; the resubmittal of our plan with some of the suggestions that the technical committee has asked us to put in place.

MR. THOMAS FOTE: I would like to answer two questions. One, you know, it's easy for me looking outside the agency to talk about what is going on. I understand Jim's problem but I guess what I'm looking at and what New Jersey is looking at is fisheries that we can make a difference or that will make a difference in the state.

When we start looking at river herring, we're going to basically – we're not going to submit a plan because basically it is going to be shut down. I mean, we don't have any science; and if we started right now, it would be three or four years before we could even open up the fishery because we need to get three or four years' background of information.

None of us in New Jersey is seeing us having the money right now to do that. I think by default you're going to wind up just going through and when 2011 comes – whenever that date is to basically put the moratorium in effect, that is what is going to happen in New Jersey. So then you look at what do you dedicate staff to with the limited staff?

As Jim has pointed out, retirements and everything else and everybody is stressed to the gills about what they're doing, that you basically make a conscious decision as to where you put personnel and where you effectively – and that's not the way we should be doing business, but I think that's what is happening right now for most states in that difficult situation.

We're going to have to take that into consideration and start looking at how do we correct those problems. I mean, it's beyond, you know, what do we do getting a vice-chair to a technical committee. It's now do we get the amount of technical people we can actually get to meetings anymore to participate as a whole.

Whether it's sea herring or whether it's tautog or any other species, we're going to look at where the value of sending that person because there is a limited amount where you can send to meetings. I'm just throwing that out for discussion to answer poor Kathy's problem about getting a vice-chair, but I think that's really where it comes into play right now, and I think it's a bad situation, which is going to get worse.

CHAIRMAN RHODES: Well, do we have a feel for these other states, what timeline would be acceptable or do they feel they could have a plan submitted? Mr. Gilmore.

MR. GILMORE: Well, at least I can speak to New York. I had a good reason why we were delayed, and then Dave Simpson gave me a better one saying that since we focused on our technical staff making sure the other states got theirs in on time, we're delinquent on ours, but I wouldn't say that.

In terms of New York's situation and having the advantage of Kathy as the Chair is that we have seen some of the plans that come in that they've had a completed stock assessment that really made the plans acceptable. We're in the middle of doing that right now and we should have that completed in the fall, so we were delaying to maybe not have to go through this twice. As we see it right now, we would be able to finish that stock assessment and then complete the plan by the end of the year and hopefully have something by the January. If you're ready, after the other folks have talked, I would have a motion as an alternate date. Thank you.

CHAIRMAN RHODES: Thank you. Any other discussion? Mr. Carpenter.

MR. A.C. CARPENTER: Mr. Chairman, I guess in the absence of filing a plan with the ASMFC, we have closed our river herring fishery with the exception of a minor bycatch for pound nets. We have also, starting in 2011, required all pound nets to have cull panels put in them. These are designed to let the smaller fish out and the river herring should abide by that. Beyond that, I think our plan is that we're simply going to formalize all of that action in a letter to the board, and that's going to be our plan.

MR. FOTE: A.C., are you going to be able to prove that those runs are sustainable because otherwise you have to shut down the bycatch. That's the quandary New Jersey is in because we're not going to be able to prove the runs are sustainable; so according to the plan there has to be a moratorium put in place.

MR. CARPENTER: As I said, there is moratorium in effect right now. It went into effect in 2010 with a 50-pound daily bycatch allowance for pound nets with these cull panels. That's an incidental catch that is impossible to police, so we are going to require these cull panels to be put in the nets in 2011; and then from then forward to reduce that bycatch even further.

SENATOR DENNIS DAMON: In Maine we have seen some dramatic increases in our alewife population in particular in some of our river areas where we have removed dams or we have improved passageways. The Kennebec River comes to mind; the Damariscotta area comes to mind as does the Penobscot River Waterway.

There is an area, however, in far eastern Maine, the St. Croix, where we have a continued problem with fish passage. The brief history is back in the mid-1990s the Maine State Legislature voted to close that river to migration of alewives because it was felt by some that they were having a negative impact on the smallmouth bass fishery. There has not been scientific data that would back up that assertions, but that there was plenty of data to show that during the time of spawning on one of the lakes in particular there was a rather low water level which dried some fish up in their spawning beds.

But that aside, in the early 2000s there was another attempt to reopen that river to the migration of alewives, an attempt that came to the Maine State Legislature. That attempt failed. The lobby of the smallmouth bass fishery was certainly large. More recently – and I think it was 2008 or 2009 – I introduced a bill before the Marine Resources Committee to open up that river again as historic passage to the alewives.

It was amended – it passed but in an amended form which opened up a couple of dams but not all the way into the flowage. We now are faced with a plan that some regard as extremely conservative to continue to allow the alewives to inch up, literally, the river of their historic homeland. The International Joint Commission, a commission of Canadian and United States membership, has urged that there be a more aggressive opening.

NOAA, Ms. Kurkul has written a letter also suggesting that could be more aggressive, and also I believe the Fish and Wildlife has. My reason for all of this background is that I'm wondering if this board would consider writing a letter, based on the Sustainable Fisheries Plan that we are talking about, would write a letter to the International Joint Commission with a copy going to the Committee on Marine Resources of the Maine State Legislature urging that there be a more aggressive opening to the historic areas of the alewives in the St. Croix. I offer that up for discussion; and if we could do it, I would make it a motion. Thank you, Mr. Chairman.

MR. FOTE: Can I ask you a question? We've run into the same problem with striped bass and rainbow trout, and I basically said to people, I says, "Which is the invasive species?" Is smallmouth a native to that; was it introduced to that lake to begin with? I know rainbow trout was introduced to the Delaware River. The native species is striped bass, and so we need to protect the native species over the invasive species.

SENATOR DAMON: Mr. Chairman, if I might, the native species is obviously the alewife. The smallmouth bass, as best can be determined, was introduced into that watershed somewhere after the Civil War. It has become a very popular fishery, and many sporting camps have sprung up to help prosecute that fishery. It is in fact, in my estimation, working as a detriment to restoring the alewife to its native habitat.

MR. GROUT: Senator Damon, if that is a motion that you're making, I would be willing to second it.

SENATOR DAMON: Mr. Chairman, if a motion is in order I would make one.

CHAIRMAN RHODES: Please do.

SENATOR DAMON: I would move that the Atlantic States Marine Fisheries Commission, the Shad and River Herring Management Board write a letter to the International Joint Commission with a copy going to the Marine Resources Committee of the Maine State Legislature urging a more aggressive and comprehensive plan for restoring alewives to their historic St. Croix River Watershed. Thank you, Mr. Chairman.

CHAIRMAN RHODES: If you will allow it, I believe this should not come from this board, but that this board makes a recommendation to the Policy Board that would then send a letter. This board itself would not make it, but the Policy Board would.

SENATOR DAMON: That's absolutely acceptable; thank you.

MR. FOTE: My recommendation also is a friendly amendment that would basically direct it to the U.S. Fish and Wildlife Service since they're responsible for bringing the native back and the National Marine Fisheries Service because they are responsible basically to protect native species or for invasive species, so I think they're important players in this game.

SENATOR DAMON: I'll accept that, certainly. You're talking about a copy going to them? I will accept that, certainly, as a friendly amendment and it also should go to NOAA. I have letters from the National Marine Fisheries Service, from NOAA and Fish and Wildlife that support this and so our letter to the International Joint Commission should go to them as well, so that's fine with me. Thank you.

MR. LEROY YOUNG: I just have a question. Where is the opposition coming from; is it from the public, is it from your freshwater fishery agency; just for clarification on that?

SENATOR DAMON: It is coming from the sporting camp owners and operators who are fishing for the smallmouth bass. It is coming, as well, from one of the tribal units. The Passamaquoddy Tribe has two tribal governors; one at Pleasant Point. That governor and that township are in support of reopening the river to alewives. The Passamaquoddy portion of their tribe at Indian Township and their governor have been opposing it, and so that's where it's coming from primarily.

In the legislature, given that there are more representatives from the inland portion of Maine than there are from the portion of Maine, that is why I believe – although I wasn't in the legislature at the time, I believe that's why there was a bill to close the river to alewives in the mid-1990s and why it was unsuccessful to open it in the early 2000s. It is only in, as I say, 2008 or 2009 when a bill was passed that would allow passage beyond two of the dams but not up into the entire watershed.

MR. ADLER: Senator Damon, they closed the St. Croix River to the passage of alewives or to the fishing of alewives?

SENATOR DAMON: No, it was actually to the passage of alewives.

MR. ADLER: How did we tell the fish they couldn't go up there?

SENATOR DAMON: We blocked their passage at the dams. We closed the fishways at the dams and wouldn't allow them to go up, and their efforts to go around the dams weren't successful.

MR. THOMAS O'CONNELL: I feel like this is a good idea to go forward. I'm just wondering because this discussion began with a timeline for plan submittals, and I almost feel like maybe this item should be tabled for other business because we're

really getting away from the topic that we need to get some decision and some guidance on.

CHAIRMAN RHODES: Thank you; I agree. I think we have two points we could do at this point. One would just be to call this question and vote on it and then move back to Mr. Gilmore if there is no more discussion of the timetable submittals. If that's the consensus of the board, let's do that. Senator Damon, if you could reread the motion.

SENATOR DAMON: Certainly, Mr. Chairman, and I think that direction that you have just expressed is the way that we should go. I would move that the ASMFC Shad and River Herring Board recommend to the ISFMP Policy Board write a letter to the Joint International Commission with a copy going to the Marine Resources Committee of the Maine State Legislature, USFWS and NOAA urging a more aggressive and comprehensive plan for restoring alewives to their historic St. Croix River Watershed. Motion by myself and seconded by Mr. Grout.

CHAIRMAN RHODES: All right, and time for a vote. All those in agreement raise your hand; those in opposition, same sign; null votes. **All right, the motion passed 16 votes in favor, zero against.** Mr. O'Connell.

MR. O'CONNELL: Just back to the timeline for sustainable fisheries management plans, a couple of questions. At this point Maryland is probably going to proceed with a moratorium, but we do have some bycatch issues that we we're trying to investigate and plan to do some field studies next spring.

We ultimately wanted to reserve the right to submit a sustainable fisheries management plan, if we decide to, by July 1, 2011, hoping that would give the technical committee enough time to review and implement by the deadline of January 1, 2012. A question to Kathy; would that provide enough time for technical committee review? I'm just thinking of a motion that would establish a timeline from which states would have to abide by.

MS. HATTALA: That's up to the commission, too. For instance, you have to meet. If it doesn't meet muster and it has to be revised, can Maryland implement regulations fairly quickly? I know in New York it takes me six to eight months to provide for a regulation change. My suggestion, perhaps, would be a window – from what Mr. Gilmore and yourself between the end of January 2011 to July 1, 2011 – to give you time to do that, you're cutting it kind of

close with the July 1, 2011, to get to January with regulations in place, as I understand it.

MR. O'CONNELL: Well, I think pretty much then the states need to pay attention to their regulatory timeframe. Maryland could proceed with implementation in time if the plans were submitted and reviewed in late summer or early fall next year. **I would like to make a motion that the states are required to submit their sustainable fisheries management plans by July 1, 2011.**

CHAIRMAN RHODES: Is there a second?

MR. JACK TRAVELSTEAD: Second.

CHAIRMAN RHODES: Mr. O'Connell, if you would like to speak to the motion.

MR. O'CONNELL: I think one of the issues that – and we don't have to do it today, but what would be helpful to get technical guidance on is the question that A.C. posed for the Potomac River Fisheries Commission's Plan for going forward. Is the concept that was presented for the Potomac River Fisheries Commission going to be acceptable by the technical committee to recommend for board approval? If so, I think some states may look at how they proceed differently.

MS. HATTALA: From my perspective when North Carolina submitted a plan for research set-aside under a closed moratorium, then any fishery will need to submit a sustainable fishery plan. I think Mr. Fote brought up the idea that it is any fishery. That's what Amendment 2 states. It doesn't say whether it's directed or bycatch, so I think a letter may be insufficient – not to be critical – because it does need to have the elements that I described before of the timeline, a sustainable target, et cetera, et cetera, et cetera. That's what Amendment 2 currently states, so we're trying to stay under the tenets of the amendment.

MS. KATE TAYLOR: Under Amendment 2 states, if they would like to submit a sustainable fisheries plan, that option is already in place to submit it with the compliance reports as of July 1st. The request from the technical committee for their planning procedures, submitting your plans by July 1st may not give some states enough time with their regulatory processes when you're accounting for the technical committee review and subsequent board approval for any changes that may be needed. The request might be more helpful for the technical committee's logistic

planning if it is an earlier date. Otherwise, the January 1st deadline might be hard to implement.

MR. STOCKWELL: I'm assuming that this motion won't disrupt the technical committee's review of New Hampshire and Maine's resubmission. After this motion is dispensed with, I'll have a motion concerning the New Hampshire and Maine resubmission.

MS. HATTALA: That's correct. What we did was we recommended a September 1st deadline or as soon as possible, but we're shooting towards September. If both of them come in earlier, that's great, that speeds up the process. That is not affecting – yours is a separate timeline from states that have not submitted at all.

MR. STOCKWELL: I just didn't want to get in that one-year hiccup.

MR. G. RITCHIE WHITE: I guess I'm not going to oppose this motion, but it does give me some concern. We've been at this for some time, and I guess it's just disappointing that all the states were unable to present within the timeline that we had set. I guess my question would be if there is not an acceptable plan brought forward during 2011, what happens?

MR. HATTALA: Then the state goes to a moratorium as of January 1, 2012.

MR. R. WHITE: So that's automatic.

MR. FOTE: I'm not picking on the Potomac River but it gives me grave concern because we were basically just going to put in a total moratorium. Now, if we're allowed to allow for a bycatch in the pound net fishery, that's where I need clarification. I'm going to hear my fishermen sayings, "Well, why didn't you ask for the bycatch in our pound net fisheries," which are basically the same concern because we're saying, well, we couldn't prove sustainable and that's why we're not doing it.

That's why I asked the question even though you're allowing a 50-pound bycatch, is it going to be acceptable without proving that it's a sustainable fishery? I mean, that's an important question to ask before we move forward. I'm not sure where we are with that right now and I'm trying to get a reading from the board.

I mean, do we claim every bycatch now as a research set-aside? It's a difficult proposition and it's putting

us that want to follow what we think is the message of the plan and the interpretation of the plan or are we going to look around how do we get around the plan. You know, 50 pounds doesn't seem like a lot, but it starts defeating the whole purpose if we're shutting down the recreational fishery completely. I really need a decision or at least some guidance on this before I move forward.

MR. ROBERT E. BEAL: I think there is some discussion going on that's sort of outside the motion that is up on the board right now. The board may want to dispense with that motion and then move on. Relative to this motion, the date of July 1, 2011, is already in the fishery management plan as the next opportunity for the states to submit their proposals.

I think really what a lot of this discussion from Mr. Gilmore and the technical committee comes back to is really the technical committee is asking to get these in as early as you can, but July 1 next year is as late as we can possibly accept those and the states have a chance of getting them in place.

I think that discussion is clear on the record, and I don't know if this motion is actually needed given that the July 1, 2011, date is already in the fishery management plan. The technical committee is obviously requesting or pleading that the states get their proposals as soon as possible to allow as much time as they can have to allow for reviews and if necessary the next iteration of those plans, et cetera, et cetera.

MS. HATTALA: I would like to comment. There are two timelines. There are revised sustainable fishing plans such as Maine and New Hampshire. We have already seen the plan, we have made the suggestions, we just need to revisit them and go over the revisions. Then there are those that have not submitted plans at all; for instance, New York and perhaps Virginia, Maryland and PRFC.

From my perspective as the technical committee chair, it says in the plan any fishery has to be shown to be sustainable. That's the wording in the plan so I'm going by that. That's a different issue. The "as soon as possible" is to get the Maine and New Hampshire ones done so we can do a completion by the end of this year for those that have been submitted.

For the newer plans that we haven't even seen – for instance, New York has suggested the end of January is the opening lead which would give us most of 2011 for technical committee review, et cetera, and

approval by the board, so that regulatory processes can start within the state. I'm not sure what it is for the state of Maryland or Virginia or PRFC. There needs to be a meeting of the minds on those that have not been submitted prior to that, because the July 1st deadline is cutting it close for plans not submitted.

MR. CARPENTER: Just a point of clarification; doesn't every state have the opportunity to present a sustainable fisheries plan at anytime, even after July 1st? It just won't be dealt with until the next time that the committee is meeting. The only reason that you have July 1, 2011, is if you want something in place for January of 2012. If you're willing to have the moratorium, it may be July 1st of 2015 before you submit a plan for a sustainable. I think the motion is unnecessary.

MR. GILMORE: **The motion I was originally going to put up was really getting to Kathy's points. The date I was picking was January 31, 2011, to allow for two things; for the technical committee to have some review, because, remember, of the four plans submitted so far two had to be sent back.**

If we delay until July 1st and then some of those plans don't meet muster, they may not meet 2012. You may not want to have the moratorium, but you're not going to have enough time to get, first, the technical review done, and, secondly, in New York, as Kathy had said, we're looking at six months or longer period, so the January 31st date was based upon a practicality of getting regulations done and the review of the technical committee.

I would be more comfortable with going with that date. Obviously if it slips a little bit, but people are working on it and we've been having that as a theme for several of the boards right now, so I would offer an alternate motion that we change the date to January 31, 2011. I think we do need that, Bob, to your point before. July 1st is fine; it's already established, but we're going to miss the end of the year if we delay the submission of the plans to that date. Thank you.

CHAIRMAN RHODES: So, Mr. Gilmore, you are putting a substitute motion; do we have a second? Second by Mr. Grout. A motion to amend. All right, at this point we vote on the motion to amend. Do the states need to caucus or just call the question? Would you repeat the amended motion?

MR. GILMORE: **Move to amend the submission date to January 31, 2011.**

CHAIRMAN RHODES: Mr. Carpenter.

MR. CARPENTER: Point of clarification for me; there is nothing in the plan that prevents somebody from submitting a plan at any point in time; so if you want to submit your plan January 31, 2011, help yourself. The plan states that you have to submit it by July – you have to; it's a deadline; not an early filing. It's a deadline if you want action for 2011 is how I read the plan. Quite honestly, I don't think either one of these motions is necessary.

MR. TRAVELSTEAD: I agree with A.C.; I don't think either motion is necessary at this point. The technical committee has said if you want to get this done and in place and have your regulations or a total moratorium by January 1, 2012, we've got to see your document by July 1st. If you submit it after that, there is no guarantee a review is going to be done and you better have a moratorium in place on the appropriate date. If you want to submit it before July 1 to make sure you can be ready, then that's fine. I would also question if the date is already in the plan, are we talking about a plan addendum to change that date? Again, I don't think it's necessary.

MR. O'CONNELL: I appreciate the discussion and it provides clarity to me. Recognizing there seems to be already an established timeline in the plan, then I would be prepared to withdraw my motion if the amended motion fails.

MR. GROUT: I guess my question – and the reason I seconded this motion was given our meeting schedule, which next year we have a board meeting in August and we have I believe the annual meeting the beginning of November, my first question to the technical committee, because they're the ones that have been bringing this concern about how tight it is from July 1, would you be able to review – I believe it's up to three plans that have indicated – four plans between July 1 and be able to provide recommendations by our meeting, which is going to be the first week in August? That's my first question; and then depending on your answer, I have a follow-up question.

MS. HATTALA: Generally I think this is a procedural issue. If we received all four plans on July 1st, my answer is probably no. The technical committee – yes, you could do it through conference calls, et cetera, but the best way is a face-to-face meeting. I seriously doubt that people could turn this around in less than a month.

MR. GROUT: And I think that's a potential reason for a motion, but we also have another meeting in November; so my question is if they could not meet the deadline – let's say they got all four plans, which is all that's required by what is in the amendment, by July 1 and they could not meet that deadline – and you've heard the technical committee say that it is unlikely that they would be able to do that – would the regulatory nature within the four states that are planning to submit allow you to, one, either put in new regulations in a period of less than two months or potentially close your fishery within two months?

It's a logistical issue and that's why I'm concerned that the July 1 deadline may not provide the opportunity to get those regulations changes in place because the technical committee may unlikely be able to review four plans within a month.

MR. GILMORE: I think we do need the date. I think the other thing we're forgetting is we already missed the July 1, 2010, deadline. We had a deadline for submissions and right now we're looking for an extension to that first deadline we've all missed and now we're contemplating not having any deadline at all, which is kind of what Ritchie had brought up before.

You know, there was some due diligence that some of the states have done. I think some of us are still interested in doing a plan, but we really need to give the technical committee and the process, you know, the ability to work through; and if we delay until July or later or don't have a deadline, then we're going to shoot ourselves in the foot. I think we need a new deadline.

MR. PATRICK AUGUSTINE: I was going to move to table all of this and go back to the original plan which called for a specific date and be done with it, but I do agree with what Jim's point is. What method or technique or hammer are we going to use for the states to get their report in?

I don't think it's a matter of whether the technical committee has time to review them or not. The plan calls for deliverance of your plan by a specific date. Then I think it turns out to be in the ballpark of the technical committee to find the time to do whatever they can. If we slip on this one again without some kind of a hammer that says we must submit by – I think Mr. Gilmore is correct on this one. I would be inclined to move the second one as the first one has been eliminated anyway, Mr. Chairman.

MR. FOTE: Looking realistically on this, we're going to have a meeting in November of 2011 and be able to vote whether we accept plans or not. But, again, we don't meet until February or like this year we've changed the winter meeting to March before we can vote anybody out of compliance and put a moratorium in effect.

I mean, Virginia's legislature, if I'm not mistaken, meets about the first three months, so they're not going to meet until January, February and March of 2012 to implement a regulation. You know, I understand where we're talking about dates and figures here; but when it comes out realistically what we do with plans and when we vote on moratoriums, we're not going to vote on any moratoriums until February of 2012 and then send letters out unless I'm seeing something that we have done differently than we've seen before because we've never sent preemptive letters out in November of the year before. I mean, there is a lot of discussion and I know what we're discussing, but I think we're just wasting a lot of time.

CHAIRMAN RHODES: All right, that being said, we do have a motion on the floor. Mr. Gilmore, would you read that, please.

MR. GILMORE: Move to amend the submission date to January 31, 2011.

CHAIRMAN RHODES: All right, do the states need to discuss this or are you ready to vote?

MR. FOTE: Mr. Chairman, before we make a motion, the public should be at least contacted to see if they want to make some public comment on this. We didn't do it with the last motion and we should always make sure that at least the public, if we're going to vote on a motion, has a chance to comment on it.

CHAIRMAN RHODES: Is there any public comment? Seeing none, we'll give the states a minute to discuss.

(Whereupon, a caucus was held.)

CHAIRMAN RHODES: All right, are the states ready? Those of you in favor of this motion, signify by raising your right hand; those in opposition, same sign; any null votes. **All right, the motion fails; eight four, nine against.**

MR. AUGUSTINE: Point of order. Mr. Chairman, it's an interesting point, so what is your plan?

CHAIRMAN RHODES: Well, at this point we're back to the main motion. The amended motion did not pass so we're back to Mr. O'Connell's original motion.

MR. AUGUSTINE: Well, to that point, Mr. Chairman, I move to table that motion and go back to the original.

CHAIRMAN RHODES: Mr. O'Connell.

MR. O'CONNELL: What I have learned through this process is there is already an established timeline in the plan. States need to weigh their risk associated with when they're going to submit their plans and their regulatory strategy. Some states, it would be advantageous to submit it earlier. Some states like Maryland may be able to wait until July as we work out some bycatch issues. I would withdraw my motion and I think we just go forward with following the plan. If a state wants to submit a sustainable management plan with their 2012 compliance report in July 2011, they would do that and they run the risk of not getting it approved by January 1.

CHAIRMAN RHODES: Mr. Travelstead, do you agree with the withdrawal?

MR. TRAVELSTEAD: I think we learned at the last meeting that once a motion has been made and discussed you can't withdraw it, but I'm still in favor of withdrawing it.

CHAIRMAN RHODES: Do the states need to canvass on this one? All right, we'll give one minute to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN RHODES: All right, are the states ready? Yes, sir, Mr. Adler.

MR. ADLER: And so what we're voting on here is it is okay to withdraw?

CHAIRMAN RHODES: Yes, sir. All right, those states in favor of allowing the withdrawal of the motion, please signify by raising you hand; against, same sign. **All right, the motion has been withdrawn; 16 to 1.** At this point this would mean that the states that have the fishery plans can still submit them, but there is no guarantee that they will be reviewed prior to July of 2011.

MR. BEAL: I think there are some questions about efficiency and number of technical committee

meetings and the like, and it's probably best if staff, after this meeting, works with the four states or jurisdictions that may be submitting proposals and find out what their realistic timeline is and when they'll be able to submit these proposals.

Maybe we can lump these together and have just two meetings of the technical committee rather than four meetings kind of strung out through the winter and spring of next year. If it's okay with the board and you're comfortable with that, staff can work with those four jurisdictions and find out what makes sense and try to get those plans in as early as possible but with the realization, as Maryland mentioned, they may be working out some bycatch issues and some other things within the state.

We'll just try to get all this done as early as possible but realize the later it goes the greater risk there is for the states that the technical committee may not have time to thoroughly review those; and if the technical committee reviews your plan and it was not recommended for approval by the technical committee, the second iteration gets even more difficult and tighter with the timeline.

MR. AUGUSTINE: Mr. Chairman, to the point that Mr. Beal just made, will the support of the staff be of enough assistance for the technical committee to move forward with what they have to do? I know it's going to be very difficult not having a deadline, but could the technical committee respond to that?

MS. HATTALA: We will try our best and we'll just see how it goes. I would like to bring up another issue, if that's all right. I still need some clarification that as Mr. Carpenter suggested a letter to the commission would be sufficient for a bycatch fishery. From the technical committee's perspective, I don't think it's sufficient as I am going under what is stated in Amendment 2 that any fishery has to be shown to be sustainable. Does the board have any thoughts on that issue?

MR. CARPENTER: The pound net fishery is going to occur with or without a herring management plan. There are other species. This is not a directed species that pound nets are set for herring. They are set for multiple species. It's about three dozen species that they catch throughout the course of the year.

What we are proposing is not a directed fishery. It is a fishery that takes herring incidental. What we are further doing is requiring all pound nets to install cull panels that will allow the majority of the herring to escape. When you have a boatload of fish that has

10,000 pounds of fish in it, it is impossible to cull out every herring.

Our regulation is designed to recognize that factor and all other methods of catching herring are prohibited by other regulations. I don't know what else you want, and I don't have any idea how to supply this. In our minds this is an enforcement issue, that there is a tolerance built into the regulations; and if we're found out of compliance with that, then I don't know what you expect.

MR. R. WHITE: Could I ask Kathy is there anything in the plan that allows incidental catch to be excluded?

MS. HATTALA: As far as I understand, no.

MR. R. WHITE: My sense would be to follow the wording in the plan as you have described and I would support that.

MR. STOCKWELL: A.C.'s comments raises a number of issues that the board has yet to deal with, including one of our upcoming agenda items on Draft Amendment 5. A huge issue that the New England Council is dealing with is incidental bycatch of the federal pelagic species and state landings. I would suggest that we save this discussion for a little later this morning. If that's agreeable with you, I have a motion about Maine and New Hampshire to move along with that part of the technical committee's report.

CHAIRMAN RHODES: I think it's time to move along. I had two other people and then we'll move on to Ms. Taylor. Mr. Simpson.

MR. DAVID SIMPSON: I think just to support what A.C. was saying, I'm looking at the plan and going by memory now, I'm pretty clear that fishery meant directed fishery. It talks about being in a system. I don't think we're about to entertain the idea that we're going to close every fishery that might possibly catch one river herring as bycatch. The sustainable fishery plans are for directed fisheries and not for bycatch fisheries.

MR. FOTE: It is how you interpret what a moratorium means, and we have not come to grips with what a moratorium means. When a moratorium is in place, do you not allow any landings of that fishery? It came close. When we were talking about a moratorium on weakfish, we never made the decision.

That is a topic for discussion because my interpretation of a moratorium means that if you put a moratorium – like horseshoe crabs we did in the Delaware Bay. There is no bycatch, there is no nothing, there is no allowing to be in possession of a fish in a moratorium. If that's what we're talking about here, we need a clarification of what a moratorium means.

Maybe this needs to be kicked up to the Policy Committee, but we need to decide if we're going to have a moratorium in the fishery – and by the way, I have a hundred pound bycatch in weakfish, and that's when we got in this whole discussion. We need a clarification on what it means and what it doesn't. I mean, I don't know what – you know, I think the Potomac River is in an interesting situation because you're depending on Maryland and Virginia to prove that the rights to run is sustainable up and down that whole river, if I'm not mistaken, and the same thing with D.C. in there.

It's a whole different ballgame because it's all one run or maybe I'm mistaken about how the Potomac River Run basically takes place. Maybe I need more clarification on that, because maybe you can prove that the run is sustainable. But when I look at a moratorium, a moratorium means no possession of fish in that moratorium.

MS. HATTALA: I do have one comment. When you talk about a bycatch fishery – and I agree with Mr. Fote that a moratorium is supposed to mean moratorium. However, we know all these fish get caught everywhere. However, that incidental catch, as everyone likes to say, which is landed needs to be quantified, it needs to be identified, it needs to be put in some perspective from the stock as a whole.

I may make a suggestion to Mr. Carpenter that you may want to have some kind of observer program to estimate, get some size information. Is there any fishery-independent information available within the entire system; so perhaps working with the other jurisdictions in the states of Virginia and Maryland, develop a Potomac River Plan, per se, because there are other data streams available.

CHAIRMAN RHODES: All right, seeing no hands up, you've raised a lot of interesting questions that I'm not sure we're going to deal with at this point, but the staff has a lot to digest and work forward to. Mr. Stockwell.

MR. STOCKWELL: Before we move along to the updates, I'd like to make a motion to approve the

technical committee's recommended timeline for Maine and New Hampshire to submit their revised sustainable fishery plans.

CHAIRMAN RHODES: Is there any objection to this? I don't think we need a motion for that.

RIVER HERRING AND AMERICAN SHAD BYCATCH UPDATE

MS. TAYLOR: The following is just a brief update on Draft Amendment 5, which is being drafted by the New England Fishery Management Council; and Draft Amendment 14, which is going through the Mid-Atlantic Fishery Management Council. Just as an update, the ASMFC Shad and River Herring Board sent a letter to the Herring Committee in May 2010, which is included on the Briefing CD, requesting increased at-sea and portside monitoring and also requesting that the committee address the large percentage of unknown bycatch within the Amendment 5 documents.

The Herring Committee met last week to discuss issues and management options within the amendment, including river herring bycatch, and were also briefed on a comparison of at-sea and portside monitoring and the identification of river herring hotspots. The committee is requesting that the hotspot identification be developed at a finer scale.

It is currently at the statistical area and they're looking to see it for quarter degree squares and also looking at not just seasonal bycatch hotspots but maybe on a monthly or bimonthly scale. The council will be considering the range of alternatives in Amendment 5 at their September meeting. For river herring bycatch this includes options such as the move-along rule, percentage of observer coverage in areas with identified hotspots, bycatch limits and time area closures.

With the Mid-Atlantic Council, the Amendment 14 to the Squid, Mackerel, Butterfish FMP is being developed. There was a comment period for the scoping document, which was included in the Briefing CD, and that closed on July 9th. The commission submitted comments requesting that the council consider a combination of at-sea and dockside monitoring; that monitoring should be increased to adequately cover gear types, ranges and the seasonality of the fishery and increasing at least a 30 percent CV for observer coverage.

The committee will be meeting on August 16th to review the complete comments and to finalize the direction of the amendment. Just a brief update on the comments that they did receive; I was briefed by Jason Didden from the Mid-Atlantic Council staff. He let me know that most of the comments requested action to improve monitoring and reduce catches of river herring and shad.

Additional comments expressed concern about taking management action before adequate information on bycatch and related biological effects was available. Additionally, at the Mid-Atlantic Council meeting, during their business session they will be reviewing a request for the initiation of an anadromous FMP, and that is to consider how best to coordinate management of anadromous species. Thank you, Mr. Chairman.

CHAIRMAN RHODES: Thank you. Any questions? Mr. Grout.

MR. GROUT: Just a follow-up comment; that was a good review of what has happened at our Herring Committee meetings recently. One of the things that we are addressing in Amendment 5 is improvement to the catch monitoring, and that includes bycatch. We're looking at some things as different observer coverages, and she mentioned portside sampling, maximize sampling and measures to address net slippage, which is something that occasionally happens in this fishery as a part of operational discards as well as non-operational discards.

We're looking at measures on how to look at the bycatch at-sea and at port from the river herring standpoint. As was pointed out, we're also looking at river herring hotspots, which I think the work by Jamie is going to help us tremendously in managing this fishery, to try and avoid the bycatch so that it doesn't get landed. That is the important part, make sure it doesn't get in the net.

MR. AUGUSTINE: Kate, you mentioned something about the Mid-Atlantic; did you make a comment about the Mid-Atlantic? What did you say at the end of your last couple of sentences?

MS. TAYLOR: During the business session of the Mid-Atlantic Council meeting, they have an agenda item to consider the initiation of an anadromous FMP.

MR. AUGUSTINE: To that point, Mr. Chairman, there has been considerable talk brought by one of the council members wanting to know if in fact it

would be wise to create an FMP on anadromous species fish particularly to address the bycatch issues that have been raised by the ASMFC.

There is some serious talk about developing – or least first reaching out to ASMFC to see if it would be a joint plan if in fact we go down that road. Our Ecosystem Committee is going to have a meeting this coming week after next to address it, so we want to make sure that ASMFC is involved in the process along the way, whether it's a technical person or Bob Beal or staff, have someone there to see which way we go with this.

The concern I have is if the Mid-Atlantic goes forward with a council approach, as you know, to develop an amendment, we're talking two to four years or longer; and the concern I have is that if the Mid-Atlantic were to have a leadership role in that FMP, it could cause the states some major problems or vice versa, as the case may be.

I do think we have to stay apprised of the direction they're going. I think Bob is going to be down there hopefully during that period of time when we have that meeting, and I'm sure he'll keep you posted and we'll keep you posted as that evolves. There is a definitely a movement in that direction to get a handle on the herring situation. Thank you.

MR. FOTE: Don't even mention to me joint plans. When I think of that SSC and I think about that, there is no way that I would basically, sitting here as a commissioner, approve another joint plan with any of the council systems until this thing is rectified of how we deal with SSCs. Do I think there might be some issues that they could deal – like New England is supposed to be dealing with the bycatch of river herring up in their fishery in their squid and butterflyfish.

Maybe that's what you need to talk about is how you deal with these individual management plans to basically prevent the bycatch of species that we basically have listed. As far as doing a joint plan, after what is going on with scup, sea bass and summer flounder and bluefish over the last couple of year, it is not something I would look favorably on.

MR. AUGUSTINE: Mr. Chairman, this isn't a tit for tat; I'm just telling you what the Mid-Atlantic is going to do. Whether you like a joint plan or don't like a joint plan, there is an action to move in the direction of addressing the issue. I do hope that we are smart enough to stay in the loop on it. Thank you.

CHAIRMAN RHODES: Mr. Augustine, I agree completely and I think we're in a very favorable position on New England and Mid-Atlantic. Commissioners here are also members of those so we're finding out both sides of the coin. I've had several discussions with the New England members also. In that way we're lucky to be included on all discussions and keep the membership aware of what is going on as we move forward. Mr. Himchak.

MR. PETER HIMCHAK: Mr. Chairman, while we're talking about the Mid-Atlantic Council, just to shed a little positive light on the issue, when the NMFS approached the council in February of 2010 about their allocation of observer coverage, the Population Dynamics Branch, all the fisheries that they had – that they were dedicating observer coverage to, and the issue came up about meeting the 30 percent coefficient variation on getting river herring and butterfish bycatch estimates.

We wrote to the NMFS to reallocate some of the observer coverage to address small-mesh bottom trawl fisheries, and they responded in the affirmative. We do have increased observer coverage on these fisheries for 2010, which will help in getting good estimates on the river herring bycatch.

CHAIRMAN RHODES: All right, thank you very much. Any other discussion? Thank you, Kate.

APPROVAL OF APPOINTMENTS TO ADVISORY PANEL

CHAIRMAN RHODES: At this point I think we have two new AP members.

MS. TAYLOR: Yes, there have been two nominations to the advisory panel; Harry Hubbard and Thomas Rowe, both from South Carolina.

MR. ROSS SELF: Mr. Chairman, we have two individuals from South Carolina who have been nominated to the Herring Advisory Panel. Do you want the nominations in tandem or do you want to deal with them individually?

CHAIRMAN RHODES: Tandem is fine.

MR. SELF: We have nominations for Perry Hubbard and Thomas Rowe to assume a role with the Shad and River Herring Advisory Panel. Mr. Hubbard comes from a commercial interest and Mr. Rowe as a recreational interest. I would move that the board accept these individuals to the Herring Advisory Panel.

CHAIRMAN RHODES: Second by Mr. Adler. Do we have any opposition? **Seeing none, those are the two newest members of the AP.**

OTHER BUSINESS

Is there any other new business? Seeing none, I would like to thank you. This I guess shows you how meetings can go from one area – Mr. Fote.

MR. FOTE: I thought we were going back to a discussion on the moratorium or are we not doing that because we basically said we would do that under old business. There was supposed to be some discussion or maybe I'm missing something. Are we ready just to quit the meeting? I'm just asking for comments of the board.

CHAIRMAN RHODES: Well, I believe we have some time if you want to open that discussion.

MR. FOTE: I think it is an appropriate discussion to have. I mean, I'm looking at what am I going to do with my pound net fisheries. I have just assumed because we take a moratorium to mean a moratorium, that we were not going to allow even a bycatch in those fisheries. If we are going to approve other states, I'm going to get a lot of heat for not doing that in our state, so I'm trying to get some kind of decision of what a moratorium means. Does a moratorium mean no possession as we do with horseshoe crabs?

That's really the only instance I know where we have a moratorium in possession. Actually, we have a proposal making it a \$10,000 fine if you're caught in the possession of a horseshoe crab because of the feeling we have on moratoriums. I'm trying to get a clarification because I have to – if I'm going to put a plan in – because it now it puts me the realm where I didn't think I needed to do a plan in New Jersey because we have talked about it. Because we just assumed we were going to have a moratorium and if that allows for a bycatch in a moratorium, then I need to know.

MR. R. WHITE: There are states that presently have a moratorium, and I guess I would be interested to hear from those states on how they handle this issue.

MR. O'CONNELL: Well, I wasn't going to respond to Ritchie's question, so I'll hold and see if a state wants to do that.

CHAIRMAN RHODES: Connecticut, Rhode Island, Massachusetts – Mr. Simpson.

MR. SIMPSON: Possession is prohibited; it's just as simple as that. If you catch them incidentally in any other fishery, they have to be released dead or alive.

MR. PAUL DIODATI: It holds true for Massachusetts as well. It's no harvest, no possession.

DR. MICHELLE DUVAL: The same is true for North Carolina, Mr. Chairman, as well. There is no possession allowed.

MR. R. WHITE: Mr. Chairman, I guess I would ask how is sea herring landed, then, with a bycatch? In other words, if there are at-shore observers and they're observing a bycatch in the sea herring fishery, how is that handled?

MR. DIODATI: There is a small tolerance allowed in those fisheries.

CHAIRMAN RHODES: Well, can you clarify?

MR. DIODATI: Yes, I'll check it; I'll have to see what it is.

MS. TAYLOR: Mr. Chairman, I believe it's 5 percent by weight for the Massachusetts exemption.

MR. R. WHITE: Final followup; I guess if that is already in place, then I would think there would be some ability for A.C. to follow that somehow. I mean, either a moratorium is no possession, period; or if there is some allowance, then maybe there is a way for A.C. to figure this out.

CHAIRMAN RHODES: Mr. Himchak.

MR. HIMCHAK: This opens up new prospects for us on this bycatch issue. I hate to keep focusing on A.C.'s position here, but again I would interpret if the run sustainable, his bycatch would be allowed if the Potomac River resource was sustainable, including the level of fishing mortality that he is experiencing in his pound nets.

If they can't demonstrate for the entire system a certain level of harvest that the resource would be sustainable, then I'm inclined to say that he would have to have a moratorium, which would be no possession even though the fish are probably going to die, anyway. This opens up questions for us as to I didn't think we were even going to explore this because how do you demonstrate a run that is sustainable? We don't have the data. I appreciate this discussion. This is my first board meeting with shad and river herring and I've got a lot of questions.

MR. FOTE: There is a difference between an EEZ fishery and a state fishery. First of all, we don't regulate the EEZ; so if the New England Council allows for a bycatch or a tolerance or whatever, that is their fishery in the EEZ. Our plan calls for a moratorium, which is a different situation, and we need to look at what our plan calls for.

I think it really needs to go to the Policy Board to basically once and for all determine what a moratorium is. Again, is a bycatch in a pound net fishery the same as – basically when you're pumping tens of thousands of sea herring into a boat, is it a lot different than basically going into a pound net or either bailing them out or suctioning them out. I don't know.

MR. O'CONNELL: We have been interpreting that all fisheries are part of the sustainable fisheries management plan. The situation in Maryland, just to shed some light, is that we have maybe 20 guys that have a bycatch fishery, and we've got one or two guys that have a directed fishery.

Those one or two guys make about four times the amount of money than those 20 other guys because they have a high-end market for it. For me to tell the directed guys that their fishery is closed but we can still allow a bycatch fishery, I think both have to apply for meeting some sustainability. Otherwise, I don't think it is equitable to the directed fishery guys.

MR. CARPENTER: The tolerance that we built into our regulation, as I stated earlier, has as much to do with enforcement as anything else. I would like to see a review by the Law Enforcement Committee that a zero tolerance is actually going to be enforced in any state for any body of water on these species. If that's the case, then if I'll get a commitment from every state's enforcement that they're going to have a zero tolerance and tickets are going to be written and people are going to throw – then, yes, I'll get our regulation in line with that.

But until somebody has actually witnessed baling fish into the boat and then trying to pick out herring, which are going to go right to the bottom of the boat, and you're going to have an enforcement authority that is going to actually stand there and pick out three herring in a 10,000 pound catch – if they'll sign up for that, I'll change the regulation or I'll get the regulation adjusted. I don't believe law enforcement is going to dig down in the bottom of a boat and our regulation was designed to allow some reasonable tolerance of a bycatch.

MR. STOCKWELL: Mr. Chairman, this is a hugely important discussion to have as both the Mid and the New England Councils develop their respective fishery management plans for herring and mackerel and squid and all the above. In the Atlantic Herring Fishery states regulate the landings. We have in New England, at least, observers with shoreside monitoring and they pick out the bycatch.

One of the proposals at last week's Herring Committee meeting was for maximized retention and that would allow for all species to come ashore, three of which are commission-regulated species, striped bass, menhaden and river herring. It raised a lot of issues that I think this board and the Policy Board need to wrestle with to give the councils guidance and the states guidance on how we move ahead with the development of these plans. We know that zero tolerance on some of these high-volume pelagic fisheries is not going to work.

MR. GROUT: Let me give a followup and just the background on this. In these high-volume fisheries, what Matt Cieri, who is on the PDT, indicated is that one of the difficulties with us trying to come up with estimates that meet the 30 percent and 20 percent CV levels is that they are such a rare event.

To use his words, at our last Herring Committee meeting, within the high-volume fisheries of the midwater trawls and the purse seiners we're looking at half representing less 0.5 percent of the catch, and so we're struggling with trying – we had set a goal of trying to have a coefficient of variance of 20 percent; and they're saying that because it's such a rare event, we may not be able to attain that even with a hundred percent coverage on it.

The way they have to sample these boats, when you're landing – when you're catching 50 metric tons – is you're taking basketful sub-samples, and you just may not get them or you might get a all of them in one catch. That's why one of the directions that the council is taking for managing these fisheries out in the EEZ – and they are bycatch fisheries.

They're directed fisheries for herring with a bycatch of river herring and some other species such as dogfish – is to try and develop measures that would discourage fishing in the areas where Jamie and her analysis have identified as hotspots. I don't think, quite frankly, after spending several years on this Herring Committee that we're going to get rid of the entire bycatch unless you eliminate that fishery completely and say no herring fishery, period.

The same thing can apply to groundfish, a major, major fishery up in New England where we have a 6-1/2 inch mesh size, yet occasionally they'll get enough groundfish that the net will be plugged and there might be a very, very small amount of river herring that gets caught. Usually things like that are discarded, but according to the definition discards are part of bycatch, and we won't be able to manage those small amounts.

I think we've really got to look at the reality of these things and try to minimize it. I mean, that is what we really want to do is minimize this to the extent practical and take measures – put measures in place to minimize this so that we can rebuild our stocks; but if it ends up being a total moratorium, we're probably looking at a shutdown of a large percentage of the fisheries on the east coast.

CHAIRMAN RHODES: I think it is a lively discussion. We were just having a discussion about just the whole definition of moratorium and the interaction between the commission and the councils. I think probably the best place to move this to is to the Policy Board to have a discussion as to what is moratoria, high volume, the directed fisheries, the bycatch. This is going to be an issue that's not going to involve just this one management board but other management boards. What I would like to do is to direct this issue and especially these dealing with the two councils and the commission to the policy board to get further clarification and then we can move forward. Mr. Fote.

MR. FOTE: The one thing I was thinking about when I'm looking at this moratorium and trying to think of a comparison, and then I thought about when we basically started on weakfish and we basically addressed the shrimp fishery down in North Carolina, and the bycatch of fish were coming in, you know, because it was a natural occurrence.

It used to be of value to the trash fish being brought in because they were traded for ice and things like that, and Bill Hogarth said you're going to have discards in your catch, but you can't have an economic value for that, so there is no economic incentive to bring it to the docks, so that fishery could no longer be used.

Maybe that's what I'm looking at, the economic value of those fisheries. Again, when we look at large – you know, it has always been said that certain fisheries is considered large volume only as a 1 percent bycatch, but if we look at the volume that comes in those fisheries and you look at about a 1

percent bycatch, it can make up what states are actually catching in directed fisheries and make it that their fisheries have to be shut down because they're catching that much, but if the bycatch equals that, and that is my concern and that is what all I'm looking at is how do we handle it?

DR. DUVAL: Mr. Chairman, just one additional point before we leave this discussion. Section 3.3 of Amendment 2 states that quantifying current levels of river herring bycatch is essential to determining stock status and implementing effective management programs. That is not specific to local or state. It just says that is an important thing to do. I just put that out there for everyone's consideration.

CHAIRMAN RHODES: If states do have bycatch fisheries, do they have to submit a plan for that? Mr. Simpson.

MR. SIMPSON: My understanding all along has been if there is a harvest, it needs to be based on a sustainable fisheries plan, an approved one. I did not see it expanding, as I said earlier, to explaining or incorporating a mixed-species trawl fishery in Long Island Sound that might take one river herring to be part of a sustainable fisheries plan as long as the harvest of that species is prohibited.

DR. DUVAL: We in North Carolina to that; I mean, we have a moratorium in our waters with the exception of the research set-aside, a very minimal harvest, that the technical committee chair noted, but we submitted that as a sustainable fishery plan because it is accounted for and it is harvest.

MS. TAYLOR: I just have a quick question as to whether or not the states will follow or the states or jurisdictions will follow North Carolina and be submitting a plan or if it won't be required just so that when the technical committee is expecting to review this – will states or jurisdictions be submitting a plan if there is a bycatch fishery? Since North Carolina has submitted a plan, Mr. Simpson was suggesting that they would not be submitting a plan, so I just want to make sure that there is equal footing for all states that are submitting plans.

MR. SIMPSON: Again, my understanding was if harvest was going to take place, there needed to be a sustainable fisheries plan.

MR. ADLER: How complicated would it be and would it be allowed under the amendment to submit a sustainable fishery plan based only on the small bycatch allowance that a state may have for whatever

reason and wouldn't that still be probably sustainable; that, yes, we have a sustainable fishery plan and we don't allow any directed harvest, we don't allow or encourage any other harvest, but we do have a small allowance and we think that is sustainable. How complicated would that be for a state to do that to get us out of this?

MS. HATTALA: That would be up to the jurisdiction. From my perspective I agree with Mr. Simpson, if there is harvest there needs to be some level of degree of quote, unquote, sustainability shown in regard to what the stock is doing. If the stock is stable at low levels and that harvest is basically not affecting that, then they may be sustainable under the definition that is currently in Amendment 2, but the state would have to provide the supporting information; or jurisdiction in the case of PRFC.

MR. DIODATI: I think in situations where we call for moratoriums, those generally do in fact apply to direct fisheries. In the case of a fishery like river herring, I don't think there is a state around the table that has a moratorium in place that won't have some level of bycatch in some fishery in their state.

If we're going to want those states to report on that level of bycatch, I think that the commission should at least define some de minimis value of landings so that unless the bycatch is over that level then you're not expected to provide an annual report about that. Otherwise, I think every state around the table will be simply providing a report about every single river herring that is caught in every fishery that we operate. I don't think that's our intent here.

If the directed fisheries are closed, that is pretty straightforward. If you have bycatch in other fisheries above a certain level, then perhaps we should require some level of reporting about that, but the way the plan is written I think we're reinventing it, and I don't think that was the intention.

CHAIRMAN RHODES: Thank you. As has been brought out, the shad plan is similar to that. It is 5 percent. Mr. Young.

MR. YOUNG: So, Mr. Chairman, from our perspective in Pennsylvania there is a directed fishery right now, but the numbers that are caught are very small, and a lot of the bycatches in these commercial fisheries probably dwarf that, so how do you deal with that?

CHAIRMAN RHODES: Well, in your case you deal with it in your state. Mr. Fote.

MR. FOTE: It's setting up a different set of rules on how we look at fisheries, whether it's recreational or commercial. That's the problem I'm dealing with, also, because I have guys that are basically catching a few to make pickled herring out of, and now I'm telling them they can't while the guy is going to be landing in my pound net fishery because he says he is killing them, anyway, a hundred fish a day, and how many pound nets do I have out there; and all of a sudden the recreational committee is going to come and say, "What are we doing here; I thought you had a total moratorium?"

That is similar to what we – you know, and that's why we need to define what we're talking about with a moratorium. A moratorium means that you can't – to me – and that's why I need to find out what you think about it, because right now I'm going to have to look in New Jersey on whether I have a plan to open it up and whether I have – if you're fishing for shad, which has a 5 percent bycatch, am I allowed to catch herring in that fishery because it's only a bycatch in the shad fishery.

I mean, you know, the striped bass fishery that started in one state years ago, there was a bycatch in the shad fishery, and now it is winding up being a shad bycatch in the striped fisheries. You know, I'm looking at how we basically interpret this because we need to be consistent and we need to be able to sell this to the public and we need to be transparent in how we do it.

CHAIRMAN RHODES: I believe, though, if your state has a bycatch plan submitted, then you would know the number of fish that were caught and you wouldn't be in that pickle.

MR. FOTE: Yes, you would because you have to prove that run is sustainable, and New Jersey has not done the thing. We have low numbers that are being captured, the same way as A.C. maybe – and I don't know where the Potomac River is proving that it's a sustainable run, but you have to prove first it's sustainable.

You have to do all the science necessary and the plans to do that. That's why I'm asking for guidance here because, you know, that's my understanding as a lay person out here. And as a governor's appointee looking at how we do plans for almost close to 30 years, this is how we look at plans; and if we're going to start picking and choosing at how we

basically – because usually there has been no economic value place on a fish during a moratorium.

Yes, you're not writing a ticket because the guy has a hundred fish that would be illegal undersized in a total of a huge amount of fish, whether it's summer flounder or something like that, but you can't get an economic value or those fish have to be discarded, and it would be done when they're basically processed, and that's what I'm looking at.

MS. HATTALA: Basically, the answer to your question, Mr. Fote, is that from my perspective, as the technical chair, that you're correct. If a run is sustainable or not, even if it's at a low level, you use other means other than just the fishery data. For instance, you would collect biological information off of your fishery, the amounts of harvest, et cetera, and then also compare that to the fishery-independent information that may be available; for instance, like a juvenile index, as long as that may be stable, combined with information on your adult runs, whatever it may be, whether it just be a size metric, an age metric, just so that there is some sense for, quote-unquote, sustainability.

If the harvest is low and the stock has remained low and stable the entire time, then there may be sufficient information. It just depends on what is available. New Jersey, I know, working with the Delaware River, data are few and far between and it is hard to come by. For other states, for instance, for the Potomac there are other data series that are available from D.C., there are historic landings, there is some Maryland data. I do not know the extent of information collected on adults. Until I can actually see that, I can't answer the question of whether or not the Potomac River Bycatch Fishery is, quote-unquote, sustainable as defined under Amendment 2.

MR. DIODATI: I think some clarification might be in order. The commission's plan doesn't require states to implement a moratorium. That's up to the state. It is also up to the individual states to define what that moratorium means to them. If that state decides to allow some level of bycatch, then you have to demonstrate – you know, if it's above a certain volume, you have to demonstrate that bycatch is sustainable.

Likewise, you're free to conduct directed fisheries provided you can demonstrate that those directed fisheries are sustainable. The commission isn't mandating that these moratoriums be put in place nor is it defining what that moratorium would be. To Mr. Fote's questions, I think that's really up to New

Jersey to define what his moratorium means or doesn't mean.

MS. HATTALA: I would like to read out of Amendment 2: "As of January 1, 2012, fisheries that do not have an approved management plan in place or are not covered by an approved management plan by January 1, 2012, will be closed, detailed in Section 4.1. So, yes, if you do not have a fishery management plan, the state will have to implement a closure within their state waters. It is on Page 108.

MR. FOTE: Mr. Chairman, that's what I interpreted. I mean, that's what the plan calls for. It does call for a moratorium; to close the fishery down if you don't have the plan that basically says your run is sustainable. Now, if you prove that your run is sustainable because you have the science to back it up, that's a whole different ballgame, but does this say you can have a bycatch without doing that?

I'm saying if I'm going to be looking at those plans, that's what I'm going to be looking at as to whether I approve or not because basically it is going to come down to us. If they can prove those runs are sustainable at the low level, following the guidelines of the technical committee – if they don't match then, then it's a moratorium because that is what the plan calls for. It is not how you interpret what a moratorium – a moratorium is pretty clear; the fishery is closed.

MR. SIMPSON: You know, this is our first-year experience with this, and I think the best approach that we can take is if a state wants to provide for some level of retention, however small it is – because the point has been made bycatch in one fishery could dwarf directed fisheries in another fishery – put that together in your sustainable fisheries plan and submit it.

I think we all around the table appreciate that you can't expect a state to invest \$100,000 in \$2,000 fishery, so bring to the table what you have in terms of your knowledge of the volume of bycatch and so forth and just put it out there for the technical committee to review and ultimately for the board to see, and we will see if there are still problems after we go through that process. I think we'll be better off than we think we are right at the moment.

MR. BEAL: I was going to make a lot of the same comments that Dave Simpson just made; but I think when the board deliberated through the approval of Amendment 2, I think they realized there are a lot of data limitations for states and jurisdictions. Frankly,

there is going to have to be some creativity on the part of those states and jurisdictions to come up with their best case and best description of what is going on in their state, bring it to the technical committee.

If the data is not there to make a definitive statement whether it is or is not sustainable but there is evidence to say that it may be sustainable, then I think it clearly comes back to this management board and it becomes a policy decision. If the board feels that, for example, PRFC's bycatch level is fairly minimal and that mortality is going to occur anyway, then that becomes a decision of this board if there is not technical – you know, if the data is not available and the analysis can't be conducted, et cetera. The technical committee can obviously only work with the data is in front of them, but if it appears to be a minimal level and the state or jurisdiction puts together a good case for that, then it's up to the group to decide what happens with that proposal.

CHAIRMAN RHODES: The primary goal has to be for each state to present the plan to the technical committee for evaluation.

MR. BEAL: Yes. Based on the discussion here today, it is pretty clear that any state or jurisdiction that is going to have a directed fishery or a bycatch fishery that retains river herring will need to submit a proposal.

MR. HIMCHAK: Just as a parting comment, it might help to look at the technical committee's comments on the South Carolina Proposal that they approved. I mean, they put harvest in context with the population size and showed it was sustainable. That is what the technical committee I'm assuming is going to be looking for and not the magnitude of this but the magnitude relative to what?

MS. HATTALA: The South Carolina Proposal was evaluated with the data that was available. It just depends on, as I said, whatever data series that are available will be used. This is also extremely important for the upcoming stock assessment. We're still looking for all data that is available, so the sustainable fishery plan is one source. It is not necessarily – quote-unquote – population. It is population characteristics.

CHAIRMAN RHODES: With that being said, I think this has created a lot of good discussion, a lot of concerns, but a direction for the future going forward with getting your FMPs in and then having the technical committee look at the merits of your indices. Mr. Diodati.

MR. DIODATI: I'm not expecting an answer to this immediately, but does this mean that a state that closes its directed fisheries on river herring, let's say, but has small amounts of fish being landed in some bycatch fishery and doesn't submit a sustainable fisheries plan to account for that level of bycatch; would that state then be out of compliance with the plan and what would the penalty be, what fishery would get shut down?

MS. HATTALA: I'm not clear which bycatch fisheries. I think what is going on here at the board is there is a very large distinction being made. There are the inland fisheries, which most of the discussion has been talking about, and in relation to high-volume fisheries that Mr. Grout and the councils are dealing with – both are being dealt with in somewhat of a different way.

The allowable bycatch, for instance, under the Atlantic Herring Fishery and the council fisheries, we're in the process of trying to quantify that; and then in terms of the stock assessment, trying to figure out what stocks are affected. In inland waters, however, this is a known quasi-directed because they are being caught, but now they become bycatch because the amount is trying to be minimized.

However, they are being harvested and landed and utilized, so you would have to define the bycatch. If it is like discarded, so be it. However, that begs the question of a lack of data. This is where a fishery has been – for instance, in the Potomac it is part of a larger catch, it is being retained, it is being sold. I think it needs to fall under some sort of plan and how it fits in the larger scheme of things.

MR. R. WHITE: I think I understood you to say that bycatch from state water fisheries, we would have to account for, but bycatch from federal waters, we would not; is that correct?

MS. HATTALA: Not that we would not. We need to really hone in and work with the councils to determine the levels and perhaps even get down to stock ID, which is a far off into the future data need that we have. Far be it for me to say we really need to understand the levels of bycatch. Although how small and rare occurrence it is, given that river fisheries are extremely tiny, yes, it will be a rare occurrence in the ocean but it will hamper any restoration of inland stocks.

MR. R. WHITE: Yes, I misspoke. I certainly didn't mean not – what I was trying to say was that bycatch from federal waters, this plan would not kick in and a

state would not be found out of compliance by landing from federal waters. You would be found out of compliance if there are landings in state waters and you don't have a plan; is that correct?

MS. HATTALA: I think that would be the decision of this board, but I think you're correct in that.

MR. CARPENTER: I was going to ask for a direct answer to Paul's question, and I suspect that we've come as close to that as possible.

MR. FOTE: I think we have dragged on this conversation long enough, so it's time to go take it to the policy board and get some more clarification, and I move that we adjourn.

ADJOURNMENT

CHAIRMAN RHODES: Any opposition? Seeing none, we are adjourned.

(Whereupon, the meeting was adjourned at 11:50 o'clock a.m., August 3, 2010.)