

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

**Crown Plaza Old Town  
Alexandria, Virginia  
May 6, 2009**

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## INDEX OF MOTIONS

1. **Approval of Agenda by Consent** (Page 1)
2. **Approval of Proceedings of February 4, 2009** by Consent (Page 1)
3. **Move to define a sustainable fishery as a commercial and/or recreational fishery that will not diminish the potential future stock reproduction and recruitment** (Page 17). Motion by Terry Stockwell; second by Wilson Laney. Motion substituted.

**Substitute motion** that this definition of “sustainable fishery” be included in the glossary that is in Draft Amendment 3 and that glossary be incorporated by reference into Amendment 2. (Changed to friendly amendment on Page 20.)

**MOTION REWORDED ON PAGE 20:** Move to define “sustainable fishery” as a commercial and/or recreational fishery that will not diminish the potential future stock reproduction and recruitment; and to add this definition of “sustainable fishery” to the Glossary of Amendment 3; and that the entire Glossary of Amendment 3 be added to the Glossary of Amendment 2. Motion carried (Page 20).

4. **Move that the board adopt the working group recommendations regarding state waters sustainable fishery proposals with the clarification that jurisdictions with active fisheries remain open but require submission of a proposal to the technical committee for a sustainable fishery by the winter of 2010 ASMFC Meeting** (Page 20). Motion by Terry Stockwell; second by Michelle Duval.

**NEW WORDING OF THE ABOVE MOTION ON PAGE 23:** Friendly amendment is that the board adopts the working group recommendation to prohibit state waters commercial and recreation fisheries beginning January 1, 2011, unless those fisheries are demonstrated to be sustainable. Initial proposals demonstrating that a fishery is sustainable must be submitted to the technical committee for review by January 1, 2010, and the board will consider approval at the ASMFC Spring Meeting prior to the fishing year beginning January 1, 2011. Proposals to reopen closed fisheries can be submitted annually as part of the Annual State Compliance Report.

**NEW WORDING OF THE ABOVE MOTION ON PAGE 27:** Move that the board adopts the working group recommendation to prohibit state water commercial and recreation fisheries beginning January 1, 2012, unless those states develop harvest management plans which include within them a demonstration that they are sustainable. Plans demonstrating that a fishery is sustainable must be submitted to the technical committee for review by January 1, 2010, and the board will consider approval at the ASMFC Spring Meeting and prior to the fishing year beginning January 1, 2012. Proposals to reopen closed fisheries can be submitted annually as part of the Annual State Compliance Report. Motion carried (Page 31).

5. **Move that the board require the existing monitoring requirements of Addendum I to Amendment 1 for American shad be complemented by equivalent measures for the monitoring of river herring** (Page 32). Motion by Terry Stockwell; second by David Simpson. Motion carried (Page 33).

(continued)

## CONTINUATION OF INDEX OF MOTIONS

6. **Move that the ASMFC send a letter to the Secretary of Commerce supporting efforts underway by the New England and Mid-Atlantic Fishery Management Councils to effectively monitor bycatch of river herring in small-mesh fisheries and encouraging the Secretary of Commerce to provide additional resources to support the cooperative efforts between the commission and the councils to better manage anadromous fisheries; and, finally, to request that the Secretary of Commerce take emergency action with regard to implementing the bycatch monitoring measures that have been under discussion at the New England Fishery Management Council to Amendment 4 to the Sea Herring Plan.** (Page 33) Motion by Michelle Duval; second by Robert Boyles. Motion carried (Page 34).
7. **Move that states should develop habitat restoration plans for river herring as outlined in Draft Amendment 2** (Page 34). Motion by Wilson Laney; second by Terry Stockwell. Motion carried (Page 36).
8. **Move to recommend to the full commission approval of Amendment 2 to the Shad and River Herring Management Plan as modified today by the board** (Page 36). Motion by Pat Augustine; second by Jack Travelstead. Motion carried (Page 38).
9. **Move to adopt the 1 percent *de minimis* as previously stated** (Page 37). Motion by Pat Augustine; second by Bill Cole. Motion carried (Page 38)
- 10.. **Motion to adjourn by consent** (Page 38).

## ATTENDANCE

### Board Members

George Lapointe, ME (AA)	Bernard Pankowski, DE, proxy for Sen. Venables (LA)
Pat White, ME (GA)	Tom O'Connell, MD (AA)
Doug Grout, NH (AA)	Bill Goldsborough, MD (GA)
Rep. Dennis Abbott, NH (LA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
G. Ritchie White, NH (GA)	Jack Travelstead, VA, proxy for S. Bowman (AA)
William Adler, MA (GA)	Cathy Davenport, VA, (GA)
David Pierce, MA, proxy for P. Diodati (AA)	Michelle Duval, NC, proxy for L. Daniel (AA)
Mark Gibson, RI (AA)	Mike Johnson, NC, proxy for Rep. Wainwright (LA)
David Simpson, CT (AA)	Bill Cole, NC (GA)
Lance Stewart, CT (GA)	John Frampton, SC (AA)
James Gilmore, NY (AA)	Robert Boyles, SC (LA)
Pat Augustine, NY (GA)	Spud Woodward, GA (AA)
Brian Culhane, NY, proxy for Sen. Johnson	Bill Orndorf, FL (GA)
Tom McCloy, NJ, proxy for D. Chanda (AA)	Jessica McCawley, FL (AA)
Tom Fote, NJ (GA)	A.C. Carpenter, PRFC
Leroy Young, PA, proxy for D. Austen (AA)	Steve Meyers, NMFS
Roy Miller, DE, proxy for P. Emory (AA)	

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

### Ex-Officio Members

Bob Sadzinski, Technical Committee Chair	Byron Young, Advisory Panel Chair
Jeff Bridi, Law Enforcement Committee Chair	

### Staff

Vince O'Shea	Bob Beal
Kate Taylor	Chris Vonderweidt

### Guests

Charles Lynch, NOAA	Lara Slifka, CCCHFA
Larry Miller, US F&W	Patrick Paquette, Hyannis, MA
Pam Lyons Gromen, NCMC	Bob Baines, ME
Jed Brown, DC F&W	Arnold Leo, E. Hampton, NY
Brooks Mountcastle, MFCN	Jeffrey Pierce, Desden, ME
Abigail Franklin, NOAA	Jeff Kaelin, Winterport, ME
Wilson Laney, USFWS	Terry Stockwell, ME
Gil Ewing, NJ	Brian Culhane, NYS Senate

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, May 6, 2009, and was called to order at 8:30 o'clock a.m. by Chairman Paul Diodati.

### **CALL TO ORDER**

CHAIRMAN PAUL DIODATI: I want to welcome you. This is the Shad and River Herring Management Board Meeting.

### **APPROVAL OF AGENDA**

CHAIRMAN PAUL DIODATI: We do have an agenda, which you all should have in front of you. Any discussion on the approval of the agenda? Seeing none, it is approved.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN PAUL DIODATI: You should also have proceedings from the last meeting, which was February 4, 2009. Any changes to the proceedings? Seeing none, they are approved.

### **PUBLIC COMMENT**

We will take this opportunity for any public comment. There are a number of things on the agenda; I think most importantly the adoption of Draft Amendment 2 for River Herring. I will take some public comment now or we will consider public comment as we move later into the meeting. Anyone in the audience like to comment at this time? Mr. Kaelin.

MR. JEFF KAELIN: Good morning, members of the Shad and River Herring Management Board. I'm Jeff Kaelin from Winterport, Maine. I am representing Lund Fisheries of Cape May, New Jersey. Lund's Fisheries is an organizer of the Sustainable Fisheries Coalition. I serve as clerk.

Our coalition is a group of fishing vessel owners, fish processors and bait dealers engaged primarily in the Atlantic Herring and Atlantic Mackerel Fisheries operating from Maine to New Jersey. When this process began almost two years now, anti-fishing advocates portrayed a world where the use of mid-water trawls in the Herring and Mackerel Fishery over the last 12 to 15 years was singularly threatening the sustainability of river herring populations from North Carolina to Maine.

These vessels – some of them are worth two or three million dollars – were built and are utilized today to harvest abundant Atlantic herring and mackerel resources and bring these fish back to market in large tanks utilizing refrigerated seawater to keep the fish in excellent condition for sale. They are large boats so that the people in them can also return in good condition.

We create jobs and food and bait products that are in demand by lobstermen and by fish consumers. I don't know how many around the table have gone to sea in winter conditions, but I believe you would want a large vessel under your feet if you were to venture offshore. These boats were built to compete with pelagic trawl fleets in Europe primarily where good markets for mackerel in particular are available to those who will take a risk, capitalize a vessel, a plant and send U.S. caught fish to export markets where they have greater value than they have in local markets.

Unfortunately, few Americans today want to eat these Omega-3 rich fish like herring and mackerel, so export markets had to be developed to sustain the mackerel fishery. With herring, on the other hand, export markets are not generally available due to great catches of herring in other parts of the world.

About 80 percent of the herring harvested today ends up in bait pockets and lobster traps while a small cannery market still exists in Maine and in New Brunswick. Throughout this time and long before that, I am certain, river herring species have likely been taken as bycatch in the herring fisheries, mobile land-fixed gear and in other small-mesh, bottom-trawl fisheries during certain times of the year and in certain locations.

Until two years ago, when the commission began to focus on developing Amendment 2, this bycatch simply became part of the bait being sold and no one in the herring fishery or lobster fishery gave these fish much thought. Clearly, that is not case today. First, I want to say that we appreciate the working group's recognition that there is bycatch in a number of small-mesh fisheries and not only in the mid-water trawl fleet.

We also support the conclusion of Amendment 2 that states "quantifying current levels of river herring bycatch is essential to determining stock status and implementing management programs." As you know, the New England Council is now developing Amendment 4 to the Herring Plan. One of the priorities to the amendment is to focus resources to

better understand the bycatch of river herring species in the herring fishery.

Last month, recognizing this concern about the herring fishery and I think also recognizing the fact that river herring bycatch exists in other small-mesh fisheries in the Northeast Region, the National Marine Fishery Service's Northeast Fisheries Observer Program reprioritized observer coverage in the Northeast Mid-Water Trawl Fleet, to increase observer days from 123 days to 433 days, which the SBRM preferred alternative.

In the Northeast Small-Mesh Trawl Fleet observer days this year will increase from 129 to 1,019 days, about one-quarter of the 4,000 days identified as the SBRM preferred alternative for that fleet. In addition, our organization has asked congress to fund observer coverage in the Herring Fleet at the same increased level in FY 2010 and possibly beyond.

We're also asking for half a million dollars to increase the scope of the ongoing Shoreside Monitoring Program, which focuses on the herring and mackerel fisheries from Maine through New Jersey and is run by Maine DMR using expiring ACCSP funds. We appreciate the use of those funds over the last two or three years to develop that Shoreside Monitoring Program.

This funding that we're seeking would increase shoreside monitoring of catches from about 10 percent to about 40 percent of the traps landed in addition to the fleet being covered with observers at the level that I just spoke about. Over the next couple of years we will have better data from these fisheries so that bycatch mortality in river herring species can be better quantified relative to the other threats facing river herring like habitat loss, nutrient loading and irrigation.

We don't agree with the statement in the AP Report that reads, "The problem with bycatch is significantly impacting coast-wide river herring populations." We believe this is simply not known. Existing data that is available has been called preliminary by technical committee staff and people have been cautioned in using it at this point in time.

We recognize the need for additional data to better understand the effect of ocean bycatch of river herring species, and we look forward to working with the commission. We will continue to cooperate with the observer program to help gather this data. We look forward to this data being analyzed in the context of other manmade impacts known to threaten the sustainability of river herring runs in the region.

Then on a more personal note, I have been in Maine a long time. I had an opportunity to serve four years in the Maine Legislature on the Marine Resources Committee. I appreciate the commission's posture in terms of allowing a state to determine that its directed fishery can be managed sustainably. I think that is certainly the case in Maine.

We have been working closely with the Alewife Harvesters of Maine to allow them to better understand our fishery. I think that they're doing a tremendous job. Maine has traditionally managed its marine resources in a sustainable way, and I think that's certainly the case in river herring. I think the program in Maine could benefit some of the other states as you might consider opening up directed fisheries in some of the other runs that are in good condition in New England. Thank you for the opportunity to make this statement this morning.

CHAIRMAN DIODATI: Thank you. Mr. Kaelin, would you stay a minute. Is there anyone from the board that would like to ask Mr. Kaelin any questions? That was a very thoughtful and articulate presentation. I have one. You had mentioned that the at-sea observer coverage has been increased by a great number. Do you know what the percentage of coverage would be after the increase?

MR. KAELIN: I am not really sure what the so-called SBRM coverage rate is. Thirty percent coefficient of variation gives you a precision of – I never did take statistics in college and ended up with a master's degree without statistics, thank goodness. I assume that is probably going to be in the neighborhood of 40 percent or something like that, Mr. Chairman, but I don't know for sure.

The council also took some action, which is not related to your discussion today, about increasing observers at a rate of 100 percent in the groundfish closed areas. We have some real serious problem with that kind of coverage. I don't think, from what I've been able to understand in following the SBRM Process both in the Mid-Atlantic and the New England Council, that anything near 100 percent observer coverage will give us a good idea of what is really going out there.

Certainly, we're willing to take the observers when asked. We have to notify the Fisheries Service 72 hours before we sail, and normally it is kind of a blanket notification to them that we may fish on a particular day. In addition, of course, we have to notify NMFS Enforcement within six hours, I think it is, before we land, and that's where that Shoreside

Monitoring Program I think benefits our understanding of what is going on out there. So, maybe 40 percent, to answer your question, but I am not absolutely certain.

CHAIRMAN DIODATI: And this intent to increase observer coverage that is being initiated by the council, when do you foresee the implementation of that increased coverage?

MR. KAELIN: According to the document that the New England Coordinating Council published April 1<sup>st</sup>, that coverage will be applied beginning May 1<sup>st</sup> of this year, the beginning of their year, the way that they're allocating the date, so immediately I think is the answer to your question, Mr. Chairman.

MR. WILLIAM GOLDSBOROUGH: Mr. Chairman, just a comment, really. First, I want to thank Jeff for his thoughtful and informative comments. I know there has been a lot of vitriol over the last couple of years on these issues. In that light especially his remarks have been quite reserved, and I appreciate that.

I do note the use of the words "anti-fishing groups" and I'm sure there have been some over the last couple of years that fall in the category. I want to note that in my experience over recent months, working with the dedicated conservations that are concerned about river herring stocks, that they do not fall in that category and in fact quite the opposite. Their main objective is to bring these stocks back to a healthy level where we can maximize their benefits from fishing. Thank you.

MR. KAELIN: I appreciate Mr. Goldsborough's comments. Sometimes I shoot from the hip, but I'm not the only one in the room.

MR. G. RITCHIE WHITE: Jeff, I think I heard you correctly where you say you are opposed to a hundred percent coverage in the closed groundfish areas.

MR. KAELIN: Well, forever, you know, and we have actually asked the Fisheries Service for a meeting to discuss this; I mean, how long will that take place. I don't want to spend a lot of the commission's time on the groundfish closed areas, but there is very little biological impact that has been demonstrated from those activities out there. We catch some haddock, but we're well under the cap.

We're really kind of surprised at the approach that the council took, and we hope that the Fisheries Service will determine – and the council – and how long that shall take place. I mean if you want to do it

for a couple of years, I suppose you will have better data, but I don't think you need to have that level of coverage forever to know what is going out there.

We're very confident taking these observers particularly in the groundfish issues because it is a clean fishery. It has always been a clean fishery, and all the data that we have shows that the bycatch of groundfish species of concern is extremely low. Again, we're not even taking the haddock catch cap, which is only 0.2 percent of the haddock TAC, only 30 percent of which is being harvested in the region right now. Those are some of my comments about that.

I don't think anybody else came here to talk about groundfish closed area observer coverage, but we're going to have higher observer coverage out there. I don't think we'll get a lot of river herring data from that particular application of observers from the charts that I've seen, that some of us have seen that the observer program has developed.

I guess my point really is that we take this seriously. We have got a meeting with our captains on May 20<sup>th</sup>. We're focusing on the next assessment for herring and mackerel, too, but we want our captains to understand that there is concern about river herring bycatch at times in areas. We have actually tried to stay out of that Block Island Sound area to the extent possible.

We want to do a better job of communicating with the fleets out there; not only our fleets but the bottom-trawl small-mesh fleets about where river herring are being found because they could be there one day and not the next. That's kind of the nature of this bycatch. I think some of the reports show, I think, 70 or 80 percent of our trips doesn't take river herring at all.

There are some trips where there is more concern. We are going to address it seriously. As I said earlier, we never even knew this was an issue until a couple of years ago. We're looking forward to providing the commission with better information as time goes on, I guess. That's all I wanted to say.

CHAIRMAN DIODATI: Thank you, Jeff. No more questions for Jeff, I think we will move on. Any other comments from the public at this time? Lara.

MS. LARA SLIFKA: Lara Slifka, Cape Cod Commercial Hook Fishermen's Association. I do really appreciate Jeff's comments. I know that he and I have sat down and talked quite a bit about river



herring bycatch in the past. He did attend the Alewife Harvesters of Maine's annual meeting, as did I, and he did sit down and talk about river herring bycatch.

I do have some concerns, and this doesn't just relate to bycatch issues. Although some of the newspapers are reporting that river herring populations are on the rebound, I am not quite positive where they're getting their information. The positive report doesn't represent the zero pounds that volunteers continue to count in our local runs.

Two manmade runs in one of our towns, one of which has been eliminated due to homes and cranberry bogs, but the other is in fairly good condition as is the water quality of the pond. The fishermen used to remove 100,000 alewives from the runs, and this is average; this wasn't high. Currently the population is estimated to just be over 1,000 fish. This isn't abnormal for Cape Cod Rivers or many other rivers in Massachusetts.

The small populations of river herring are being eliminated, and river herring are going the way of the Atlantic salmon. Fishermen are starting to lose faith that the populations will ever rebound. Local citizens are losing heritage. It isn't okay for fisheries' managers to look at this lightly or say that it is a political game because the only witch hunt is the hundreds of volunteers that are standing at the streams waiting to count one, and that's just one river herring swimming upstream.

The letters written to the federal councils just will not suffice. Someone who doesn't know anything about the fish will not take it seriously, nor is there a mandate for the federal councils to actually take any actions. The ASMFC has the responsibility to lead in the protection of river herring and shad. Although the observer program is going to increase coverage in the sea herring fishery, there are other fisheries out there that do take river herring as bycatch. As well, where the observers are placed will not necessarily correlate to where river herring are being caught at sea. Thanks.

CHAIRMAN DIODATI: Thank you, Lara. Lara, one of the board members has a question; do you mind?

MR. PATTEN D. WHITE: Thank you, just a clarification, if I might, Lara. In the beginning of your presentation you kept referring to our rivers. Are you referring – you said you went to the Harvesters of Maine – are you referring “our rivers”

in Maine and Massachusetts or Massachusetts or what?

MS. SLIFKA: Primarily Massachusetts.

MR. PAQUETTE: Once again, Patrick Paquette, Massachusetts Striped Bass Association and Recreational Fishing Alliance. On April 1<sup>st</sup>, as has been the case for the last 23 or 24 years, our organization brought our average of a little bit over a hundred volunteers down the herring run in Weymouth, Massachusetts, to clean the run.

Very surprisingly, the local deli owner came running outside this year and asked where we have been. We explained to him about the whole moratorium and this is why the fishermen haven't been around. He said to us Saturday's aren't the same. There is a hotel and deli along the Cape Cod Canal that is empty this week.

That hotel a few years ago you couldn't get near a room at this time of the year. The fishermen aren't necessarily fishing the Cape Cod Canal the same way they used to be. This is a world-famous destination written about in over a hundred books. Five years ago the state of Massachusetts, with support from recreational fishermen, had to make the decision that a moratorium on the recreational harvest of river herring was not only needed, that it was probably our only way to stop losing complete runs.

We have stopped at least 20 percent of the harvest of the manmade mortality when that moratorium went into effect. To this day we have not seen 10 percent return after giving up that 20 percent. In the last ten years we have seen the habitat increase to the benefit – our habitat is significantly in better shape over the last ten years.

The state of Massachusetts, with money from all different kinds of areas, has put millions upon millions of dollars, has built some impressive fish ladders. I currently serve on the Neponset River Citizen's Advisory Committee for the legislature of the state of Massachusetts. We just got by an age-old problem – or on May 26<sup>th</sup> we will announce a negotiated solution to one of the major rivers that feed Boston Harbor to try and return that river herring run.

All of this work is not returning, all of the money being poured into habitat improvement and restoration is not yielding in Massachusetts the results that it should be. We have gone through one complete life cycle of river herring since our

moratorium came back. We get back 20 percent harvest a year. We haven't seen 10 percent. There is another problem, not the only problem, but there is another problem.

The commission is faced with – I listened last month and heard commissioners honestly use words and compared the situation with river herring to the early days of the striped bass collapse. That was a dramatic conversation which cannot be left behind. I am not just speaking about Massachusetts.

My colleagues in Rhode Island – a lot of you got a letter this week that was signed off by – and I will tell you how severe this question is. Those of you who are – well, you're all fisheries' managers. Pew-funded groups and the Recreational Fishing Alliance signed the same document. That is an unprecedented behavior. Some might say that the two organizations hate each other.

However, we feel it necessary because we feel that the status of these fish is in that kind of trouble. The other half of my advocacy work is that I'm a shore-access specialist. I've served in many of the states that you guys represent. The Endangered Species Act scares the death out of me, but I think it may be the only thing if this commission and the councils fail to get some improvement.

I think it may be the only thing left, and I don't want to see it go back there. I want to be able to fish river herring again. I want my kids to be able to fish river herring again. I haven't seen anybody come commit – I haven't seen any proposals for a buyback of the millions of dollars in live wells that recreational fishermen own.

I don't know a guy who doesn't have a dead \$200 or a \$150 live well sitting in his garage because we have lost that. The largest source of known mortality is the at-sea bycatch, not just in the one fleet, not just in the Atlantic Herring Fleet. The small-mesh bottom-trawl guys down around Block Island, absolutely they're a part of it. The bycatch has to be addressed, and we all thought it was going to be addressed here.

I have attended every council and Atlantic Herring Technical Committee Meeting for the last year and a half. In the last 18 months, the most current schedule that the Lori Steele and the council announced was that the new bycatch measures in the current amendment are going to have to wait until the either one- or three-year specification package is done, and we're looking at three to four years before implementation of the current Atlantic Herring

Amendment that will have the bycatch measures if it doesn't get bumped into the next amendment because of staff time.

We are looking at legitimately four years before implementation at sea of the current Atlantic Sea Herring Amendment, four years. That's Lori Steele's words. There are quite a few ways that you guys can get the minutes from that or you can listen to the tapes. We have got them on line these days.

We're looking at four years, so in Massachusetts we're going to be looking at, probably, seven to nine years or moratorium on the recreational harvest before bycatch measures go into effect from the Atlantic Herring Plan. River herring are not being – there has been zero discussion about river herring being included as a stock under the Atlantic Herring Plan.

National Standard 1 allows that and that is not being spoken about. At the Mid-Atlantic Council the query on the mackerel trips that were reported at the last Mid-Atlantic Council Meeting was only on trips that harvested 45,000 pounds or better of mackerel. There was a significant number of mackerel trips or of trips that were supposed to be fishing for mackerel that were not included in that query.

To this day we have not had one query run to have the total known river herring, not to mention that the unknown herring or the identified herring are at least as much as the river herring, so we don't know. One last comment about something else that was reported this morning; at the council meeting I heard the reports of all of this increased observer days. It was my understanding that a significant portion of the increased observer days was going to go directly into that Area 1 Groundfish Closed Area observation.

So, I would really like to have that question answered when we get back to the council, and we will ask it a bunch of times. But are the increased observers going to groundfish closed areas or are they going to the fleet in general because I'm absolutely positive that this increased observer coverage was going to go into the Groundfish Closed Area 1 issue with haddock.

River herring is not being addressed at the council; not at the New England Council nor at the Mid-Atlantic Council. It is being spoken about mildly but not in the way that it can, and the recreational fishing community is really relying on the commission to take significant action to at least answer the questions. That all my organizations are asking is

let's answer the questions, let's know what is happening. Then you can take appropriate action. Thank you.

CHAIRMAN DIODATI: Okay, I'm giving a lot of latitude to the members of the public this morning because I know you've come a long way and we're about to adopt an important amendment. I hope we will. I will continue to take some comment, but I'm going to warn you that your comment may be limited later in the morning because we're taking so much time right now. Mr. Leo.

MR. ARNOLD LEO: Arnold Leo, consultant for commercial fisheries, Town of East Hampton. Two points, briefly. One is one of our most experienced trawler captains in East Hampton works out of Montauk. He was reporting that he was catching a lot of blueback herring, and Steve Hines of our New York State DEC thought that was very interesting and asked me to bring him some samples of these blueback river herring.

I met this captain at the pack house in Amagansett and I got eight fish from four cartons that he had brought in, and Steve Hines determined – now, this is a sea captain who comes from a fishing family that has been fishing for 300 years. Steve determined that these in fact were Atlantic herring and not blueback herring. This captain had been reporting these as river herring.

Now, the reason I bring this up is it is hard to tell and especially when you're at sea the difference between these species, and so I caution that this observer program, especially when the days at sea are real rough, may produce some questionable information and maybe an education program for the observers is very much in order so we don't make the same mistake in large numbers of observations that this sea captain has been making all along.

The other thing, and very briefly, hey, look, I think river herring is another one of those populations that like to come inshore and breed, which are just adored by the striped bass of which we have too many. So once again I can't understand why with ecosystem management we're not increasing the commercial quota on striped bass. Thank you.

MR. JEFFREY PIERCE: Mr. Chairman, my name is Jeffrey Pierce. I'm the executive director of the Alewife Harvesters of Maine. We would like to thank the technical committee for their good work they've done on this amendment. We agree with most of it. We are in negotiations with Jeff Kaelin's

group and another fisherman about bycatch, to reduce tow times in sensitive areas. This is something we're going to continue to work on.

We would ask this commission to look at habitat. It seems to be the biggest issue that we see as a problem with river herring. The St. Croix in Maine could stand to be opened. We working on trying to get the Penobscot River opened. We would ask that the habitat be looked at as what is one of the more significant issues with river herring. Thank you.

MR. BROOKS MOUNTCASTLE: Brooks Mountcastle, Marine Fish Conversation Network. I don't have a lot of comments beyond what some of the conservation communities have provided to date. I do want to encourage the commissioners, before they make any votes today on this issue, to take a look at the banner in the back of the room and you will see a wide breadth and depth of organizations represented from Maine to South Carolina.

If you're interested in fly fishing, there are groups there that have signed it from fly fishing community. There is the Charter Unlimited that has signed it. There are environmental organizations, there are conservation organizations. These are your constituents, these are your stakeholders. They certainly haven't voted for you but they send you here or they expect you to do the work that is required to conserve the species and do what is appropriate for the resource.

That is what we're asking for you to do today is do what is appropriate for the resource. I don't know what action you're going to take but simply sending a letter to the New England Council or the Mid-Atlantic Council is not going to cut it. This is simply kicking the can down the road and making it someone else's problem.

We all know that when we amend a fishery management plan it takes three to four years at the minimum, and river herring, unfortunately, does not have that time. They're not afforded that kind of time to wait around until managers decide what action to take. I encourage you to take the steps needed to address the issue of bycatch and help conserve river herring. Thank you very much.

CHAIRMAN DIODATI: Before you leave I have a question. That is an impressive list of signatories back there on the wall. I guess my question would be what is it that you think was the common thread that those folks that signed that banner; what is it that

they think that they're asking for, conservation of river herring, recovery?

MR. MOUNTCASTLE: The predominant focus of the letter that those organizations signed on to was reducing at-sea bycatch. We looked at Matt Cieri's presentation, which you have seen many times over, and we believe that the bycatch is significant and perhaps is even greater than what the initial study has presented.

Those groups signed that letter calling on ASMFC to reduce at-sea bycatch. They aware that river herring numbers have fallen to single digits in many rivers and they're very concerned about the long-term recovery and productivity of river herring; and by continuing to allow the at-sea bycatch that is occurring, we're denying future generations of river herring to repopulate the rivers and the oceans.

## **DRAFT AMENDMENT 2 FOR RIVER HERRING**

CHAIRMAN DIODATI: Okay, thank you. Anybody else, anyone else in the audience? Okay, thank you. We're going to move along with the agenda items. You will recall at the February meeting the board was not quick in adopting some of the measures that were put before them for Amendment 2, so it was decided that we would break up into a working group. That working group has met during the interim since the last meeting, and I think Kate has some information on the proceedings of that meeting and the outcome.

### **WORKING GROUP RECOMMENDATIONS**

MS. KATE TAYLOR: Copies of both Amendment 2 and the working group recommendations were included on the briefing CD. If any commissioners would like a copy, please let the staff know and they can distribute that to you. At the February 2009 Shad and River Herring Management Board Meeting the board determined a need for further discussion and clarification on many of the issues contained in Amendment 2 and created working group comprised of a subset of Board, PDT and TC members.

This working group met in February and in April to develop these recommendations presented today. Board guidance provided at the February meeting for the working group included the development of a basic level of resource protection that all states must adopt and the development of definitions of what constitutes both a sustainable fishery and excessive bycatch.

This working group endorses Option 4, which is close fisheries with exceptions for systems with a sustainable fishery for both the commercial and recreational management measures with some modification and clarification. Systems with a sustainable fishery are defined as those that demonstrate their alewife or blueback herring stocks could support a commercial and/or a recreational fishery that will not diminish the future stock reproduction and recruitment.

Under this option in order to maintain a commercial or recreational river herring fishery, states or jurisdictions would be required to develop sustainability targets that meet this definition, which will include specific and practicable criteria for current management and are based on the best available science.

These targets that will be developed can be applied statewide or can be river and species specific and can also be cooperatively developed. These targets should also include a quantifiable means of estimating improvements in populations. As new information becomes available, states should review and update these targets in a timely manner.

The working group recommendations contain examples of what these targets would look like, and they're up here. States and jurisdictions must also submit a management plan that describes how the fishery will be conducted and monitored and detailed how annual monitoring will be conducted and which will show that the sustainability targets are being achieved.

If a stock is below optimum levels the management plan must detail restrictions that will be enacted to allow for an increase in the spawning stock abundance and juvenile recruitment. If a stock is at optimum levels, then that level will need to be sustained. The frame of reference for determining the optimum level will vary from system to system, but it should be based on an appropriate time scale.

The working group tasked the technical committee with the initial review of these plans, and the annual review will be conducted by the plan review team. The management board will have the final authority to permit an alewife or blueback herring commercial or recreational fishery on any system under its jurisdiction. States and jurisdictions would be required to submit these sustainability targets and corresponding management plans on July 1<sup>st</sup>, which corresponds with the compliance report requirements for shad and river herring.

The working group proposed, with the exception for monitoring that would be required to meet a sustainable fishing target, all monitoring proposed in Amendment 2 be considered recommendations to states and jurisdictions to implement as feasible and where possible. The results of these monitoring must be reported annually in the compliance reports.

The working group recognizes the potential of bycatch to adversely impact some systems more than others depending on how river herring are schooling while at sea. The working group also recognizes that more information is needed through increased bycatch monitoring on these and other small-mesh fisheries that may impact river herring populations which could influence these findings.

Since ocean bycatch is not under the jurisdiction of ASMFC, the working group affirms the board's decision to send a letter to the Fisheries Management Councils advocating for monitoring programs to provide estimates of bycatch and discarding at sea; time-and-area closures with special attention given to Gulf of Maine, Cape Cod, Cape Ann, Block Island and the coast of New Jersey and Long Island during Quarters 1 and 4; and other options to be considered, including bycatch limits by gear type and/or fishery. These letters have been sent to the councils in April. That concludes my presentation of the working group recommendations.

#### **DISCUSSION OF WORKING GROUP RECOMMENDATIONS**

CHAIRMAN DIODATI: Questions for Kate? Mr. Augustine.

MR. PATRICK AUGUSTINE: Very well presented, Kate. Excessive bycatch, in that part of your report I just read the working group recognized the potential of bycatch to adversely impact some systems more than others depending on how river herring are schooling at sea. But here you're going on to say they recognize that more information is needed to increase bycatch monitoring.

And as Jeff and others in the audience noted, it is going to take some time to do that with the observer program and so on. Is there any way that the technical committee could go back and review existing catch rates for those small-mesh fisheries that could have or have had substantial impacts on river herring in the past?

I know there is some reporting done, but I'm wondering if there is some way that the technical committee could mine that data to see if in fact we could take more appropriate action quicker. I'm not sure the technical committee can do that, Kate, but if you could try to answer that I would appreciate it.

MS. TAYLOR: Matt Cieri has gone through the observer data bases to provide presentations to both the technical committee and the board, and he is continuing to work on looking at that data.

MR. AUGUSTINE: Just as a follow-on, Mr. Chairman, so then just based on that I guess there is no way we could come up with any quicker action or do anything other than go for more research and data collection? We have to wait that cycle?

CHAIRMAN DIODATI: Well, not necessarily; there may be other avenues of opportunity, but I think that work has been done by the state of Maine and Massachusetts to mine the data bases, as you put it, to determine where and when the potential for bycatch to increase in some at-sea fisheries. There are some opportunities that we might discuss as discussion goes forward later this morning.

MR. AUGUSTINE: And then just one follow-on, Mr. Chairman, if you don't mind, earlier on in the presentation we noted that the – I want to say "offshore" – the large fishing vessels maintain a level 1 to 4 percent of bycatch, and 1 to 4 percent doesn't like much but if you have a vessel that is going land 100,000 pounds a clip, that 1 percent or 4 percent variable can amount to a heck of a lot at one particular time.

I just wanted to make sure that we're aware of that difference. I think the bycatch issue as far as our large commercial vessels is concerned, they're doing a very credible job, but, again, I'm looking forward to more observer coverage, too. I think we have to reduce that wherever we can during this rebuilding cycle. Thank you, Mr. Chairman.

MR. GIL EWING: Mr. Chairman, I just have a question on this Option 4 of system-by-system basis. Could you describe what a system-by-system basis means? Is it just like the Delaware Bay Estuary or are we talking about the Delaware Bay, the Delaware River and all of its tributaries? That is rather extensive so we need to know what a system by system constitutes.

CHAIRMAN DIODATI: It was my understanding during the discussion that the systems actually referred to specific fisheries, which could go down as

fine scale as a river system. Was that the understanding that you folks had? So, it did go as fine as a river system, so it is somewhat finer in scale than an estuary.

MR. EWING: So now you're saying the river and its tributaries; is that what you're saying?

CHAIRMAN DIODATI: I believe that was the intent. Robert.

MR. ROBERT H. BOYLES, JR.: I've raised this question before and I would like some clarification from staff for the management board. Noting on Page 76 of the draft, regarding the management unit it specifies land-locked populations are not included in the management unit. I would just like some clarification.

In my state we do have land-locked populations that are connected to lower river systems with fish lifts. I would like some clarification on the status of those populations behind those dams; are they included or are they not?

CHAIRMAN DIODATI: It would be my guess that if they are connected by some kind of passage system, then that is essentially your brood stock up there, that's your spawning ground; and it would seem that if there is a fishery that takes place on those fish, then I think that would still be included in this provision that is being discussed. Any other questions about the working group? Wilson.

DR. WILSON LANEY: Robert, to that point, I think that language was intended to cover cases where there have been stockings of blueback or alewife in inland reservoirs in some cases without agency assent or plan, such as in Lake Norman. I think you're familiar with that situation in North Carolina where those species were introduced by well-meaning anglers to augment the striped bass forage base and then subsequently have developed into problematic species in some cases.

I think that was the intent. I know that you have sort of a unique situation there with Santee-Cooper where you do have animals that are probably coming down from upstream reservoirs mixing with sea-run animals that are coming up through the fish passage devices. How you would ultimately split those out, I don't know.

I guess one way to do that is there have been otolith microchemistry studies that clearly can distinguish between those because they don't have the stanchion

spike, I guess it is, that they get from going to the ocean. Also, those inland reservoir populations tend to be stunted and much smaller than the sea-run ones. But I think the intent here is that those deliberately, purposefully stocked populations not be addressed by the amendment.

CHAIRMAN DIODATI: Anyone else? Okay, before we move forward, I am going to, if there is no objection, step down and join my delegation so I can participate in the discussion. I will ask Bob Beal to act as Chair for the remainder of the meeting.

MR. ROBERT E. BEAL: The vice-chairman of this board is Malcolm Rhodes and he wasn't able to make it to the meeting, so Paul has asked me to come up and stand in as chair while he participates with the delegation from Massachusetts. The next item on the agenda is the technical committee comments on Draft Amendment 2.

#### **TECHNICAL COMMITTEE COMMENTS**

DR. ROBERT SADZINSKI: The TC reviewed the workgroup recommendations via conference call on 29 April, and the TC made the following recommendations. The TC accepts the working group's definition of "sustainable fishery" with some modification. The TC notes that any fishery directed or bycatch will diminish future stock reproduction and recommends that the "sustainable fishery" definition be amended as follows: "those that demonstrate their alewife or blueback herring stock could support a commercial and/or recreational fishery that will not diminish the potential future stock reproduction and recruitment."

The TC reviewed the workgroup recommendations and have made the following recommendations. The TC would recommend that sustainable fishery targets be applied regionally which will assist states that may not currently have adequate state monitoring to successfully petition for a river-specific fishery.

The TC agrees that all proposed management plans which include these targets should be reviewed by the TC before board consideration and approval. Under Amendment 1 there is no mandatory monitoring for river herring, and the board should recommend status quo or more restrictive measures for river herring until Amendment 2 becomes enacted.

Some general discussion points concerning the working group recommendations. Doing Option 4 alone would close approximately 80 percent of the

in-river herring fisheries on the east coast. If the board approves state closures, the reductions of at-sea river herring directed or bycatch fisheries will likely benefit through increased catches.

The recommendations put a specific burden on jurisdictions by closing river-specific herring fisheries that have little or no monitoring data. Jurisdictions cannot increase monitoring due to budget and monitoring constraints. Additional financial support may not be of assistance to states with present hiring freezes.

The TC recommends an option that gives states more flexibility. The inclusion of a modification of Option 2 with Option 4 is recommended by the TC; modify Option 2 to reduce harvest in all areas unless a state can show that a river has a sustainable river herring fishery, which is Option 4. The board should recommend status quo or more restrictive measures for the river herring until Amendment 2 becomes enacted.

The TC also recommends the development of a clearly defined timeline for implementation of the amendment, which the TC came up with the 2012 date; an addition of an addendum to Amendment 2 documenting state mandatory requirements as outlined in state-proposed management plans.

For states that have closed river herring fisheries, the TC recommends mandatory river herring bycatch reporting and also board support for restoring funding through the Anadromous Fish Restoration Program. As far as bycatch the TC would recommend fast-track implementation of the ACCSP Bycatch Module, which is a multi-species bycatch plan, but may need to be more inclusive for ocean fisheries.

The TC would recommend increased portside sampling and increased observer coverage; formation of a focus group including ASMFC, the Northeast and Mid-Atlantic Councils to draft significant river herring reduction plans for the ocean, reduction of river herring ocean landings and discards and mandatory in-state and ocean reporting of river herring.

The TC responsibilities under Amendment 2 include reviewing state-specific management plans and make recommendations to the board for sustainable targets and implementation plans, which is Option 4, and also to review harvest reduction plans. Also, the TC will be reviewing annual compliance reports. Thank you very much.

## **DISCUSSION OF TECHNICAL COMMITTEE COMMENTS**

MR. BEAL: Thank you, Bob. Are there any questions for Bob? Tom Fote.

MR. THOMAS FOTE: Somebody brought up the fact that, you know, we did striped bass, we did a lot of that work back in the eighties when we thought it was a serious situation. Also, congress put a lot of money and the Fish and Wildlife Service and the National Marine Fisheries Service put a lot of money to basically help restoring the stocks.

I mean, hatcheries were basically set up, stocking went on and there was tons of monitoring. You know, I'm looking at these monitoring requirements and has anybody got an estimate of how much – I mean, I'm just looking at the Delaware River, to do every tributary, every monitoring that goes on there. Basically there is no way the states can afford it at this time.

We don't have a trillion dollar stimulus package to basically draw from; and unlike the federal government at the state level you can't print money. You're required by the constitution to have balanced budgets. We have a hiring freeze which they don't have at the federal government. So, you know, I'm looking at we need part of this and maybe put a request in the stimulus package to do something like this because this restores jobs, it restores an industry. Without that type money – I mean, do you have any idea of all this monitoring, how much it would cost up and down the coast?

MR. DIODATI: I would like to just try to ask some questions and maybe put in context what the bycatch levels are, what it really means and how it weighs into the factor or mortality. We have heard a lot in terms of concern from the public about at-sea bycatch being excessive and a major concern certainly for a lot of groups that have signed this petition in the back of the room.

We have also heard from the technical committee that they have concerns about the potential for high levels of at-sea bycatch. I think that is the context we have to think about that there is potential. I think we all agree that there is potential for very high catches; even an individual catch on one day could be high. But what has been measured – and I think that the states have done a good job of that recently in trying to determine what those levels really are.

What has been measured is levels in the highest years seem to rival the current directed harvest of river herring, which is already restricted by moratorium and other measures to a very low level, so that level of bycatch is on the order of two or three million fish, I believe, and that is what seems to be rivaling the directed harvest.

So when you make the comment that it rivals the directed harvest and that's why we're concerned about it is erroneous, in a sense, because the directed harvest is under severe control in most of the states that have large catch or potential for a large catch. It is also erroneous when you consider that bycatch level of two to three million fish, in a state like Massachusetts we probably still have – even though we have a condition of very low levels of abundance, the actual numbers of river herring are probably on the order of about 10 million fish.

So, 2 million in context to that – and that is just Massachusetts – is not a relatively high percentage. I am also concerned that we haven't heard much discussion about concern for predation. The striped bass, clearly from earlier discussions we know that the coastal population – the whole population is 50 or 60 million fish, but if there are 25 or 30 in the migratory stock and they all ate one herring during the year, that's sounds like a much higher level of concern to me than the bycatch.

Again, if I'm saying anything that is inconsistent with the technical committee's understanding of that, I guess I need to hear that, but that is my understanding. So in order to put it into context I have to have a good understanding of what the context is for me to make the right kind of decisions as we move forward. I guess my question, Bob, is my understanding correct?

DR. SADZINSKI: The problem, obviously, is data. The bycatch data is very difficult to interpret, it's highly pooled, CVs are very high so reliability is somewhat questionable. The Massachusetts report I think summarizes it very well in the sense that the average is about 2 million herring landed per year over the last three years, and in-state landings are approximately 1 million pounds, as you stated. That is the best available data at this point. That is why the TC recommends decreases in ocean bycatch.

MR. BEAL: Any other questions for the technical committee? Tom.

MR. FOTE: Yes, I kind of asked the question and never got a real answer on it. Is anybody looking at

the total estimated cost to do the monitoring to allow streams to stay open is going to be, and are we going to do that so we have at least an idea of what the value is and the money to go congress to properly try and get that is necessary to do this type of operation?

MR. BEAL: I have not seen an estimate of the total cost of all the monitoring that could be included if all the recommendations in Amendment 2 are implemented.

MR. FOTE: Well, then, isn't it important that we basically do that so we have some idea of the funds necessary to do that? I mean, it's all well and good to say we're going to do this and put – and I've been around long enough to see a lot of documents that we were going to implement and monitoring and realized there is no money and we start voting states out of compliance and then we allow them to be out compliance because there isn't the money to do the monitoring.

It would be nice to have some kind of at least ballpark figure that we could look at basically when we vote on this so we understand what the implications are for the state and for the agencies that are going to do this because I want to see the money. I mean, show me the money as the old expression goes.

MR. BEAL: Bob, do you have a comment from that?

DR. SADZINSKI: Just concerning a comment following that; the TC did kind of straw polled via e-mail this week figuring out where all the data was; did we have data on these systems? So far we have 117 river systems that have river herring runs. Forty-six of those have moratoriums, leaving 71. Approximately 28 percent of those have data, leaving approximately 72 percent that do not. That's why I gave the figure of approximately 80 percent of the river herring runs would be closed if you went with the sustainable fishery definition only.

MR. A.C. CARPENTER: I would like to carry on with what Tom has started with here. All of the discussions and options here, there is a massive amount of monitoring and a massive amount of monitoring and sampling and an awful lot we're going to need. I really believe that in a document this size and with the potential onerous requirements; that I think we need a chapter in here of estimated cost to comply with this management plan.

How much is it going to cost a state to do the monitoring that any of these options outline because



we don't have any new money to fund any of this work. The Atlantic Coastal Cooperative Act, we haven't had an increase in that since we got it. As a matter of fact we're getting less money.

All the monitoring that we're doing now for eel and other things is costing us more every year, and we just don't have the money. So, is the option that we're going to be left with is just a total moratorium and then you never get to reopen it because you can't monitor it?

I really believe that – and it is an issue larger than just this Amendment 2 – that all of these amendments that require additional monitoring that we need to build into the plan itself, the amendment itself an estimate of what the monitoring costs are going to be in today's dollars so that at least we have some appreciation for what we won't be able to do.

MS. MICHELLE DUVAL: Bob, just a quick question. I was wondering in light of the fact that you all are gathering data for the upcoming stock assessment if the TC had the opportunity to discuss prioritizing some of those monitoring components that would be most critical for completion of the stock assessment?

DR. SADZINSKI: No, we really haven't looked at that.

MR. DIODATI: I think that the states that have active fisheries and runs that remain healthy are typically runs that already have some level of study or monitoring in place. At least that was my understanding, and so the level of additional monitoring might not be as great. Certainly, if you have incidental runs or fisheries, small ones that are currently not being monitored, I could see where they would fall by the wayside, but in a restoration effort such as this that wouldn't be unusual.

That's exactly what happened during the recovery efforts for striped bass. One of the first things required was extensive levels of monitoring for commercial fisheries. Some states couldn't afford it or didn't want to budget for it and those fisheries remain closed today. I think one is Maine. New Hampshire is probably another that might have followed that pattern.

So, it's not unusual. It might be considered unfortunate, but I think that the board needs to remember that it's really the in-state fisheries that we have the most control over from this forum. There has already been a lot of discussion to move beyond

this forum and to apply pressure to fisheries that are in the open ocean and under management of different management plans by councils. So, certainly, if we're willing to take that step we should at least be looking as earnestly as right at home at those fisheries that are right under our nose.

MR. BEAL: Any other questions for the technical committee? Ritchie White.

MR. R. WHITE: Just a comment. I know the finances are extremely difficult for the states, but when I sit down at this chair I first take the condition of the species as my foremost duty. You know, here is a situation where we have a species in an extremely difficult situation, and I think that even though money is important that that has to come first. I think that until I hear some other option that says, okay, we don't have the money but let's do this I'm going to have to support actions that are going to protect these species to rebuild. Thank you.

MR. ROY MILLER: Tom, I did some back-of-the-envelope calculations while we were talking; and if we have 117 systems, as Bob told us, 47 are being monitored and about 84 are presently not being monitored, if I heard Bob correctly, so if you did a back-of-the-envelope calculation, I wanted to frame the dollars for you on what might be needed for monitoring.

I just took a figure of \$15,000 for studying a small river system as a minimum estimate and I took \$100,000 for larger river systems as a reasonable estimate for monitoring costs. And to put it in that context of the 46 being monitored, the costs would run between \$690,000 to \$4.6 million. Now for the 84 not being monitored the costs would be \$1.26 million to \$8.4 million. That gives you some framework at least for the dollar amounts that might be necessary for monitoring these systems.

MR. P. WHITE: Just a clarification if I could, Bob; you said that the overall catch was 2 million. Is it 2 million pounds or 2 million fish?

DR. SADZINSKI: It is 2 million pounds, but in the sense of ocean bycatch they're probably sub-adults, most of those fish, but we do not have a good estimate of how many fish actually that could be.

MR. DOUGLAS GROUT: Just to give you folks an idea of cost, we monitor six rivers within our tiny 18-mile coastline of fish ladders. This is maintaining and monitoring those fish ladders. We have a Juvenile Finfish Survey throughout our state. We also

monitor our harvest. The overall cost of all these programs for the tiny state of New Hampshire is about \$450,000 a year. This also includes trap and transport operations. You can use your guidance from that.

MR. FOTE: I am not trying to belabor the point. What I am trying to do is get an estimate. I mean, the total budget in New Jersey for marine fisheries is \$3.1 million. I am trying to put this in perspective of what I have to spend out of that \$3.1 million. With that I do striped bass and the state does everything else.

The other factor is even if there was a big influx money – say, New Jersey actually did something with a license or something like that and generated the funds, because of hiring freezes – and a lot of the states are feeling the same thing – we can't hire the personnel. I mean, there is no way you're going to hire anybody right now.

Any work that is going to be done will have to be contract work and that means outside money coming in. I'm not saying we shouldn't be doing it. I'm saying where are we going to get the money to do this because I just don't want to shut down complete states because of monitoring.

Then somebody will be going, well, we might as well go for endangered species, and then it will affect everybody because now we're putting moratoriums and that would be a good pretense of basically doing endangered species. So, I mean, I'm just trying realistically to try to get a handle on this so when I go back to the states, when I go to the congressional delegation and say we need help on this, that is what I have got to look for because it is just not going to be with state money.

MR. BEAL: One of the things to keep in mind I think is that in the working group recommendations they noted that the targets can be applied statewide or it can be a river and species specific, so I think the working group has recognized the expense of monitoring every river and every tributary. I think there is probably some room for creativity.

At least that is what it looks like the working group is saying and having some river serve as proxies for other rivers in the states, I think there may be ways to do some monitoring on certain river systems without having to know every detail about every river system in the system and make assumptions other river systems within states to cut down on the cost. I think that is definitely where we're going to have to go to

deal with some of the expense issues associated with implementing these measures.

MR. AUGUSTINE: I think the cost issue is important, but I agree with Ritchie White's point earlier. We have to take action. We have to do what we have to do. I think when the directive goes back to each of the individual states you just clarified what I was going to say is that it is up to the state as to how much effort they're going to put into to doing what they have to do. If a state has to shut down because they can't monitor, again, or use proxies, as you have suggested for similar riverine systems, then so be it.

But it would have to be up to the state to do that and then pass that information by the technical committee. So, I think we have gotten the issue on the table about cost, it's of major concern, but the greater issue is we're responsible for fisheries' management, and I think we have to move this process forward. The working group was very clear in making available the direction and suggestions that they give to us that we should go forward with. They did exactly what we asked them to do. With no further ado, Mr. Chairman, I would hope we move this process forward. Thank you.

MR. BEAL: Thank you, Pat, I think we are starting to debate some of the merits and options in Amendment 2. I have two more hands and then we'll ask Byron to give the advisory panel report and then we can get into the actual debate on what should be selected for Amendment 2.

MR. TERRY STOCKWELL: Mr. Chair, I will pass since you made much the same point I was going to make.

MR. DIODATI: I just want to remind everybody that the working group has come up with an alternative to a complete moratorium on these fisheries. That was one of the other options that were before the board. I think this is an opportunity for those fisheries that have successful runs that are sustainable, to demonstrate that and to continue with those fisheries.

I guess I will ask Doug a question, not to throw you off Doug, but you have six rivers, you're spending nearly a half million dollars a year monitoring them, but is it likely that you're going to require much more work in order to keep those rivers in compliance with the new requirements?

MR. GROUT: The in-state monitoring requirements, no. I think if I can follow the guidance of the working group here and provide a plan on a state-

wide basis I shouldn't have to spend any more money.

MR. BEAL: Thank you, Doug. Well, it is good to see Byron Young back at an ASMFC meeting. I am sure he is thrilled to be here as well. Bryon, can you give the advisory panel report, please.

#### **ADVISORY PANEL COMMENTS**

MR. BYRON YOUNG: The advisory panel met April 10<sup>th</sup> in Baltimore to go over Amendment 2 and Amendment 3 for the Shad and River Herring Plan. At this point I will focus my comment to Amendment 2 for the river herring. The advisory panel first took up the working group's recommendations.

We agree with the assessment provided by this working group and we want to thank them for their time and effort on putting this all together. We especially liked the fact that they had a clarification for sustainable fisheries and excessive bycatch. We had a fairly extensive discussion on that. One of the issues that came up was the purpose of the ad hoc committee or the working group.

A couple of members of the advisory panel that an AP member should have been invited to participate in that. I would like to offer that recommendation to the board for consideration in future working groups. Whether it be for shad and river herring or other species, I think it just improves the communication lines between the groups.

Focusing on the commercial fisheries, the AP maintained its previous position presented at the February board meeting, which was the endorsement of Option 4, close fisheries with the exceptions of those systems that are sustainable. Second, until the sustainable management plans are accepted, states should be required to reduce effort from current levels.

The AP prefers the methods described in Options 2A and 2B; reduce effort, area closures or escapement provisions, but regardless states should be required to implement measures that show a quantifiable reduction in effort. The AP believes the problem of bycatch is significantly impacting coast-wide river herring populations and endorses all measures for bycatch reduction.

I think I would like to amplify on that. It is not just the offshore or onshore component; it is all of them. There are some pretty significant bycatch fisheries going on inshore as well. Further, the AP would

encourage further research and clarification on the classification of fish labeled as "unidentified alosine" in bycatch studies.

The AP has reviewed the commission's letters to the councils and recommends that follow-up action is taken to ensure that the problem is addressed. I think that is another level of communication. Letters have been sent to the two Services and I think it just should be followed up to see where we are.

With the recreational fishery, the AP continues to endorse its position presented at the February board meeting, which is Option 3B, reduce effort, a coast-wide creel limit; and Option 3D, reduce effort and area or seasonal closures, for systems that have a sustainable recreational fishery.

One last thought, I was listening to the monitoring discussion, and, yes, I understand that monitoring is very expensive, but I think there are some untapped resources out there for people who are monitoring streams or looking for herring streams that we might want to reach out to. One of the other things I am doing on Long Island is working with the Southshore Estuary Reserve, looking for remnant alewife runs in the Southshore streams.

I think on Cape Cod you have lots of folks that monitor herring runs. Maybe with some forethought they could be asked to collect some data that would be of help to the management process. It isn't as expensive as running a full-blown survey. It is just a thought, reaching outside the box a little bit. There are a couple of members from the AP in the back. I don't know if I missed anything from their perspective or not. I would ask them to speak up if I did.

#### **DISCUSSION OF ADVISORY PANEL COMMENTS**

MR. DIODATI: This is going to be my last comment on this issue, but as far as excessive bycatch I just want it known that the Commonwealth, through the work of Dr. Gary Nelson and Dr. Michael Armstrong, has investigated the relationship between increases of at-sea fisheries particularly for the sea herring fishery and the decline of river herring over time. We don't see that correlation.

In fact, we see the decline in river herring occurring much earlier than the increase in the river herring fishery, particularly that conducted by mid-water trawls. What we do see, however, is one of the strongest biological correlations that we've measured

in recent years for the increase in striped bass populations and decrease in river herring, which go back over 15 years.

That we see quite well, and it's a point I keep bringing up because in my view it is one of the more obvious ecosystem impacts that we've seen in recent years. I think now with the decrease of river herring in our coastal waters we're actually starting to see striped bass move further and further from shore, which, again, makes sense in an ecological model that if the food isn't there they have got to go elsewhere. So, it's a point that I will continue to make and I think we should all keep that in mind.

MR. GROUT: First of all, just to follow up to Paul's original question to me, I was incorrect in one aspect here, and that is with the plan I would have to start getting biological samples from our 2,000 pound commercial harvest every year. That would cost us more money. Also, if we had to have any bycatch monitoring within state waters – now, we won't have to for mobile gear because we don't allow mobile gear within states waters, but the fixed gear we might have to implement some bycatch monitoring and that would cost.

The other thing I wanted to concur with Paul about, we have evidence, particularly from one of our rivers, one river that we have been monitoring the seventies, where we had put in a fish ladder, and at the time striped bass became more abundant in our waters in 1995 there was a correlation between downturn in the return numbers at that point.

It had been a very stable high level with about 40,000 fish, and at the time that striped bass came back we started seeing a decline in that river for about ten years until we started some supplemental upriver stocking. So, I do believe there is some evidence that predation has an effect, but that's one of the purposes of river herring. They're a forage fish and they're supposed to be feeding some of the predators here.

MR. JACK TRAVELSTEAD: Byron, I'm curious why the AP is recommending a different preferred option for the recreational fishery than the commercial fishery. I mean did they give any thought – I mean you're recommending creel limits. Are there any more specifics that the AP had in their discussion on that topic?

MR. YOUNG: I don't recall if there were any more specifics. Some of the recreational efforts came at the end of our meeting when we were crushed for time, so we really didn't delve into them as deeply as

we did for the commercial side of it. That is not an excuse; we just didn't do that. It is something we probably should think about a little bit more. I can ask Kate to take a note for that and add it to our agenda for the next time we get together.

MR. GOLDSBOROUGH: I just wanted to underscore the last part of Doug's comment that predation is actually a good thing in a sense. It is what seeking here to provide forage for striped bass and other predators that themselves we value quite highly.

I think the notation that there may be some correlation between increased striped bass and reduced river herring and other forage fish numbers should not raise alarm about striped bass because those are natural processes and, indeed, the things that we're trying to maintain the integrity of, but what they should raise is alarm about what other factors may be going on to hold those river herring and other forage fish populations at levels at which they cannot sustain that natural predatory function. That's where I think we should turn our attention when we see that kind of data. Thank you.

MR. BEAL: Any other comments or questions for Byron on the advisory panel report from the board? I don't see any at the table. There is one hand in the audience, one member of the advisory panel that had asked to come forward and make comments.

MS. PAM LYONS-GORMEN: Pam Lyons-Gormen with the National Coalition for Marine Conservation, and, yes, I do serve on the Shad and River Herring Advisory Panel. I just wanted to add a footnote to Byron's report when he talked about unidentified alosine bycatch. One of the things that I found particularly alarming – if you look at the standard bycatch reporting methodology that just came out recently, and it is looking at what was observed July 2007 to June 2008 – the herring “NK” or herring not known category – this is observed pounds – was 893,299.6 pounds of observed unknown and undocumented bycatch that was not part of Matt Cieri's analysis.

Just to put that in perspective for you that outnumbers hickory shad, American shad, blueback herring and alewife bycatch seven to one. This is the importance of a bycatch monitoring program so that we can get a better handle on this, and I think it also should emphasize how a portside program could complement the observer efforts at sea. Thank you.

MR. KAELIN: Mr. Chairman, quickly, I am here representing two advisors. I am not an adviser because I don't live in New Jersey. The only point I wanted to make is that we were concerned the technical committee report was not available to the advisors or the public or anybody else until a few minutes ago. We wanted to register that concern. Thank you.

## **DISCUSSION AND APPROVAL OF DRAFT AMENDMENT 2 FOR RIVER HERRING**

MR. BEAL: Thank you, Jeff. I think that concludes all the reports from the technical committee, the working group and the advisory panel, and it is time to move into the discussion of selecting options and approving Draft Amendment 2. There has been considerable discussion I think already on some of the merits and concerns about monitoring and the expense associated with that, and the chairman allowed significant public comment at the beginning, so I think we probably will be probably able to focus discussion on selecting options at this point. Are there any motions to get this discussion started on the approval of Amendment 2?

MR. LANEY: Mr. Chairman, I just wanted to make a few points in advance of our discussion here with regard to these species, and by species I'm talking about the two river herring as well as American shad. The first point is that there may have been no other group of species managed by this body which has been as geographically widespread and important to our society from an ecological, economic and cultural perspective.

I am going touch in these comments on some points that have already been made and I apologize for any redundancy. At one point in time the collective harvest of these animals within ASMFC jurisdictions and at sea approached 200 million pounds per year with an associated industry employing thousands of people and a value in the millions of dollars. Today these animals contribute nowhere near what they once did to the prey base for other commission and council-managed species.

There is speculation that other species' failure to recover fully could be linked to their absence. Coast-wide harvest is currently around 2 million pounds, two orders of magnitude less than it once was. Some tribal subsistence fisheries have ceased to exist and many of the numerous spring festivals – and I had the privilege of putting together a table for Amendment 3 which documents a good many of those – a lot of

those festivals which arose to celebrate the annual arrival of river herring and shad to their coastal and inland spawning areas have either been cancelled or refocused due to the lack of river herring and shad.

My second point is that the commission alone cannot restore these species. It takes a team effort to do all of this by all the partners sitting around this table as well as a lot of them that aren't present. Those include our congressional representatives, as Tom Fote has already noted, in both federal and state bodies who promoted and passed federal legislation providing us with resources.

It includes colleagues in inland fishery management agencies. It includes agencies, both state and federal, which have the authority to regulate impacts to the habitats that these species use and industries which have adversely impacted them in the past but are stepping up to facilitate their restoration and the angler and conservation organizations which encourage and support our collective team effort.

I would encourage all of us to remember that. There have already been some allusions by Doug to the fact that we don't have to do this by ourselves. We can partner with a lot of groups out there who are willing to help us. A third point is – and this one has already been made in spades – is that there are costs associated with this restoration, and in many cases they will be substantial, as Roy has already pointed out.

I would encourage us as a board to be creative in securing the necessary funding to both restore and monitor these species, and I will give you an example. On the Roanoke River in North Carolina a team comprised of Dominion Generation, which is a power company; the U.S. Geological Survey's North Carolina Cooperative Fish and Wildlife Research Unit; North Carolina State University; the NC Division of Marine Fisheries; the NC Wildlife Resources Commission's Division of Inland Fisheries; Virginia Department of Game and Inland Fisheries; three different divisions of the Fish and Wildlife Service, those being Ecological Services, my division which fisheries; and the National Wildlife Refuge System; and the National Marine Fisheries Service Habitat Conservation Division have all partnered to find the funding to monitor these stocks.

We're doing that using a combination of split-beam sonar, drift gill nets, electrofishing and for a while even a fish wheel; and if you don't know what that is, see me later. We collectively prepared a plan for

diadromous species restoration and we are implementing it. The funding comes from multiple sources, even from such diverse agencies as the NC Department of Transportation – in that case paying for some past sins.

A final point is that I encourage the board to be bold and continue to take the leadership position in dealing with habitat issues affecting these species. You as the commission or I should say we as the commission have already taken steps to do so by revitalizing the Habitat Committee, by establishing a Fish Passage Workgroup and by giving birth to and nurturing a Fish Habitat Partnership.

I know there is a lot of concern in some quarters that our member agencies lack the regulatory authority to deal with identified habitat impacts or that we lack resources to prepare habitat plans. I submit that in many cases the information needed to implement the habitat recommendations made by the Shad and River Herring Technical Committee is already present, and I include those recommendations in both Amendment 2 and Draft Amendment 3.

That information is already present in the Diadromous Species Habitat Source Document produced by the Habitat Program, much of which you see in the text of these two amendments and in the Wildlife Action Plans produced by each state which address a lot of threats to these habitats and in the forthcoming habitat assessment funded by the Atlantic Coastal Fish Habitat Partnership which is being conducted by Steve's colleagues at NOAA, specifically Moe Nelson and the Estuarine Living Marine Resources Program.

So lack of information shouldn't be a reason for inaction on our part. I encourage us all to be bold and creative as we seek to further the restoration of these species which are vital to us ecologically, economically and culturally. Thank you, Mr. Chairman.

MR. AUGUSTINE: Mr. Chairman, mine is going to be very brief. I just wanted to make sure that the document will capture the statement that the working group made recommending increased research to gain a greater understanding of river herring, migratory patterns and so on, whether if that's in there already or not. If not, I'd like to have that added. Then I would say no more. I understand there are motions that have been prepared to move this amendment forward and I will stand as the second to anybody who wants to put a motion on the table. Thank you, Mr. Chairman.

MR. BEAL: Thank you, Pat, for your consistency. I think as far as the notion of increased research that you mentioned, that is one of the decisions that is contemplated in the draft amendment as it is written now, so as we move forward those are decisions that the board will have to consider.

MR. STOCKWELL: As member of the working group I really appreciate the comments from the TC and AP for the work we have all done since the last meeting. As Pat alluded, we do have a number of motions to make, and they will be coming from around the table. Mr. Chair, a process question first. I think it would be wise to separate the discussion on state fisheries versus the ocean intercept fisheries as we move ahead. I don't know whether or not you would like to consider that by consensus or whether you would like a motion to that effect.

MR. BEAL: We will see what the pleasure of the board is. I think any tool we can use to lend some structure to this discussion is probably a good thing. I think we should start with the state water in-river system fisheries and then move into the ocean intercept fisheries in sequence. It seems to make sense to me as the stand-in chair, and I am getting a lot of nodding heads around the table, so I think we'll go in that fashion as we move forward with these decisions.

MR. GOLDSBOROUGH: Mr. Chairman, in view of all of the descriptions we have heard and especially the very good summary by Wilson Laney about the circumstances that we find river herring in up and down the coast, the dire circumstances, I wonder if we can start off by simply accepting perhaps by consensus that status quo is not an option across the board.

MR. BEAL: Well, I think that decision will be made as we enter into some of these motions that are coming up. I think, Terry, you had your hand up again for a motion.

MR. STOCKWELL: Mr. Chair, there are motions coming for the definition of a sustainable fishery, monitoring, habitat and ocean intercept, so **I would like to start off by, first, making a motion to define a "sustainable fishery", and that is to define a sustainable fishery as a commercial and/or recreational fishery that will not diminish the potential future stock reproduction and recruitment.**

MR. BEAL: Is there a second to that motion? Seconded by Dr. Laney. Terry, do you have a comment following up on your motion?

MR. STOCKWELL: Yes, thank you, Mr. Chair. This was a motion that was developed by the working group and perfected by the technical committee. We felt it addressed the requirements that the board sent and reflected the technical perfection that we needed to move it ahead.

MR. CARPENTER: Is there currently language, can you point to in the plan now, that has the definition or is this a new addition to the plan and where would it fit?

MR. BEAL: This would be an addition to the plan. I don't think there is draft language that this is modifying at this time. I think it would fit at the beginning of the commercial and recreational management section to frame the overall structure of those management programs.

MR. AUGUSTINE: Mr. Chairman, is this a commonly defined description of what a sustainable fishery is or will it be in conflict with what is out there for the National Marine Fishery Service and is in the normal glossary that is provided to the general public through NOAA or other councils? If the wording is the same and it says the same it's one thing, but if the wording is different and connotes a different meaning – I understand what we're trying to accomplish here. It's just a question.

MR. BEAL: I am not aware of any language that this would be conflict with, but as far as the commission process goes this definition will apply to the River Herring Amendment 2 in particular. This isn't a policy decision that is across all commission species by any means. I think it is specific to this amendment.

MR. AUGUSTINE: Well, I just hope we don't go down the road where we have a different definition for any of these FMPs and for other species. Let's assume this is going to be the common definition for sustainable fisheries relative to ASMFC.

MR. BEAL: Well, I think that will have to be decided on a board-by-board basis or by the policy board or the full commission itself if it applies to other species.

MR. JAMES GILMORE: Mr. Chairman, I don't have a problem with the statement, but it seems kind of odd to me. I mean, sustainable fisheries is kind of

a broader term that we're trying to define for this plan, and I just don't understand why we're putting it in here. I don't have a problem with supporting it, but, again, it is more of a policy level thing than it is for this particular issue.

I am just concerned that we will raise another issue with some other definitions because I have seen sustainable fishery things that go along for six or seven lines. Again, I don't really have an issue with it, but I don't know why we're doing this because I thought we kind of understood what sustainable fisheries were.

MR. WILLIAM A. ADLER: Mr. Chairman, putting this in the perspective of reality, okay, so a state would apparently try to keep a fishery open, arguing that they have a sustainable fishery, and could they then go to whom to have it agreed upon? Is it the technical committee that they go and they go we have a sustainable fishery because, what, and somebody judges that, yes, you do or, no, you don't; is that how it would work?

MR. BEAL: The general notion of the working group recommendations and the technical committee, as I understand them, is that the states would develop these proposals, bring them back to the technical committee for comment and review, and those would come forward to the management board for a decision on implementation.

MR. ADLER: So the technical committee would have on their table some justification as to it is or it isn't a sustainable request; is that how it would work?

MR. BEAL: Well, those decisions haven't completely been made, but if you look at the recommendations of the working group, moving forward I think the states, in their proposals, would have the obligation to develop targets and other metrics that would allow for the determination if the fishery is sustainable or not.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: I think we had sort of a definitional question from Mr. Gilmore. I think one way to look at this is to say you're contemplating a plan or an action that has certain conditions and requirements within it based on whether or not you have a sustainable fishery, so that, then, begs the question of within the plan what is the definition of a sustainable fishery. That is the decision before the board so this gives context to the action that you're considering taking.

MR. THOMAS McCLOY: Mr. Chairman, I guess I'm wondering if I nodded off for a moment here. Maybe I'm in the minority, but this seems to be leading in the direction of a motion that will be forthcoming to adopt Option 4. I haven't said anything up to this point in time about Option 4, but I do have a few words I want to share with the board on that. It seems to me unless we're just putting this definition in the plan so we have it for the future, then maybe we ought to deal with the substance of what options are being adopted and then go from there.

MR. CARPENTER: I would like to, for a second, call attention to Amendment 3. There is a Section 12 called "glossary". "Sustainability"; "sustainability catch"; "sustainable fishing"; and "sustainable yield" are all found in that glossary, and are we going to have one glossary for shad and another glossary for river herring with different definitions? I don't object to this definition, and it is why I asked where it will occur. There is a whole list of glossary items in Amendment 3. Are we getting at cross-purposes here with two amendments of the same plan? It is only a question.

MR. BEAL: Hopefully, folks will be able to shed some light on that, A.C.

MR. STOCKWELL: Development of this definition was a remand of the full board to the working group at the winter meeting. We went back and did what you requested us to do. The working group was a composition of board members and technical committee members and PDT members. It was reviewed again by the technical committee, so it is what it is.

MR. DAVID SIMPSON: I think Terry did a good job of laying that out. I would just point out that we haven't adopted Amendment 3 yet, so certainly in due time we can bring these things in line.

DR. LANEY: Mr. Chairman, to A.C.'s point I think he makes a good point that there needs to be some close coordination between Amendment 2 and Amendment 3. I met with some of the workgroup members last evening and we discussed the fact that another potential opportunity for consolidating maybe at some point in time are the habitat recommendations that are present in both of those amendments. I would encourage everybody to consider opportunities to make the two amendments consistent.

MR. YOUNG: Mr. Chairman, the advisory panel was concerned about these issues, too, with Amendment 2 and Amendment 3, and they wanted to make sure that there was consistency between both. I think that is the direction that the board is headed at this point is to looking at consistency in terminology and definitions between both amendments. The AP would support that and encourage it. Thank you.

MR. BEAL: Other comments on the motion? We have had some process suggestions about looking down the road at future decisions that the board will be contemplating here at this meeting or does the board feel comfortable voting on the motion that is before it now? Seeing no hands, I think we will caucus for about 30 seconds on this one and then we will vote.

(Whereupon, a caucus was held.)

MR. BEAL: All right, thank you, I think that's 30 seconds and then some. Pat Augustine.

MR. AUGUSTINE: Point of clarification, Mr. Chairman. Assume this motion is passed, will it then be added to Amendment 3 and are we going to treat it as a separate for Amendment 2? Mr. Young suggested they wanted to keep them common. A.C. indicated there were three or four definitions for sustainable in Amendment 3, so are we going to try to be consistent or are we going to treat this as a separate item in Amendment 2?

And if we do, it seems to me as was pointed out we will probably end up with a different definition at every single FMP amendment or whatever. I thought we were going to try to shoot for consistency. We do have a statement on every piece of paper that we're shooting for successful restoration well in progress by the year, whatever, healthy, self-sustaining fish populations of all Atlantic coast fisheries. So, it is just another chip defining something a little more fine, so the question is will this be added to Amendment 3 or will they remain separate in the definition and glossary section?

MR. BEAL: Well, I think as others have said that's a future decision. This definition would only apply to Amendment 2 to the Shad and River Herring FMP. Then as we get into Amendment 3, should we actually get there at this meeting, the board can decide if they want to modify that one to be consistent with this one.

MR. CARPENTER: Is there any advantage to just adopting the glossary that is proposed for



Amendment 3 as part of Amendment 2 so that at least you would have the same definition of words in both documents?

MR. BEAL: My quick read of the sustainable definitions that are in Amendment 3 actually does not define sustainable fishery. It defines sustainable yield, fishing, so I think there are some nuances between this definition and the ones that are included in Amendment 3, but that is a decision for the board to make.

MR. CARPENTER: **I would like to offer a substitute motion that this definition of “sustainable fishery” be included in the glossary that is in Draft Amendment 3 and that glossary be incorporated by reference into Amendment 2.**

MR. BEAL: A.C., I think the glossary that is included in Draft Amendment 3 – and we’re kind of getting into a process situation here – was included for the public comment period because there are a number of terms that are included in that document that will go out to public hearing. The ASMFC has a number of laymen’s guides, the stock assessment and those sorts of things that have a lot of those definitions already in there.

I think the Amendment 3 Glossary has definitions that are pulled from other documents that already exist. It is just a convenience thing for the public hearing draft. I don’t think it was intended to be a glossary or an attachment or an appendix to the final Amendment 3 when it is approved. Is there a second to Mr. Carpenter’s motion? Pat Augustine seconds.

A.C., as far as process goes, this may be better as a motion to amend since the board hasn’t approved the previous definition of sustainable fishery yet. It may be better to tack this additional language on and make it part of the original motion, so the original motion will define the term as well as include it in the glossary.

MR. CARPENTER: I will agree with that.

MR. BEAL: Mr. Stockwell, are you comfortable with adding that as the original motion maker?

MR. STOCKWELL: I am feeling very friendly.

MR. BEAL: Dr. Laney, how about you?

DR. LANEY: Mr. Chairman, I was just going to speak in support of the motion. I think it combines A.C.’s comment with Mr. Augustine’s comment. I

think it is a good way to proceed. I believe there is precedent for – I think other commission documents have had glossaries as well, if I recall correctly, so I don’t have a problem with it.

MR. BEAL: We will consider that a friendly amendment; and once we get that wording squared away we will read it into the record and then we will have another quick caucus and then we will hopefully have a vote on it.

I will go ahead and read it into the record: Move to define “sustainable fishery” as a commercial and/or recreational fishery that will not diminish the potential future stock reproduction and recruitment; and to add this definition of “sustainable fishery” to the Glossary of Amendment 3; and that the entire Glossary of Amendment 3 be added to the Glossary of Amendment 2.

Is everyone comfortable with that semi-wordy motion? It looks folks around the table are nodding yes. Is there a need for a caucus? Seeing no need, those in favor of the motion please raise your right hand; those opposed like sign; abstentions, 1 abstention; null votes, zero null votes. **The motion carries 17 in favor, no votes in opposition and one abstention.** Moving on, Terry Stockwell.

MR. STOCKWELL: I will try one more. **Move that the board adopt the working group recommendations regarding state waters sustainable fishery proposals with the clarification that jurisdictions with active fisheries remain open but require submission of a proposal to the technical committee for a sustainable fishery by the winter of 2010 ASMFC Meeting.**

MR. BEAL: Is there a second to this motion; seconded by Michelle Duval. Terry, do you have a followup on your motion?

MR. STOCKWELL: Yes, thank you, Mr. Chair. Implicit in the motion is the endorsement of the working group recommendation, and the delayed time implementation was in recognition of staff that are in the field right now and the ability to come forward with a solid recommendation for the technical committee in a timely manner. We felt the Fall Annual Meeting would be too time compressed.

MR. TRAVELSTEAD: Just a question for clarification. For those states with active fisheries and essentially no monitoring in place and therefore no ability to define sustainability, I assume those states would have to close those fisheries. My

question is at what point in time would that occur under this motion?

MR. BEAL: Terry, do you have a comment on that?

MR. STOCKWELL: No. I'll think about it for a minute.

MR. R. WHITE: The way I would read that it would be 2011.

MR. BEAL: We will continue to think about the timing.

MR. MILLER: Terry, just a followup on the previous comments. For those fisheries which are presently opened but unmonitored, there wouldn't be time to mount much of an monitoring effort between now and Winter 2010. The spring runs are already proceeding and in some cases may be passing their peak this year.

There would not be an opportunity to monitor any spring runs prior to Winter 2010 according to this motion, so I think the default interpretation of this motion is that all of those fisheries would have to be closed. I am not sure that was your intent, so I wanted to clarify that, if you would, please.

MR. STOCKWELL: Roy, you're correct, it was our intent the plans being submitted by then. Perhaps someone else from the working group can help me out with the sense of timing. The plans need to come in; they're going to have to go back to the TC; we're going to have to develop a monitoring program, and 2011 or 2012 would probably be the most likely scenario.

MS. DUVAL: Well, I'm thinking off the cuff here, but I'm wondering for those fisheries that are open but don't have monitoring right now, as Bob mentioned earlier, an adjacent system that might be able to be used as a proxy that is monitored. That is just a suggestion I'm throwing out there.

MR. BEAL: I have got a question for the technical committee chair. Bob, did the technical committee comment on the potential for regional harvest targets or restoration targets?

DR. SADZINSKI: Exactly, Mr. Chair, the TC did recommend using regional data, and we did not define that, whether it was even adjacent states.

MR. BEAL: So it sounds like there is an opportunity for some creative thinking as far as looking at potentially adjacent states or similar river systems

within other states, obviously river systems that aren't monitored within the states, to come up with state proposals that will affect and be considered for river systems that currently have fisheries that are occurring.

MR. SIMPSON: I think the intent was that fisheries would remain open for the 2010 season. If I recall correctly, the technical committee report, they were looking at June – I think it was June 2010 for proposals, and that made it a bit clearer that we wouldn't be trying to act on the 2010 season. I think as people consider this, it should be in the light of an expectation that their fishery would remain open through 2010 and this wouldn't apply until the 2011 fishery at the earliest.

MR. GROUT: Concerning the extent of the proposals here, I saw a clear line in here that said that targets in these plans can be applied statewide or they can be river specific, so I'm taking that to mean that we can use – if you don't have information on all your rivers you can use some river or rivers as proxies for your entire state-wide fishery.

MR. DIODATI: I guess I'm wondering why this couldn't be applied to river systems that are currently closed but may be coming on line in the next year or two or three, so that we don't have to reopen an addendum or any other management process to broaden this.

The way it reads now it sounds to me like it is accommodating ongoing fisheries, and it gives them until winter of 2010 to continue, but at that point they must submit a management plan to be reviewed by the technical committee. But at least the way I read it, it doesn't accommodate a new fishery to be opened in a system that is currently closed, or is it the intent not to accommodate that?

MR. STOCKWELL: That was not the intent. There was significant discussion on how to reopen systems using the same criteria. I don't know whether or not we should consider amending this motion or make it as a separate motion in order to accommodate the states who wish to open systems. The principle would be the same, though.

MR. BEAL: Terry, so the concept would be those states that currently have river systems that are closed, they would have the opportunity to establish targets; and once those targets are achieved, they could reopen those river systems. Is that the concept the working group was considering?

MR. STOCKWELL: It would be the equivalent submission of criteria to the technical committee.

MR. BEAL: Paul, do you want to try to craft or wordsmith this motion to reflect that?

MR. CARPENTER: Dave Simpson just said that his reading of this would say that your 2010 fishery could remain open. If that's what this means, then let's say that because in my mind the Winter 2010 ASMFC Meeting is going to be in February of 2010. If you haven't been able to submit a plan and get it approved at that time, it would close your 2010 fishery. Now, if what you really mean is that it wouldn't close until 2011, then I think we need to adjust this thing. I just need to know which way this is intended to be read.

MR. BEAL: I think I'll take a couple of more comments, and it is probably a good time for a break to stand down and get some of the wording crafted and then we can back together and hopefully move forward here.

MR. SIMPSON: Yes, I think it is important to make that clear, and we could just wordsmith it a little bit to say that jurisdictions with active fisheries remain through the 2010 fishing year or something to that effect. It sounds like Paul is going to further tweak it to address fisheries that are currently closed but could justifiably be reopened in 2010.

MR. McCLOY: Doug, pay attention because I have a question for you. There has been some discussion about what constitutes a system, whether it is an in-river system or whether it is a larger area. Then reflecting on Doug's comments about possibly using a system to characterize the sustainability of your entire state's fisheries, obviously, brought on a lot of confusion for me because I think we would all be hard pressed, as an example, to take the Delaware Estuary System and use that to characterize the fisheries of Pennsylvania, New Jersey and Delaware.

The level of monitoring or level of work and financial investment on doing that with the three of us maybe is doable, but for all of us to deal with our own specific little routine river systems up the coast, which really probably have nothing to do with Delaware Bay, is considerably a tougher row to hoe. I guess I need some clarification on what really is this motion going to require in terms of determining what fisheries are sustainable.

MR. GROUT: You have a different situation than the situation in New Hampshire. Clearly, what I was

referring to was the statement that targets can be applied statewide or they can be on a river or species-specific basis.

In our situation I can see where I'm monitoring five rivers in our major estuary and we have harvest reports from that estuary, that I can do that and I'll apply that to our entire state because our other estuary is about this size, about the size that I can see in your head. So, I think the key point that came out of this document was that there is the flexibility to do it either way, depending on what is appropriate for your state or your state systems.

MR. McCLOY: So you would agree that New Hampshire's situation probably wouldn't be applicable to New Jersey?

MR. GROUT: I would agree, but that's up to you. No, I think that is up to the board.

MS. DUVAL: Just sort of a clarification on the timing, speaking to A.C.'s concern, I think the intent was really to have a date certain by which states would have a proposal ready for submission and technical committee review. I think, when discussing this, it was our assumption that if a state or jurisdiction could have a proposal ready for submission to the technical committee by the Winter 2010 Meeting, that the technical committee would then be spending pretty much the remainder of the year reviewing those proposals, and so nothing would be effective until the 2011 season.

MR. CARPENTER: It doesn't say that in the motion.

MR. DUVAL: I understand definitely; I just wanted to point that out.

MR. BEAL: All right, let's take a ten-minute break. Those that have bright ideas on how to perfect this motion, please come up to the front and we will work on it.

(Whereupon, a recess was taken.)

MR. BEAL: We will get going again. During the break there was a fair amount of wordsmithing on the motion. The new wording is up on the board to replace the motion that was made by Terry Stockwell and seconded by Michelle Duval. The wordsmithing was trying to capture all the discussions and points that occurred before the break.

There were questions about what happens to fisheries in 2010; when would proposals be due; what would happen if you were trying to reopen fisheries after the initial wave of approvals; and there was also some concern about the state implementation time or going through the regulatory process once a state proposal had been approved by the board.

I think the crafters of the motion tried to capture all those ideas in this motion. It may need some tweaking but hopefully not a whole lot before the board is willing to consider this. Terry, how do you want me to process? Do you want me to read this in and then you and Michelle can decide if you are comfortable with the new wording?

MR. STOCKWELL: Yes, that sounds like a good idea.

BEAL: Okay, I will go ahead and read the new language into the record and then the original maker and seconder will decide if they're willing to accept this as a friendly change to their motion. The friendly amendment is that the board adopts the working group recommendation to prohibit state waters commercial and recreation fisheries beginning January 1, 2011, unless those fisheries are demonstrated to be sustainable.

Initial proposals demonstrating that a fishery is sustainable must be submitted to the technical committee for review by January 1, 2010, and the board will consider approval at the ASMFC Spring Meeting prior to the fishing year beginning January 1, 2011. Proposals to reopen closed fisheries can be submitted annually as part of the Annual State Compliance Report. That is the new wording; Terry, are you comfortable with the new wording?

MR. STOCKWELL: Yes, thank you, Mr. Chair.

MR. BEAL: Michelle, as the seconder are you comfortable with the new wording?

MS. DUVAL: Yes, I am, Mr. Chairman.

MR. BEAL: Okay, that will become the main motion now that is under consideration by the management board. Any comments on the new motion now that you see the changes that have been made? Tom McCloy.

MR. McCLOY: My comments are not directed necessarily at the old motion versus the new motion; that it would be to either motion. It concerns the level of monitoring or work that states that currently

don't do much with river herring are going to have to comply with. Given my pessimistic nature of the improvement of the financial situation in New Jersey in particular, I'm not real optimistic that we're going to be able to comply with this even given essentially another year.

The board needs to understand that passage of this motion essentially deems a moratorium on river herring in New Jersey statewide effective January 1, 2011. Maybe the Striped Bass Board would like to relieve us of our monitoring requirements or the Weakfish Board – well, that's right, we're out of compliance with that one already – but at any rate my point is that I obviously can't vote for something which has a 97 percent chance of putting my state in a moratorium status. We do commit probably 90 percent of our budget and staff time now to support ASMFC plans; so unless we were to take it from some other plan, we're not going to be able to comply with this. Thanks.

MR. BEAL: Thanks, Tom. I think some of the members of the working group were a little bit more optimistic than your pessimism that you have indicated. They felt that given the monitoring that is going on in neighboring states or in other river systems or as part of your striped bass monitoring potentially there may be a way to creatively develop targets that could be implemented in New Jersey that would allow your fisheries to be proven that they're sustainable and remain open. There is some uncertainty there and it has to work through the technical process to make that decision, but your points are well taken. Followup, Tom.

MR. McCLOY: And obviously if this motion passes and we're required to do that, we will pursue all options, but I'm also a realist and as I stated earlier that's probably where we're headed.

MR. FOTE: I'm just looking at the coast and I know of many river herring runs that go along the coast that probably don't have monitoring going on. There are small systems like Diehl Lake, Spring Lake, Tom's River. I can see the money is not going to be available to them, so maybe in a combined on the Delaware River or the Hudson River something can be done. Unless I can basically use one of those proxies – and every one of those systems is different. Honestly, can I use them as a proxy if one has a flume and one doesn't have flume, one has a dam and the other one doesn't have a dam.

So, that is what I'm looking at, so I'm looking at the – you know, New Hampshire has 99 miles; I have got

120 miles of coastline here; I've got 120 miles of coastline there and a lot of streams that run in and out and how do I monitor all those small bodies?

MR. STOCKWELL: The working group put a significant amount of time and has absolute recognition of the states' needs and the dismal financial positions we're all in. This proposal here was intended to give the maximum flexibility to the states to develop their own plans given the economic times we're all living in and as in responsible a manner as possible.

The next motion after this is going to be specific to monitoring and it is going to refer complementary to the shad monitoring. We're looking to make sure our plans are consistent. Well, that's where we're going with the monitoring direction. I didn't talk earlier about the state of Maine monitoring. We have 40-something rivers; 20 of them or something are open; and we use a significant amount of labor from the towns and the fishermen. Without them, we would not be able to retain these, so there are other options out there that can work if we all think creatively.

MR. JED BROWN: I represent a jurisdiction which has a very small recreational fishery for river herring. We might be able to live with this, but I think we would feel more comfortable with something that was proposed by the advisory panel, which was Option 3B putting forth a daily creel limit for river herring.

I think we would be able to manage the fishery through a daily creel limit. The second point I had was a question, and I don't know if this goes to the technical committee or to the maker of the motion, but what if a jurisdiction were to have a robust fishery or population for alewives but not for blueback or vice versa; how would that affect the determination of sustainability for that system?

MR. BEAL: I'm just looking at the working group report. I think it notes that the targets developed by the states or jurisdictions could be statewide, jurisdiction wide or species specific, so I think you could look at jurisdiction-wide targets that weren't specific to species and that may be appropriate, but folks on the working group may want to comment on that.

MR. STOCKWELL: Actually my comment is specific to the recreational question there. Once again, it does leave it up to the states and jurisdictions the ability to develop their own proposal for a sustainable fishery; and if a creel limit is what is

determined to be sustainable, then it should be an issue. Other areas may have different plans, but it gives everybody a different option.

MR. TRAVELSTEAD: Virginia's situation is similar to Mr. Brown's. We really don't have any commercial fisheries for river herring left, and those fisheries need to be prevented from starting back up or continuing in any fashion. I think the motion on the board works for our commercial fisheries. On the recreational side we have some very small, isolated recreational dip net fisheries for herring that are not monitored in the least. I'm not sure if they're sustainable or not. They're quite small.

The problem is we're not going to have the funding to determine whether those small recreational fisheries are sustainable; and as a result under this motion they're going to be closed down. I have got to go back and tell those people really the reason you're being closed is because we can't afford to monitor and determine whether it is sustainable when in fact they very well could be.

That's my dilemma and I'm wondering if we might – I don't know if other jurisdictions are in this situation or not, but I wonder if we might separate the motion so that we can vote separately on the commercial sector versus the recreational sector. I mean from Virginia's point of view something like Option 3 that was recommended by the advisory panel that looked at creel limits and season and area closures might be more reasonable.

MR. BEAL: Jack, are you making that as a motion or just kind of hold that thought as we have the discussion?

MR. TRAVELSTEAD: I'm just curious what other members think; I'm not prepared to make a motion at this point.

REPRESENTATIVE DENNIS ABBOTT: Mr. Chair, obviously, this motion creates problems for the states, but I think that it probably might be an opportunity moving forward to see what we can do, how creative we can be, how creative we could do our work and come in with proposals that would be almost similar to conservation equivalency at some point as we talk about regionalizing and proxies and all these other things.

I think we should give ourselves that opportunity because I think the resource demands it. I think the board has the flexibility at some point to make

decisions regarding each individual state's plans at a later time. I think we should approve this motion.

MR. THOMAS O'CONNELL: We have talked about this river herring issue for a couple of months with our stakeholders and understand the concerns that have been raised here today. I do appreciate the work that the working group put together. It really helped me sort through in my mind what action is needed.

I think I just want to echo some comments that Wilson Laney made previously that I think it is the time for this board to be bold and take a leadership role on this management issue. I know, if approved, this motion is going to create some challenges for us, but hopefully by working together with all our partners and being creative that we can find a way to move forward to mitigate some of the concerns that are being talked about today but to allow this resource to get on a track of rebuilding. I am looking at supporting this motion. Thank you.

MR. BOYLES: Mr. Chairman, I am conflicted on the motion for a couple of reasons, but perhaps the most practical part is the timing of it. As many of you know we manage things legislatively in South Carolina, so this motion, if approved, is going to result in us in effect de facto instituting a moratorium statewide in South Carolina.

The timing of it is such that our legislature that meets in the spring of the year will take up legislation to close this fishery in South Carolina, and then there may be an opportunity for us to open it back up via this board's approval. Then I will go back to the legislature and seek legislation to open up certain river systems, so the timing is very, very awkward for me, and I'm not going to know how to administer this in South Carolina.

MR. MILLER: Mr. Chairman, I'll be briefly. Basically I just want to echo Jack Travelstead's comments. In our particular case this would amount to a de facto closure of our commercial and recreational fisheries. However, our commercial fishery is so minimal that it almost would be a no-regrets option for us.

In terms of the recreational fishery we just have no information on these small-scale bait fisheries for river herring, and it's a de facto closure. Frankly, I would rather take the bull by the horns and have this commission adopt a closure and call it that rather than the onus be placed on the agency to mount monitoring efforts when we can ill afford to do so

and knowing full well that the end result will be a closure because the public puts the onus on us.

I am wondering, you know, one of the advantages of working through the commission is that the collection action of the commission provides some cover to individual state agencies when particular actions are contemplated that become difficult or perhaps unduly expensive. Thank you.

MR. LEROY YOUNG: I would also support Jack's idea of splitting this into a commercial and recreational component. I think that makes sense. We have a fairly minimal recreational component. We're taking action right now to reduce the creel limit. What this would essentially do before we can even go to that final rulemaking we would have to probably close the fishery. I think it is unlikely that fishery is having a significant effect on certainly the river herring populations.

DR. LANEY: To Jack's point, I will reference comments that Terry made earlier about the fact that Maine is able to use significant labor from their towns and also from their fishermen and note again that the motion is designed to allow states a considerable amount of flexibility in coming up with ways to address the monitoring concern.

I know, Jack, that similar recreational dip net fisheries existed in North Carolina a long time ago, and those were closed I think due to concerns about the runs. But, in a case where I think a state could demonstrate that the run appears healthy, it might be that you could solicit the support of the local fishers themselves in conducting the monitoring that you need because they're going to be out there doing it anyway.

It would require some educational effort and it would require some training in identification where you have alewife and blueback both co-occurring in a system, but I think it is doable. I think it could be done. The other thing that I haven't mentioned yet and I'll go ahead and toss it out there now because it's relevant to the funding concerns, I think.

Some of us on the habitat committee and also in the Atlantic Coastal Fisheries Habitat Partnership have been made aware of the fact that the National Fish and Wildlife Foundation is in the process of preparing a business plan for a River Herring Keystone Program. I think their board is committed to putting some funding into the efforts that are being undertaken by the fishery management family coastwide to river herring.

How that's going to turn out I don't know yet, but I suspect that commission efforts will be benefited by whatever the National Fish and Wildlife Foundation chooses to do, and there may be opportunities there, when they put out an RFP, for states to apply for funding.

MR. SIMPSON: I'm looking at this trying to figure out how to achieve the objective that you've heard me go on at length about on this board the need to provide maximum flexibility to state jurisdictions to manage their own fisheries which occur exclusively in their waters and don't impact anyone else's fishery.

I have argued pretty strongly in that direction in the past, and yet it was Jack who usually would remind me that sometimes we need the power of the commission to help us do what we need to do in our own waters. I'm looking to figure out how to adjust this and not just take on faith that states will be given that maximum latitude to determine for themselves what is sustainable in their waters for their runs given that there are many, many runs, and it is virtually impossible to monitor all of them or even a substantial proportion of them.

I don't have the specific wording yet, but I think that's what I'm looking for is a way for states to have that autonomy to manage their resources. They're in the best position to judge whether they're sustainable or not. They're up to the task of being responsible for managing their own fisheries and they're capable of doing it, but, again, provide a little bit of a hook back to the commission where we have the ammo we need to take management action that might not be popular but is necessary back at home.

MR. BEAL: Thanks, David. It looks like the board is in a bit of a bind with a lot of differing opinions. I have got Paul Diodati, Jack Travelstead, Robert Boyles, Ritchie White and Doug. Everybody wants to comment on this. We have got a motion that is up on the board. The folks around the table need to decide is there perfection to this motion, substitute motions or are you ready to vote on this one, which I think this is probably the only way to get out of this. There are obviously a lot of opinions and strong feelings on this one.

MR. DIODATI: Well, I will start by saying I am ready to vote my approval of this motion. I want to point out that the Commonwealth is going in its fourth year now of full moratorium on all our fisheries; and when we implemented that moratorium

all we had was recreational fishing, quite a few runs, over a hundred active runs at the time.

It was a substantial move forward for the Commonwealth without the cover of the commission. I understand that there are times when it helps having more incentive, but I want to warn folks that in our fisheries we had very limited creel limits in place, closed days during the week that prohibited the taking of river herring from fishways, but nevertheless there was enough undercover operations going on because of the popularity of river herring as striped bass bait.

We had trucks from as far away as Maine and Rhode Island and Connecticut observed in our rivers with live wells and barrels on the back of these trucks taking out substantial numbers of fish. You know, these are very difficult to control and I wouldn't underplay the impact of a recreational fishery.

MR. TRAVELSTEAD: Wilson, thank you for those recommendations on monitoring our recreational fishery. In fact, Bill Goldsborough had suggested something similar to that earlier to me. Let's assume we could engage our fishermen in a perfect monitoring program that provided us with all the kinds of information we would need. I then have a question for the technical committee.

Could they advise me on how many years' worth of that type of information we would need to be able to prove that those fisheries are sustainable? I don't see that happening with just one or two years' worth of information.

DR. SADZINSKI: You're right in saying it wouldn't be just one or two years. I'd like to see at least four to six, but I can certainly present that to the technical committee for comment.

MR. BOYLES: Mr. Chairman, not to belabor the point; I want to support the motion. The problem again I have is a timing issue, and I'm wondering if this closure could begin January 1, 2012. The reason for that again is that this board will be making decisions on what is considered to be a sustainable fishery this time of year from now, about the same time that my legislature is wrapping its session. I want to support it but I don't know that I can as it is presently worded.

MR. R. WHITE: Obviously this creates a lot of difficulty for almost all the states. There is not an easy solution to this problem that everybody goes home happy, but this resource is in a lot of trouble

and we have to do something. I think as an earlier speaker said we can't continue to kick the can down the road. We have to act; and even though it is difficult I am going to support this motion.

MR. GROUT: I would have no problem if there was a friendly amendment to address Robert Boyles' concerns here being 2012 if that is what is needed. I don't know if Michelle or Terry would agree to that, but I would have no problem. I am looking at a way to see how we can accommodate Robert's concerns as well as Roy's and Jack's concerns here by making an amendment or offering friendly amendments.

I would ask Jack or Roy is there something that we can do this to give them a little bit more comfort and flexibility? I looked at this as an ideal situation because it did give the states the flexibility to come up with the plans that would show sustainability.

MR. BEAL: Terry, do you have a comment as the maker of the motion?

MR. STOCKWELL: Just a brief comment. Yes, I would be comfortable with extending the time period to accommodate Robert's needs. I mean all of our states have all kinds of problems and issues; and if that will help him out, I'm happy to change the date.

MR. BEAL: Let's go to Michelle and see if she is comfortable as the seconder, and then we will get back to the board comments.

MS. DUVAL: I would be comfortable with that as well if it would help Robert out.

MR. BEAL: Okay, we will go ahead and change the date to 2012. Robert, since folks are responding to your concern, when would you feel comfortable submitting a proposal for a 2012 implementation? Would that be pushed back a year as well?

MR. BOYLES: No, I don't anticipate the proposal – the moratorium date is to accommodate our legislative session, for them to be able to pass judgment on this and to get the work done. I would still envision the proposals being here next January.

MR. BEAL: Great, so the states will have about seven or eight months to pull those proposals together from now.

MR. CARPENTER: Just procedurally, if this motion is approved you have essentially de facto chosen Option Number 4 of all of the options for the management; is that correct, and there will be no

discussion of the management options as we move through the rest of the document?

MR. BEAL: I think that is the recommendation of the working group. There is one nuance here and that is the technical committee had recommended allowing regional targets and the working group had only recommended state-wide targets. Allowing for regional targets may provide a little bit more flexibility to the states as they consider development of their proposals, so board members may want to think about that for a moment as well.

MR. MILLER: Mr. Chairman, I was just going to remark the road we're taking harkens back in my recollection to 1984 when we began to impose increasingly restrictive regulations through the commission process on striped bass harvest to the point where a couple of jurisdictions, Maryland and ours, finally bit the bullet and said, "You know, we just don't want to go through that; we're going to close our fisheries," and that's what we ended up doing.

I suspect that this is the road that we will be headed down rather than trying to prove sustainability for little artisanal recreational fisheries that are currently unmonitored. I just wanted you to understand where we're headed.

DR. LANEY: My colleague, Larry Miller, who is in the audience and I are both on the technical committee and we're comfortable with changing the date to 2012. I also wanted to note that if this motion passes the technical committee is going to be tasked with quite a bit of review work here, and I just wanted to make sure that we consider that when we're formulating the work plan for those years, that the technical committee is given sufficient resources to do that work.

EXECUTIVE DIRECTOR O'SHEA: Is the goal with this change to accommodate South Carolina or is it to provide more flexibility to the rest of the states or both, I suppose?

MR. BEAL: I'm not sure if there is any comment around the table on that.

MR. BOYLES: Again, the concern I've got is that we would end up going back to the legislature potentially twice. The way I envision this working is this board reviews the plan that South Carolina submits next year, a year from now. By that time we have got a clear indication from this board what rivers are going to be suitable for a fishery to



continue. Then we go to our legislative process one time and not twice. Again, the concern I have is taking through our legislative process issues that need to be addressed. This is clearly an issue that needs to be addressed, and I am very comfortable with the friendly amendment.

MR. BEAL: Wilson, did you have your hand up?

DR. LANEY: Well, only to respond to Vince's comment. I think it addresses both South Carolina's needs as well as the needs of the states.

MR. BEAL: Dave Simpson, did you have your hand up or are you still contemplating?

MR. SIMPSON: I did and yes. I'm still trying to figure out how to just wordsmith a little bit to give the states a little more responsibility in this and keep people comfortable that they're managing their own fishery in state waters and sort of try this out on the fly. It would begin the motion to say – start the motion at “to prohibit state waters commercial and recreational fisheries beginning January 1, 2012, unless those states develop harvest management plans, which include in them a demonstration that they are sustainable. Initial plans demonstrating sustainability would be submitted for technical committee review and board consideration at the ASMFC Meeting.” The rest would stay the same.

What I'm trying to do with that is to put the onus on the states to develop plans and demonstrate essentially to their own satisfaction that their fisheries can remain open. The technical committee would review those plans. The idea would be that states would be given the latitude they need to keep fisheries open where they feel it is justified.

If they can't meet their own plan for sustainability, then they come to that conclusion in their in their annual review; and if they fail that test, that's for the commission to make that finding and agreement and be able to take commission-level action.

MR. BEAL: David, would that be a substitute motion or a request for a friendly change?

MR. SIMPSON: If it could be perceived as a friendly amendment you would be substituting “states” in place of the word “fishery”, so “prohibit state waters commercial and recreation fisheries unless those states develop harvest management plans that can be demonstrated to be –

MR. BEAL: Hang on, David, if you start over Chris can capture this as you go, I think. Yes, Vince.

EXECUTIVE DIRECTOR O'SHEA: My suggestion is you decide what you're doing here. Is this a friendly amendment, is this going to be a substitute motion or do you want a motion to amend? That question needs to be put to the maker of the original – well, first you have to understand what you're trying to do. Then that question needs to be put to the maker of motion and the second before we put anything up there, I think.

MR. SIMPSON: Okay, so what I was trying to do is to explain what modifications I would make to this motion and put it to the maker and seconder if they considered it friendly. If they do, fine; if they don't, then it's a motion to amend.

MR. BEAL: In order for Terry and Michelle probably to fully understand it, they will probably need to see the wording. Can you work with Chris on that?

MR. SIMPSON: I don't have the whole thing written down. If you want to just copy that to say – for the moment you want to put “fisheries”, those fisheries, put that in parentheses and –

MR. BEAL: We have copied it so they can modify this one. Terry Stockwell while this is going on.

MR. STOCKWELL: Mr. Chair, I understand where David is going and this is much of the conversation we had in Baltimore. I mean from my perspective a lot of what you're asking for is already embodied in the working group's recommendation. Until I see what language you come up with, I don't know whether it would be just duplication or whether it would just further complicate what we're trying to do.

MR. SIMPSON: In my reading of it, based on having been in the working group and participated in the discussion, I was comfortable with the original language because I perceived it to give the states wide latitude to determine what fisheries could be opened and basically the technical committee would be giving the nod or saying no based on the state's own conclusions about the appropriateness of a fishery.

But when I hear these fatalistic comments around the table that states are seeing this as being a de facto closure of all their fisheries due to lack of monitoring ability, that is when I see the need to do something a

little bit clearer in the motion to satisfy people that that is not case because that's not my intent.

MR. BEAL: Dave, is that the wording on the board that you had recommended?

MR. SIMPSON: Yes, that part is right and then "plans demonstrating that a fishery" – right where you are now, "plans demonstrating that a fishery is sustainable must be submitted". I'm hoping that what that does is captures the sense of the board that this is putting the onus on the states to develop that plan and show to their own satisfaction that continuation of a fishery is appropriate or not, and they would submit that plan to the commission for review.

If they have concluded that a fishery is not appropriate or further restrictions are required, the board would receive that information and act on it. But if the state concluded that a fishery was appropriate, that the board would be leaning toward allowing the states the latitude to make that call.

MR. BEAL: Terry, I guess it is your decision whether you're comfortable with the wording or if you understand the changes and what they might mean.

MR. STOCKWELL: Mr. Chair, I understand the changes and I understand the intent. I'm just struggling over a couple of words here, but if the rest of the board is comfortable with it.

MR. BEAL: Michelle, do you have a comment?

MS. DUVAL: Which words are you struggling over?

MR. STOCKWELL: "Harvest" definitions.

MS. DUVAL: I think that is my struggle as well. Since we have been using the terminology "sustainability targets", I am just wondering what the difference is between those; that's all. Maybe David can clarify it.

MR. BEAL: David, do you have a comment on the difference between "harvest definitions" and "sustainability targets"?

MR. SIMPSON: Yes, it would probably be clearer just to strike "harvest definitions and" and say "include in them a demonstration they are sustainable".

MR. BEAL: All right, we're a little bit overtime already on the agenda. We probably need to move

forward as quickly as possible if we can. Terry, are you comfortable with the new wording? Do you fully understand the implications of the new wording?

MR. STOCKWELL: Yes, we just have a different way of saying the same thing, "harvest management plans that are sustainable". I mean I think we could delete a few more words in there and say the same thing.

MR. BEAL: Michelle, are you comfortable with the new wording and we will make that the main motion?

MS. DUVAL: Yes, I would be comfortable with that.

EXECUTIVE DIRECTOR O'SHEA: I guess the question here is does this now change the decision-making from the board and the technical committee and shift the decision-making back to the individual states, and is that the intent?

MR. SIMPSON: Yes, with the understanding that if a state comes to the conclusion that they're not meeting their own definition of a fishery that should remain open, they include that in their report that is submitted to the technical committee and ultimately the board to receive and act on, so there still remains the hook, so to speak, of the commission mandatory compliance that a state would need to then close their fishery or restrict it further.

What I'm trying to do is strike that balance that we've been struggling with under this FMP for a long time between a state's right and ability to manage a fishery that exists only in their waters, and disproportionately relative to other fisheries, other species, other plans affects that state to the good or bad based on the quality of their management.

You know, this is an example where what Connecticut does in Bride Brook will affect us profoundly; it won't affect New York at all. It is very different than winter flounder or lobster or any other even very limited migratory species. It is in a data-poor environment and multiple stocks so I think states, I'm hearing it around the table, need some latitude to use their best professional judgment – a term that is thrown around in other circles – to make those calls and take the lead in the management of these resources with the commission backing ultimately to help them do what they believe is necessary for the conservation of these species.

MR. R. WHITE: I would like to ask the technical committee if the changes in this motion will still accomplish the recommendations of the working group?

DR. SADZINSKI: In some sense they will. Like I said, we had a whole list of recommendations, but, of course, it also puts more burdens on the technical committee at the same time. Now we're reviewing an additional plan, the harvest management plan, which I'm not sure what that is.

MR. GROUT: My question since the intent of trying to put forward this friendly amendment to address some of the concerns that Virginia and Delaware have; does this make things more amenable to those two states if we make these changes?

MR. TRAVELSTEAD: Unfortunately, I'm still confused about the language in bold. What I thought I heard Dave say was that an individual state will determine whether its own fishery is sustainable and not rely on approval from the management board, but then if you read the motion further it says the plans still have to be submitted for review by the technical committee and approval by the board, so I'm confused about that. I have a little bit of a problem with leaving it up to an individual state. As much as I didn't like the original motion, I don't trust myself, Mr. Chairman, I guess.

MR. BEAL: Doug, I think you also asked Roy the similar question does this help out the state of Delaware.

MR. MILLER: No, I don't think it does change the net impact, and I agree with what Jack said.

MS. DUVAL: And I guess that's my concern just with the proposed language change and just clarification from Dave that – I mean I would still want to see the harvest management plans, as Jack said. In the motion it reads right now that those harvest management plans would be submitted to the technical committee for review, and I want confirm that is still the intent.

I'm supportive of giving the states maximum flexibility in determining sustainable fishery targets, but I want to make sure that we have the scientific input on those plans and those recommendations coming before the board before there is a final approval.

MR. BEAL: There seems to be a lot of confusion to Vince's question of does the burden fall on the states

now to prove the harvest is sustainable and accept that or does it go to the technical committee and board for review. I think Michelle, as the seconder, is saying she would like to have the technical committee and board make the final decision. I think in modifying the language is saying that it would fall upon the states. I think there is still a bit of disconnect between the opinions of some folks around the table. Terry.

MR. STOCKWELL: Mr. Chair, my read is that this would give the states the flexibility to develop their own management plan. It still has to be reviewed by the technical committee with final approval by the board. The language is a little convoluted but that is what it says to me.

MR. AUGUSTINE: Based on Mr. Stockwell's last comment, that just cleared the air. The final approval comes from the board and the technical committee. I agree, this convoluted the whole damn thing around, but it did give the states the option to develop their plan. I think we have beat this death and I would like to call the question, Mr. Chairman.

MR. R. WHITE: My concern is that the states have been in charge of managing this species to date and we're in the problems we're in. I guess I don't want to go back in that direction. I want to have the commission overseeing what the states are doing.

MR. BEAL: All right, just to be perfectly clear, it sounds like Terry, the maker of the motion, and Michelle the seconder is saying that David's addition changed some wording but it really didn't change the overall function of the motion, which would mean states go home, look at their fisheries, develop plans or proposals, and then those will come back to the technical committee and management board for approval and implementation, and then states will take those home and implement those. It is a bit of a wording change but it takes everybody in the same direction; is that where we are?

MR. SIMPSON: Yes, I think so, and like a lot of these things I think the interpretation into the future depends a lot on the record that we've said here and the intent. The intent in my mind in this is to give states the maximum latitude to justify their position should their fishery be opened or not.

The commission would be very sensitive to that finding and I think would have to have a little higher level justification if they were to disagree and say that, no, a fishery should be closed or not. Again, this is a little bit of a unique species. It is not clear

that the driving force in the health of this resource is the directed fishery.

Connecticut closed its fishery about the same time Massachusetts did, maybe a little bit before. That was our call to make. We are a state government. We do have that authority and we do have that will. We didn't need the commission's help in doing that, but I understand that some states do sometimes and so I'm trying to include that in there.

Ritchie made that comment that, gee, states have been doing their own thing and look what happened to the resource. Looking at a recent report that just came out from UConn that we paid for over the last two years with SWIG money, striped bass predation has been quantified in one stretch of the Connecticut River, one stretch of it, mind you, and their estimate is that striped bass consumed 200,000 blueback herring in May of 2008.

So one stretch of one river in one month 200,000 river herring disappeared into the mouth of striped bass. That is equivalent to what we were passing back at the Holyoke Dam when the fishery was healthy, when the resource was healthy. Those same fish or probably the larger ones consumed a hundred thousand American shad in that one stretch of the river in one month of one year. So these are the things, the sort externalities that we can't directly control under this management board but may be indirectly controllable.

MR. BEAL: I have got two more hands and then unless there is a compelling reason I will ask the board to caucus and then vote on the motion. I had Dennis Abbott and Wilson Laney.

REPRESENTATIVE ABBOTT: After you've spent so much time with Terry's amendment, which I thought we were getting close to voting on prior to Dave coming up with amending that motion, process-wise I would have been a lot happier to vote on Terry's amendment and then leaving that motion or call it amendment – I'll call it a motion – open to further amendment and then giving us the opportunity to vote on Dave's because now I'm a bit conflicted on how I feel personally about the original motion versus how I feel about the combined motion. I would still have preferred to be voting on Terry's motion as you folks spent a lot of time perfecting in the past hour and a half.

MR. BEAL: I think there is only one motion in play right now the way I read it, which is the one that is on the board because Terry and Michelle have accepted

the wording changes that Dave has suggested. That's the way I see it. Wilson Laney.

DR. LANEY: Mr. Chairman, to that point about the motion, I have no problem with it. I think Terry's analysis of it I share so I think it still does what it needs to do. With regard to David's comments about striped bass predation, I think that's an eloquent statement of why we need to move and why we're already moving as the commission toward ecosystem management.

I have said for a long time that while I applaud the commission's session with regard to striped bass restoration we picked the wrong species to restore first. We should have picked river herring and American shad to restore first and then maybe we wouldn't be having some of these issues.

MR. BEAL: Thirty-second caucus, please.

(Whereupon, a caucus was held.)

MR. BEAL: While folks are wrapping up their caucus, I will read the motion into the record since it has been modified a few times. Move that the board adopts the working group recommendation to prohibit state water commercial and recreation fisheries beginning January 1, 2012, unless those states develop harvest management plans which include within them a demonstration that they are sustainable. Plans demonstrating that a fishery is sustainable must be submitted to the technical committee for review by January 1, 2010, and the board will consider approval at the ASMFC Spring Meeting and prior to the fishing year beginning January 1, 2012. Proposals to reopen closed fisheries can be submitted annually as part of the Annual State Compliance Report. Motion by Mr. Stockwell; seconded by Dr. Duval.

All those in favor of the motion please raise your right hand; those opposed like sign, please; abstentions; null votes. **The motion carries 14 in favor, five opposed, no abstentions, no null votes.** Tom O'Connell.

MR. O'CONNELL: Bob, just for the record, these harvest management plans, if they're on a population that is below the optimum level, I would hope that these plans would incorporate a rebuilding strategy and not just a plan that would keep that fishery sustainable at that low population level, and it would come before the technical committee and the board for final approval.

MR. BEAL: Actually that is part of the working group's recommendation from their meeting.

MR. FOTE: I kept quiet for the last end of this discussion, but I'm sitting here thinking about New York's report a couple of years ago talking about power plants in the Hudson River, talking about the fact that the harvest of shad and river herring could be 50 percent greater if it wasn't for the problems that power plants cause.

So when we talk about 200,000 being killed by striped bass, if you could increase the harvest by 50 percent, what does that number have to be larger to do that because I know with summer flounder and other species, you've got to have a bigger biomass to basically harvest 12 million pounds of spiny dogfish. So I'm sitting here thinking about what do we really need for there. In all these plans we are not dealing with some of the real problems here.

You know, we deal with some of the habitat issues and there were great strides. And, you know, Pat Kurkul had this discussion the other day and I said, "I love when you write those comments, but you wrote those comments and it's always the creek just got reauthorized for 20 years without cooling towers, without any better impingement than they have right now and we're going to be still causing the same thermal pollution and the same killing of fish." Thank you.

MR. STOCKWELL: Mr. Chair, on to something easy, monitoring, **move that the board require the existing monitoring requirements of Addendum I to Amendment 1 for American shad be complemented by equivalent measures for the monitoring of river herring.**

MR. BEAL: Is there a second to that motion? Seconded by David Simpson. Terry, do you have a comment on the motion?

MR. STOCKWELL: I'm running out of words. It was the working group's intention to keep it simple, make it complementary and try to reduce the burdens on the states.

MR. BEAL: Just for clarification, the monitoring requirements that already exist and the states have implemented for American shad; the idea is to require, through Amendment 2, complementary monitoring requirements for river herring. I think the idea, if I remember the working group's discussion, was essentially the monitoring is already going on and it just may require collecting additional samples

during the already-existing monitoring efforts that are going on in the states. A.C. Carpenter.

MR. CARPENTER: Am I to understand the intent of this motion is to delete Section 3 of this plan and replace it with the monitoring requirements that are in Amendment 1; and if that's the case can we have a copy of the monitoring requirements for Amendment 1 available before we proceed?

MR. BEAL: Kate can handle this one, I think.

MS TAYLOR: The monitoring requirements that are currently contained in Draft Amendment 2 are identical to what states are currently doing for American shad as laid out in Amendment 1. That was the intention of the original plan development team, that the monitoring requirements for river herring and shad be consistent. The Draft Amendment 2 states that states may adopt these monitoring requirements as recommendations or they would be mandatory requirements.

MR. BEAL: So the mandatory requirements would be the elements that are consistent with what is currently being conducted for American shad. Anything above that would be a recommendation to the states and jurisdictions as things that would be very helpful for the management of river herring.

The very first decision that the board made was to go in-river system and then talk about the at-sea intercept fishery so we're still talking about the in-river system monitoring; is that right, Terry. That is right. A.C.

MR. CARPENTER: I hate to be so dense but then why doesn't the motion just simply say that we're going to adopt the monitoring requirements that are in Amendment 2 as presented if they're written to be identical to Amendment 1 of the Shad Plan? Procedurally why are we mixing Amendment 1 shad stuff if what is written in here is already identical to Amendment 1?

MR. BEAL: I think Michelle has a response to that, hopefully.

MS. DUVAL: To try to clarify, I think the intent was for states that are already conducting monitoring for American shad under Amendment 1, that, as Terry mentioned, this would be a way to just reduce the burden, and the intent was to just piggyback on the monitoring that is already being conducted.

MR. BEAL: Does that help, A.C.?

MR. CARPENTER: Not at all but I will be quiet.

MR. BEAL: Any other comments on the motion regarding monitoring? Doug Grout.

MR. GROUT: I have to admit I'm a little bit confused by that statement that the things that we're required to do under shad are exactly the same as what we're required to do in Amendment 2 here for river herring. Amendment 2 talks about picking three sentinel rivers and it talks about being required to implement juvenile abundance surveys.

I don't have a requirement in the current shad plan to do a juvenile abundance survey. I have a requirement with one river, the Exeter River, to do an annual spawning stock survey and to calculate mortality or survival estimates. I don't have a juvenile abundance; and what I read in Amendment 2 it says that I'm required.

Now, I have no problem with this. I'm just questioning the statement that things are exactly the same because I saw the fisheries-independent and the fisheries-dependent monitoring requirements that were in the proposed Amendment 2 here as being much more stringent than we have ever been required to do before. Maybe I'm confused by the statement.

MS. TAYLOR: The basis of the PDT recommendation for monitoring in Amendment 2 came directly from Amendment 1 with the thought that they would be applied coastwide. At the previous meeting in February the board felt that those were very restrictive and that's why the working group was reconvened. Yes, there are some differences as I'm looking through the tables right now between the two, so there would be an option for either adopting them as this motion or the working group's recommendation was adopting what is in the draft documents.

MR. BEAL: So I guess there is a difference and maybe I can clarify that. The Draft Amendment 2 includes provisions that were implemented by some jurisdictions but not all, and the plan development team is recommending that those monitoring programs are implemented by all jurisdictions.

The motion on the board backs off of that recommendation to implement all monitoring by all jurisdictions and reverts back to what is in place for shad and allows, as Michelle said, the states to piggyback on those monitoring efforts that are currently occurring, so there are some recommendations in Draft Amendment 2 that would

not be required. Those would be recommended, but the requirements would be the existing monitoring efforts in the Shad Amendment. I hope that is helpful and I hope that gets to A.C.'s question as well. Is that clear or does the board need any additional clarification? Roy Miller.

MR. MILLER: Mr. Chairman, what is not clear to me since I don't have Amendment 1 in front of me is which ones from what I do have in front of me would be struck out; can you help with that, out of Table 14, presumably?

MR. BEAL: We will get back to you on that, Roy. We're going to grab a copy of the Shad Plan with the table. While we look for that answer, are there other questions or comments on the motion? Roy, I assume you would like to see that answer before you voted on this motion or are you comfortable voting on maintaining your current monitoring program that you have for shad and just piggybacking river herring monitoring on those programs and essentially not requiring any new monitoring programs for the state of Delaware, but collecting river herring data while you're out collecting shad data?

MR. MILLER: I'm comfortable with what you said, Mr. Chairman.

MR. BEAL: And I think that is the intent if Terry and Michelle agree. They're both nodding their heads yes. Any other comments on this? Seeing none, a quick caucus.

(Whereupon, a caucus was held.)

MR. BEAL: All right, it looks like folks are finished caucusing. Those in favor of the motion regarding monitoring please raise your right hand; those opposed like sign; abstentions; null votes. **The motion carries unanimously.** Michelle, I think you have the next motion.

MS. DUVAL: Mr. Chairman, now we're going to move into the at-sea bycatch. As part of the conversation we certainly heard a lot of concerns expressed about at-sea bycatch of river herring. I think we have taken some important steps in terms of the letters that have been sent to both the Mid-Atlantic and New England Fishery Management Councils.

Clearly, we need to continue moving forward on this, so I would offer the following motion. **Move that the ASMFC send a letter to the Secretary of Commerce supporting efforts underway by the**

**New England and Mid-Atlantic Fishery Management Councils to effectively monitor bycatch of river herring in small-mesh fisheries and encouraging the Secretary of Commerce to provide additional resources to support the cooperative efforts between the commission and the councils to better manage anadromous fisheries; and, finally, to request that the Secretary of Commerce take emergency action with regard to implementing the bycatch monitoring measures that have been under discussion at the New England Fishery Management Council to Amendment 4 to the Sea Herring Plan.**

MR. BEAL: Thank you; is there a second to that motion? Seconded by Robert Boyles. Discussion on the motion regarding comments to the Secretary of Commerce? Paul Diodati.

MR. DIODATI: Just for clarification; then this is asking for secretarial action that would require some level of increased monitoring immediately and since it is an emergency action not wait until any particular council adopts a plan one or two years down the road, so that is my understanding of the motion?

MR. BEAL: That is my understanding and Michelle is nodding her head yes, so I think that is the intent of the maker and Robert, the seconder, as well. Any other comments with respect to the motion? Seeing none, let's have a quick caucus if necessary. Those in favor of the motion to provide comments to the Secretary of Commerce please raise your right hand; those opposed like sign; abstention, one abstention; null votes. **The motion carries 18 in favor, no votes in opposition and one abstention.** Any other motions at this time? Dr. Laney.

DR. LANEY: Mr. Chairman, let me preface this motion by saying we talked a little earlier about the fact that the commission has just finished its Anadromous Habitat Source Document, to my great relief. Given that Draft Amendment 3 has a suggested habitat restoration provision, I think the workgroup, at least the members I met with last evening, would recommend that both Amendment 2 and Amendment 3 move forward and consider habitat planning and that the habitat planning needs for Amendment 2 and Amendment 3 may very well be rolled together into one document as process permits. **So having said that, I would like to move that states should develop habitat restoration plans for river herring as outlined in Draft Amendment 2.**

MR. BEAL: Terry Stockwell seconds the motion. Question, Wilson, on the motion; does Amendment 2 actually have the recommendation for a habitat plan or is that included in Draft Amendment 3?

DR. LANEY: It is definitely in Draft Amendment 3 and I thought that was some similar language in Amendment 2, but I will defer to staff on that point.

MR. BEAL: My reading of it, anyway, is that I don't think there are recommendations with respect to the development of a habitat restoration plan. There are a number of habitat restoration recommendations in there but not a recommendation for the states to go home and develop plans.

DR. LANEY: Then perhaps we should modify the wording of the motion.

MR. BEAL: How would you like it modified?

DR. LANEY: How about move that states should develop habitat restoration recommendations for river herring as outlined in Draft Amendment 2.

MR. BEAL: Well, not to be argumentative, but I think the habitat restoration recommendations are already included in the draft document. Are you asking the states to then implement those recommendations?

DR. LANEY: Well, I was trying to accommodate the discussions that we had in the workgroup and also at the last technical committee meeting that tried to make things more efficient by anticipating that there may be a habitat planning requirement for American shad as part of Amendment 3 and being able to roll river herring into that. I look to guidance from staff and other board members as to how we might try and capture that attempt in a perfected motion.

MR. BEAL: Let's see if I can frame the question. Draft Amendment 3 that the board may consider later includes recommendations for the states to go home and develop habitat restoration plans for American shad, and Wilson is asking should we, as part of Amendment 2, develop something similar for river herring since those plans will already be under development; is that correct, Wilson?

DR. LANEY: Yes, Mr. Chairman, thank you.

MR. BEAL: Are there any thoughts on developing and prioritizing habitat restoration efforts within the states and how those plans may be developed? I don't see any comments on this one. Doug.

MR. GROUT: Was there any time set forth in the plan at this point that says we have to have them developed by a certain timeframe?

MR. BEAL: Amendment 3 has the timeframe which is three years after implementation of Amendment 3; okay, three years to develop the habitat restoration plan but there is no requirement to implement that plan. It would just be an exercise by the state to develop a plan and prioritize habitat restoration efforts; and as resources are available, then the states would be able to implement that plan. Dr. Laney.

DR. LANEY: And as I alluded to earlier I think a lot of the information that would feed into the plan outline that is presented in Amendment 3, anyway, has already been developed either by the commission in the Diadromous Source Document or by the individual state jurisdictions in their wildlife action plans or will be developed by the Atlantic Coastal Fish Habitat Partnership's coast-wide habitat assessment that is being conducted by NOAA.

MR. FOTE: I think states could draw up plans but I'm wondering how they can implement it. How do you affect the power plants? How do you basically look at the Delaware River and the proposed dredging that would basically go much further down deeper and basically include that in habitat restoration when it is under construction?

I mean, you know, it is the federal agencies, a lot of them that have control over what really goes on in the states. States have a certain amount of control but when it comes to the Army Corps of Engineers, when it comes to the power plants, you look at FERC and everything else.

I mean, you know, where is that component because it is, again, another feel-good exercise that we can put together and with all the extra staff Tom has you can put those people on there to basically do that. But, you know, my concern is that we write a paper and how do you affect real changes when the federal government doesn't – EPA doesn't really put what needs to be on some of these things.

MR. BEAL: Dr. Laney a followup and then I have Michelle Duval.

DR. LANEY: To that point, Tom, I think, once again harkening back to the comments that I made earlier, I think that the commission has with great intent increased the membership of the Habitat Committee to include representation from a lot of those federal agencies to which you referred.

That have also, with great intent, undertaken the formation of a fish passage workgroup. I think it is incumbent upon the individual states that are members of this commission and the other jurisdictions to set forth what the needs are with regard to habitat restoration or conservation or preservation for these species. I think this is the appropriate body to set that forth in a plan.

I realize that there is a lot of concern around the table that these agencies sitting here don't necessarily have the regulatory authority to make that happen, but I think the commission does possess, clearly, the leadership to make it happen. If you all put it down in writing and put it on paper and submit it to FERC as an approved plan, then it carries a great deal of weight in the relicensing process.

It also sets out for everyone to see what the commission thinks are the important parameters that need to be addressed within each jurisdiction to restore, conserve or preserve the habitat for these species. Once it is out there, then other people tend to pick up the ball and run with it. The same can be said for the commission's annual compilation of research needs for each one of these species.

I can't tell you how many times colleagues in the academic community have asked me what is the commission looking to see done, and I point them to that document or to the electronic compilation that is now being done. It carries a great deal of weight. I think that preparation of habitat plans for all three of these alosine species would carry a great deal of weight and would lead to implementation of a lot of those measures either by other agencies or by other entities such as the conservation groups and the angler groups that are such great supporters of this process.

MS. DUVAL: Mr. Chairman, just one quick point for clarification. The intent of the motion is not that it be a compliance element, but that be something that the states develop along the way. I will echo what Wilson has just said and say that this also provides assistance. Even though most of the folks sitting around the table here don't necessarily have the regulatory authority, as Tom pointed out, over these activities that are impacting habitat, but having this put out in writing really lends an air of authority, for lack of a better word, when we're appealing to those agencies that do have regulator authority over development.

MR. McCLOY: Mr. Chairman, I suspect the hierarchy makeup in all states is a little bit different.



We, the division, don't stand at the same level as the rest of the department which really has the last say in terms of environmental projects and habitat restoration efforts. I mean, it could be problematic for us to write a plan and then have anything to submit if the department did not agree with our viewpoint. So, how we overcome that I am not sure.

MR. BEAL: Thank you, Tom. Other comments on the motion? Wilson.

DR. LANEY: Well, just to Michelle's point and to Tom's point, those of us that worked on these very carefully chose that word "should" as opposed to "shall" or "must", so I think that provides for the contingencies in those cases where states don't feel that they would be able to develop a plan, whether it's for lack of resources or whatever reason.

MR. BEAL: So this is a recommendation to the states rather than a compliance requirement. It sounds pretty clear. Bill Goldsborough.

MR. GOLDSBOROUGH: Mr. Chairman, I can say from several years' experience on the Habitat Committee working on the Diadromous Fish Source Document that it is a wonderful resource that I highly recommend to everybody; and that if this motion has the effect of causing each of us in our states to make use of that resource and apply it toward the end of improving habitat for alosids, then I fully support it. Thank you.

MR. BEAL: Thank you, Bill. Other comments on the motion? Seeing none, is there a need to caucus? It doesn't look like it. All those in favor of the motion please raise your right hand; those opposed like sign; abstentions, 1 abstention; any null votes. **The motion carries 18 in favor, none in opposition and one abstention.** I think that is all the motions that I was aware of with respect to Amendment 2 to the Shad and River Herring FMP. A.C.

MR. CARPENTER: Is it my understanding that the monitoring requirements, when the final version of Amendment 2 comes out, that it will go back and rework that section to reflect the mandatory requirements that are in Amendment 1 or do we have to carry both volumes with us when we go to try to read this?

MR. BEAL: No, we won't subject you to carrying too much paper around. The staff will go back and work with PDT to spell out exactly what is required of the states and then also anything that is not required of the states will be retained in the document

but as a recommendation when additional resources are available.

I think we're at a point where the board has to make a decision in that there have been number of decisions made today on Amendment 2. Is the board comfortable recommending to the full commission to approve that document when they meet tomorrow morning or does the board want to see the perfected draft of this document and come back before them at the August meeting for one final review?

Those are the two courses that the boards have taken in the past to wrap up an amendment. It is at the pleasure of the board how clear they feel the decisions were today and how comfortable they are with what the final document may look like when the plan development team finalizes it. Any comments on that? Pat Augustine.

MR. AUGUSTINE: I'll be bold; your first approach; move forward and let the staff clarify and present to the commission tomorrow ready to vote on and moving it forward now.

MR. BEAL: Is that a motion, Pat?

MR. AUGUSTINE: That is a motion, but you use better words than I do. Move to recommend to the full commission – is that up there for me yet?

MR. BEAL: It is your motion but what I was saying earlier was **the one option is to recommend to the full commission approval of Amendment 2 to the Shad and River Herring Management Plan as modified today by the board.**

MR. AUGUSTINE: **I will make that motion.**

MR. TRAVELSTEAD: Second the motion.

MR. BEAL: Jack Travelstead was the seconder of that motion.

MR. TRAVESTEAD: It's the first time I have ever seconded a motion of Pat's.

MR. BEAL: Are there any comments on the motion as it is written on the board? Vince.

EXECUTIVE DIRECTOR O'SHEA: Earlier in this meeting the board decided to send a letter to the Secretary urging something to be considered and take it on an emergency basis. I think if this motion were to be approved it would be a consistent signal to the

terminology of the emergency where you want the Department of Commerce to look at this. Thanks.

MR. BEAL: And I assume staff will work with the actual chairman of the board to craft that letter and send it off to the Secretary of Commerce probably within the next couple of weeks. I think one of the other decisions that boards usually make at this time is implementation schedules and timelines for amendments, but I think those were actually embodied in previous motions that the board passed today about where states will be required to take certain actions.

Kate reminds me there is one more decision on de minimis. I think it is drafted that the board will make that decision once they decide what the final version of the document looks like. We have a motion to approve it, but it approves that there is one detail on de minimis that the board has not considered. Pat, are you comfortable holding this motion until we briefly discuss de minimis?

MR. AUGUSTINE: Yes.

MR. BEAL: So unless there is objection, we will table this motion until the discussion on de minimis is completed. Jack, are you comfortable with that as the seconder? All right, de minimis status, the draft amendment does not include details necessarily for de minimis status. Are there any comments or recommendations with respect to de minimis?

MR. CARPENTER: Is there anything in Draft Amendment 2 – I mean, can you point to a page where it even talks about de minimis.

MR. BEAL: We will get the page number in a minute, A.C. The current Shad FMP has a 1 percent standard; any state that is below or jurisdiction that is below 1 percent of coastal harvest is granted de minimis for shad – page 95, A.C.

**MR. AUGUSTINE: I would move, Mr. Chairman, to adopt the 1 percent de minimis as previously stated.**

MR. BEAL: There is a motion; is there a second to the 1 percent? Bill Cole seconds. Since we're kind of following the model of the Shad FMP, in that plan if you are granted de minimis you are exempted from the fishery-dependent monitoring portion of the amendment. Is the board comfortable with, if this standard is adopted, carrying on the shad standard of exempting states from the fishery-dependent monitoring if you're granted de minimis? That's the

question before the board, 1 percent standard and what are the states exempted from? Wilson.

DR. LANEY: Mr. Chairman, I would like to hear from our technical committee chairman with regard to what the impact that would be on the ability of the technical committee to assist the states with management of those stocks.

DR. SADZINSKI: Well, from a technical perspective you won't know that you're at 1 percent the following year. It might be better just to actually establish probably just an overall quota based on the overall million pounds that is landed.

MR. BEAL: Any other comments on the de minimis motion or questions? A.C.

MR. CARPENTER: For those of us who I think are going to have to declare a moratorium as a result of actions taken a little bit earlier, does that necessarily put us all in the de minimis category now?

MR. BEAL: I'll assume that is a bit of a rhetorical question. Any other comments with respect to de minimis? Roy Miller.

MR. MILLER: Just to refine the motion; is that 1 percent of total take to include commercial and recreational or is it 1 percent of commercial and 1 percent of recreational?

MS. TAYLOR: Amendment 1 was amended to read that de minimis could be requested if the state had a commercial landing that was less than 1 percent of the total commercial coast-wide fishery, and the de minimis would apply for both the commercial and recreational fisheries-dependent monitoring.

MR. BEAL: So I assume that standard will be carried over as part of this motion. Tom.

MR. FOTE: It is a little different where we don't have an ocean fishery for shad anymore, but we do have for river herring, so those fisheries that are going on for river herring under the New England Plan – I mean I have no idea; I am just asking the question – do they count as your 1 percent?

MR. BEAL: The bycatch, Tom?

MR. FOTE: Yes.

MR. BEAL: We usually don't consider bycatch in de minimis determinations. That has been the commission practice. Vince.

EXECUTIVE DIRECTOR O'SHEA: So Kate's answer was that the trigger is the commercial harvest and then the impact is on both the commercial and the recreational fisheries?

MR. BEAL: Yes, that's how the shad document is written now. Is the management board ready to vote on the de minimis motion? It looks like they are; is there a need for a caucus? Seeing none, those in favor of the de minimis motion please raise your right hand; those opposed like sign, two opposed; abstentions, no abstentions; null votes, no null votes. **The motion carries 16 in favor, two votes in opposition and no abstentions.** Wilson Laney.

DR. LANEY: Mr. Chairman, for the record the reason that Mr. Meyers and I voted against it was because of our concerns about the potential impact on our ability to manage the stock.

MR. BEAL: Thank you, Dr. Laney. Now we can bring back the motion on recommending to the full commission approval of Amendment 2. Are there any comments with respect to that motion? Bill Adler.

MR. ADLER: Mr. Chairman, the other sections that are in this draft stay, don't they? I mean adaptive management and all that type of staff is the wording; they just stay in place?

MR. BEAL: All those sections will remain in the document and all the sections that were modified by the board today will reflect the board's decisions. Any need to caucus? Seeing none, those in favor of recommending to the commission to approve Amendment 2 please raise your right hand; those opposed like sign, two opposed; abstentions; null votes. **The motion carries 17 in favor, two opposed, no abstentions and no null votes.** I think that is all the business before the board on Amendment 2. Paul Diodati.

MR. DIODATI: Mr. Chairman, since you have run way over your allotted time (laughter), I would suggest that – I don't think there is a pressing penalty if we postpone discussion on the Shad Amendment until the August meeting, so I would recommend a postponement on that part of the meeting and adjourn the meeting now.

MR. BEAL: Is everyone comfortable with that course of action? I think the technical committee had actually made comments that if they had another crack at Amendment 3 and a little bit more time to think about it they could probably perfect some the

language in there to help out with the discussion at the August board meeting.

MR. TRAVELSTEAD: It would be helpful for me and perhaps others if I could get a copy of the motions that we passed here today before we leave this week. I know my phone is going to start ringing shortly and I want to be able to explain these things in great detail.

MR. BEAL: Yes, we can print out those and we can hand them out at the policy board this afternoon since it is essentially the same group of folks. Anything else before the board? Vince.

### OTHER BUSINESS

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, since the issue of the timeliness of this meeting has been brought up, I just wanted to point out that at the beginning of this meeting time was taken to recognize various stakeholders that expressed an interest in contributing their input to this board prior to the start of the board. That decision was authorized by Director Diodati in view of the controversy and the importance of this amendment, and I just want to make that clear. Thank you.

### ADJOURN

MR. BEAL: The Shad and River Herring Management Board stands adjourned.

(Whereupon, the meeting was adjourned at 12:32 o'clock p.m., May 6, 2009.)