

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

**Hyatt Regency Hotel  
Newport, Rhode Island  
November 2, 2009**

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## INDEX OF MOTIONS

1. **Approval of Agenda by Consent** (Page 1)
2. **Approval of Proceedings of August 20, 2009** by Consent (Page 1)
3. **Move adoption of a sustainable fishery definition consistent with Amendment 2 for River Herring; that is, that demonstrates their support of a commercial and/or recreational fishery that will not diminish the future stock reproduction and recruitment** (Page 9).  
Motion by David Simpson; second by James Gilmore. Motion carried (Page 9).
4. **Move that the monitoring requirements in Amendment 2 for River Herring be incorporated into Amendment 3 for American Shad** (Page 10). Motion by Michelle Duval; second by David Simpson. *Motion not voted on before adjournment of the meeting.*
5. **Move that the JAI trigger be changed to 75 percent and that the trigger would be met if three successive values are less than 75 percent of the values in the time series** (Page 12).  
Motion by Wilson Laney; second by Robert Boyles. Motion carried (Page 13).
6. **Move to adopt Z 30 as a mortality index rather than as an overfishing definition** (Page 14).  
Motion by David Simpson; second by Sen. Damon. Motion carried (Page 15).
7. **Move to postpone any further consideration of Amendment 3 until the February meeting** (Page 16). Motion by A.C. Carpenter; second by Pat Augustine. Motion carried by consent (Page 16).
8. **Move that Virginia's 2010 American Shad Bycatch Allowance Program be approved** (Page 16). Motion by Jack Travelstead; second by A.C. Carpenter. Motion carried (Page 16).
9. **Move to approve the 2009 FMP Review for Shad and River Herring, including approval for *de minimis* status for shad for the states of Maine, New Hampshire and Massachusetts** (Page 17). Motion by Terry Stockwell; second by Bill Adler. Motion carried (Page 18).
10. **Motion to Adjourn by Consent** (Page 18).

## ATTENDANCE

### Board Members

Terry Stockwell, ME, proxy for G. Lapointe (AA)	Craig Shirey, DE, proxy for P. Emory (AA)
Pat White, ME (GA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Sen. Dennis Damon, ME (LA)	Roy Miller, DE (GA)
Doug Grout, NH (AA)	Tom O'Connell, MD (AA)
Rep. Dennis Abbott, NH (LA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
G. Ritchie White, NH (GA)	Bill Goldsborough, MD (GA)
Paul Diodati, MA (AA), Chair	Jack Travelstead, VA, proxy for S. Bowman (AA)
Rep. Sarah Peake, MA (LA)	Catherine Davenport, VA (GA)
Bill Adler, MA (GA)	Michelle Duval, NC, proxy for L. Daniel (AA)
Mark Gibson, RI, proxy for B. Ballou (AA)	Mike Johnson, NC, proxy for Rep. Wainwright (LA)
Kelly Mahoney, RI, proxy for Sen. Sosnowski (LA)	Red Munden, NC, proxy for B. Cole (GA)
David Simpson, CT (AA)	Malcolm Rhodes, SC (GA)
Pat Augustine, NY (GA)	Robert Boyles, SC (LA)
James Gilmore, NY (AA)	Spud Woodward, GA (AA)
Brian Culhane, NY, proxy for Sen. Johnson	Rep. Bob Lane, GA (LA)
Tom McCloy, NJ, proxy for D. Chanda (AA)	John Duren, GA (GA)
Tom Fote, NJ (GA)	Jessica McCawley, FL (AA)
Gil Ewing, NJ, proxy for Asm. Albano (LA)	Bill Orndorf, FL (GA)
Leroy Young, PA, proxy for D. Austen (AA)	A.C. Carpenter, PRFC
Eugene Kray, PA, proxy for Rep. Schroder (LA)	Steve Meyers, NMFS
Loren Lustig, PA (GA)	Wilson Laney, USFWS

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

### Ex-Officio Members

Byron Young, Advisory Panel Chair

### Staff

Vince O'Shea  
Kate Taylor

Bob Beal  
Chris Vonderweidt

### Guests

Peter Burns, NMFS  
Bob Ross, NMFS  
Brian Hooker, NMFS  
Paul Perra, NMFS  
Derek Orner, NMFS  
Janice Plante, Commercial Fisheries News  
Alison Bowden, TNC  
Ray Kane, Chatham, MA  
Patrick Paquette, RFAMA  
Ken Hinman, NCMC  
Rob O'Reilly, VA MRC

Ron Lukens, Omega Protein Corp.  
Bob Bowes, PRFC  
Ben Martens, CCCHFA  
Paul Pajak, USFWS  
Arnold Leo, E. Hampton, NY  
Jeff Kaelin, Winterport, ME  
Andy Kahnle, NYSDEC  
John Pappalardo, NEFMC  
William Rice, PRFC  
Jessica McCawley, FL FWC  
Kathy Hattala, NYSDEC

The Shad and River Herring Management Board of the Atlantic States Marine Fisheries Commission convened in Brenton Hall of the Hyatt Regency Newport Hotel, Newport, Rhode Island, November 2, 2009, and was called to order at 5:10 o'clock p.m. by Chairman Paul Diodati.

### **CALL TO ORDER**

CHAIRMAN PAUL DIODATI: This is the Shad and River Herring Management Board. As you know, we're about an hour and a quarter behind schedule.

### **APPROVAL OF AGENDA**

CHAIRMAN PAUL DIODATI: We are going to make every attempt to move through this agenda, however. Seeing no changes to the agenda – I don't think there are any looking around the room – I will consider that approved.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN PAUL DIODATI: The Proceedings from our last meeting, seeing no changes to the minutes, I will consider those approved.

### **PUBLIC COMMENT**

CHAIRMAN PAUL DIODATI: I'm going to move directly to public comment. If there is any public comment particularly about issues that are not on the agenda and not related to Amendment 3 for shad, now would be a good time to raise your hand and come to the microphone. Mr. Kane.

MR. RAYMOND KANE: Thank you, Chairman Diodati. At the last meeting it was brought to the attention of the commission that there was a sizable amount of catch in Herring Specifications Document that was labeled as "herring not known". I believe Dr. Cieri was asked to look at this because it is important to understand what percentage of that catch might be river herring.

Something that wasn't addressed and should be included in Dr. Cieri's research is the amount of fish labeled "fish not known". On Table 22, Page 34, total fish not known was 777,632 pounds, which is a substantial number to ignore. Thank you for your time.

CHAIRMAN DIODATI: Thank you, Mr. Kane. I was told that Dr. Cieri will be presenting information about those numbers at our February meeting, so there will be an actual discussion about that.

MR. KEN HINMAN: Mr. Chairman, my name is Ken Hinman, President of the National Coalition for Marine Conservation. I just have a few comments which relate to the follow-up actions that will be required by Amendment 3. This pertains to the recommendation for monitoring and reduction of bycatch in the ocean fisheries as a cooperative effort of the states, the ASMFC, the regional councils and NOAA Fisheries.

In our written comments we had encouraged the board to initiate a process for developing this bycatch monitoring program and to include stakeholder input given the high level of concern about the impact of ocean bycatch on the shad and river herring stocks and to establish minimum requirements for effective bycatch monitoring and reduction.

I will reference the board to our written statement as part of the record for Amendment 3 where we list six of these minimum requirements that we think should be in the program that is ultimately designed by the management board and by the ASMFC. We urge you not to rely completely on the request to NOAA Fisheries for secretarial emergency action to monitor the bycatch that was, we note, part of Amendment 1 ten years ago.

A recommendation for NMFS to be doing that has just not happened yet. We think it is extremely important and we will be working to get that done along side of you and the councils, but we need to complement that with state and ASMFC action. That is my statement. Thank you very much.

MR. PATRICK PAQUETTE: Patrick Paquette, Recreational Fishing Alliance – Massachusetts; Massachusetts Striped Bass Association and various recreational fishing organizations in the Commonwealth of Massachusetts. One item not on the agenda that I was just going to ask it be placed on the agenda or be followed up on at some point is the request for secretarial action regarding observer coverage.

In reviewing a lot of different river herring documents going back about ten years, I noticed that in some interactions with the sea herring fishery, just about 11 years ago there was a request by the Atlantic Marine States Fisheries Commission to the Secretary to do exactly what has been just requested again, was to ask for more observer coverage.

That was never followed up in the record and in the minutes, and I just don't want to lose this last letter and this last effort by all of the agencies, including this board. As somebody who represents a great deal

of people who gave up our 20 percent, which was only 20 percent of the harvest of river herring in our state, through a moratorium, I feel like I got scolded a little while ago while there are still commercial fisheries and two million fish recorded as bycatch in other commercial fisheries.

Those fish aren't laying belly up; they were belly up in a trawler somewhere. I would just like to make sure that at least the emergency action remains on the agenda at each meeting until we have an answer.

CHAIRMAN DIODATI: Okay, I'll just say that I'm pretty sure that we haven't received a response yet. I guess if we're going to take any subsequent action to that, it will take place in February. Anybody else? Seeing none, we're going to move to Item 4, which is the Draft Amendment 3 for American Shad. We have a final action due here. There are a number of decision points that need to be made along the way, so we're going to begin with Kate reviewing the public comment summary.

### **DRAFT AMENDMENT 3 FOR AMERICAN SHAD**

#### **PUBLIC COMMENT SUMMARY**

MS. KATE TAYLOR: The Public Hearing Summary was included in the CD Briefing. I will just briefly go through the comments that were received at the public hearings. In total 120 people attended 15 public hearings. Every state held a hearing with the exception of jurisdictions of the PRFC and the District of Columbia. There was no public attendance at two of the hearings; one in New York and one in North Carolina.

On the commercial fishery management options, the majority of public comments that was given at the hearings were either for the status quo or for a coast-wide moratorium, followed closely by the option to reduce effort in commercial fisheries. On the recreational fisheries management options, the majority of the public hearing comments were for the status quo, for the creation of a recreational permit, followed closely by a coast-wide recreational moratorium; and in Option 2, reduce effort.

For the written comment summary, this was distributed by e-mail on Friday so I'm going to go through this in a little bit more detail. A total of 226 written comments were received via fax, mail, phone and e-mail prior to the October 22<sup>nd</sup> deadline. In total there were 22 unique written comments; 14 of which

were from individuals and 8 were from groups or organizations.

There 204 form e-mails that were received from individuals with the form e-mail originally drafted out by the Delaware River Shad Fishermen's Association. A written comment summary was presented by the following organizations, the CHOIR Coalition, the CCA of Maine, the Conservation Law Foundation, the Delaware River Keeper, the Herring Alliance, the National Coalition for Marine Conservation, the Sustainable Fisheries Coalition and the Nature Conservancy.

In the written comment summary documents, Tables 1, 2, 3 and 4 goes through what I'm going to be presenting here in these slides. It is presented there in the document in table form to make it easier, and I'll just briefly going through what the written comment summaries were for the management measures.

For the commercial side, for individuals that submitted – unique individuals that submitted written comments, six out of ten were for the coast-wide moratorium with the remainder; two were in favor of reducing harvest, one in favor of the sustainable fishery option, and one in favor of the status quo.

For groups submitting comments on the commercial fisheries management measures, the majority were in favor of the sustainable fishery option and the option to close fisheries on mixed stocks. The form letter by the Delaware River Shad Fishermen's Association was in support of the sustainable fishery option.

On the recreational side, unique individuals submitting comments, the majority were in favor of reducing harvest or a coast-wide moratorium. The groups that were submitting comments for the recreational management measures were in support of the sustainable fishery option and the option for a catch-and-release fishery. The form letter was in support of the sustainable fishery option and the catch-and-release fishery as well.

With regard to the other sections contained in the amendment, only the groups and the form letter addressed these other sections. The groups' organizations were in support of the fisheries-independent, fisheries-dependent and the bycatch monitoring contained in the document, as well as the overfishing definition and the implementation plans contained in the document. The form letters were in support of the bycatch monitoring and the overfishing definition.

Some general comments that were given by individuals include that populations for American shad are very low and concerns that the commercial fishery is not the problem; that a one-to-three fish recreational limit would be acceptable; and there was concern about the impact of striped bass predation on the American shad population.

General comments received from the groups included requests to require states to increase monitoring to help reduce bycatch and discards of American shad; statements that American shad are an important prey species; that the implementation of the habitat and restoration plans should be required as opposed to recommended; and that the public should be included in the development process of the implementation plans, as well as the shad fishery is an important part of the coastal heritage in the communities.

The form letter addressed many of the similar comments; that the population of American shad are very low; that all human-induced mortality should be included in the overfishing definition; that states should be required to increase monitoring to reduce bycatch and discards; and, again, that the shad fishery is an important part of the cultural heritage and community. That contains my report on the public comment summary, Mr. Chairman.

CHAIRMAN DIODATI: Very good; any questions for Kate about the public comment summary? No questions, good. We have Kathy Hattala here today to give a technical committee summary.

#### **TECHNICAL COMMITTEE REPORT**

MS. KATHY HATTALA: Good afternoon. It has been a while since I have been here. I'm glad to be back. I heard earlier in the striped bass meeting that it's a very data-rich species; that you didn't need a history lesson. Well, unfortunately, shad is a very data-poor species and it does require a history lesson, because history has got us to where we are today.

What I'm going to do is I'm going to just give a brief overview of some background and then I'm going to go into specific technical committee comments that we had. Here is the history; this is recorded history and it's not a very pretty picture. We're down there by the X-axis. The FMP refers to 1985 when the American Shad and River Herring FMP was finally written. It was a gentleman's agreement; it did not work.

It took another ten, eleven or thirteen years, until 1998 when Amendment 1 was written and approved

by this board. The message is it did not work, so here we are in 2009. We're faced with Amendment 3; it's a new direction. Please pay very close attention to the new direction because what we have been doing in the past has not worked – right there.

One of the options is for status quo; it does not work. Management by F; it was in the 1998 assessment; it did not work; and why didn't it work? Because it started to ignore very, very important components that American shad are exposed to during their life history. Shad and river herring are the three alocine species that come into extremely close contact with human beings; that come into river systems, way into the freshwater portions.

Everything that we do affects them. It is not just fishing anymore. The ignorance that we had about ignoring all the other mortality sources didn't get us anywhere, but it's not bliss because everything has still been in decline since 1998. What I'm going to talk about is I'm going to talk about Amendment 3. Amendment 3 is a new direction.

It had tremendous interactions from the PDT and the technical committee. It recognized that we needed to change direction. It is proactive; it's an ecosystem approach. It's the new buzz word but ecosystem means that we've got to deal with all the other issues that we always ignore. What Amendment 3 will begin with – and I'm going to start with the more comprehensive beginning – is an implementation plan. The implementation plan has two components. It's a recovery plan, which a fishery strategy effort, and that also includes a habitat plan.

The recovery plan is quite unique – I shouldn't say "quite"; it is unique because it has a very specific attitude about each river system. Each river system was required during Amendment 1 to develop a specific management strategy and a recovery plan for most of the river systems along the east coast.

What Amendment 3 will require is an update of that plan, so this is not just a totally new written plan; just get the old one off the shelf, get it into words, start editing, but there are some very important components in Amendment 3. One of them is that next issue, the purpose. The purpose is the up-front discussion of possible unfunded mandates, which I hear is the buzz word around here, and seeks to get alternatives out on the table, including dispensation from this board to exempt a state from possible monitoring requirements; not all of them – I repeat not all but possibly some.

I've heard again and again about how everyone is in a lot of fiscal straits. Well, New York is among them. But, anyway, what that does – and you'll see that in Amendment 3 that we do have a lot of the monitoring requirements. In fact, it is even more than what was in – excuse me, Amendment 3 has more requirements than Amendment 1, because we went through and we found out what we lacked when we did the 2007 stock assessment.

So what Amendment 3 seeks to do is to maintain all the standards. This is what we need to do a proper stock assessment to understand where we're going with these stocks. However, it recognizes the fact that we may not be able to do it all. What it intends to do is to get – when the plan is written, write it down; I can do Plan A, I can Part B, but I can't do Part C. Are there alternatives out there that someone may know about that can help me?

Are there other money sources out there that we can go after to help supplement staff or program requirements; for instance, the NFWF and river herring initiatives that propose to support juvenile abundance indices for river herring along the coast? The other part is the Habitat Plan. The Habitat Plan is going to not be this all-knowing, all-encompassing. What it does it identifies all the threats that American shad deal with when they venture into river systems along the east coast to spawn.

It is going to identify river-specific issues, but it's going to just go through them not in a totally comprehensive way. It's going to cover the bases comprehensively, but what it's going to do is define, well, I know about this and I know that I have a dam, I know I have power plant impact mortality, but then I really don't know what it is or what kind of impact it has on the stock. It is just to put the issues out there on the table.

The next part of it is a revised version of what was in Amendment 1 for fishery-independent and fishery-dependent monitoring. Yes, the list is longer this time, but the reason why it's longer is because we identified a whole number of missing data gaps when we went through the '07 assessment.

The other part of it is it's going to have an annual update. This is going to be an electronic format. The only species I think that requires it right now is striped bass. What this annual electronic update is to take the spreadsheets that you had in the 2007 assessment and send that in every single year so that we can start looking at are we really being effective at what we're doing?

The other thing it's going to try and address is the bigger black hole, which was bycatch monitoring out in the ocean. It encourages implementation of the ACCSP Bycatch Module. It encourages one of the public comments here about working with industry to try and identify – we know it happens, but the when, where and how of the mechanics of it really need to be addressed.

One of the other things it's going to also address, it's going to move up – it's going to move up. We had a long discussion about the JAI indices of striped bass at the 75 percent cutoff level. Currently for American shad in Amendment 1 it is at the 90 percent level. If you go for three years below the 90 percent level, it is essentially an obituary.

However, if you move that bar up and the consecutive years are at the 75 percent cutoff level, that is a warning signal. I speak from experience. For New York, the Hudson is in recruitment failure. I wish I had the 75 percent level. The reality check – the new overfishing definition that is suggested in the 2007 stock assessment, which was peer reviewed – and it was one of most positive peer reviews I have ever experienced in my career – management by Z, a novel approach.

Why, because it recognizes all human sources of mortality, fishing, dams, bycatch, power plant impacts, pollution. The list can go on and on and on. The reason why it's there is because we want to identify the problems and get them out on the table. There may not be an immediate solution, but the issue is there and we're not going to hide it anymore.

There was lots of discussion, I think, and I think there is – I'm going to go through a brief tutorial on what management by F got us and show you why we chose to go to a solution by Z. In standard fisheries' models it's Z; total mortality equals natural mortality, M, plus F, fishing. You can do that for data-rich species like striped bass. For data-poor species it doesn't work because there are too many other variables that are lacking.

Shad are more complex. Z equals natural mortality plus a whole host of human-caused mortality. Fishing is only one of them. I put dams and bycatch up there along with the rest in the dot, dot, dot only because fishing is a human-caused source. So are dams and so are bycatch. We're the ones that built the dams; we're the ones that can fix this.

Some models can't estimate dam or bycatch mortality very well, but you can't calculate an benchmark F



without them, so what do we do? We just pretend that it's zero. So we calculate the benchmark for human-caused mortality and then we call it all F, and then we go out and measure F. It's a great delusion because we're forgetting about the rest of the mortality.

F is so small, oh, my God, well, see, it's not a problem. So what is the solution? The solution is management by Z. It is going to be covering all human-caused mortality. You see, F can be measured. However, dam mortality, it is like fishing, but it's hard to measure. Bycatch is hard to measure. So in total human-caused mortality is hard to measure, so the solution that we came up with in the assessment that is bought off by all the technical committee, except for a few, which I'll get to in a minute, is we manage by Z because Z can be managed, it can be measured.

And if it's excessive, you go to the sources where you know you can reduce the Z, fishing, dam mortality or bycatch. A quick example from the Chesapeake – this is a generic Chesapeake one I put together; I'm not going to be picking on any one system – in the '07 assessment the Z-30 benchmark is 0.85 with an M of 0.35, so the human-caused portion of that is 0.5.

However, in reality when you go there and you measure your Z and your stock came from ages, from the repeat spawn marks, from scales; it's 1.52. But, geez, fishing is zero, so, geez, I guess we're okay. Not so fast! Human-caused mortality is the difference between them, so it has to be something else, whether it be dam mortality or bycatch or take your pick. The total mortality is excessive.

I'm going to move forward to the fishery management measures and then I'll come back to Z in a moment. We had a very long conference call where we debated on the TC about what to do about the management measures. It wasn't clear from our perspective of what the reduced harvest one was all about; reduce it how much and for how long?

However, a lot of us agreed with the sustainable fishery option. As a compromise and as a consensus, we came up with a reduced or closed fisheries combined. There is your choice if you cannot prove that the fishery is sustainable or not, but there again there was a minority of opinion of us. We really need to define what the reduced harvest is. What we suggested is a minority opinion and it was quasi agreed to – like I said it was a minority – that the TC will end up determining the percent reduction that

will be required and the timeframe in which you need to achieve it. Otherwise, you have to close.

What is a sustainable fishery? A sustainable fishery is a management measure. It is not an overfishing definition. I read the board minutes from the last time. I'm going to repeat that. It's a management measure and not an overfishing definition. A sustainable fishery is it must not diminish potential future stock production and recruitment.

Your stock size can be low, but it can be stable. It means you have stable JAIs or stable and increasing adults. How else would you define it? What you do is you come up with a variety of targets that indicates – this is your proof that you have a sustainable fishery. This is what is also in Amendment 2.

The stock targets must be defined to include a combination of but not exclusive to any of the following. Your mortality, your Z 30, which is the overfishing definition defined in Amendment 3; or, other benchmarks identified in the 2007 stock assessment such as catch rates, which were identified for some of the Virginia rivers; or, the development of future benchmarks as we get additional data; for instance, biomass indices, percent repeat spawning, a JAI three-year average above some minimum, all of which will go to the technical committee for review in the recovery plan that will be written and will have both technical committee and board review.

In summary, the TC recommendations are stay with the required monitoring as outlined in Amendment 3. Let's stay with the comprehensive implementation plan that has the up-front discussion about what we can and cannot do. We need to have the JAI at the 75 percent cutoff level. We need to do the bycatch monitoring. Our management measure choice is reduce the harvest or close if not sustainable; meeting sustainable definition by meeting a combination of the benchmarks that I outlined earlier. There is your choice.

If we go to the status quo, we're down there by the X-axis or do we take the new direction and see if we can turn we can turn this around. It's not going to be simple; it's not going to be very easy; and it's going to take a very long time. Thank you.

## **BOARD DISCUSSION OF TECHNICAL COMMITTEE REPORT**

CHAIRMAN DIODATI: Questions for Kathy from the board?

MR. LEROY YOUNG: This definition of sustainable; how is that not the same as the status quo?

MS. HATTALA: It is not the same because it says "must not diminish potential future stock reproduction and recruitment". That means that your indices have to be increasing and/or you have to be meeting any benchmarks that were determined for your stock. For instance, if you had a Z 30 estimate and you measure it at 1.0 and your Z 30 is at 0.8, that means you're over.

If your JI is decreasing and a decreasing trend, if your adult indices are decreasing, that is not sustainable. If your JIs are decreasing, that's your stock production and recruitment. If your adult is going down, that is also your recruitment into your fishery. They're all going downhill, and it must not diminish. That means must not decrease. That is what is different from the status quo. Does that answer the question?

MR. L. YOUNG: Yes, I understand that but the stocks are so low, so depressed, that if you sustain them where they are, that's a pretty poor situation to be in. That's why I raised that question. I guess a related question; does the technical committee think that there is any – what is the real likelihood that the technical committee thinks that these stocks can recover without a moratorium on these fisheries?

MS. HATTALA: It all depends. There are very few, but there are a few signs of recovery. For instance, the moratorium in the state of Maine, there is more reproduction now going on in the Kennebec. In the Chesapeake and the Potomac there is some recovery, and that means increasing catch-per-unit effort. Now, Virginia is under a moratorium; however, there is a bycatch fishery in the Potomac and in Virginia.

It's a positive sign so it can start to increase if fishing is pushed low enough. However, if you really would like not to be in the low but stable group, then you will have to consider among your options going to moratorium within your state.

CHAIRMAN DIODATI: I just want to jump in here. I'm going to assume that the definition of a sustainable fishery is going to have to be defended by each state. Each fishery will have to defend that to the TC, I believe. We're going to have some type of review. Given what I've already heard, I think Kathy is going to hold a very firm line on that. Gil.

MR. GIL EWING: I hear a lot of rhetoric about shutting the fishery down to fishermen. We talked about the ecosystem. The Delaware River is about to be dredged from Philadelphia to the lower end of the Bay. What effect is this going to have in the shad fishery and are we going to allow the Corps of Engineers to blatantly go against what we're talking about here as far as ecosystem and dredging? Thank you.

MS. HATTALA: I think I'm going leave that to the state of Delaware, Pennsylvania, New Jersey and New York. Under the Delaware Co-op we cooperatively – I'm just going to set aside my TC Chair position for a second. Under the Delaware Co-op we will be looking at that. I can't answer that question just yet.

CHAIRMAN DIODATI: I think we can say that the commission has weighed in when asked to by various states or regions relative to environment impacts particularly on marine fishery resources. The commission, if asked to by the state of Delaware and New Jersey or by whoever is asked to evaluate a project, I think it's assigned to the Habitat Committee these days and a comment letter will be generated. Gil.

MR. EWING: Do I understand, then, that the ASMFC will not make any recommendations unless requested by a state that is involved?

CHAIRMAN DIODATI: Yes, I think generally because there are so many projects going on up and down the coast it first has to be brought to the attention of the commission that this is important to the region and why, and the commission might want to comment on it through their Habitat Committee. I think in general practice the commission relies on states to bring it to the attention of the commission. That's what I would recommend here.

MR. WILLIAM A. ADLER: Thank you for the report of doom and gloom here. My problem is that we've had rules on the fishing a long time, and everything kept going down. As you said, it did not work. I have these fears that the predation, the dams, the pollution and those particular factors, which you do identify, but, of course, as has always been the case, everybody says, yes, that's really the problem, but the only one we can control is fishing so let's hit the fishermen.

They may need to have a moratorium. I'm not saying they don't. It's just a matter of mentioning these other factors which we've identified as factors, but

we just can't seem to control them because that's not within our purview. I'm concerned that this fishery and others, too, sometimes, aren't going to recover.

If the predation continues, the dams continue, the pollution, we can shut the fishing down, no fishing at all on this, and yet you won't see a turnaround. That's why, when I saw the charts where everything goes downhill, and I know that we've put rules on this fishery, we've put rules, we've pinned the thing down more, and still everything keeps going down.

This is why I just think it is the other factors probably more than fishing. I just wanted to get that on the record that I'm very concerned. I noticed you mentioned it in this report and in the amendment, but I'm concerned that just closing the fishing down isn't going to do what we really want, and I'm frustrated at that. Thank you.

MS. HATTALA: I'd like to answer that. I understand the frustration. In my 24-year career with New York State DEC, never in my wildest imagination would I be shutting down the Hudson River, commercial, recreational fisheries, and in marine waters. New York is proposing complete closure within our state. We don't have a dam in our river.

We had pollution problems which we fixed. Yes, it's not the perfect river yet, but it's a heck of a lot cleaner. Ours is a classic overfishing problem. If you do not close your fishery or if you do not stem the tide, you bring open the fact that you're going to extirpate your stock. There is your choice. Bycatch is fishing but it is an obscure sense of fishing.

It's fishing on very small fish, they get hidden into a whole variety of fisheries, which shall remain nameless, which we all know about and a lot that we don't know about. There is your choice. Is it the fishery that suffers or is it the resource that is necessary for the fishery to occur?

MR. THOMAS McCLOY: I guess I'm having a little bit of difficulty dealing with the relationship between managing by Z and how that is going to affect proving that our fisheries are sustainable. When we're managing by F, those are things that most of the agencies sitting around the table here have direct control over.

When we start talking about other human impacts, whether it's dam obstructions or power plant impacts, yes, we all have a mechanism, I imagine, to provide comments on how to fix those problems, but our

ability to really effectuate any change is limited. I guess maybe you could provide some insight to me in terms of if we're going to be using an overfishing definition that has all these other impacts included in it, what is that going to do to the bar, if you will, that we have to prove sustainability for our fisheries?

MS. HATTALA: On the sustainability, back in the presentation, it's not just Z 30. The Delaware didn't have a Z 30 determined for it, for instance. Your stock targets under the sustainable fishery definition is you come up with targets based probably, most likely, on historic levels of where it is you think you would like to be.

For instance, I can get very specific, what is your JI doing, is it going down, is it going up, was it high at one point in the time series, which it was for the Delaware probably – I think it was in the mid-1990s. Can you develop adult indices? There was fishery catch-per-unit that was very high; it's currently declining. The commercial fishery index, which has been used from the Delaware River side of the river, of the Upper Bay River – this always gets confusing – that's been in decline.

What you have to do is determine are there other indices besides the Z 30 if there has not been one determined for your stock. You have an adult index and you have a reproduction index. If they are stable, then it indicates to any technical person, whether it's a high or low stock size, that at least you're stable. But if both are declining, then you have some serious thought about what it is you're going to have to do to stem the decline.

It's not just the Z 30; it's adult indices. This is where during the timeline when this amendment will be implemented, you will have to devise a way to figure out what representative indices you're going to use and what benchmarks you will set for yourself to determine how you're going to define sustainable and then come to the TC for review. Does that answer your question, Tom?

MR. McCLOY: Not really, but we'll let it go.

CHAIRMAN DIODATI: Tom Fote.

MR. THOMAS FOTE: I'm just trying to figure out where the money is going to come from. We can't put any tax on the power plants, we can't put any tax on the sewer plants, we can't put any tax on the intakes of water that come out of the Delaware River or the Hudson River and the stuff that's going in.

I mean, we've always stayed away from trying to manage or try to put in plans things that we can't manage. I've always been against that. I think we should put everything into the plan and explain where everything is coming from. I mean, I'm still trying to get copies of the New York Study that was basically talked years ago that we basically said – you know, we looked at power plants; and if it wasn't for the power plants, the harvest of shad would be 50 percent greater commercially and recreationally.

I remember the figures always kind of stand in my mind. When I think about it, if the commercial and recreational harvest is 50 percent greater if it wasn't for the power plants, that means the present standards we're using, that means the stock is probably 20 times bigger because in order to get a 50 percent increase we've got to have a stock that's 20 times larger.

That is just how it's falling with everything that I see lately. My concern is really money. I mean, where are we going to get the money to do the stock assessments? I mean, Tom, on a budget that has no money to begin with, we've got to cut another 800,000 or whatever it is this year, and I think every other state is in the same thing.

We had no stimulus money. I was hoping the Fish and Wildlife Service and the National Marine Fisheries Service, the same way they did with striped bass, would come up with money to start doing this. I think unless we figure out a way of basically getting the money from the people that are outside the fishing community that are causing the problem – because we've putting down money in there and Wallop-Breaux money and a whole bunch of other money over the years to do that.

It's going to be nice; we're going to put things in, but we're not going to be able to monitor them, so again we'll be with another compliance issue that you'll vote us out of compliance or shut a fishery down, so we won't even be able to prove that it's sustainable and just put a moratorium because we can't basically do what it is necessary to prove that it was sustainable. I think that's where we're going to wind up with a lot of fisheries. It boggles my mind to figure out how –

CHAIRMAN DIODATI: Tom, have you got a question for Kathy in this because we're –

MR. FOTE: Yes, where are we going to get the money? I mean, it's simple to come in and cast this all the time. We sit here and look at it, but is the

commission looking at any way of basically getting the money for this through either Fish and Wildlife or through a Striped Bass Plan like for shad or something like that because I don't see us being able to do it.

CHAIRMAN DIODATI: I'm going to ask that we put that question off until when we start to debate the actual amendment. Right now we want to focus on questions to Kathy's TC Report.

DR. WILSON LANEY: This is sort of in response at an earlier comment, I guess, about factors that are beyond the control of this body. Certainly, that is the case; ASMFC doesn't have the regulatory authority to deal with a lot of the factors that cause mortality in American shad. However, what it does have the authority to do and I would argue the responsibility to do is to identify those factors, put them down on paper, and then develop an aggressive plan for addressing those.

This body is certainly not without influence on those who do control those factors. We know that we can reduce mortality at dams. Is it expensive, yes, it is, but one of the things I would contend with you that has never been done is there has never been a study to my knowledge that looked at the complete and total economic picture in terms of cost and benefits of restoring a fishery.

Far too many times the studies that are done look only at the cost of fish passage and don't consider a comprehensive suite of benefits which would include, for example, the full restoration of the fishery on the Delaware River or the Roanoke River or pick your river; you know, name a river. There are tremendous ecological, economic and cultural losses that have occurred because of the losses of these fisheries.

If you add up all the benefits of restoring all those shad festivals that have been cancelled because they no longer have shad or because they have had to import shad from somewhere else or switch to another species, along with the economic benefits of full commercial and recreational fisheries, then I think the picture might change in terms of the cost-and-benefit ratio.

In terms of bycatch, as Kathy noted that is fishing, even though that is occurring in fisheries that are regulated by councils and not by the commission, that doesn't mean that issue can't be addressed. This commission has worked with the South Atlantic Council, for example, to address weakfish bycatch in the Southern Shrimp Fishery.

The council very graciously I think and very realistically required modifications to the gear in the South Atlantic Shrimp Fishery to address weakfish bycatch. Just because it occurs someone else's authority, it doesn't mean this commission cannot address it if you bring to their attention. If you implement the planning provisions of this amendment, I think it would require each state to take a comprehensive look at each fishery and determine what needs to be done to try and restore it fully.

CHAIRMAN DIODATI: Any board members have questions for Kathy? Okay, thank you, Kathy. We're going to turn to Byron Young for a review of the AP Report.

### ADVISORY PANEL REPORT

MR. BYRON YOUNG: Mr. Chairman, to be brief, I think you all have the summary of the AP Conference Call on October 23<sup>rd</sup>. The advisory panel has been amazingly consistent throughout this whole process in its views on where the management should go for this species. For the commercial fisheries, the AP endorses Option 3, close fisheries with the exception for systems with a sustainable fishery and Option 4, close directed fisheries on mixed stocks.

For the recreational fishery, the AP endorses Option 4, close fisheries with the exception for systems with sustainable fisheries; and for any other system Option 5, which is allow catch and release only. There are some additional measures that the AP has discussed. They're listed below. It's basically the nuts and bolts of the fisheries management plan.

The one thing that came up at this last meeting was an implementation date, and the AP would like to see an implementation date of January 1, 2011, should the plan be approved. Beyond that, I think the other things, the board has had a chance to read them. I don't need to reiterate them to you just to save time and move on. Kate, there was one other comment from an advisory panel member; should that be –

MS. TAYLOR: Yes, that's included.

MR. B. YOUNG: Oh, that's included, okay. That's really where we are with the advisory panel. They have been very consistent throughout and have been in this position since we started discussion of this. Thank you.

### BOARD DISCUSSION OF DRAFT AMENDMENT 3

CHAIRMAN DIODATI: Thank you, Byron. Any questions for Byron? Okay, now I think you have an opportunity to express your concerns about the amendment because we're consider approval of the draft amendment. I'm wondering, Kate, if we have a decision document for the board to walk through.

MS. TAYLOR: Yes, we do.

CHAIRMAN DIODATI: Great, that will help. I think Kathy's report talked about the Habitat Plan and it talked about Z 30. I just want to clarify that the Habitat Plan is separate from this particular amendment; and Z 30 is not an option, it's a component of Amendment 3. Let's start with – did you have something up there with commercial fishing? Do you want to start here? We'll start with the sustainable fishery definition or we'll go back to the commercial fishery management measures. David.

MR. DAVID SIMPSON: Yes, I think we should start with the sustainable fishery definition if there is a slide for that; and if there isn't, I gave Chris a motion, if he could put that up. I will read it for the record: **Move adoption of a sustainable fishery definition consistent with Amendment 2 for River Herring; that is, that demonstrates their support of a commercial and/or recreational fishery that will not diminish the future stock reproduction and recruitment.**

CHAIRMAN DIODATI: Seconded by Jim Gilmore. Okay, Bill.

MR. ADLER: Mr. Chairman, if I may ask what does that mean? Who determines that it will not diminish the future stock? I mean, how do you gauge that; is there a way to do that?

CHAIRMAN DIODATI: I think the maker of the motion wants to respond.

MR. SIMPSON: As it says, this is what we did for Amendment 2, and it would put the burden of responsibility on the state, as you'll see as we go through this amendment, to demonstrate to the satisfaction of the board ultimately that any commercial or recreational fishery they have is sustainable and that it will not diminish the future stock reproduction and recruitment.

That's very different than keep status quo abundance. That's don't undermine recruitment, don't undermine stock size. It really is fairly traditional in terms of a overfishing definition; but to directly answer your question, it would be that the state would develop a proposal, it will be reviewed by the technical committee and approved by the board.

CHAIRMAN DIODATI: Anymore discussion on this motion? All right, are you ready to take an action? Is there need for a caucus? Okay, all in favor of this motion signify by raising your hand, 17; all opposed; any null votes; any abstentions. **The motion passes seventeen to zero.** Now I think we can go back to the commercial fishery measures. This is the order of the plan and go right ahead. Do we have a motion already? Michelle.

DR. MICHELLE DUVAL: **I was going to make a motion that the monitoring requirements in Amendment 2 for River Herring be incorporated into Amendment 3 for American Shad.** I think we've all expressed some concern about having – and we all very much appreciate the work that the PDT and the technical committee have done in building these amendments. There is some concern around the table with regard to having some consistency between these two amendments. Having heard all the concerns about finding money to pay for things, that's the spirit in which I make this motion.

CHAIRMAN DIODATI: Is there a second? Dave Simpson seconds. Okay, do we have that motion? Discussion on this motion? Doug.

MR. DOUGLAS GROUT: My question may be solved with a clarification of this. This applies uniquely – I don't know if this is unique to our state, but the rivers that we're required to monitor in river herring are much more extensive than we have in shad, because we don't have shad return to some of our other rivers. I would not want to be held to that standard for all the rivers that we have to monitor for river herring. Unless there is a clarification that it would only apply in New Hampshire to the Exeter and Merrimac Rivers, then I would be opposed to this motion.

CHAIRMAN DIODATI: What kind of clarification are you suggesting?

MR. GROUT: That the rivers in Table 2 of the monitoring plan, the fisheries-independent monitoring programs be the only rivers that you're required to apply these monitoring programs to.

CHAIRMAN DIODATI: Do you want to perfect the motion and that will help you support it, maybe? While you're thinking about that, I'm going to go to Wilson.

DR. LANEY: Mr. Chairman, I guess I would like to ask the technical committee chair to clarify for us what the monitoring requirements are in Amendment 2 and what they are in Amendment 3, and which set of those provisions the technical committee thinks we need in order to properly manage the stock. As a follow up, I think there is, if I'm not mistaken, a provision in there that would allow states to address what they do if they are unable to carry out those monitoring requirements, if she would address that as well.

MS. HATTALA: Thank you, Wilson. You're correct, Amendment 2 took Amendment 1 and revised it for river herring and put some error into the river herring monitoring. Amendment 3, we started with Amendment 1 monitoring and revised them, improved them to what was necessary and what we identified in the 2007 stock assessment as necessary to manage the stock.

I did explain that there is a part of the implementation plan that allows a state to ask forgiveness and/or seek alternatives as to what will be required in Amendment 3. Amendment 3 is a vast improvement over what is in Amendment 1. The alternatives that you can seek in Amendment 3 does not lower the standards of what is required to help these stocks. I understand that everyone is in dire fiscal straits, but that does not help the condition of these American shad stocks.

There is money available or you just will have to be creative. South Carolina, for instance, has 12 rivers that they have to do. Perhaps you won't have to do them on all of them. It's a matter of proposing what you can do versus what you can't. My question to the board is do you want to lower the standards back to Amendment 1 or do you want to go forward as an improved version in Amendment 3?

CHAIRMAN DIODATI: There seems to be some apprehension by the board that they're not sure about what they're buying if they approve this motion or if they vote in favor of this motion. Dave, do you want to speak to that point?

MR. SIMPSON: It is essentially maintaining status quo monitoring requirements. It's the same as in Amendment 1, so it is what we have now. It is what we adopted for Amendment 2, so it would be

consistent with Amendment 2 for River Herring. If it would help Doug, I think if the maker – I'm the seconder of the motion – is in agreement, we would be voting on this with the understanding that states would be required for American shad to monitor only the systems that are identified in Table 2. You wouldn't be expected to monitor a system that doesn't have a shad population, clearly.

CHAIRMAN DIODATE: Michelle, you're okay with that?

DR. DUVAL: Yes, that is my intent.

CHAIRMAN DIODATI: Okay, Leroy, did you have your hand up?

MR. L. YOUNG: It is essentially the same question as to how these two actually compare.

MR. JAMES GILMORE: Mr. Chairman, my understanding, in and going back to the initial part of this discussion, was that Amendment 3 was supposedly including new requirements that we were going to – I mean, we identified what the problem is and now we're essentially getting mired down in who has money and who doesn't have money. I mean, that should be a secondary discussion of this.

We should figure out what the solution to the problem is and then we can go into looking at alternate sources of funding. Quite frankly, in some cases, when I have something that is an ASMFC resolution, it actually gives me leverage to get money. If I essentially am leaving something out of this right now, I think it is a big mistake.

My feeling is that we should have not just incorporate the requirements in Amendment 2. I mean we should merge the two essentially, make sure they're consistent, but have all of those new requirements included in our monitoring as we go forward; so whatever is in Amendment 3 should be completely in there and not let's figure out what we can fund right now.

MR. GROUT: Thank you, Michelle and Dave, for amending your motion there because that does make things much more palatable for us, and we certainly want to approve this motion. I do have one very minor thing that applies to New Hampshire, and I guess this may have been an oversight of an oversight. At the last meeting I pointed out that in this Table 2, under the Exeter River, it required New Hampshire to do hatchery evaluation. We do not stock juvenile shad in the Exeter River and never

have except for one year when we grabbed – about five years ago when we got some fry from Maine.

I was told at the time by the plan coordinator that this was an oversight and that it would be removed. It is still not removed and I would like to find out what it takes to get it removed from here. We don't stock so why are we the only state other than Maine that is held to a hatchery evaluation in New England?

CHAIRMAN DIODATI: Why, indeed? I think Kate could look into that, Doug. Is that in the River Herring Amendment you said that it transferred over?

MR. GROUT: No, it was in the discussion of this particular amendment; and if you look at the meeting minutes, I asked this same question at the last meeting and was told –

CHAIRMAN DIODATI: And it wasn't addressed.

MR. GROUT: -- it was an oversight, it will be removed, and I think it probably was one of the things that might have gotten lost in the shuffle here. If we can cross it off right now on the PDF Document, I would like to do that.

CHAIRMAN DIODATI: Yes, consider it gone, Doug, Michelle.

DR. DUVAL: Mr. Chairman, I think part of the intent with this motion, it is recognizing that Amendment 3 has vastly improved upon Amendment 1 and Amendment 2 was an improvement upon Amendment 1 in trying to I think ensure that the monitoring requirements under both amendments were consistent in terms of what was being asked for.

I mean, I definitely agree with Jim that we want to make sure that what we adopt is what is necessary to move the species forward. I guess it would be much easier for me to deal with the monitoring requirements if I could have had a table up there that had a specific side-by-side comparison of what we voted on in Amendment 2 versus what is going in Amendment 3.

Kate has also asked for clarification with regard to monitoring requirements, is this motion just referring to the fishery-independent monitoring requirements, the fishery-dependent monitoring requirements, and it would be referring to both, fishery-dependent and independent monitoring requirements.

MR. L. YOUNG: I'm a little bit confused by – I thought I remember in our river herring discussions

for Amendment 2, that the decision was to include river herring monitoring at the same time we did shad monitoring, and it seems like we're flipping that now with this amendment. Maybe I'm not correct with that, but that was my understanding.

MS. HATTALA: I think there is a lot of confusion everywhere. I'll give you my take on it. In Amendment 1, that was our first shot at what we needed for American shad. It had a whole list of fishery-independent and fishery-dependent monitoring. That was Table – I'm not sure what the number was. There were followed by two tables of recommended requirements for river herring.

Everybody thought, oh, well, at the previous board meetings – I think it was back in February or May; whenever you approved Amendment 2 – that why don't we just take all of Amendment 1 requirements for shad and turn them into river herring requirements? It sounded good at the time. However, it doesn't work. I have said before

The reason why is because it has river systems like New Hampshire that some of the systems have river herring and some of them have shad. You don't use the same gears for independent monitoring for river herring as you do shad. That's why, when we finally got to Amendment 3, we figured we'll focus on American shad.

If you would like to make the two consistent, we can fix Amendment 2 if you would go back to the technical committee to actually ask them, well, what is that you do to monitor? I'm a technical committee person; I cannot make a motion. But to be consistent, the river herring stock status report shows you what we sort of do.

The stock assessment, which is now in process, will assist you in developing the list of what we do versus what we need to do and identify the gaps, so we can fix Amendment 2. We fixed the shad portion by going through the '07 stock assessment, so we improved it in Amendment 3. We set a standard saying this is what we need. I think we can do the same thing for river herring as we move through the river herring stock assessment, which may lie in the future.

CHAIRMAN DIODATI: I'm sure that cleared up a few things for you, Leroy. Jack.

MR. JACK TRAVELSTEAD: It might have helped Leroy, but I'm sorry it didn't help me, I'm afraid. I don't know where to go on this motion until I

actually see a table that has the river herring requirements in it for Virginia compared to what is in this shad document. I'm wondering if we can't table this –

CHAIRMAN DIODATI: Table this for time certain like in 25 minutes.

MR. TRAVELSTEAD: Whatever until staff –

MR. TRAVELSTEAD: Before the end of the meeting, we'll come back to this. Without objection, I'll just table it without a vote. I think I can do that for a few minutes, and maybe we can go to something less confusing and approve some other option. I'm concerned about the time.

We're getting on 6:30 and we have a number of options to move through before we can even begin thinking about approving this amendment. Then we have some other things on the agenda such as a proposal from Virginia. If you'll just bear with us, we'll try to put up something on the board that we might be able to approve quickly. Okay, here is a definition for a recruitment failure relative to juveniles.

MS. HATTALA: The recruitment failure is – right now, for instance, the three-year consecutive low JI is the value in the three years have to be below 90 percent of the values of all of the entire time series. As I said in my presentation, that's essentially an obituary. If you're stock is at 90 percent below everything, it is as good as gone. Seventy-five percent gives you a warning to say, hey, something is going on, what is it, and asks for recognition from either movement by the technical committee to see what is going on and/or management action by the board as I think it's listed in the amendment. It is the same for striped bass.

CHAIRMAN DIODATI: Dave, you have something you want to say about this.

MR. SIMPSON: Yes, was this in response to providing information about monitoring because I'm not sure why we're talking about the definition of recruitment failure.

CHAIRMAN DIODATI: Oh, because I tabled the last motion for a few minutes so we can put up some more clarifying documents such as a table. While we're getting ready to do that, I thought we can perhaps go through part of the rest of the document and make some decisions about it.



DR. LANEY: Mr. Chairman, I'm prepared to make a motion on this particular issue, if that is your pleasure.

CHAIRMAN DIODATI: That is my pleasure.

DR. LANEY: **Okay, I would move that for the JAI trigger – I guess we call – that we change it to be 75 percent; that the trigger would be met if three successive values are less than 75 percent of the values in the time series.**

CHAIRMAN DIODATI: Thank you, Wilson, and it's seconded by Robert Boyles. Any discussion on this motion? Jack.

MR. TRAVELSTEAD: I don't think I have a problem with the motion, but I'm curious. If a state had 50 years of JAIs and it's looking for that 75 percent mark, it seems to me that might be a completely different situation than a state that only had ten years, the most recent ten years of JAIs where it sees no pattern at all. I'm not sure I'm being clear on this, but I wonder if Kathy can comment on that. How does the length of the time series affect this?

MS. HATTALA: I think it's an early warning system for systems that still have some production in them. For instance, in the Chesapeake, right now what you have is a series of fairly low JIs. It's bouncing around for some of the indices. Some of them are going up; some of them are just – they bounce up and they bounce down, but currently you're still at moratorium, theoretically, even though you do have a bycatch fishery.

It's saying that there is something going on with recruitment. You need to look elsewhere to see what is creating that index. Another example, in the Hudson, the Hudson is now in total recruitment failure. If I had the 75 percent warning and was warned by the board, we could have done something perhaps or perhaps not to at least take a look at what is going on. It's an early warning trigger.

You went through this discussion just an hour or two before about striped bass and you wanted to raise the bar. I'm trying to raise the bar so that at least these species are equitable. Seventy-five percent provides a warning for those JIs that have been fairly stable and all of a sudden drop. It provides the warning that perhaps management needs to take a look and see what is causing the problem.

CHAIRMAN DIODATI: Okay, Jack? Any more discussion? Wilson.

DR. LANEY: Well, to Jack's point, it seems to me, Jack – and I'll defer to Kathy on this – that setting it as a percentage sort of addresses your concern in that if you have a real short time series, which is, let's say, for a stock that is nowhere close to what it might be back in the 1800's, it is going to be 75 percent of those lower values whereas, if anything, I suppose some of the stocks with a much longer time series where you had very high values maybe for a juvenile abundance index early on would, if anything, be somewhat penalized by the 75 percent. I don't know, Kathy, do you have any thoughts to Jack's point?

MS. HATTALA: If you're going to use a 50-year time series, it may or may not and you just don't want it to drop – let me think about this – you may or may not be penalized. The thing is, is you don't want your production to drop to zero. I'd have to think about exactly the logistics of the mathematics here, but for a very low JI I don't you have to worry about being under 75 percent of the level if there is very low production.

The whole idea is to catch those stocks that are going under further decline. I would have to actually get back to you, but what I'm trying to impress upon people – and I'm not sure exactly how it would apply to the Chesapeake, but for other systems that do have shorter time series – the Hudson had 30 years; the Connecticut has 20, 30, 40 years. The Delaware; the later time series has almost 20 now. It would help. That's all I'm saying, it provides a trigger to set off some exclamation points and to pay attention.

CHAIRMAN DIODATI: Okay, I don't really see the danger in approving this or moving this forward. Any other discussion on this question? Is there a need to caucus? All in favor raise your hand. Okay that was 17 in favor; all opposed raise your hand; abstentions; null votes. **The motion passed.**

We'll try to move through a few more of these as we are, but if we stumble again where it gets too confusing – I know it's late in the day – but there is no reason why we can't accept moving the approval of the amendment to February. There are other things on the agenda, though, that I'd like to address, such Virginia's proposal. We'll go through and see how we do. Do we have another one up here? Kathy, are you going to explain this?

MS. HATTALA: The 2007 stock assessment went through all the data with a fine-toothed comb. It went through an even finer-toothed comb with the peer review, and they applauded us for recognizing

that American shad stocks are affected by more than just what we know about directed fishing.

They said if you ever want your stocks to recover you're going to have to start recognizing that directed fishing is just a component of everything that is going on in your stock. Z 30 encompasses all mortality sources. It includes the issue about predation. It includes issues about dam mortality. It includes bycatch and it does include directed fishing, but it puts us in a state of mind where we can actually see what is going on in our stock. It's to Z 30.

The benchmark is developed using life history characteristics of the American shad river-specific stocks. Not all stocks have Z-30's; please keep that in mind. It was only a handful that were done in the '07 stock assessment. But those life history characteristics developed to Z 30 that would maintain the stock – this is the target not to exceed. It is not a target fishing rate.

This is a target total mortality rate so that your stock will not decline any further. It is an attempt to stabilize what we have continued to see as declines. That is why the Z 30 was chosen, stabilization. How far you need to go under it to improve the condition of your stock will still remain to be determined based on other benchmarks that you will use for your stock. Remember, this was something that took a lot of pain within the technical committee to finally recognize. It was peer reviewed and applauded. Now the decision is yours on whether or not to adopt it.

CHAIRMAN DIODATI: Okay, a motion to adopt the Z 30; I will entertain a motion if there is one. Do I see one? Is that Dave Simpson with one?

MR. SIMPSON: **I move to adopt Z 30 as a mortality index rather than as an overfishing definition. I will leave it at that because we've already touched on the sustainable fishery definition. We've already done that. If I get second, then I'll explain some of the rationale.**

CHAIRMAN DIODATI: Seconded by Senator Damon.

MR. SIMPSON: Okay, as it indicates in the amendment, American shad stocks are affected by several sources of human-induced mortality. These include directed fishing, F; fish passage mortality at dams; mortality from pollution and bycatch; and discard mortality in indirect fisheries. You've got both fishing and other human but not fishing sources

of mortality plus natural mortality, so the logic is that this really is not an overfishing definition.

Overfishing has to do with F, fishing mortality only in every other FMP that we've ever discussed, and I think it will be very confusing to the public to now change the definition of fishing mortality. I also note in the amendment in reference to Z 30, the amendment says the priority here would be to reduce mortality from inadequate passage at dams and bycatch since those losses are avoidable and do not benefit society.

We do see mortality from directed fishing without reducing mortality from other man-induced causes is not encouraged because it transfers fish production from a beneficial use to non-beneficial uses. If we were to retain this as an overfishing definition, it would actually run counter to that very statement because it would require us to act first and solely on fishing mortality, which I think nobody in this room wants to do.

I think the value of Z 30 is that it focuses attention on these other very significant sources of mortality that are outside the range of authority of ASMFC, particularly the dam-induced mortality and whatever pollution-related mortality there may be; things that can be addressed, that should be addressed that this amendment can bring focus to, but I think the idea is to stop short of essentially blame it all on fishing and close the fishery and in many cases still not achieve the rebuilding that everyone is hoping for.

I also note that the peer review panel considered the Z 30 benchmark sufficient for region-wide comparisons presented in the assessment. This reference point is not directly linked to the management issues for many of these populations, and the review panel encourages development of population-specific reference points appropriate for the alleviation of the threats that exist for many of these populations.

I think it's really important for us to separate what is fishing, the area of our responsibility and authority in ASMFC, but at the same time don't lose that spotlight on these other sources of mortality, bring attention to those and try to get those addressed through the appropriate authorities to do so.

CHAIRMAN DIODATI: Thank you for that, David. Do we need more discussion on this? Jim.

MR. GILMORE: From what you just said, Dave, instead of it being an index then and according to

what you just read in the document, it is actually a benchmark. It's not an index, so could we replace the word "index" with "benchmark", and would that work?

MR. CRAIG SHIREY: I guess I had a similar question of whether this would be a target rather than a definition?

CHAIRMAN DIODATI: Dave, do you want to clarify?

MR. SIMPSON: Well, it's a benchmark. It's a point that the technical committee has used to say if you fall below Z 30, you have reason to be concerned about the stock and look at your sources of mortality. That's what the peer review panel also said, look at your sources of mortality; is it the fishery; is it something that ASMFC could address; or is it dams?

I love to quote George Lapointe because he is so quotable, and at a river herring meeting we had a couple of years ago – actually the fish passage workshop we had a couple of years ago, he said, "If you're in a system with more than two dams, you're poached." That just drove the point home that it may have nothing at all to do with fishing.

It may have entirely to do with things that are much bigger than ASMFC that need to be wrestled with and contended with. That's my explanation. You would look at it, if you're under Z 30 it would be reason to pay attention. If you recall at our last meeting I pointed out that the Connecticut River, by this standard we would have had to have closed our fishery. Since about 1974, we would not have been able to have fishery under this definition.

CHAIRMAN DIODATI: Any more discussion on this motion? Wilson.

DR. LANEY: Just a question for clarification to the technical committee chair; it sounds to me that this would be acceptable or would accomplish what the technical committee is seeking to accomplish from the perspective of a rose smelling as sweet by any other name, but is my perception correct about that? Doesn't this still do what the technical committee wants it to do, if we call it a benchmark instead of an overfishing definition?

MS. HATTALA: From all my stock assessment experience, an overfishing definition is a benchmark and a benchmark is an overfishing definition. I'm not really clear – I am clear. I'm going to lay it on the line. If your mortality is over, it's over Z 30.

You want to be under it, but if it creeps over and you continue fishing and you don't deal with all the other sources that you know to exist within your river system, then expect to start extirpating your stock.

That's the choice you end up making. If your fishery keeps continuing, it is going to keep eroding until the point where it will become extremely small and you'll go under the threshold of your spawning biomass where your stock will never recover. That is what the Z 30 benchmark is trying to count. The human-induced mortality at dams, we create a dam, we license dams. We create power plants, we license power plants.

Yes, they are very difficult issues to address, but if you keep exceeding it as an index, then it has no teeth in it anymore. The benchmark is a not-to-exceed level. Is that what you mean, or is that the overfishing definition because we don't always measure all of F? I'm not clear on how you're trying to interpret this. A benchmark to me is an overfishing definition; a level not to exceed.

MR. SIMPSON: Well, an overfishing definition can be a benchmark but not all benchmarks refer to overfishing, if you get the point. To me an overfishing definition should be explicitly about fishing and no other source of mortality. That is the definition in every fisheries statistics book that I've ever read.

I think everyone is clear on the distinction. I want to retain the value that the technical committee focused on and that the peer review panel appeared to embrace. There is a very strong desire to want to get out there and address dam-induced mortality, for example. Unfortunately, that is outside the jurisdiction of ASMFC, so I think it would be really valuable to have benchmark, to focus attention to it.

I did point out that the Connecticut River has been under Z 30 since about 1974 or 1975 when we had very prosperous fisheries during those years. I will also point out that the peer review panel – quote, the panel was unable to find any rationale for the choices of value of 30, *parens*, versus 35 or 50, *end parens*, and requests that future stock assessments reveal this rationale and investigate whether the choices of the value of 30 is sufficiently conservative.

In other words, they picked a number because it is commonly used for other stocks. There is no explicit calculation that says that 30 is better than 35 or 25. Again, it is a signpost; it's a measure to gauge where

you are, but there is nothing biologically based about it specific to American shad.

CHAIRMAN DIOATI: Are we ready to move this question? No more questions, no more discussion? Caucus? All in favor of the motion raise your hand; all opposed, same sign; abstentions; null votes. **The motion passes.** A.C.

MR. A.C. CARPENTER: Mr. Chairman, I've got a feeling that we're plowing down a road that is really not going to get us very far tonight. **I would like to make a motion that we postpone any further consideration of Amendment 3 until the February meeting; at which time if we can possibly get it scheduled in the morning some of our minds might be a little bit fresher.**

CHAIRMAN DIODATI: It's not my fault.

MR. CARPENTER: I didn't say it was your fault. It started with my fault this morning running us late.

CHAIRMAN DIODATI: **There is a second for that motion by everybody on this side of the room. If there is no discussion I'll consider that motion approved.** We are going to delay everything else on Amendment 3 until February. However, don't everyone leave because we still have other business on the agenda. I'm going to right to Virginia to bring up their proposal.

MR. TRAVELSTEAD: Mr. Chairman, in the interest of time I'm not going to go through this. It was copied on the CD ROM that was sent to everyone. This is Virginia's annual request for a small bycatch fishery on American shad. Coming in, I thought there might be a question about our plan if in fact Amendment 3 had been approved at this meeting, but that not being the case I think Virginia's plan is still valid.

I would note that it did receive technical committee review and approval. It is a continuation of the measures that we put in place last year, which received the board's approval. With that, Mr. Chairman, **I would move that Virginia's 2010 American Shad Bycatch Allowance Program be approved.**

CHAIRMAN DIODATI: People are ready to make motions on this before we get the TC report, but go ahead.

MR. CARPENTER: I was going to second the motion.

CHAIRMAN DIODATI: There was a motion made to approve the request; seconded by A.C. Kathy, do you have a report on this?

MS. HATTALA: I think it was distributed. The technical committee did look it over and will approve it.

CHAIRMAN DIODATI: Okay, before I move on this I saw a hand in the audience that wanted to make a comment about this particular issue. Go ahead.

MR. PAQUETTE: Forgive me in the way that I just did that, Paul. Patrick Paquette, Recreational Fishing Alliance and a bunch of different recreational fishing groups depending on which species we're talking about today. I apologize but I have seen this happen before, so I know it's going to go down like real quick at the end of this motion.

I was informed in conversations with staff that an issue potentially with a potential 5 percent violation possibly by the state of New York under the Shad Plan was going to be coming today. If it's not coming, I just want to make sure that it's acknowledged, and I wonder – I had stuff that related from that to Amendment 3, but we're putting that off. I just want to make sure that we don't lose the potential bycatch violation in the haste of the day.

CHAIRMAN DIODATI: Thank you, Patrick; that is going to come up under – we're going to do it right after this. There is one more issue which is the FMP Review and I think that's where that comes up. We have a motion by Jack Travelstead; it is seconded by A.C. Carpenter. Do we have discussion on this motion? The technical committee is in favor of it. I see no discussion. All in favor raise your hand; all opposed, same sign; null votes; abstentions. **The motion passes.** The last issue of the evening is FMP Review of the plan by Kate. I think the item that was brought up by Mr. Paquette will be discussed here.

## **REVIEW OF 2009 FMP REVIEW FOR SHAD AND RIVER HERRING**

MS. TAYLOR: I will try to run through this as quickly as possible. The current status of the American shad stocks, the stocks are currently at all-time lows and do not appear to be recovering. That was a result of the 2007 benchmark stock assessment. The status of hickory shad is currently unknown. The status of alewife and blueback herring is unknown. A stock assessment is scheduled for completion tentatively in late 2011.

This is just showing the American shad landings coastwide. In 2008 the National Marine Fisheries Service reported 485,000 pounds of American shad landed. The ASMFC compliance reports reported 544,000 pounds landed. This was a decrease of 34 percent from the 2007 compliance reports.

The states of North Carolina and South Carolina comprised 80 percent of the landings. There was no harvest from Maine, New Hampshire, Pennsylvania, Georgia and Florida. For American shad ocean bycatch there is a 5 percent per-trip limit on American shad landed. In 2008 there were 20,511 pounds reported landed, which was 3.6 percent of the coast-wide directed harvest. This was an increase from 2007.

Landings were reported from Maine, Massachusetts, New York and New Jersey. New York accounted for 93 percent of the total bycatch landings where 38 percent of the trips that did report shad catches were over the 5 percent limit. Additionally, the 5 percent bycatch limit, the landed pounds were greater than their actual in-river commercial fishery landed pounds. This was only for reporting from January to May of 2008.

For hickory shad the commercial fishery landed just over 71,000 pounds in 2008, with North Carolina comprised of 89 percent of the landings. This was a 75 percent increase from 2007. For river herring the commercial fishery landed about 1.2 million pounds in 2008, which was a 65 percent increase from 2007.

Maine landed the majority of the landings. There were other landings reported from New Hampshire, New York, Delaware, PRFC, North Carolina and South Carolina. There are currently moratoriums in four states. There are currently coast-wide stocking efforts underway. In 2008 19 million American shad fry were stocked in rivers; 7 million hickory shad were stocked; and 90,000 alewives were stocked.

There are three states currently requesting *de minimis* status which the board will have to approve today. Those are the states of Maine, New Hampshire and Massachusetts. The PRT notes that several states are not reporting all of the monitoring requirements listed under Amendment 1, the Technical Addendum I, and Addendum I.

The most common omissions were variance, length frequency, age frequency and the degree of repeat spawning. The PRT requests that the technical committee also provide a spreadsheet on how to accurately determine the variance. The PRT reminds

states that they need to include a harvest-loss table in their compliance reports, and that the information should be reported in both numbers and pounds of fish.

The PRT requests that states and jurisdictions check with the law enforcement agencies as well as their freshwater counterparts when reporting poaching, bycatch or other losses. The PRT also requests that states and jurisdictions that share monitoring should report who was responsible for what required monitoring in lieu of not including that information.

Additionally, Amendment I requires that each state annually document the American Shad Ocean Bycatch. The PRT reminds states to include this information in their compliance reports. The PRT requests increased coordination between the American Shad and River Herring Technical Committee and the Atlantic Sturgeon Technical Committee to help better facilitate the understanding of bycatch.

The PRT requests that the states report the absence of fisheries in state waters rather than omitting the fisheries from their compliance reports. Lastly, the PRT requests that staff inform states of their previous compliance issues when they're sending out the general compliance report reminder for that year. That concludes my report. Thank you, Mr. Chairman.

CHAIRMAN DIODATI: Questions about these recommendations on the last slide? You need a motion here. The three states requesting *de minimis*, did they qualify?

MS. TAYLOR: Yes.

CHAIRMAN DIODATI: **Okay, so if I can have a motion to approve Kate's report, including approval for *de minimis* for the three states named. I'll go to Terry.**

MR. TERRY STOCKWELL: So moved, Mr. Chairman.

CHAIRMAN DIODATI: Seconded by Bill Adler. Discussion? Bill.

MR. ADLER: Included in this motion is the request for the three states, Maine, New Hampshire and Massachusetts?

CHAIRMAN DIODATI: Yes.

MR. ADLER: And this is on shad?

CHAIRMAN DIODATI: That's right.

MR. ADLER: And not river herring? Thank you.

MS. TAYLOR: Both shad and river herring.

CHAIRMAN DIODATI: I'm sorry, Bill, it's for shad and river herring *de minimis* status.

MR. ADLER: I was just going to ask Maine if that you – for river herring?

MR. STOCKWELL: Our *de minimis* request was for shad.

MR. ADLER: Okay, this is where I'm trying to go; let's get this straight.

### ADJOURNMENT

CHAIRMAN DIODATI: Okay, my fault there, Bill; for the three states, it's for their shad fisheries' *de minimis* status. Any opposition to the motion? **Seeing none, the motion is approved.** All right, any other business? None; a motion to adjourn. So moved; thank you.

(Whereupon, the meeting was adjourned at 6:58 o'clock p.m., November 2, 2009.)