

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

**The Francis Marion Hotel
Charleston, South Carolina
November 8, 2010**

Approved March 2011

TABLE OF CONTENTS

Call to Order, Chairman Malcolm Rhodes	2
Approval of Agenda.....	2
Approval of Proceedings, August 3, 2010	2
Public Comment.....	2
River Herring Sustainable Fishery Management Plans	2
Discussion of August 2010 Policy Board Motion.....	2
Technical Committee Report	5
Board Discussion of Sustainable Fishery Management Plans	7
River Herring and American Shad Bycatch Update	15
Update on NEFMC Draft Amendment 5	15
Update on MAFMC Draft Amendment 14.....	21
Board Discussion of Federal Fishery Management Plan.....	24
Virginia American Shad Bycatch Request	29
Fishery Management Plan Review and State Compliance Report.....	30
Other Business.....	31
Adjournment	31

INDEX OF MOTIONS

1. **Approval of Agenda by Consent** (Page 1)
2. **Approval of Proceedings of August 3, 2010** by Consent (Page 1)
3. **Motion that any state or jurisdiction that wishes to retain river herring harvested in state waters must submit a sustainable fishery management plan for review by the technical committee and approval by the board** (Page 3). Motion by Davd Simpson; second by Tom Fote. Motion carried (Page 4)
4. **Move to approve the Maine Sustainable Harvest Plan** (Page 6). Motion by Terry Stockwell; second by Bill Adler. Motion carried (Page 6).
5. **Move to approve the New Hampshire River Herring Sustainable Fisheries Plan with the addition of a fisheries-independent target that equates to a 50 percent average of the river herring returns to the fish ladders in the Great Bay Indicator Stock from 1990-2009. This equates to 70,369 fish. If the three-year running average of the annual river herring returns to the fish ladders in the Great Bay Indicator Stock falls below this target, New Hampshire will take steps to prohibit harvest of river herring in state waters** (Page 6). Motion by Douglas Grout; second by Gene Kray. Motion tabled (Page 8).
6. **Move to table until the spring of 2011 meeting the New Hampshire River Herring Fishery Management Plan** (Page 8). Motion by Pat Augustine; second by Tom Fote. Motion carried (Page 8).
7. **Motion that all jurisdictions be required to meet the regulatory provisions with regard to river herring and American shad if the species occurs in their waters and is subject to fisheries, whether directed or non-directed** (Page 13). Motion by Roy Miller; second by Pat Augustine. Motion failed (Page 14).
8. **Motion for approval of Virginia's Bycatch Plan for 2011** (Page 27). Motion by Jack Travelstead; second by A.C. Carpenter. Motion carried (Page 29).
9. **Move to approve the shad and river herring FMP and state de minimis requests.** Motion approved without objection (Page 20).
10. **Move to adjourn by Consent** (Page 20).

ATTENDANCE

Board Members

George Lapointe, ME (AA)	Craig Shirey, DE, proxy for P. Emory (AA)
Terry Stockwell, ME (AA proxy)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Sen. Dennis Damon, ME (LA)	Roy Miller, DE (GA)
Pat White, ME (GA)	Tom O'Connell, MD (AA)
Doug Grout, NH (AA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
G. Ritchie White, NH (GA)	Bill Goldsborough, MD (GA)
Rep. Dennis Abbott, NH (LA)	Steven Bowman, VA (AA)
Paul Diodati, MA (AA), Chair	Catherine Davenport, VA (GA)
Bill Adler, MA (GA)	Jack Travelstead, VA, (AA Proxy)
Rep. Sarah Peake, MA (LA)	Michelle Duval, NC, proxy for L. Daniel (AA)
Bob Ballou, RI (AA)	Bill Cole, NC (GA)
Mark Gibson, RI (AA proxy)	John Frampton, SC (AA)
Bill McElroy, RI (GA)	Ross Self, SC, proxy for R. Boyles (LA)
David Simpson, CT (AA)	Malcolm Rhodes, SC (GA), Chair
Rep. Craig Miner, CT (LA)	Spud Woodward, GA (AA)
Lance Stewart, CT (GA)	Rep. Bob Lane, GA (LA)
James Gilmore, NY (AA)	John Duren, GA (GA)
Pat Augustine, NY (GA)	Jessica McCawley, FL (AA)
Tom McCloy, NJ, proxy for D. Chanda (AA)	William Orndorf, FL (GA)
Gil Ewing, NJ, proxy for Asm. Albano (LA)	Sen. Thad Altman, FL (LA)
Tom Fote, NJ (GA)	A.C. Carpenter, PRFC
Leroy Young, PA, proxy for J. Arway (AA)	Steve Meyers, NMFS
Gene Kray, PA, proxy for Rep. Schroeder (LA)	Jaime Geiger, USFWS
Loren Lustig, PA (GA)	

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

Ex-Officio Members

Byron Young, Advisory Panel Chair

Wilson Laney, Technical Committee Representative

Staff

Vince O'Shea
Kate Taylor

Bob Beal
Chris Vonderweidt

Guests

Arnold Leo, E. Hampton, NY
Dave Ellenton, Gloucester, MA
Bob Ross, NMFS
Linda Mercer, ME DMR
Chris Bonzek, VIMS
Mark Alexander, CT DEP
Carol She, NMFS
Dan McKiernan, MA DMF
Rick Robins, MAFMC

Jeff Bridi, ASMFC LEC
Joe Moran, USFWS
Raymond Kane, CHOIR
Darren Saletta, Chatham, MA
Ken Hinman, NCM, Leeseburg, VA
Charles Lynch, NOAA
Peter Burns, NMFS
Thomas Rowe, Jr. Meggett, SC

The Shad and River Herring Management Board of the Atlantic States Marine Fisheries Commission convened in the Carolina Ballroom of the Francis Marion Hotel, Charleston, South Carolina, November 8, 2010, and was called to order at 2:45 o'clock p.m. by Chairman Malcolm Rhodes.

CALL TO ORDER

CHAIRMAN MALCOLM RHODES: I would like to welcome you all to the Shad and River Herring Management Board Meeting.

APPROVAL OF AGENDA

CHAIRMAN MALCOLM RHODES: Everyone had received the minutes and the agenda from the previous meeting. Are there any additions to the agenda? Seeing none, we will accept that.

APPROVAL OF PROCEEDINGS

CHAIRMAN MALCOLM RHODES: Everyone was sent the Proceedings from the August 3rd meeting. Were there any additions or corrections to those? Seeing none, we'll approve those.

PUBLIC COMMENT

CHAIRMAN MALCOLM RHODES: At this point there is a time for public comment. If anyone from the audience would like to comment upon any issues regarding shad and river herring not on the agenda, this would be the time. Seeing no one, we shall move on to the next part. At the last meeting there was a discussion about non-directed fisheries bycatch and what a moratorium would mean.

RIVER HERRING SUSTAINABLE FISHERY MANAGEMENT PLANS

DISCUSSION OF AUGUST 2010 POLICY BOARD MOTION

That was sent to the Interstate Policy Board, at which point there was a motion made to have the Shad and River Herring Technical Committee notify the states the need to put together a sustainable fisheries management plan for directed fisheries only. Bob Beal has been working with this for more clarification, and I'm going to turn it over to him.

MR. ROBERT E. BEAL: As Malcolm said, there was a lot of discussion at the last meeting of this management board about what states and jurisdictions would need to submit sustainable fishery management plans, what should be included in there. And then board had a discussion on what is a

moratorium, is it just a closure, is it a closure plus preventing all bycatch.

As Malcolm mentioned, they referred that to the Policy Board, and the Policy Board passed a motion that is on the bottom of the screen now, which is move to have the Shad and River Herring Technical Committee notify the states that need to put together sustainable fishery management plans for directed fisheries only.

Once that motion was passed at the Policy Board, a number of commissioners and I started kind of chatting about that and they said what does this really mean; does the last part of that that says "for directed fisheries only" mean that jurisdictions that have bycatch fisheries no longer need to put together sustainable fishery management plans.

And then folks said, well, that's not really what we intended, we wanted to make sure that all the bycatch is characterized or at least run past the management board and then the board makes decisions on where to go next. What I did was I put together a white paper, which I think has been passed out. I think it is titled "River Herring Bycatch Clarification". It is just a quick summary of where I think we are.

There is a little bit of a process issue here in that the Policy Board passed a motion that is on the screen and this board may want to really change the intent or clarify the intent of something the Policy Board did, so we will need to just – whatever decisions or a course of actions selected by this board this afternoon will need to be just, I guess, blessed by the Policy Board hopefully later this week since the majority of this board is the Policy Board.

With that said, what I tried to do is summarize where I thought we were in that white paper that has been passed around. As I mentioned, there were two concerns. One is that the motion doesn't require sustainable plans if bycatch is going to be retained, and the other was that the motion didn't really set a limit on the magnitude of bycatch that can be retained.

There was a concern that states would just say, well, it is a bycatch fishery and we don't need to submit a plan and then they would just carry on and river herring would be harvested. When you look at this issue, there are really three dimensions that are included. One is the directed fisheries for river herring that occur in state waters, state water bycatch fisheries and then bycatch of river herring in offshore

fisheries. I kind of broke it down into those three dimensions.

The first one is the directed fisheries, and that one is pretty simple, any state or jurisdiction that wishes to retain a directed river herring fishery must put together a sustainable fishery management plan for technical committee and board review. That one is pretty straightforward, and I think the board all agree to that the last time you all met.

State water bycatch is one of the areas that there was a lot of discussion; what does it mean if you have some level of bycatch occurring in other fisheries that are run in state waters and do you need to put together a sustainable fishery management plan. Through the review of the minutes of the last meeting and policy board and everything else, the white paper includes my summary of where I think we are, which is any state or jurisdiction that has fisheries in state waters that retain river herring as bycatch must submit a sustainable fishery management plan.

So, if you have any fishery that keeps river herring in state waters, you need to put that into a sustainability plan and notify the board of that and the technical committee will then review that proposal, provide feedback to the board on the magnitude and sustainability of that bycatch, and then the technical committee will also comment on what is the appropriate level of monitoring that is needed to keep track of the bycatch in those state water fisheries.

And then this proposal will come to the management board and the board, as they always do, will review the technical committee comments and then decide what actions should be taken. The actions that could be taken by the board are modifications to current fisheries, modifications to discard practices in fisheries that are going on, as well as establishment of monitoring requirements.

If the board determines the level of bycatch is not significant and is sustainable, then the state may not need to modify anything, but the board will be on record and understand what is going on in that state, and that the state practices that are going right on right now may be allowed to continue if it is a sustainable level of bycatch and it is not significant.

The final area is offshore bycatch, and this is something that the Sea Herring Board talked about a little bit this morning, but I think where we were at the last meeting was folks were noting that some level of bycatch is going to come into the docks from these offshore fisheries as they're currently

configured. They're high-volume fisheries and you just can't prevent some amount of river herring coming back to the dock given the current structure of that fishery.

The group also noted that obviously these issues are being addressed by the New England Council and the Mid-Atlantic Council, and those are the groups that have the authority over actions that occur in federal waters. Basically, the board was recognizing that the two councils are handling the offshore bycatch issues through Amendments 5 and 14.

The board also noted that they may need to react to what is going with Amendments 5 and 14 through some management action at the commission level once we have a clear picture of where those two documents at both the councils are going. That's a quick summary of where I think we are. I think that can sort form the foundation of what jurisdictions still need to put together sustainable fishery management programs or proposals. I think it addresses a number of the questions that the board was grappling with at their last meeting. I can try to answer any questions if the board has any.

MR. GIL EWING. Mr. Chairman, I only have one question. I haven't been on this commission very long. We keep talking about bycatch, bycatch, bycatch. Do we have any guidelines as to what bycatch fishery means; is it 1 percent of the total catch, is it a hundred percent of the total catch, is it 10 percent? I haven't seen anywhere where it states what bycatch really means. Can you help me out here?

MR. BEAL: I'll give it a try. The commission doesn't have a set percentage that applies to all the fisheries across the board at the commission. There is some mention in different plans and different levels that are considered by catch and we try to stay below, what is it, 5 percent, Kate, in the ocean fisheries, but there isn't a standard definition that applies to all the fisheries of the commission.

MR. THOMAS FOTE: A comment on the memo that went out, Bob; I didn't hear about this memo until I went for a pre-meeting that Tom and I had last week, and it seems that it was only sent out to state directors. There was also a memo on tautog that was the same thing and a few others. If it is going to be a memo on this, it should be sent out to all the commissioners and not just state directors.

None of the commissioners were on that e-mail list that went out on this memo when it was first sent out.

Tom was surprised that I knew nothing about it when he asked me and Gil to comment on this. When we had a meeting last week, I said I haven't seen it so he had to forward it to us. That should have come out of the commission.

My concern here is I remember sitting around this table – I guess Jack would remember and A.C. – when we had a directed shad fishery off New Jersey and basically made the shad fishery directed to shut down even though their numbers were not basically in accord was being caught as a bycatch in the other fisheries. I fought to keep the gill net fishery open because I thought it was the right thing to do because we were shutting down a small directed fishery and still allowing the strong bycatch.

When it comes to scup doing the same thing, the scup bycatch is way larger than the whole directed recreational fishery. It still is after all these years going back to '92 when we first started talking about this. I'm having the same problem that Gil has; what is a bycatch? When I looked at this original proposal, New Jersey is going to have to shut down all this because we have really no proof right now and it will take us a couple of years to do that, to come up with the information even if we had the money to do that to prove that we have sustainable runs on river herring, but it is going to allow for a bycatch in certain fisheries.

Well, if you're fishing for striped bass and you hook into it with a dart and you hook into a river herring, is that a bycatch now and can he throw it in the bucket as long as he has one striped bass in the bucket, and is that going to qualify the same thing as if you have a pound net in the Potomac River? That is my concern.

We could shut down fisheries that is an important fishery in Pennsylvania on a directed recreational fishery that is not large numbers. People don't catch a lot of fish even on the shad fishery and yet we're going to allow those bycatch. That is my concern here; we have got to look at the total number of being handled in bycatch and make some real hard decisions on this.

MR. DAVID SIMPSON: Do we need a motion to incorporate or adopt your white paper descriptions? I can make a stab at it. I think it is as simple as I would move that any state or jurisdiction that wishes to retain river herring must submit a sustainable fisheries management plan to the technical committee for review and approval by the board. Does that capture it?

MR. ROY MILLER: Mr. Chairman, if I may ask a question of David in regard to clarification to his motion; how is that different than what we've already done, David?

MR. SIMPSON: I need a second to continue with the discussion.

CHAIRMAN RHODES: Second by Mr. Fote.

MR. SIMPSON: The difference was at the last meeting, it was quite a confused discussion and Bob did a good job of capturing where I think we're headed, and I think it had to do with a bycatch fishery, trap net fishery or something – it doesn't matter where it came from – that prior to this motion you were only required to submit a sustainable fishery plan for directed fisheries, and it begged the question what is direct. I think the intent of the board and the intent of this motion is you have to submit a sustainability plan if you're going to allow retention of the species. Otherwise, if you're not going to allow retention, that is essentially the closure that would be default without a plan.

MR. PATTEN D. WHITE: David, I just wondered if this should have a date of January 1, 2012, as it was in this paper that was just handed out, so it didn't start tomorrow.

MR. SIMPSON: Does it need that for clarification; "board by January 1, 2012" – Bob, maybe you can help me.

MR. BEAL: Well, I think the plan states that fishery closures will occur January 1, 2012, so the sustainable fishery management plans will need to be submitted much sooner than that so that we can go through these review steps. The plan already includes the date of January 1, 2012, for the closure or required action by the state, so I don't know if we necessarily need a date. I think this is just clarifying who between now and January 1, 2012, is obligated to submit plans and have them reviewed by the board or they have to implement a closure.

MR. SIMPSON: So I think it is clear to just leave the date out and the plan will speak to that.

MR. DOUGLAS GROUT: I think this is good wording. I did have one suggestion to help clarify between those harvested in the EEZ and harvested in state waters. After the words "river herring" put in "harvested in state waters". Does that clarify it?

MR. SIMPSON: Yes, thanks, I intended to include that.

CHAIRMAN RHODES: And does the seconder of the motion take that clarification?

MR. FOTE: I will accept the clarification even though I have a problem with it. I think we need to address what is being caught in the offshore and leaving it up to the council could basically – we could put a lot of effort into what we're doing and be circumvented because we can't know what the schools on the ocean and where they are and what is going on, but I'll agree to this.

MR. WILLIAM A. ADLER: Mr. Chairman, this motion therefore says whether you're catching two fish or you've got a directed, you still have to put in a plan because it doesn't say offshore or landing bycatch, it doesn't say – does this thing cover everything or is this just for state waters or directed fisheries?

CHAIRMAN RHODES: This would be for state waters, incidental or directed.

MR. ADLER: Okay, so this is incidental or bycatch or directed in state waters, and this has nothing to do with the offshore bycatch, I'm going to say; is that correct?

CHAIRMAN RHODES: That is correct.

MR. JAMES GILMORE: Mr. Chairman, just a logistics point; at the last meeting we talked about the extension of the deadline and we decided not to do even that extension and that we were just going to use the functional date of January 2012. I think the issue at the time was maybe just a workload issue and the number of staff.

Do we have any idea how many new plans this is going to include because we still don't have a succession plan for the technical committee in terms of staffing right now. If they're essentially going to have to review a whole bunch of plans, we may have trouble meeting that January 2012 deadline. Thank you.

CHAIRMAN RHODES: For that I'll turn to Mr. Wilson.

DR. WILSON LANEY: Yes, sir, Mr. Chairman, the technical committee discussed that, and it is covered in the memorandum that you have from the chairman from our October the 14th conference call. The

answer to that question is that currently five jurisdictions have not submitted their sustainable fishing plans. There are directed fisheries in New York, both commercial and recreational; District of Columbia, recreational, and then there are bycatch fisheries in the Potomac River and Virginia and Maryland.

Our understanding is the states of Pennsylvania, Delaware and New Jersey will close their fisheries in 2012. Kathy has a very nice map, when to get her presentation here momentarily, that shows the status color coded for all the states so we can take a lot at that as well.

MR. TERRY STOCKWELL: Thank you, David Simpson, for the motion. It is clear, concise and I can support it. I have just a simple process question. Are we recommending to the Policy Board this? I wasn't clear whether or not this motion alone would be enough to make our clarification.

MR. BEAL: I think if this board passes this motion or a similar motion, we can convey that to the Policy Board later this week; and if the Policy Board doesn't have any concerns with it, then they can carry forward; but if the Policy Board would like to suggest anything or remand or anything back to this board, they have the ability to do that.

CHAIRMAN RHODES: Any further comments on this? Would the states like to take a minute or are you ready to vote?

(Whereupon, a caucus was held.)

CHAIRMAN RHODES: The motion being voted on is move that any state or jurisdiction that wishes to retain river herring harvested in state waters must submit a sustainable fishery management plan for review by the technical committee and approval by the board. Motion by Mr. Simpson and a second by Mr. Fote.

Is everyone ready for the vote? All right, all those in favor please signify by raising your right hand; those opposed same sign; any nulls; any abstentions. **The motion passes 15, zero, zero, zero.** We move on now to the **technical committee report**. Kathy Hattala is under the weather and so Wilson Laney is going to give the technical committee report.

TECHNICAL COMMITTEE REPORT

DR. WILSON: Okay, the technical committee had a conference call on October 14th. You have the memo from Kathy Hattala, who is our chair, in your

package, but we also have a powerpoint presentation here that hits the highlights. This is the slide that I was talking about. It basically shows the status of all of the fisheries and sustainable plans.

There are two states, as you can see there, that are under moratorium. There are a number that plan closure by 2012. North Carolina set-aside was approved along with the South Carolina Plan. There are two plans that have been submitted and are in review, and we'll talk about those today. And then there are a number yet that have to be submitted, which I just indicated to you a short while ago.

Those that are undocumented, specifically Georgia and Florida, I guess we'll talk about that in a little bit. The technical committee has a recommendation for you on those. Just as a reminder, the criteria that the plan established for sustainable fishery plans include having a sustainable target, having supporting data, having sufficient monitoring in place, having some sort of regulatory structure in place and providing a timeline.

Okay, Mr. Chairman, if it is okay, I'll move on to the main plan. Let me just say before we do that, that both Maine and New Hampshire, in response to requests from the technical committee, added a tremendous amount of information to their plans. Both of them were much more complete on the second go-round.

Maine provided a comprehensive revised document to the technical committee, and the technical committee has agreed that the Maine Plan met the sustainable fishery definition. They provided a very extensive description of all the fisheries, the physical settings and the locations. They provided all available data that they had, including that on repeat spawning, mortality estimates, their target escapement rates, harvest, exploitation rate, fishery-independent data and the rivers that were covered.

They also provided to us the criteria associated with closure and reopening of each of those fisheries; and they in addition provided us information which we didn't request, indicating that they have implemented a pelagic license, which is now in place. That license provides support for data collection. It covers a host of fisheries; not just river herring but also menhaden, whiting and mackerel.

The coastal fisheries have reporting requirements and all river herring discards will be tracked. For the directed in-river fisheries, daily landings will be reported to allow for better tracking. Also, they have

prohibited bycatch in state waters or I guess retention of bycatch, we probably should say. That one, Mr. Chairman, we recommend for approval.

Okay, the technical committee recommends that the board consider the technical committee request for additional information on the New Hampshire sustainable fishing plan. The technical committee had reviewed the plan initially. New Hampshire revised it in response to that request. The technical committee review of the revised sustainable fishing plan noted a lack of information that had been previously requested.

New Hampshire lowered their target in-river exploitation rate as we had suggested, but we still had a lot of concerns, and we have a number of requests and recommendations that we made to New Hampshire. The first was that a Great Bay indicator stock exploitation rate – well, we raised the concern that the Great Bay indicator stock exploitation rate was the only target that they had.

That Great Bay Index is a combination of run-count data from four different rivers that are tributary to the Great Bay and harvest occurs from all the fisheries. The risk of using only an exploitation rate as the target is that both the harvest and the run counts can decline together and the exploitation rate would stay the same without triggering any action. I think we have a figure in here which makes the point I think that if you look at the graph, the blue line there is the Great Bay Index annual run size.

You can see that the long-term trend there is for it to decline. The target exploitation rate is the dotted line at 20 percent there. The annual exploitation rate is the green line, and you can see that for most of the time series it was below that 20 percent exploitation rate, and in recent years it has been a pretty ways below it. I guess the most recent estimate there is around 12 percent, so that was of concern to us.

From our perspective, the target that was selected, although it was lowered to 20 percent in the revised sustainable fishing plan, it still appears to be arbitrary as it is among the highest values of the last 20 years. The current exploitation rate is much lower than the target value, yet the GBI is still declining. The technical committee also recommended that New Hampshire provide justification for the selected target value.

Such justification should include analyses of all available data to identify and examine these relationships, and those include between life stages,

within-year juvenile production and adults, juveniles and returning adults, between adult total mortality and population estimates using adult mortality rates, with aging and repeat spawning data, actual annual run counts, actual annual harvest and current and past annual exploitation rates.

We would also like to see them include a secondary fishery-independent target, and I think Doug is going to address that point. We also would like to see them explore the use of an escapement target. Maine used that technique, and we think that it would probably be applicable in New Hampshire as well.

We also recommended that New Hampshire seek assistance from the Stock Assessment Subcommittee for analysis. We also recommended that they need to highlight the factors that they think are impacting their stocks, and these targets, as with all the sustainable fishing plans, will be reviewed after the river herring stock assessment is complete. Mr. Chairman, that is our recommendation with regard to the New Hampshire SFP.

BOARD DISCUSSION OF SUSTAINABLE FISHERY MANAGEMENT PLANS

CHAIRMAN RHODES: Thank you very much for both of those reports. If it is the will of the board, could we break these into two separate motions? We will bring up Maine first. Any discussion? Terry.

MR. STOCKWELL: Mr. Chair, I have a motion.

CHAIRMAN RHODES: I will entertain that.

MR. STOCKWELL: Okay, but before the motion I would first like to thank the Maine DMR staff and the technical committee for a great deal of work in the development of several revisions of Maine's plan. I'm very appreciative. **I would like to make a motion to approve the Maine Sustainable Harvest Plan.**

CHAIRMAN RHODES: Second by Mr. Adler. Any discussion? Are there any objections? **Seeing none, we will approve that plan.** The New Hampshire Plan. Mr. Grout.

MR. GROUT: Mr. Chairman, I'm prepared to make a motion here to have our plan accepted; and if I get a second to this motion, I would like to be able to speak to the reasons that we feel that our plan is sustainable. **I have a motion to approve the New Hampshire River Herring Sustainable Fisheries Plan with the addition of a fisheries-independent target that equates to a 50 percent average of the**

river herring returns to the fish ladders in the Great Bay Indicator Stock from 1990-2009. This equates to 70,369 fish. If the three-year running average of the annual river herring returns to the fish ladders in the Great Bay Indicator Stock falls below this target, New Hampshire will take steps to prohibit harvest of river herring in state waters.

CHAIRMAN RHODES: Second by Mr. Kray. Mr. Grout.

MR. GROUT: I appreciate the time that the technical committee has taken to review our plan and it has made some good suggestions; some of which from the last report that was given to us, unfortunately, there was a misunderstanding over what was actually requested of us. We addressed all the items that were in the report to the board and apparently there were some items that were discussed in the technical committee report that they also wanted, and that is some of the things that Wilson had mentioned.

What we have done, Mr. Chairman and members of the commission, is we have – first of all, just to give you an overview, we have a very, very small fishery. It is a personal use fishery that is essentially lobstermen and recreational anglers that are targeting river herring for bait. There has been no record of sale of river herring in a number of years in our waters. It is all personal use.

In recent years, as a result of some management actions we took prior to adoption of Amendment 2, since then our river herring harvest is between 2,000 fish and 17,000 fish per year. So, again, this is very, very small. We feel because we have controlled the exploitation and harvest here, that our plans are sustainable. Just to give you an idea and explain the management actions that we took back in 2005, we had had harvest that had been climbing primarily in one river where it is fairly easy to target and harvest these rivers.

That had gone up to as high as 45,000 fish, and we were very, very concerned about that; so as we result we targeted that particular river and we reduced the number of harvest days in that one river from six days per week to two; and in addition, we put in a one-fish tote per day limit for everybody. That resulted in at least a 50 percent reduction in the subsequent harvest of river herring from that river and from our entire state.

I feel prior to the implementation of this plan we took significant action to try and control the harvest as it was getting up to a point that we felt that we felt that

it was unsustainable. Now, in the plans that we submitted we proposed that we have an exploitation rate target of 20 percent that we would not exceed. If it ever exceeded that amount, we would again take additional measures that could be targeted to the specific fisheries that were responsible for us getting back up that 20 percent exploitation rate.

What that target results in is an 80 percent escapement rate of river herring to spawn, which we feel is extremely conservative. We feel also that the way we're calculating this is even more conservative and we think that this is a minimum estimate that we're coming up with. Our current exploitation rate is a three-year running average of 12 percent.

The reason this is a minimum value is because we have mandatory logbooks for all our coastal harvesters of river herring. They have to have daily – it is a mandatory logbook that they have to submit monthly with daily reporting. If they do not report this, they don't get a permit for next year. We have a hundred percent records of the harvest, yet we are only monitoring for the seven rivers within Great Bay Estuaries. That is what we have, four fish ladders.

We used to have five, but we just removed the head-of-tide dam at the Winneconne River, which used to have a fish ladder, and so that is now the only free-flowing river in the Great Bay Estuary from the headwaters all the way down to the Estuary, so we don't have counts in there anymore, so we did not include that in our Great Bay indicator stock, and at this point we don't have – that plus two other rivers we don't have estimates of what the returns are.

So we know there is more river herring returning than what is in our four fish ladders that we monitor; so because of that, the exploitation rates are actually much lower in reality. So we have that one target and that is the exploitation rate target in which if we would ever exceed that we will take some action to try and reduce it.

The technical committee at this last technical committee meeting provided us a suggestion, and my technical committee member and myself sat down and we said that is a good suggestion, that we have a fishery-independent target to along with this exploitation rate target, because as they rightly state our herring returns could continue to decline; as long as we keep the harvest levels lower, they could go down – we could stay under the target yet our river herring runs could continue to decline.

So what I proposed in a memo that sent out to your folks on Friday – and I apologize for it being so late, but it took between my schedule and my technical

committee member's schedule, it took us until Friday to be able to get together and propose this level – is that we are going to set fisheries-independent target where 50 percent of the mean returns from the Great Bay Indicator Stock from 1990-2009 – and that equates to the 70,369 that I have up there on the board – and what we're proposing that if our three-year average return rates to our fish ladders falls below this level, that will be the bottom line below which we feel that we need to shut off our entire fishery.

We wanted to have a three-year average because we have had years where, for example, from 2005-2007 we had two 100-year floods and some years we just weren't getting fish back to the fish ladder because they couldn't get up there because the flows were so strong. So we want to make sure that we don't get shut down because of one year's weather event that prevents the fish from even making it to the fish ladder. So that is our fisheries' proposal, and I will be glad to take any questions from the board concerning this or any questions about some of the items that were up in Wilson's report there.

MR. JACK TRAVELSTEAD: Not a question for Doug as much as it is for the technical committee; do the measures outlined in the motion and the explanation of Mr. Grout satisfy the concerns of the technical committee?

DR. LANEY: I think the answer is no. The technical committee hasn't seen New Hampshire's proposal. I think it speaks to one of the requests that we made, which was that they include a secondary fishery-independent target, and it appears to me that Doug's proposal represents a response to that, but we haven't seen this.

This is the first that the technical committee has been exposed to it, and obviously the rest of the technical committee is not here today. From a process standpoint, I would certainly think that the rest of the technical committee would like to hear the proposal, but my sense is that we would probably still have some concerns because of all the other information that we know is available to New Hampshire that hasn't been analyzed. I guess comparing the Maine report to the New Hampshire report, which I may not supposed to be doing, but I'm going to do it, anyway, you establish criteria, you set standards, and I feel like we have one jurisdiction that clearly met the standard and we have another jurisdiction that in the opinion of the technical committee has not met the criteria that the board established for having a sustainable fishing plan.

MR. PATRICK AUGUSTINE: Mr. Chairman, based on Dr. Laney's comments and without any further discussion around the table and taking anymore time, I think what Mr. Grout has put together for his state is very admirable again, but it does not appear to meet the criteria based on the limited time any of the technical members have had a chance to review this. **I would suggest we table this motion until the March meeting, at which time hopefully we can get a report from the technical committee as to the viability of the recommendations in the letter to us.**

CHAIRMAN RHODES: So we have a move to table this and a second by Mr. Fote. All right, a motion to table is not debatable. Therefore, this will be a vote. Do the states need to caucus for a moment?

(Whereupon, a caucus was held.)

CHAIRMAN RHODES: There was a motion to table until the spring of 2011 meeting the New Hampshire River Herring Fishery Management Plan. Mr. Simpson.

MR. SIMPSON: Not to debate the motion, but just for clarification; if we do wait until March, there is the chance for an exchange between the technical committee and New Hampshire to get clear on what it is needed and to address those things, and it doesn't jeopardize New Hampshire's ability to continue its fishery uninterrupted if the sustainability plan is passed in March; is that correct?

CHAIRMAN RHODES: That would be correct. All right, it is time to vote on the motion. All in favor of the tabling please signify by raising your right hand; those opposed same sign; null; abstentions. **All right, the motion has been tabled;** 16 in favor, 2 against. Mr. Augustine.

MR. AUGUSTINE: Yes, that is to date certain, which is the March meeting?

CHAIRMAN RHODES: Yes, sir. Mr. O'Shea.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, it is going to require a motion to take this from the table, and I would assume that the maker of that motion, at that point might be New Hampshire, who would then say they have a report or, no, that there is a report from the technical committee with an analysis of that. I guess the board wants that analysis at the time the motion is made or would they want that analysis from the technical committee prior to the March meeting.

CHAIRMAN RHODES: It would be my thought that New Hampshire has proposed this. The technical committee will be able to get in discussion with them and work this out hopefully prior to the March meeting. Mr. Grout.

MR. GROUT: It is unfortunate that this was not a debatable motion because I could have added some information to this debate it, and then it may be very difficult to provide all the analysis that the technical committee is asking from us. That is because a lot of the information that they have asked for is in the report. It is the analysis comparing exploitation rates to our return runs, to our juvenile indices, and they have also asked that we estimate Z from repeat spawning.

What we have in the report is we have return numbers, we have juvenile indices, we have repeat spawning information for them. We also have harvest rates. It is the analysis, and by their own request they think that this is sufficient enough that we need to consult with the stock assessment subcommittee to determine exactly what needs to be done.

Our concern with that kind of information, this is the kind of information that is going to be done in the upcoming stock assessment, which is not due for completion until the end of 2011, and so my concern is that now we have tabled this until March is that we're not going to be able to get all our information together and consult with the stock assessment subcommittee, do the analysis and then get it to the technical committee to have them review our plan and then have it before the March board meeting.

My technical committee representative has indicated this is a lot of work and it is something that we see is going to take a long time to do and it is going to be done as part of the stock assessment. So, I know we've tabled it; that has been done, but we didn't bring this forward just to – it was because we didn't think we could get that kind of information together before March, to be honest with you.

DR. LANEY: During the conference call, Ms. Hattala offered the assistance of the stock assessment subcommittee to New Hampshire in developing that information, so the only thing I can say in response, Doug, is I presume that offer still stands. Also, I think your proposal should be sent out to the technical committee as soon as possible so they can take a look at your response to that request for a fishery-independent trigger and then hopefully some dialogue between New Hampshire and the stock

assessment subcommittee and the technical committee can determine whether or not we can meet that deadline by March or not.

REPRESENTATIVE DENNIS ABBOTT: Mr. Chairman, as a matter of process, I think that we should be careful when we make these motions to table like we did. I respect the individual from New York, Pat, being able to make the motion, but Doug was sitting here with his hand up and wanted to say things.

I don't think that he was offered a fair opportunity or the state of New Hampshire was not offered a fair opportunity to present their case. I think we were surely given short shrift in my opinion when Dr. Laney compares us to Maine's proposal and acceptance versus our. Maybe there are some apples and oranges there, but I would have liked to have seen New Hampshire's proposal stand on its own two feet and then the board reach its conclusion, whatever that was, and maybe it would have reached the same conclusion, but I don't think that we were offered a good opportunity today.

MR. FOTE: When this original plan was proposed and as it went through its process of being adopted into the addendum, I had serious concerns. As a matter of fact, New Jersey voted against the plan because we knew it was going to shut down the fisheries. But now that a plan has passed and we have a process to go through and that the plan must be followed, we have to get the approval of the technical committee before we can approve this. That is the criteria we should be using for every plan from every state.

I did not feel uncomfortable at all because basically that is the process we go through; and to come with a plan at the last minute and at this time without going back to the technical committee is not what we should be doing according to the plan. We have a process that is set up and process is that, and that is the reason I basically – because if Pat hadn't made that motion, I was going to make the same motion because without the approval of the technical committee – I understand that in New Jersey.

I've basically told my fishermen because we don't have the money and because we can't do the studies in the period of time, it is going to shut down and that is going to affect a lot of people because they use it for bait. And people actually eat herring and want to pickle it and things like that and that is actually sustainable, and we're going to shut down. I did it one time and we're going to shut them all down. I

sympathize with you but I'm going to be playing by the same rules as everybody else and I can't get a plan approved by the technical committee, we're not going to have a fishery in New Jersey.

MR. AUGUSTINE: Mr. Chairman, I did not with haste make that motion. Again, Mr. Fote stated exactly where I was coming from. I think everyone has an opinion about which way we should go. This is another one of those cases where a state obviously has done more behind the lines. You have the documentation; we have not seen it; the technical committee has not seen it.

Again, Mr. Fote is correct; if we're going to follow procedure, let's follow procedure as painful as it can be. New York has found themselves in that situation a couple of times and we're going to find ourselves in that situation again very shortly. To that point, I'm not apologizing for having made the motion. I am sorry that we did not have all that information to the technical committee, to have them review it so we could have made the right decisions in the case of New Hampshire. The technical committee made their statement. I don't think it is refutable or rebuttable, and that is where we are. Thank you for that, Mr. Chairman.

MR. SIMPSON: I have to say I disagree a little bit with the process as it was described by the previous two speakers. I don't believe that this board needs the approval of the technical committee. I think what we're looking for is the input and advice from the technical committee, but ultimately the decision to approve these plans lies here with the board.

I think there were some important deficiencies in the plan that were pointed out by the technical committee. I'm confident that with the time to incorporate what you put together at the last moment, that we'll be much more comfortable with this. I think New Hampshire fisheries in terms of jurisdiction are limited to New Hampshire.

I'm very comfortable that the state of New Hampshire has a very keen interest in maintaining sustainable fisheries, and it's really about process and making sure we have the right document in front of us.

I will offer that if it is of help to New Hampshire I will offer staff time from our shop to work with yours to address some of these deficiencies, maybe do some of the analytical work, pull in some of the data, because I do understand that you have quite a bit of data that is pre-1990 and there were some issues

about why not incorporate it. I would be happy to offer assistance to the extent that New Hampshire can use it, but I'll end with where I started. I do not believe that we need the approval of the technical people to make a decision at the board.

MR. PAUL DIODATI: Mr. Chairman, I was essentially going to say the same thing, that the record needs to be corrected there. The technical committee simply reviews these recommendations and the board clearly could have approved New Hampshire's request to move this fishery forward with their sustainable plan as given to the board today.

I think the process did move a little bit too quick there, to be honest with you. It was clear that Mr. Grout had more to say and more to offer. His hand was up before the motion was made. I apologize to the state of New Hampshire that moved a little too quickly for me; because based on what I've heard, I think I would have supported moving forward with this.

As to comparing the two sustainable plans, Maine to New Hampshire's, I think that is a poor way for us to judge. We have no experience here. This is the first time I think we've met and looked at any of these sustainable fisheries plans for river herring. We have no experience in that regard. I think if my state is going to going to be put through the same process that New Hampshire with seven runs, we have more like thirty, you're going to be spending a whole Shad and River Herring Board meeting on judging whether or not the Commonwealth's runs meet the standards of the plan. I think we could have learned from New Hampshire's experience here and maybe weaned a little from the process today, and maybe we'll do that at the next meeting.

MR. FOTE: I am clear that we can override the technical committee. We have done that numerous times, and I've been here since 1990 and basically gone against their advice and approved things. I understand that. What I am looking at is this is a plan that this board voted to put in place against some of the recommendations of other states. As I said, we voted against it.

But we have a plan now in place and I'm looking the process. The technical committee basically turns it back and asked for more information and comes to us and that information has not been vetted through the technical committee before it comes back here for us to make a decision, then I have serious concerns. I'm going to look very strongly on the recommendations

of this technical committee because that is how the board basically approved this plan.

I did not – I thought it was going to be impossible. As Paul pointed out, I have numerous runs in New Jersey. We might have one or two runs because we basically share with other states that we might have information, but a lot of those runs, especially along the coast, are going to be shut down. That is why I worked so hard against; but once the plan is in place, I respect the process that we are going through.

I have got to respect that the process has gone through right. Now, are we going to learn some things? Yes, and it might be – we might have to revisit it and we might have to do an addendum to this plan because some of the states might not be able to do the criteria that is there to basically open up their fisheries, but we also begin a fair and equitable playing field so we can't pick and choose how we do one state to the other so we should be holding the same criteria for each state that walks in here with a plan to prove their run is sustainable, because that's what I think we're about.

MR. GROUT: I guess to that latter point, it is our concern that we may not be held to the same standards because our exploitation rate target is lower than many of the exploitation rates that are identified in the Maine plan. For example, in the Sheepscot River they have measured exploitation rates of 47 percent, and the technical committee has approved that as sustainable.

We feel our plan is sustainable at something that is much more conservative. We have repeat spawning percentages that we have presented in our plan that are better than the repeat spawning percentages in Maine. These are sustainable. I agree that they're sustainable. One of the concerns I had with approving this plan and having an open ended let states bring forward their plan is that there may be – unless we evaluate and unless the technical committee has a certain set of standards upon which to evaluate each plan, that we could end up with varying standards for varying states.

I'm beginning to be concerned – and, Wilson, I respect the technical committee's desire to get the best information possible here, but I'm beginning to think – the reason I brought this forward is because this is a very conservative plan, and their concern was that our trends were going down in our particular Great Bay Indicator Stock.

But as we pointed out in our plan, the reason that is occurring is primarily because of one particular river, which went from 10,000 fish up to 150,000 fish and now has declined down to about 11,000 fish. We state and document in this plan that the reason for that decline is because this particular river is undergoing nitrification in this particular impoundment.

I almost was going to take a picture of it to give it to the board because a picture is worth a thousand words. We have documented in that impoundment that there are low dissolved oxygen levels during the summer, and that is what we have presented in the plan is the reason this particular river has declined so much.

Now, if you take that river out, which we didn't want to – we wanted it part of the stock because we're trying to manage this estuary as a whole and the state as a whole. If you take that out, our river herring return runs are above average right now. It is that one river that is driving that. I was actually quite perplexed when my technical committee came back and the technical committee had asked us to state the reasons for the decline.

It is one of the things that Wilson had presented. We explained that on Page 3 of this document here. On Page 2 and 3 there are explanations as to why we feel there has been declines here and they are not related to the fishery. They are related to weather events and they're related to low dissolved oxygen levels in one particular river.

DR. LANEY: To that point, Doug, as I said, the technical committee hasn't seen the new information that you provided. I did consult with the chairman on the telephone earlier today and made the point that you had made to me about the Oyster River and the low DO and everything. She indicated to me that point I guess wasn't as clear to the technical committee as she thought it should be.

But the other concern I think is that given that you have seven rivers there and you're monitoring four of them and they're all combined in within that index, I think the feeling on the part of the technical committee was still that we were uncertain exactly how – you know, what other factors besides the Oyster River situation might be entering into the index and how you were going to take action based on establishing that exploitation rate. Since you have added that fishery-independent index to it, I think that goes a ways toward addressing that concern.

Whether that will be enough to address the rest of concerns, I don't know. The whole technical committee is going to have to weigh in on it. I will just say one other comment with regard to comparing plans, I think that is something that the technical committee is hopefully doing against that suite of criteria that were established, which I reviewed when we began the report, but remember that I also said we appreciated the work that New Hampshire and Maine both put into additional analysis.

Both reports were very comprehensive in terms of the information provided. I think the New Hampshire one just didn't go quite as far as we would have liked to have seen in terms of the analysis. I would note I think for the record I think Maine has, what, 60 or 70 runs, and quite a few of those I guess are going to close, and then there are 40, if I remember the numbers correctly, that were sustainable. Again, those are based on information that is coming from the single rivers, which I think is easier to track than when you're trying to use an index to track multiple rivers.

MR. STOCKWELL: Mr. Chair, I was prepared to second Doug's motion and help advocate for it primarily because I thought it was a fairly tight proposal that addressed the unique situation in New Hampshire. It is difficult for me to hear our two plans – the apples and oranges of Maine and New Hampshire. As Wilson just said, they are two very, very different proposals.

The one addition I would have made had we moved ahead would have been to add a perfection of a review of the technical committee, but I'm going to join Dave Simpson from the state of Connecticut and volunteer our staff to help pull this together for the March meeting.

CHAIRMAN RHODES: Well, thank you for this discussion on procedure, parliamentary, and technical committee workings and interactions. Wilson had one other piece of business to bring up and then we'll move on to the bycatch updates.

DR. LANEY: The remaining question for the board from the technical committee is a question for board consideration, and that relates to specifically those states with undocumented fisheries. For example, Georgia has no river herring regulations in place because technically they don't have a directed fishery.

However, there are anecdotal reports of undocumented harvest during the recreational

American shad fishery on the Savannah River, and South Carolina is planning to close their half of the river. Florida does not currently include river herring in its published regulations. The question to the board is does a state or jurisdiction with no documented fishery need to implement regulations to assure no river herring fishery occurs to be in compliance with Amendment 2?

MR. FOTE: That's an interesting question. If I was looking at this just as far as regulations would be in place, when years ago we didn't have any cobia and a whole bunch of fish up in the north, but we put in regulations. I did catch ten red drum in one governor's surf fishing tournament one year and haven't seen another one since, but we basically put those regulations in to comply to the management plan.

I would assume that if you river herring in the system that can be caught and you can't prove the run is sustainable, then you basically have to put a regulation in place to shut it down. I think that is pure and simple. Now, it is up to the states how we handle this, but that is the way I would interpret it because I'm looking at again we're trying to be fair and equitable to everybody and make everybody have the same regulations.

If you have those fish in that run and there is an opportunity to catch them – you know, we have small amounts of catch that don't get picked up in MRFSS. We all know we have species that – unless the guy is there intercepting it at that time, you're not going to get it picked up when it is a very small part of your overall catch. I mean, that's the way I feel about it.

MR. A.C. CARPENTER: If you don't have a fishery and you don't have the fish, I can't possibly see a need for regulations. The regulatory process that you have to go through to say that you can't catch something that is not there is hardly worth the effort and expense. We don't have a regulation on sharks in the Potomac.

We don't get any – we did get two of them this year so am I now supposed to public regulations against the harvest of sharks in the Potomac? Come on, people, at some point you've got to realize the world is real and to require Florida to ban the possession or the harvest of river herring when they don't have any, and Georgia likewise, I think is well beyond the need for this. We can spend our time doing better things.

DR. LANEY: A.C., I didn't say they didn't have any. What we said was there are anecdotal reports of

undocumented harvest during the recreational American shad fishing on the Savannah River in South Carolina. South Carolina is going to close their side of the river. It is not a case of the species not being there.

River herring extend all the way down into the St. Johns River in Florida. Florida can correct me if I'm wrong, but I'm pretty sure they have river herring there. The question is if you have the species present and if there is some undocumented harvest that is apparently occurring but it goes unreported, should the regulation be in place. We're not asking to put a regulation in place where a species is not present.

MR. MILLER: Mr. Chairman, we have precedence within the commission of requiring states and jurisdictions to comply with management recommendations even when the species is not present in their waters. An example is the horseshoe crab in the state of Pennsylvania when a market was about to develop for horseshoe crabs in the Philadelphia area. But, I'm inclined in this particular case, even the regulatory process can be onerous and time-consuming, if the species occurs in the state, I'm inclined to suggest that those jurisdictions and states come into compliance with the plan if the species is present in their waters and is subject to fisheries whether directed or undirected.

MR. SPUD WOODWARD: I think I'm outnumbered here. I see the writing on the wall. My main comment was really just to address what A.C. said, and I appreciate that support. We are facing a situation where the species is known to occur in the Savannah River and probably in very low levels in the other rivers. If it is the will of the board that we go back and seek regulations, then we'll have to do that and that will be through our legislature, and everybody knows how painful that process is going to be.

I had hard enough time with weakfish being at the southern end. My main thing was that A.C. mentioned no sharks in the Potomac; and based on what happened last Tuesday it looks like there are a whole lot of sharks real close to the Potomac, so he may have to change his regulations.

CHAIRMAN RHODES: Roy, were you offering a motion earlier?

MR. MILLER: I could if it pleases the chair. **Move that all jurisdictions be required to implement the plan measures with regard to river herring and American shad if the species occurs within their**

waters and is subject to fisheries, whether directed or non-directed.

CHAIRMAN RHODES: Second by Mr. Augustine. Okay, Pat.

MR. P. WHITE: Could you pull down David Simpson's motion and tell me where this one is different.

DR. LANEY: Mr. Chairman, I just consulted with Mr. Beal on what appears to me to be a fine point, and that is that if there is no directed fishery and there is no landed bycatch, but all you have is an undocumented fishery, I'm thinking that all the technical committee was for looking for there was regulations and not requesting the jurisdiction have to go through the whole plan preparation process. I'll leave that to those that are more knowledgeable than I about process.

MR. MILLER: By way of clarification of my motion, what Wilson Laney just suggested was my intent, that the states not have to implement all of the plan measures, per se, but be required to implement – I guess the proper way to phrase would be –

CHAIRMAN RHODES: Regulatory provisions?

MR. MILLER: Yes, meet the regulatory provisions of the plan.

MR. WOODWARD: Okay, I just want to make sure I understand this right. If I go to our General Assembly and they fail to establish regulations for a species for which we have no fishery and then I go out of compliance with what and the secretary shuts down what, because I don't have a fishery.

CHAIRMAN RHODES: I will have to defer that to Mr. Beal.

MR. BEAL: If there was a federal moratorium imposed, it would prevent the retention of river herring in any of the systems in Georgia.

MR. WOODWARD: Okay, so we basically have a little bit of incidental catch and very little retention, and so the worse that could happen to us it would basically reinforce what is already happening. Okay, I just wanted to know.

MR. CARPENTER: With the latest change to regulatory provisions, doesn't the plan require the submission of the sustainable plan? Isn't that a regulatory provision or what is the regulatory

provision? Is it a size limit, a season, is it a creel limit; what is the regulatory provisions that are in Amendment 2?

MS. KATE TAYLOR: If a state has a closed fishery, for instance, in the case of Massachusetts, they're not required to submit a plan. Should they want to reopen their fisheries, should river herring restoration or American shad restoration bring the fish back to those systems, then they're at a level that sustainable is possible, they would have to submit a plan at that time.

MR. MILLER: I think Kate summarized what I was going to say in perhaps other words, but, yes, I think the intent of the regulatory provisions was that if a state wished to take no action with regard to fisheries for river herring within their jurisdiction, then they either must submit a sustainability plan or declare those fisheries with a potential or actual closed.

MR. SIMPSON: I guess I just offer that I think this is already what the plan says. If a jurisdiction doesn't submit a sustainability plan, then they have to close their fishery. I think that is what this says. We already have it, so I don't think this motion is necessary.

DR. LANEY: Mr. Simpson, should the technical committee presume, then, that in the case of states like Georgia and Florida, where we know they have river herring present, there is no directed fishery and there are no indications that there is any bycatch landing occurring, that the appropriate course of action in those states would be simply to prohibit possession of river herring? The technical committee is looking for some assurance that in those jurisdictions there won't be a harvest of river herring. I think that is the whole point.

MR. SIMPSON: Yes, I think that's what the plan says now. I mean, every state from Maine to Florida is on this board. They have a declared interest in this fishery, so, yes, if they don't submit a sustainability plan, then the FMP requires that they close their fishery. It is just where we were kidding about with sharks, Chris had to help me three or four times to close all our shark fisheries because I couldn't identify 10 percent of the sharks that were on that list. But for the integrity of the plan to prevent shifts of landings and for all the reasons we do it for every other species, you would have to close your fishery unless you have an approved sustainability plan.

CHAIRMAN RHODES: Well, with that clarification and the technical committee knowing that these fisheries will not be prosecuted without having a

sustainable fisheries management plan and that being clarified, would the makers of this motion like to withdraw the motion?

MR. MILLER: Mr. Chairman, I hate to be stubborn about this, but I think there is a distinction between – the plan requires that states that have a declared interest in the fishery either submit a sustainability plan or close their fisheries. I think where that action has been silent is with regard to states like Florida and Georgia that have neither a declared interest in the fishery nor intention to submit a sustainability plan.

In my opinion our guidance to the states of Florida and Georgia has been incomplete prior to this meeting. The intent of the motion was to give clarification to what those jurisdictions need to do who have not declared an interest in this fishery and don't intent to submit a sustainability plan.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, just a clarification that a state is on this board because they've declared an interest in the fishery.

MR. AUGUSTINE: Roy, you did a great job of explaining that and that was really the nature of why I seconded it. What it says to me, then, is that in the point that Florida and/or Georgia do not make a statement on the record in their regulation procedure, would it not be possible for us, the board, to find them out compliance even though they're not prosecuting those fish?

That would be the end result in my mind, which should be a year away or whatever it happens to be. I think I'm right on that point, and I go for clarification on either Vince or Bob, but it seems that is the case. If they not have in regulation something that states that they are abiding by that FMP description as it is stated, they could be found out of compliance, which sounds like the dumbest thing in the world to do for two states that don't prosecute the fish but they have them in their waters. I don't think I'm wrong on that one, but if someone else wants to debate it, I'd love to talk about it.

MR. BEAL: Well, this board and the full commission obviously have the authority to find a state out of compliance if they're not complying with the plan and fully and effectively implementing all the provisions. If that recommendation does go to the Secretary of Commerce, that becomes a two-part decision there; you know, has the state implemented everything they're obligated to do, yes or no; and then the second part of that is does the state's lack of

implementation compromise the conservation of the species. That will have to be a second decision that will occur at the federal level, and I can't comment on that as to the relatively small level harvest from these two states.

MR. WOODWARD: Just a point of clarification; Georgia sits on this board primarily because of its American shad fisheries and not river herring.

MS. JESSICA McCRAWLEY: I would like to reiterate what Spud just said; that's the same reason that Florida sits on this board, for our interest in shad and not river herring.

CHAIRMAN RHODES: Thank you. I think we can call the question at this point. There is a motion on the floor that moves that all jurisdictions be required to meet the regulatory provisions with regard to river herring and American shad if the species occurs in their waters and is subject to fisheries, whether directed or non-directed. Motion by Mr. Miller; seconded by Mr. Augustine.

Do the states need a moment to caucus or are you all ready to vote? Ready to vote. All in favor signify by raising your right hand; those opposed same signal; null votes; abstentions. **The motion is tied, 8/8/1. The motion fails by lack of a majority.** I think we can move on now. Lori Steele is going to update us on the Draft Amendment 5 from the New England Fisheries Management Council.

RIVER HERRING AND AMERICAN SHAD BYCATCH UPDATE

UPDATE ON NEFMC DRAFT AMENDMENT 5
MS. LORI STEELE: Okay, thank you. For those of you who may not know me, my name is Lori Steele and I am the chairman of the New England Council's Plan Development Team for Atlantic herring and also the FMP coordinator for the council's Herring Plan. I talked this morning to the Herring Section about some of the actions that the council is considering in Amendment 5 relative to the Atlantic Herring Fishery.

We focused this morning mostly on catch monitoring, but one of the other big issues in this amendment is the river herring bycatch issue. I'm going to just go over particularly that element of Amendment 5 since I assume that's really of most interest to you right now, but I'll give you just a very brief overview of the amendment and the timeline for those of you may not be familiar with it.

Amendment 5 is, as I mentioned, under development now, and I will give you an update on the timeline at the end of the presentation. There are several large issues under development in the amendment. The primary issue and the top priority is to establish a comprehensive catch monitoring program for the Atlantic Herring Fishery, which will include some component of at-sea monitoring and some component of portside or shoreside monitoring.

The second priority is to develop management measures to address river herring bycatch; third, to establish criteria for mid-water trawl access to the groundfish closed areas; fourth, to develop measures to address interactions with the Atlantic Mackerel Fishery; and fifth, consider developing management measures to protect spawning fish. It is a huge amendment, but I will just focus right now on the second issue, which are the management measures to address river herring bycatch, a very quick overview of the catch monitoring alternatives.

The October version of this Amendment 5 document is on your briefing CD. If you want to take a look through the large document and see the types of management alternatives that are being developed, it is a terribly complicated document right now, but we're working our way through it and hopefully will simplify things as we move forward.

The catch monitoring alternatives that are in the document, as I mentioned, there is an at-sea and a shoreside component to the alternatives, but there are also all kinds of other provisions related to just plan administration, permitting provisions, trip notifications, how vessels call in and declare that they're going fishing for herring or pre-landing notifications, and then quota monitoring issues, observer coverage, portside sampling.

It is very complicated, and then, of course, the largest issue of them all is how the program is going to be funded. We talked at length about that this morning, and I'm going to try to just move on through the elements of the document that really focused on concerns about river herring bycatch.

As I mentioned, the council is considering some specific management alternatives to address river herring bycatch in the herring fishery, but I think that it is important to recognize that regardless of what other additional management measures may be implemented in this amendment, many of the management measures that are proposed in the catch monitoring program will address river herring bycatch to some extent.

Part of addressing river herring bycatch is getting a better handle on what the bycatch is, the nature and the extent of it, time area components of it and things like that. We have a lot of measures in the plan that are being considered that should improve what we know about how much river herring is caught as bycatch in the herring fishery.

Some of these measures include the quota monitoring and reporting provisions that are being implemented to improve reporting, especially the timeliness of reporting; certainly increases in observer coverage. There is an experimental fishery proposed for consideration in the amendment, which would require maximized retention or essentially prohibit vessels from discarding at sea. I wanted to just bring this up because if this does move forward when the final measures are selected in the amendment, we will obviously have to do some coordination with the states because under a maximized retention program any river herring that is caught in the Atlantic Herring Fishery will be landed, so there may be some coordination that needs to occur there.

There are several management measures under consideration to maximum sampling by observers and address net slippage and then a portside sampling program. With river herring in particular, most of you know that the Atlantic Herring Fishery is an extremely high-volume fishery. For the most part, fish are pumped from the net into the vessel fish holds and there is not a lot of culling of the catch at least for river herring that goes on at sea.

River herring and Atlantic herring look a lot alike so there isn't really an active separation of the two species at sea. When you're talking about river herring bycatch in the herring fishery, you're not necessarily talking as much about bycatch as it is defined in the Magnuson Act, which are discards, but more about incidental catch, which may be the bycatch that is actually landed in the fishery.

We are trying to get a handle on both in the amendment because obviously you want to know total catch, so we are trying to get a handle on both the bycatch, the discards; and the landed bycatch, the incidental catch. When it comes to river herring, there is not a lot of at-sea discarding that goes on in the herring fishery.

The discards and the bycatch that is of concern with river herring in the Atlantic Herring Fishery is related to net slippage because that's really where most of the at-sea bycatch may occur. In Amendment 5 we've defined slippage or net slippage, and I just

wanted to introduce you to this definition because I don't know if everybody is really clear on what slippage is. For the purposes of Amendment 5, we are defining slippage as unobserved catch, catch that is discarded prior to being observed, sorted, sampled and/or brought on board the fishing vessel.

Slippage can include the release of fish from a cod end or a seine prior to the completion of pumping or the release of an entire catch or bag while the catch is still in the water. Fish that can't be pumped and remain in the net at the end of pumping are considered operational discards. That is not slipped catch. Discards that occur after the catch is brought on board and then discarded is not considered slipped catch. Those are considered discards.

But, when you're talking about river herring and bycatch and discarding in the Atlantic Herring Fishery, we're really trying to focus on this issue of slippage, and all of the management measures in Amendment 5 that are designed to maximize sampling by at-sea observers are intended to essentially either minimize slippage or ensure that the observer has an opportunity before a net is slipped to sample or at least access the fish that may be slipped from the bag.

Measures to maximize sampling and address net slippage; some of the things that are being considered to get at this issue and improve the information about slipped catch are requirements to provide certain notifications to the observers when the observers are on board, like when pumping is going to start and finish, provide details to the observer if and when a bag is slipped. If there is a pair-trawl operation or multiple vessels involved in a fishing operation, there are requirements for more communication between the vessels and with the observers.

This all seems like sort of, well, yes, everybody should be doing this, anyway, but we're trying to really like, you know, hard wire this into the regulations so that it is clear exactly what is expected of both vessel owners, captains and, of course, the observers when they are on the vessels. There is a requirement being considered to ensure that the observer has visual access to the cod end and its contents.

There is an option in the document for the Closed Area 1 sampling provisions to apply potentially across the entire fishery or any subsets of the fishery. This requires that in a pumping operation, when there is an observer on board, all of the fish have to be pumped aboard the vessel and made available for

sampling. They can be discarded but they've got to come on board first.

We're considering these kinds of measures to try to get a better handle on what the at-sea component of the river herring and other species discards may be. Beyond that and in addition to what we're doing with catch monitoring and maximizing sampling, we are looking at some alternatives that specifically try to address river herring bycatch as we know it now; bycatch being catch essentially.

The Herring Committee had passed a couple of motions earlier this year to task the Herring Plan Development Team with further review of data to identify gear-specific times and areas where these Closed Area 1 provisions may be applied, and the committee added some emphasis on identifying bycatch hotspots.

And then there was a motion that the PDT develop a move-along concept or a move-along rule to reduce river herring instead by TEDs, similar to the approach that will be undertaken by the Sustainable Fisheries Coalition in a bycatch-avoidance project that they just recently had funded through NFWF. These were sort of the initial directions that the committee and the council gave to the plan development team to try to work on developing some solutions to what we know about the problem with river herring bycatch that we may have, which certainly isn't a problem that's just unique to the herring fishery, as many of you know.

Where have we gone with all of this? Well, we've gone to a very complicated place. We have developed some alternatives to try to identify river herring hotspots, these sorts of seasonal times and areas where the herring fishery encounters river herring. We have three alternatives for how to identify those hotspots right now and then a host of management alternatives that may apply in these hotspots, and I'll go over those briefly.

The hotspots are at this point seasonal. They're two months, bimonthly, January/February hotspots, March/April, May/June, and I'll show you that. It's a two-stage hotspot approach. The stage one hotspots are sort of your initial set of areas that are based on observer data and where we have observed encounters with river herring.

The second sort of level, the stage two level of hotspots is based on bottom trawl survey data and where we would expect to find the river herring. So sort of stage one is where the fleets encounter them at

least that we know; stage two is where else we may expect to find them. The way it is set up right now in the document is you start with your stage one hotspots and you apply some management to those hotspots.

If there is a trigger that is reached, and there are some options for the trigger, then you trigger the stage two hotspots; and once they're triggered then all the management measures that apply to the stage one hotspots also now apply to the stage two hotspots. You sort of start with a smaller group of areas; and if you hit a trigger, it triggers management in these larger group of areas.

That is essentially what I just explained here in this flow chart. Like I said, it is a little bit complicated and hopefully we'll streamline this a little bit, but essentially the stage one hotspots are managed until a trigger is reached. The trigger is some sort of poundage of river herring on a trip in one of those hotspot areas, which would then trigger the stage two hotspots. It is complicated.

What I'm going to do now is I'll just walk through a series of maps that shows you one alternative for the hotspots. This is the most conservative alternative so this is the one in the document that will give you the most number of areas. It is the lowest threshold for identifying a hotspot. This is the January/February map; and as you can see these darker squares – these are all based on quarter degree squares – the darker squares here for January and February represents the stage one hotspots.

So, in this particular alternative, in January and February you would start out with these dark squares being your hotspots and something would happen in those squares, a hundred percent observer coverage, some sampling, some something, and while you're fishing in these hotspots under some sort of management program, if hit a trigger and the trigger triggers these stage two hotspots, then all of these lighter gray areas then become hotspots as well, and so for the rest of January and February, now you're dealing with all of these areas and whatever management may apply in these areas.

And you go to March and April and you get a whole new map with a whole new group of hotspots, and these darker areas again are your stage one hotspots, so that is where you start in March and April; and then if the trigger is hit during March and April, these lighter areas become your stage two hotspots. Here is May and June.

Again, the stage one hotspots are based on when we have observed encounters of river herring in the fishery, so you can sort of see the seasonal nature of the bycatch events that we have observed in the fishery. You get into May and June and you really only have two stage one hotspots here around the back of the Cape and one up here in Downeast Maine. The others are your stage two hotspots.

The stage two hotspots are based on the survey data and where we would expect to see river herring other than where the fishery is encountering them. This is July and August; again not as many of either but certainly not as many stage ones; and September and October, the same thing; and then November and December, and you can see again sort of this seasonal affect of the fishery and the bycatch events, and in November and December you get a few more stage one hotspots.

This is how the approach has developed at this point. It is complicated and I think we're going to work on it a little bit more, but the idea here is that we're going to identify some times and areas where we know that we have observed the fleet encounter river herring, and so we want to apply some sort of management in those times and areas.

Some of the things that are being considered in those times and areas are, as I mentioned the Closed Area 1 provisions, which would mean to go fishing in the hotspots you have to have an observer on board, you have to pump all your fish across the deck so that the observer can sample all of your catch. You can imagine if you're in a stage one hotspot fishing with an observer on board and pumping all the fish across the deck, probably at some point that stage two trigger would probably be hit and you'd trigger the stage two hotspots and then apply these measures to all of those areas.

Other things as we move through this, we're also trying to develop some move-along rules. That was the direction that the committee and the council definitely wanted to go in. It's a direction that the industry wants to go in, too. It's early in the stages of development right now. There are a lot of complicated issues to sort out with move-along rules.

The industry has just embarked on a cooperative research project of its own to try to answer a lot of the questions that we have about how a move-along rule would work. I'm not really sure how this is going to develop in the amendment, but it is still in the document and we're still trying to consider it. The Sustainable Fisheries Coalition Program is

something that we may consider implementing in the future through a framework adjustment once they've had an opportunity to go through this sort of bycatch-avoidance work with SMASS and with Massachusetts DMF and maybe they can answer some of these questions for us on how a move-along rule would work.

And then, of course, we're also considering closed areas. The alternative in the document right now for closed areas would close the stage one hotspots; so back on these maps here, the closed area alternative would just – for November and December these darker blocks would just be closed.

There wouldn't be stage two; stage one would just be closed, and they would be closed to all vessels fishing with small mesh – any vessel that has a herring permit fishing with small mesh. So, that is the closed area alternative that is being considered. All vessels with a herring permit, we're talking about 2,400 vessels here, so there are some pretty significant impacts to consider.

As I mentioned, there are certainly some outstanding issues and some things that the committee can still be wrestling with to try to flesh out these alternatives; one of them being the seasonal configuration and the two-stage approach for the hotspots. As you could tell from those maps, it is complicated. The areas change every two months, and with the stage one and stage two they could change within those two months.

From an administration and enforcement and compliance perspective, it is pretty complicated. The plan development team is working on trying to integrate the state one/stage two approach and hopefully streamline these alternatives, so that we can come back to the committee and maybe streamline it into something that is a little bit easier for everybody to wrap their brains around.

We need to go back and look at the move-along rules that are being considered. Right now I'm not sure that what we have proposed in the document is going to work from an administrative perspective. We need to talk about the time for data collection and for rulemaking for move-alongs. Unfortunately, as most of you know who have worked in the federal process, hitting a trigger on a fishing trip and moving a fleet out of an area like the following day is just not – it doesn't happen from the perspective of federal regulatory rulemaking.

We're trying to work our way through that process and see what actually is doable from a rulemaking perspective and what the timeframe is. The other thing we want to do is minimize the potential to have multiple move-along rules in the same times and areas. Right now the way the document reads you can have move-alongs going on all over the place, triggers being reached in different areas one week, and then the following week, and it is terribly complicated.

We're probably going to have to revisit that and streamline it a little bit. And certainly, we want to talk about the implications of hard wiring the move-along rules into the regulations for many of the reasons that I've already mentioned. We also in the document right now are considering catch caps for river herring. The committee and the council are going to come back to this issue, and I think one thing we need to think about is if and how the catch caps would be incorporated into these hotspots.

Very important to consider – and I think we'll probably hear more about this after my presentation – is the interaction and overlap with the Atlantic Mackerel Fishery. All of these rules that we're considering for the herring fishery for the most part are going to apply to the majority of the vessels that are participating in the Atlantic Mackerel Fishery; and due to the seasonal nature of the two fisheries and the overlap, I think we have a lot of cross-cutting issues here and a lot of impacts across the two fisheries that need to be considered.

As I mentioned, we just recently added consideration of catch caps for river herring to the document. This is something that we will be developing for further consideration. The plan development team is working on a strawman proposal for the committee to consider to develop catch caps based on available catch history information. We're going to talk about this at the December 20th Herring Committee meeting.

For those of you who have a special interest in river herring, the December 20th Herring Committee meeting is really going to be focused on river herring. The November 30th committee meeting is going to be focused on catch monitoring. Obviously, the two overlap, but we're going to really be focused on these hotspots and the catch caps and things like that at the December 20th meeting, and that is in Portsmouth, New Hampshire.

The catch caps could be fishery-wide, seasonally by area. I haven't figured all that out yet. This is sort of

a new addition to the document, so we're going to have to try to work through this in a relatively short timeframe. There are a lot of concerns from the technical perspective about the potentially arbitrary nature of seeing a cap on river herring catch in the herring fishery given the available data.

The variability in the data is significant, and it produces very large confidence intervals or coefficients of variation around the catch estimates that you get from the fishery right now, so there is a lot of concern about using that data to set caps that could potentially close the fishery or have very significant impacts, especially in light of the fact that we cannot at this point link any sort of catch cap to river herring stock status, stock condition or mortality. Oftentimes when you set a catch cap for incidental catch of one species in another fishery, you base that on some biological assessment of that stock and what the total mortality is on that stock and what contribution this particular fishery may be making to that mortality, and then you can set a cap with some sort of link back to the stock and adjust it based on stock status or the conditions in the fishery.

We can't do any of that right now, so there is a lot of concern from the technical folks who are working on this that the cap that we may set is going to be pretty arbitrary and could potentially have some significant impacts on the fishery, which is fine. That's really not a decision that the plan development team is going to make. That's a decision that the committee and the council have to make.

We're going to prepare that information and have that discussion with the committee and the council. As I mentioned, river herring is big on the December 20th herring meeting agenda and some questions to consider that I'll just throw out there if anybody has any thoughts that they want to communicate to the committee.

How can the measures be simplified – that's a really good question. I'm always looking for the answer to that one. How can the collection of information regarding river herring bycatch be improved the most; you know, what do you guys think is really the most important thing that this council should be focusing on in this amendment with respect to river herring bycatch. What role can the states and ASMFC play in addressing this issue cooperatively with both the New England Council and the Mid-Atlantic Council?

As I mentioned before, I think that everybody is aware that river herring bycatch is a significant issue,

but it is not unique to the herring fishery. It is an issue that really cuts across a lot of fisheries and the impacts of an action that may be taken to reduce bycatch of river herring in the herring fishery may have unintended consequences in other fisheries or in terms of shifting effort. It is unclear where you may be shifting some of this herring effort and what the potential impacts of that may be.

And then, of course, one of the things that we need to address at some point and consider as we move forward with the analysis of these measures is are the measures to address river herring bycatch likely to address shad bycatch? We've really been focused at this point in terms of developing the management alternatives and the hotspots and things and we've been focused on river herring, but certainly the analysis is going to consider the impacts on shad as well.

That's a general overview in terms of where we are in the timeline. We are in the process of trying to streamline these measures and pare them down and address any outstanding issues so that we can bring this back to the council at the January 2011 council meeting. I've got a committee meeting on November 30th to deal with catch monitoring; a committee meeting on December 20th to deal with river herring issues; another committee meeting on January 20th to hopefully deal with everything and bring this to the council at the January council meeting, hopefully to get a range of alternatives approved, which we can then move forward into a Draft EIS.

Given the scope of this amendment, if these alternatives are approved at the end of January, I think it is incredibly optimistic that we'll have an EIS ready for June, but we can try. If it is not June, then hopefully by September we'll have a Draft EIS ready to go. With that kind of a schedule, we would be going out to public hearings on these alternatives either in August, at the end of the summer, or later in the fall, perhaps in November. And then as soon as public hearings are over, we have a 45-day comment period that is required by NEPA. The council would select final measures as soon as possible, which would be either at the end of 2011 or at the very beginning of 2012.

We're really hoping to hit the ground running and get this amendment done in this upcoming year. It is going to be a busy year, but we're at that point now where we have a pretty idea of what we're going to try to move forward conceptually at least, and now we're just trying to put the details on and figure out what is actually feasible at this point. So that's where

are. I'm happy to take any questions and certainly if there is any input that the board wants, I can communicate that back to the committee and the council. Thank you.

**UPDATE ON MAFMC
DRAFT AMENDMENT 14**

CHAIRMAN RHODES: Lori, I want to thank you so much for updating us. If the board agrees, what I'd like to do is have Jason Didden update us on Draft Amendment 14 because these are going to tie in. At the end of that, we will have board comments and questions. Right now we'll have Jason update us on Draft Amendment 14 that the Mid-Atlantic Fishery Management Council is working on.

MR. JASON DIDDEN: My name is Jason Didden. I work on the Squid, Mackerel, Butterfish Plan with the Mid-Atlantic Council. The council is developing Amendment 14. We're looking at shad and river herring incidental catch and bycatch in the loligo squid and mackerel fisheries. The plan is squid, mackerel and butterfish, but preliminary analysis has suggested that really we're only seeing significant encounters with shad and river herring in the loligo squid and mackerel fisheries.

Before I get started, I just want to kind of quickly show on our website, if people want to track where we are with the amendment, on the right there under our fisheries, mackerel, squid and butterfish, you will see we have essentially a site for each amendment. Amendment 14 is the river herring and shad.

And then whatever the current documents are, current news – again, we're having an FMAT meeting you can see here on Tuesday and it is actually available via webinar if folks want to tune in. The FMAT will be developing the initial range of alternatives for monitoring and reduction of incidental catch and bycatch of shad and river herring. You can see the timeline.

We're definitely kind of – we started after and most likely will finish after the New England process, but it is actually a very similar amendment in the sense that we're looking at both monitoring provisions and incidental catch reduction provisions. Right now, again, we're in this November period. The FMAT is generating our preliminary list of alternatives for the council to consider.

At the December council meeting the committee will essentially approve that set for further analysis. We also, in addition to Amendment 14, have an ad hoc shad and river herring committee that are looking at

the best ways to both improve coordination and cooperation on shad and river herring management issues and also what is the best way to comprehensively address shad and river herring issues. There has been discussion of potentially a federal FMP for shad and river herring, and that committee is looking at that issue.

I think everyone has gotten a handout now. The first page just goes through some of the goals of the amendment that was in your briefing materials. If you go to the third page, however, the second full sheet of paper, has what staff – and this is again kind of white paper from to the FMAT. The FMAT will take these recommendations to the committee. If the committee likes them, they'll kick them back to the FMAT for further analysis.

Essentially what staff has proposed are several alternative sets. The first one would be – it is called basic monitoring, weekly VTR reporting, pre-trip notification for observer placement purposes, pre-landing notification, the same thing for observing at the portside, and also observer facilitation measures; again, dealing with this issue of slipped hauls, haul notification for observers, potential requirements to bring cod ends aboard and things like that.

Alternative 2 would be basic monitoring for dealers, including possibly dealer reporting. Alternative 3 is what I've called advanced monitoring. It would be portside or at-sea observer requirements, including funding mechanisms and also VMS. So those are kind of the monitoring side of things; and again we've essentially just finished scoping several months ago, so we're at a relatively early stage in the process.

The next alternative, Set 4, would be looking at mortality caps and essentially either this fishery might close when a cap was reached or possibly GRAs or mesh requirements could be required once a cap is reached. Alternative Set 5 would be GRAs, some kind of gear season, a type of restricted area, and it could be there again something that was triggered by a cap or something that was stand-alone and maybe existed in concert with a cap that closed the directed fishery.

Alternative Set 6 may be some mesh requirements; again, either cap triggered or stand-alone, something that was not triggered by a cap. It was in place all the time and it could also coexist with a cap to close the fishery. We have several different components to the fisheries. If you turn to the next page, you'll just see a little diagram.

We've got the mackerel and loligo fisheries. Within mackerel there are different levels of participation under a limited access system that the council took final action and we're working on submitting right now. The loligo fishery also has several kind of segments, a directed moratorium, permit holders, and also incidental permits.

It may be some of these alternatives either on the monitoring side or on the incidental catch minimization side could be different ones applied to these different segments, and that is something that we'll be looking at going forward. The next page just describes – again, this white paper is primarily to get the FMAT engaged looking at this management integration issue.

I have the motion there from our last council meeting that established this ad hoc committee. I boiled it down to several points. One is the cooperation and coordination issue. Number 2 is the committee wants input on how the council could facilitate EFH designation. If there are species with EFH designations at their federal entities that are doing permitting or actual activities, they have to coordinate with NOAA on things that are designated as EFH.

They don't necessarily have to listen to NOAA but they have to consider essential fish habitat impact and minimization recommendations. And then the other aspects for this ad hoc committee were council options to rebuild river herring and shad stocks and for council options to institute incidental catch protection. Essentially for the incidental catch, it is relatively straightforward. The council can restrict its managed fisheries.

Number 3 ASMFC options to rebuild river herring and shad is obviously much more complicated from the aspect of adopting shad and river herring as a federal FMP given the nature of the potential in-river catch and the habitat requirements of the fish for spawning that occur up the river. That's kind of an overview of where we're at. At least compared to the New England Council, we're at a relatively preliminary phase.

However, we're proceeding along the same lines considering these hotspots, also catch caps, and then monitoring requirements to try to get a better handle on things. I think about roughly over the last several years about 15 percent of the – or it might be the last five years – about 15 percent of the Atlantic herring catch by weight has had at-sea observer coverage. In

the mackerel fishery it is only about 8 percent, and in the loligo fishery it might be 3 percent.

We've got pretty low coverage for these fisheries; and in the amendment we will be looking at, you know, increasing observer coverage, maximizing the effectiveness of whatever observer coverage we have and then some alternatives to actually minimize incidental catch. I do kind of – as Lori mentioned, to use incidental catch is anything that you catch that you're not targeting. Bycatch is that portion of the non-targeted catch that gets thrown overboard.

We're kind of both looking at the bycatch, what is discarded and incidental catch, and incidental catch; most of the river herring that are caught in the Atlantic herring and mackerel fisheries are retained, so we have to look at both things, both kind incidental retained and bycatch discarded. That is a summary of where we are. Thank you.

CHAIRMAN RHODES: Thank you very much for the update, Jason. It is time for board comment. Mr. Adler.

MR. WILLIAM A. ADLER: Mr. Chairman, my question goes back to Lori Steele and the hotspots. I was noticing there were a couple of hotspots up off of – in basically 1A, these guys are confused enough up there with where they can go, can't go, in and out, up and down. Maine probably has a sustainable fishery to take river herring.

Okay, and just outside of that, if this thing comes through, is the council thinking in terms of you know how the small mesh, small boat fishery up there, that we just finished talking today about an addendum to allow them to days in and whatever – so you're saying that they might be affected in that hotspot at that time if they're out there fishing. That's one thing and secondly up there we have the thing about you can bring in two – anybody can bring in 2,000 pounds, the groundfish fishermen.

Now, are all of those people going to be affected by the hotspot if it is up there and those particular rules which we now have are in effect? We've got a little boats getting 2,000 pounds while they're getting something else, and then we've got the small-mesh boats and then we have the purse seiners and eventually the trawlers in there; so all of that, they've got to think about that when they're thinking about the hotspots up in that area. I don't know about further south. They'll have to think about all that?

MS. STEELE: Yes, that's definitely something that the council is going to think about and make some decisions about – one thing I did not mention in my presentation is who these measures may apply to. It's kind of not entirely determined yet. The focus, of course, is on the limited access herring fishery, which is Category A and B, or your directed vessels. There are about 45 of those and they're the big players.

Category C are your limited access incidental catch vessels. There are about 55 of those, so collectively the limited access fishery is about a hundred vessels. Then you have this open access permit category, which allows you to keep up to 3 tons of herring, and anybody can get this permit, and there are about 2,200 of those permits out there.

So, we are considering potentially focusing on the limited access fishery, and we're also considering applying the rules to everybody with a herring permit. Those types of issues are the very issues that the council is going to have to consider when we develop these measures with the complexities associated with bringing all of those vessels in just some sort of a management program that include things like move-along rules and stuff like that.

Yes, the small-mesh fisheries, the small-mesh bottom trawl guys are not likely to be the limited access permit holders. Some of them might be C boats. Most of them will probably be both. The groundfish vessels are probably D boats. Those vessels could potentially be impacted by these.

MR. ADLER: Lori, you don't get paid enough. Thank you.

MR. GROUT: I have a question for Jason. You may have already mentioned this, but have you gotten to the point of trying to flesh out how you would determine what the appropriate catch cap would be as a bycatch cap in the fisheries?

MR. DIDDEN: No, we do have a catch cap in butterfish with no assessment, but our SSC provides us with an ABC that we have to stay below. It would I think be along the lines of what the PDT has been looking at, the range of landings based on what the available data suggests when you do the extrapolations from some kind of ratio up to total landings. Essentially without it being designated as a stock in the fishery or something like that where we have an ABC and an ACL, staff would give the council a range of options.

CHAIRMAN RHODES: All right, thank you. Any other discussion? I want to thank both of you again.

DR. LANEY: Mr. Chairman, one quick question for Lori, and that is, Lori, how confident are we that the NMFS bottom trawl survey – if I understood you correctly, that I guess plus observer data are the basis for the hotspot designations – how confident are we that bottom trawl data are truly reflective of the abundance of a pelagic species in the water column and is there any consideration for using another technique in combination with trawling like hydroacoustics to maybe get a better handle on that? That is one question and then I have one for Jason, also.

MS. STEELE: Well, that's a point that I think a lot of people have talked about with respect to not just river herring but also Atlantic herring. We used the bottom trawl survey as our primary data set or one of our primary data sets for the assessment of the Atlantic herring stock complex as well. We're confident that's a very long-standing time series of survey data that is consistent and has been reviewed and is useful in that respect and for what it is.

River herring I'm not so sure about. I'm not terribly familiar with the biological issues with the river herring assessment, but for Atlantic herring we've certainly looked at hydroacoustics and those kinds of surveys to do better assessments of the Atlantic herring stock complex, and those kinds of factors are incorporated into the herring stock assessment.

With river herring what we use the bottom trawl survey data for, we're talking about a time series here that is 50 years of survey data, you know, seasonally and across the entire region, so the PDT used it as a tool to set up this framework for identifying areas where we would expect to see river herring in certain times of the year.

The committee and the council; the direction that we ended up going in with these hotspots is I guess the confidence was more – or I should say there maybe was less confidence in relying solely on the bottom trawl survey data to identify the hotspots, so the council developed this two-stage approach where the first stage, the first hotspots that are identified are based on the observer data, and they're based on where we have observed encounters in the fishery.

Then Stage two is the larger framework, which is the historical time series of the survey, and in addition to where these encounters have occurred where else we may expect to find river herring. I think that some of

the concerns about using or relying on the bottom trawl survey alone were addressed by the council in developing this two-stage approach that focused at least more for stage one on the observer data.

DR. LANEY: And I'll just say also I think the technical committee is just very gratified that both councils are working very hard to try and address the river herring bycatch issue. Just a comment to Jason; if the Mid-Atlantic Council does ultimately elect to pursue some sort of an FMP and essential fish habitat designation, the commission, through the Habitat Committee, has produced a diadromous species baseline habitat document.

Hopefully, you're aware of that. That was published in 2007, I think, Bob, if memory serves me correctly, or, Kate – I think 2007 or 2008. It is as complete as we can make it with regard to being a pretty comprehensive literature review, so I would hope that document would be of great use to the council.

MR. GROUT: To follow up on some of the comments that Lori was talking about with the hotspot analysis that was done, and, yes, we used the observer data to identify the primary hotspots and the bottom trawl data to identify those other hotspots that were a little bit light and shaded, lighter shaded on those maps.

But one of the things in the analysis that was done – and I guess I take a little pride in the fact that analysis, one of the co-authors on that works out of the University of New Hampshire – showed that there are different degrees of hotspots by season. Those shaded areas in the fall and the winter have a much higher degree of river herring encountering in the bottom trawl survey than they do in the spring and summer. For example, the percentage occurrence in the spring and summer in the bottom trawl survey runs between about 20 and 50 percent.

During the fall survey and the winter survey we're talking about occurrences start at 60 percent and above in those boxes. What I took out of that as a committee member is that we have a higher degree of interactions in the fall and winter than we do during the spring and summer or potential interactions during the summer and spring.

MR. BYRON YOUNG: The advisory panel hasn't had the opportunity to see these presentations, but they have been continuous in their support for ocean bycatch monitoring. I suspect that they would be very supportive of these activities. I can't speak for the whole advisory panel, but I would like to strongly

suggest that the New England Fishery Management Council and the Mid-Atlantic Fishery Management Council work as cooperatively as they can to create companion plans so they don't have a lot of variations to deal with. Finally, I would like to suggest that the commission be as actively involved in the development of these two plans as possible. Thank you.

BOARD DISCUSSION OF FEDERAL FISHERY MANAGEMENT PLAN

CHAIRMAN RHODES: Well, thank you for that segue, and I'm going to turn it over to Mr. Beal to keep us fully up to date on where we are with these other draft amendments and the ASMFC.

MR. BEAL: During Jason's presentation, he mentioned that the Mid-Atlantic Council had passed a motion regarding the development of an ad hoc committee. That committee has been formed by the Mid-Atlantic Council. We were contacted by the Mid-Atlantic Council and asked if someone from the ASMFC wanted to serve on that committee. Vince has volunteered to serve on that committee.

The point of the next couple of slides is to seek a discussion from this management board to provide Vince with feedback so that when he goes to these ad hoc committee meetings he is fairly representing and carrying the water for ASMFC as you guys want to interact with the two councils on this issue.

The motion passed by the Mid-Atlantic Council is to establish the committee, and there were essentially two charges. One is the effective conservation and coordination between ASMFC, the New England Council, the Mid-Atlantic Council and NOAA. The second part of that was to explore the Mid-Atlantic and Commission for comprehensive EFH, rebuilding and bycatch mitigation, I think is the word, for shad and river herring.

With that, I sent around an e-mail on Friday afternoon essentially with these same four questions in it for input from the board. The questions for the board to help Vince as he goes to these meetings are does the management board support a federal fishery management plan for shad and river herring.

If so, should it be a joint federal FMP between the New England Council and the Mid-Atlantic Council similar to what happened with dogfish where both councils are involved in the management of those species. Will an EFH designation aid restoration of shad and river herring? If there is a federal FMP

through the Magnuson-Stevens Act, that will give the councils the ability to designate essential fish habitat.

Essential fish habitat cannot be designated under the Atlantic Coastal Act, so the only way that we could have EFH designated for shad and river herring would be through a federal FMP. And then the final question is what additional coordination steps should be taken to get these four groups lined up, ASMFC, the two councils, and the National Marine Fisheries Service, on shad and river herring. Those are the four questions hopefully to spark some discussion and give feedback to Vince so he can bring forward the perspective of this board to the ad hoc committee.

MR. AUGUSTINE: I'm participating in that committee that is being formed. I argued against its formation when it was presented by one of the council members because it was so large and comprehensive that it would have infringed upon too many groups to supply too much information, and I thought we have been bogged down in trying to identify places to get information to pull the background stuff together to go forward with it.

In the meantime, Bob and I guess Vince put together this list of questions that we need answered. Sitting on the council, my biggest concern is, in working with the council process, at any point in time, once you have established a process or program, it basically takes you forever to change it. In view of the fact that we are under a separate guideline, the Atlantic Coastal Program, I would hope that the board discusses whether or not we really want to press to keep this whole package somewhat separated.

If this is an issue, I think I want people to consider what the implications are to have an overall plan for EFH and what kind of control or lack thereof that you may have. In recent months and recent meetings with the Mid-Atlantic we discussed the GRAs that we have established as possible habitat areas that would be protected and filed in a large bank of other protected areas up and down the coast.

My biggest concern when we had a vote on that was if you have your GRAs, as an example, put into this protective package or areas that are now listed with the federal government, how could you possibly change those GRAs and get consideration to go back and have control in the Mid-Atlantic? Well, the answers and what is in writing so far indicate that all the council would have to do is write a letter, whoa, viola, you're no longer under that umbrella and you could do what you want.

I would hope that the board members think long and hard and arm Vince with enough ammunition so he can operate in this minefield as we go forward. There is no question that there is a hidden agenda within all of this. I said it in the previous and last meeting of the council. I really think we have to decide what is it we're trying to accomplish, how much complicated does the process have to become in order for us to get a handle on what we're doing in this area.

Again, Vince, I'm glad that you're participating and if there is anybody else on the board that is identified as going as a participant, I think you'll speak well for the organization and represent what our group has to put forward. I look forward to participating in this and it is going to be an uphill battle to decide, one, whether or not we retain some control in this whole process or whether to become a part of a Mid-Atlantic program.

Our joint plans typically are very complex and complicated. When a motion is put on the table to change something in summer flounder, scup or black sea bass, it takes both bodies to approve any change, and those changes take a long period of time. Those are my concerns. As you know, I've been around for a short period of time, and I'm very intense about fisheries and I'm very intense about us as the council on one side and/or the board in this case, because in the board and ASMFC we can be very nimble as to how we manage fisheries. In the council process we cannot, so I would just alert you all to think long and hard before we commit to doing anything really overt. Look at all the aspects, look more at the long-term downside as opposed to the uphill short-term gains. That's my thoughts, Mr. Chairman, thank you.

DR. JAIME GEIGER: Certainly, I appreciate the questions that Bob Beal sent out. I would ask us to consider all the tools that we have at our disposal. One of the things that I see missing and that one question we may want to add is that we have a new Atlantic Coastal Fish Habitat Partnership that the commission has sponsored. We have it now approved by the National Fish Habitat Action Plan Board. I do believe that needs to be factored into this overall discussion as well. The potential of that Fish Habitat Partnership is going to also aid shad and river herring restoration. Thank you.

MR. GROUT: Mr. Chairman, just to provide input from my standpoint as council herring committee chair; first of all, I wanted to address the concerns of the AP about having ASMFC have input on the council plans, we have four state representatives on

the herring committee from our standpoint, so I think in that particular committee we have quite a bit of representation that is helping to craft and guide the plan there.

Secondly, I am comfortable with the system that we have right now where the ASMFC is managing river herring, per se, throughout the range of the stocks; and the councils, with the input from ASMFC and encouragement, are trying to address the bycatch issues in other fisheries via those fisheries management plans as we're doing in the New England Council and as they're trying to address at the Mid-Atlantic Council.

I'm very comfortable with having those two, one, addressing bycatch in the federal waters because there is not a directed fishery for shad and river herring in the federal waters, but there are directed fisheries in state waters, and so we as the states need to address those things and the councils address the bycatch fisheries.

MR. STOCKWELL: Thank you, Bob, for providing this Friday so we all had a chance to think about it over the weekend. I think my opinion is much the same as Doug's. I'm supportive of the development and coordination between the two councils for management measures in the federal waters. I think it is imperative that we work together with our herring and mackerel and other plans. Otherwise, the industry, it will be an unnecessary burden.

But I am concerned and non-supportive of a development of a federal FMP. I think it would take the commission out of the driver's seat. We've just approved Maine's sustainable harvest plan. I would be extremely threatened that it might be compromised and it might further complicate the efforts of other states to develop some of their own.

DR. EUGENE KRAY: Doug mentioned that there is no directed fishery for shad and river herring, and actually that is one of the questions in my mind; can we in fact have a fishery management plan at the federal level for a fishery where there is no directed fishery? Basically, what this committee is trying to look at is all the approaches.

Pat Augustine and I are both commission members and council members, and we are both on that committee along with representatives from five other states as well as the regional administrator, who has volunteered to serve on this committee. It is going to be an interesting discussion, and I think we do want to do something that is complementary. Certainly,

we don't want to do something is at odds with the commission, so we're going to try to look at all of the different vehicles.

One of the possibilities might be to add shad and river herring to an existing fishery management plan such as squid, mackerel, butterfish. Those are the different things we're going to looking at. The meeting is tentative for December 12th tied in with our next Mid-Atlantic Council meeting in Virginia Beach, but that has not been nailed down yet. Thank you, Mr. Chairman.

MR. SIMPSON: I don't see that there would be any advantage to river herring management or conservation through a federal FMP. There is no directed fishery. I think the work that we've heard described both this morning and this afternoon I think provides ample evidence that really effective measures can be implemented through existing federal FMPs to address bycatch of shad and river herring.

I don't see that we need an additional layer to manage the EFH aspect of this. There is a lot of work that is done at the state levels and through the Fish and Wildlife Service and others, so I don't think we need to add another layer of federal government bureaucracy to this. I think the one in terms of additional coordinating steps, Lori pointed out that they're struggling to identify the right level of bycatch for a target.

I think that is where our involvement should really focus, in addition to our direct involvement as council members, both the New England and the Mid-Atlantic, concerns about river herring conservation and interactions in federal waters, but it is identifying for all these fisheries combined what is an acceptable bycatch level. We had to deal with that with haddock.

The term arbitrary was used. Certainly, the decision to set aside first 1 percent and then 2/10 of a percent was not based on – it was simply an allocation, this is as much as we're willing to tolerate giving up to a bycatch fishery and to allow another important fishery to exist, and I think we have to go through that same process ourselves; you know, context we can work on, but certainly allowable landings would be one context to judge what we could tolerate in terms of a bycatch fishery, but I don't think anything would be served by developing another federal FMP for a fishery that doesn't exist; a directed fishery that doesn't exist.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, one of the earlier speakers asked the question what are they trying to accomplish on the Mid-Atlantic Council. It seems to me that that the council and the commission have a joint interest in fully understanding what the impact is of council fisheries, Mid-Atlantic Council fisheries on river herring bycatch, whether it is happening, whether it is not happening and the extent of it; and then understanding that, to then have a mechanism to take the appropriate action to reduce that bycatch if it is scientifically proven to be unacceptable and harmful to river herring stocks.

I think that is the problem statement going forward. The comments around the table, what I'm hearing is basically in support of that; not necessarily to go with an FMP; but if there is another mechanism under the existing management plans within the Mid-Atlantic Council for them to do that, then we ought to try to support that. That's what I'm taking from this conversation, Mr. Chairman.

CHAIRMAN RHODES: I agree, and I think a very important part is for the whole committee to be apprised of what is going on with the councils, being updated and six months from now we may have some other opinions or thoughts to go on, but as far as being aware of what is going on with the committees, both the draft amendments going on, and with your input with this ad hoc committee, we will stay informed and work forward through this.

DR. LANEY: Mr. Chairman, just a couple of comments; one relative to the essential fish habitat issue, I think the councils have been mandated under the Act, since '96 passage, to address any proposed project that would have a significant impact on anadromous species EFH. Of course, since there is no federal plan, EFH has never been defined.

That was one intent I think that the Habitat Committee had, at any rate, in producing that Habitat Baseline Source Document, was to try and lay out a foundation for that should any of the councils ever decide to pursue an EFH designation. I don't think the technical committee is in a position to advocate one way or the other. It is just an additional tool in the toolbox.

I know it doesn't have a tremendous amount of impact, but it at least does enable the National Marine Fisheries Service to make recommendations to other federal agencies. The point was there is another tool that Dr. Geiger and I can advise you about more in detail on some other occasion, and that

is the new Landscape Conservation Cooperatives that the Department of the Interior is setting up – the northeast region has set up a North Atlantic Landscape Conservation Cooperative; the southeast region of the Service has set up the South Atlantic Landscape Conservation Cooperative, and these are entities in a nutshell which are designed to assist a whole suite of partners and not just the Department of the Interior but all the state, federal, NGO partners who are involved with resource conservation in doing primarily biological planning and conservation design.

To the extent that the commission and the councils are already doing biological planning, which I think they are, then these LCCs ultimately should be able to assist in doing the conservation design; i.e., coming up with the how much and where dimension of conserving river herring resources.

In the South Atlantic I'm part of a Fish and Wildlife Service Ecosystem Team that has been doing this, what we refer to as strategic habitat conservation for a long time. We have a post doc at NC State University that we have funded who is currently in the process of developing habitat models for both American shad, in collaboration with Dr. Joe Hightower at NC State, and also for blueback herring.

Those are designed for application primarily within the Albemarle/Pamlico National Estuary Program Watershed in the northeastern part of North Carolina and southeastern part of Virginia. Once those models are developed, we would certainly share those with the council and commission.

I think at the development of those models, trying to pull the habitat dimension into fisheries management certainly is another step in terms of moving the ASMFC toward an ecosystem-based management approach. I think most of you hopefully – at least most of the state directors are aware of those LCCs being set up and the fact that we have hired coordinators for both of those, and the South Atlantic one now has a science coordinator as well, so if you want details you can find those on the Fish and Wildlife Service Website.

DR. MICHELLE DUVAL: Mr. Chairman, I was just curious who is serving on the ad hoc committee that was formed at the Mid-Atlantic? The motion indicates effective approaches for ASMFC, Mid-Atlantic, New England, and NOAA cooperation and coordination. It has been great to hear the presentations by Lori and Jason, and I support all the

efforts, obviously, that are going on in that regard. I'm just curious in terms of the coordination aspect if there are representatives from the New England Council and other NOAA representatives on that ad hoc committee.

MR. DIDDEN: Well, Pat Kurkul is on it, so we'll have NOAA representation there. I don't think we have anyone from New England right now, but that is certainly something we can look into.

DR. DUVAL: And that is something I just would definitely recommend given all of the activities that are going on is having someone from the New England Council there.

MR. AUGUSTINE: Did Dr. Thompson indicate that she was interested in participating? I know that Ms. Kurkul did, but I wasn't sure about Dr. Thompson from the Regional Science Center.

MR. DIDDEN: As a member of the committee, I'm not sure but certainly there will be a lot of liaison back and forth with the science center.

MR. AUGUSTINE: Okay, thank you, and follow-on, Mr. Chairman, we just assumed that Vince was going to be a part of that committee. He is on it anyway and represents us. I wonder if there is any interest on your part as chairman of this board to participate in it. I know you're cramped for time, but I thought I would put it on the table because we often just say, well, let somebody else do it, and you may have a strong interest or not.

CHAIRMAN RHODES: I'll take it under advisement.

DR. KRAY: Michelle, I can give you the names of those people. I don't know if you want me to do it openly, Mr. Chairman, or can I just give it to Michelle privately. It is public information. You tell me, Mr. Chairman.

CHAIRMAN RHODES: No, I think you can have discussion with that afterwards.

MR. ROBERT BALLOU: Lori, in your presentation regarding the potential development of hotspots, I think you called them, it looked to me they overlap state waters in many instances; is that fair to say?

MS. STEELE: Yes, it goes right to the beach.

MR. BALLOU: So what would be the mechanism for coordinating the implementation of those through

a federal FMP process; would it be back through the ASMFC Sea Herring Board; would there be a necessary action that the states would need to undertake through the Sea Herring Board to complement that federal action?

MS. STEELE: Well, I think in part it would depend on what management measures were applied to those hotspots, but for the most part the management is for the federal permit holders; so whatever rules apply in those hotspots would apply to the federal herring permit holders. Regardless of whether or not they're fishing in state waters or federal waters, if they have a herring permit they have to comply with the federal herring rules.

We're not doing anything for state-only herring permit holders or for vessels that are participating in the state fisheries. We're really just focused on the federal fisheries, assuming that the regulations will apply all the way to the beach for those specific permit holders.

CHAIRMAN RHODES: All right, thank you for the updates. We had a public comment; Mr. Robins.

MR. RICK ROBINS: Mr. Chairman, I'll be brief. Rick Robins with the Mid-Atlantic Council. It is good to be with you all today; and just listening to the discussion earlier about the difficulties you've tried to come to terms with in terms of managing fisheries' interactions within the state jurisdictions I think underscores the fact that just considering the geographic extent of fisheries' interactions that the river herring are subject to and the life history of the species.

It is clear that some effective coordination is going to be really essential to the effective management of this species and hopefully to its ultimate recovery. This task that we have given this ad hoc committee, in addition to what we're already doing in Amendment 14, I think will be a constructive effort, and that is in terms of trying to find opportunities to effectively coordinate the management efforts interjurisdictionally with this commission as well as with our management partners of the New England Council.

I think whether they ultimately determine that there are any gaps in our FMP architecture that need to be addressed or whether within that existing architecture they simply identify ways to better coordinate the management, I think it will be a very constructive initiative. We have, in response to a request from this board, initiated Amendment 14 to address the

allocine interactions in our squid, mackerel, butterfish fishery. We've put that on a fast track.

We recently had our priority-setting meeting in Cape May, New Jersey, in October and identified the development of Amendment 14 as a high-priority item. So despite the fact that we are well behind our partners in New England in initiating the action, we do hope to make relatively quick progress and we will benefit I think from a lot of the groundwork they've already laid.

Operationally there are a lot of overlaps between the mackerel fishery and the Atlantic herring fishery, and consequently that again I think underscores the need for effective coordination. I would hope that as we move forward into the first quarter of next year and New England's action matures that we can also coordinate with them and review where we are to ensure that the final actions are coordinated and consistent.

I think we have a fairly complex challenge in front of us. You have the state water issues and we are addressing the offshore interactions head on as our partners in New England are, and so there is I think a great need for coordination at this point whether or not it requires additional initiations of FMPs or not, so I think the exercise that we're going through with that ad hoc committee, in addition to the work that will be ongoing in the SMB Committee and the development of 14 with the FMAT support, should result in a good degree of coordination. Again, I appreciate the opportunity to be here today, and it has been very informative to listen to your board debate the issues related to the state water interactions, so I appreciate the opportunity. Thank you.

MS. STEELE: The second point that I wanted to make is that there may be, as we go down the road and we do have the final selection of management measure and whatever we decide to do in these hotspots, I think there probably will be a point at which this board and the commission as a whole wants to take a look and see whether or not there should be some sort of complementary action or something like that to keep things consistent.

Where I see the most potential for some cooperation and perhaps some integration would be, again, at the portside sampling level; and the fact that if we can get a handle on what is being discarded in the federal fishery and what is being slipped in the nets and things like that, when the catch comes on shore I think there is an opportunity here for the states to help the council and to work with the council to do

the sampling that we need portside to ensure that we get the accurate catch estimates.

CHAIRMAN RHODES: At this point I think we're moving on to our sixth item on the agenda, Mr. Travelstead.

MR. TRAVELSTEAD: **Mr. Chairman, I move approval of Virginia's Bycatch Plan for 2011.**

MR. CARPENTER: Second.

CHAIRMAN RHODES: Any discussion?

VIRGINIA AMERICAN SHAD BYCATCH REQUEST

DR. LANEY: The technical committee doesn't oppose the continuation of the bycatch fishery as proposed, but we just wanted to get it on the record, though, that we did have a very short turnaround time for review. Our inability to fully interact with the Virginia Institute of Marine Sciences and Virginia Marine Resources Commission staff left several questions unanswered, so we just would like to have the opportunity for some further dialogue to get those questions answered at some point, but we don't oppose the continuation of the bycatch fishery.

Again, just to get them on the record those included the need for additional information because there were some different totals reported there that needed to be reconciled; information regarding what portion of the fishery actually catches American shad; the lack of fishery-independent verification of the total potential bycatch and detailed records of catch composition differentiating bait landed.

It was also noted that the York River is still in decline and the causes should be identified for that decline. We think that a lot of these questions are going to be addressed during preparation of Virginia's Shad Plan in response to Amendment 3. Thank you.

MR. AUGUSTINE: This is somewhat dissimilar from New Hampshire's proposal that they made early in the day. You did have specific questions from the technical committee that New Hampshire did not address. I've been reminded I hastily moved to table that, and in the final analysis it was quick but I still think it was the right thing.

In this particular we're saying the technical committee is not opposed; however, which is a loaded word, you go on to say many questions were raised. About those questions, do we have a date

certain as to when the information is going to be available to you that you are asking for answers to?

You would like to interact with VIMS and VMRC staff and implementation of Amendment 3 Shad may affect the future of this bycatch fishery. I'm not rejecting or saying we're going to reject this or not support it, but on the one hand, although Mr. Grout had background information in his possession that we did not have available earlier on so that the technical committee could have made that decision, we have put them off for a period of time.

Now, is this information that is lacking to the value that we should not approve this at this moment and put that off until March? I'm not trying to delay the process. I'm just saying that there is information that is being called for here that we don't have, and we haven't got an end date as to when it will be available.

DR. LANEY: My sense was, Mr. Augustine, that given that this fishery has been in place since 2006 in its present configuration and given that next year there is going to be a reconsideration of the plan under Amendment 3, anyway, that the technical committee didn't feel that these questions rose to the level of not providing technical committee approval.

MR. AUGUSTINE: What we're saying is there will be no harm done and we should be okay?

DR. LANEY: That would be my interpretation.

MR. AUGUSTINE: That's good enough for me; thank you.

MR. TRAVELSTEAD: Well, let me put a little more on the record, I guess, to put people at ease. This is the sixth year that Virginia has made this request. It has been approved every year we have asked for it. It has received technical committee approval every year that we have submitted it. It probably will be our last request because of the implementation of Amendment 3. In terms of dialogue with the technical committee, I'm not sure I understand the comments that Wilson made.

The document was submitted to the technical committee for their review a month before their conference call. I'm not sure why that didn't result in some discussions. In terms of the lack of ability to fully interact with VIMS and VMRC, at no time during that month or during the call was VMRC contacted or asked to participate in the discussion or in any way.

We do have a representative on the technical committee and he was a part of the conference call and is quite familiar with the fishery and all the other VIMS work that goes on with respect to shad, so I'm not sure why he wasn't engaged in further dialogue. As far as the questions that remain unanswered, you'll note in our report there are two different totals on the size of the bycatch that has occurred in past years, and they are a function of two different collection methods.

We have a mandatory harvest reporting program that requires fishermen to report pounds of fish harvested by species. Specific to this program, we have a call-in requirement of the permittees in which they're required to report the numbers of fish and not the pounds. It is two different numbers. One is numbers of fish and one is pounds. In our mandatory reporting system we simply divide pounds of fish by 3.75 pounds per fish to get a number. Those two numbers don't match, but that is the reason why.

In terms of what portion of the fishery actually catches American shad, we can't answer that. We haven't answered it in the past and I doubt we'll be able to answer it in the future. We simply don't have the kinds of information that we'd all like to have on bycatch. I think, as Wilson pointed out, some of these other questions will be addressed as we proceed through compliance with Amendment 3.

I doubt seriously that Virginia will put forth any type of sustainability plan in the future under Amendment 3. We've had a moratorium in place since 1994 and we'll probably keep that in place. I'll be glad to answer any other questions.

CHAIRMAN RHODES: Seeing none, are you ready to vote? All in favor of approving Virginia's American Shad Bycatch Request for 2011 please signify by raising your right hand; opposed same sign; null votes; abstentions. **All right, the measure passed 17 to zero.** Kate, it's time for the FMP Review and State Compliance Reports.

FMP REVIEW AND STATE COMPLIANCE REPORT

MS. TAYLOR: Mr. Chairman, I will be brief in my discussion of the FMP and PRT and state compliance reports. The status of the stock, as we're aware the 2007 benchmark stock assessment showed that American shad stocks are currently at all-time lows and do not appear to be recovering. The status is currently unknown for hickory shad, blueback herring and alewife, although we are in the process of

conducting a stock assessment for alewife and blueback herring.

This is the American shad landings provided by the National Marine Fisheries Service, showing decreasing landings since the 1950s. The 2009 commercial landings for American shad totaled just under 500,000 pounds. This was a 10 percent decrease from 2008, and 80 percent of the landings in 2009 came from North Carolina and South Carolina, and there was no harvest from a number of states.

The recreational fishery is no longer monitored by the MRFSS system, and this is for American shad as well as hickory shad, alewife and blueback herring. The ocean intercept fishery for American shad was closed in 2005. Under Amendment 1 there is a bycatch allowance of 5 percent in pounds per trip. In 2009 just over 14,000 pounds were reported from the ocean intercept fishery, and this represented 2.8 percent of all the coast-wide directed harvest.

Harvest occurred in Maine, Massachusetts, New York, New Jersey and North Carolina. Eighty percent of the harvest did occur in New York, and it was not reported if any of the trips exceeded the trip limits. For hickory shad landings, we see decreasing landings over time. The commercial fishery in 2009 totaled just under 90,000 pounds. This was a 23 percent increase from 2008.

Only four states reported hickory shad landings, and 99 percent of the landings did come from North Carolina. River herring landings have decreased over time as well. The commercial fishery in 2009 was about 1.8 million pounds. This was a 47 percent increase from 2008, and 73 percent of the landings did occur in 2009 in the state of Maine. The landings did occur in a number of other states listed here, and currently there is a moratorium in four states, and also the state of Virginia has complementary measures for rivers flowing into North Carolina.

The de minimis standard is that 1 percent of coast-wide landings – if the commercial harvest is less than 1 percent of the coast-wide landings, and three states currently applied for de minimis for their American shad fisheries; the states of Maine, New Hampshire and Massachusetts. The PRT recommends approval of the de minimis requests.

The PRT also requests that the board task the technical committee with review of the following; a study on the Connecticut sampling methods in order to determine if sampling of the fishway does in fact yield equivalent results to sampling of the

commercial fishery; and also to propose a timeframe for future review of this method; a study on the minimum sample size recommended in a survey design and a consistent definition of a repeat spawner mark.

CHAIRMAN RHODES: Thank you; any comments? **All right, are there any objections to the approval of the FMP Report and the state de minimis requests? All right, seeing none, we will approve those.** Any other business to come before the board? Mr. Laney.

OTHER BUSINESS

DR.LANEY: Mr. Chairman, just a couple other very short items. The first is that the technical committee still does not have a vice-chair, but I understand that may change possibly. I just wanted to point out the continued lack of a vice-chairman disrupts the continuity needed to respond to board requests, so hopefully we will fill that vacancy in the not too distant future.

I think we have one more slide that just gives you a very brief river herring stock assessment update, which you can read on the screen. I won't go over it there. Basically as of January 1, 2011, we will begin to implement Amendment 3. You can see the rest of the deadlines there for the stock assessment for river herring. That is moving along.

The compliance reports for Amendments 1 and 2 are due July 1, 2011. American shad sustainable fishery plans or recovery plans are due on August 1, 2011. The technical committee review will take place in the fall. If everything goes as scheduled, everything should be wrapped up by January 1, 2013.

ADJOURNMENT

CHAIRMAN RHODES: Thank you for this meeting. Is there a motion to adjourn? So moved and seconded; good-bye.

(Whereupon, the meeting was adjourned at 5:48 o'clock p.m., November 8, 2010.)