

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

**Crowne Plaza Hotel
Old Town, Alexandria, Virginia
August 3, 2011**

Approved November 10, 2011

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INDEX OF MOTIONS

1. **Approval of Agenda** by Consent (Page 1)
2. **Approval of Proceedings of March 22, 2011** by Consent (Page 1)
3. **Move to accept the procedures identified in the white paper that was developed by staff and the AP recommendations, including use of the communication tools of webinars and related devices to access all user groups** (Page 5). Motion by Pat Augustine; second by Leroy Young. Motion carried (Page 9).
4. **Move to support Alternatives 1 through 8 of Amendment 14 for public hearing** (Page 13). Motion by Pat Augustine; second by Rep. Peake. Motion carried (Page 13).
5. **Move to recommend that the Policy Board send a letter to the Mid-Atlantic Council stating that the commission does not oppose the removal of Alternative Set 9 from Amendment 14 (Page 14)**. Motion by Terry Stockwell; second by A.C. Carpenter.
Move to postpone this motion for a time certain that would be the November meeting (Page 16). Motion carried (Page 16).
6. **Move to adjourn** by Consent (Page 19).

ATTENDANCE

Board Members

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|--|--|
| Patrick Keliher, ME (AA) | Bernie Pankowski, DE, proxy for Sen. Venables (LA) |
| Terry Stockwell, ME, Administrative proxy | Roy Miller, DE (GA) |
| Vincent Balzano, ME, proxy for P. White (GA) | Tom O'Connell, MD (AA) |
| Steve Train, ME, proxy for Sen. Langley (LA) | Russell Dize, MD, proxy for Sen. Colburn (LA) |
| Doug Grout, NH (AA) | Bill Goldsborough, MD (GA) |
| Paul Diodati, MA (AA), Chair | Jack Travelstead, VA, proxy for S. Bowman (AA) |
| Bill Adler, MA (GA) | Catherine Davenport, VA (GA) |
| Rep. Sarah Peake, MA (LA) | Michelle Duval, NC, proxy for L. Daniel (AA) |
| Mark Gibson, RI, proxy for R. Ballou (AA) | Bill Cole, NC (GA) |
| Rick Bellavance, RI, proxy for Sen. Sosnowski (LA) | John Frampton, SC (AA) |
| David Simpson, CT (AA) | Robert Boyles, SC (LA) |
| Rep. Craig Miner, CT (LA) | Ross Self, SC, Legislative Proxy |
| Lance Stewart, CT (GA) | Malcolm Rhodes, SC (GA) |
| James Gilmore, NY (AA) | Sen. Thad Altman, FL (LA) |
| Andrew Voros, NY, proxy for Sen. Johnson (LA) | William Orndorf, FL (GA) |
| Pat Augustine, NY (GA) | Aaron Podey, FL, proxy for J. McCawley (AA) |
| Russ Allen, NJ, proxy for D. Chanda (AA) | Spud Woodward, GA (AA) |
| Adam Nowalsky, NJ, proxy for Asm. Albano (LA) | Michael Denmark, GA, proxy for J. Duren (GA) |
| Tom Fote, NJ (GA) | A.C. Carpenter, PRFC |
| Leroy Young, PA, proxy for J. Arway (AA) | Bryan King, DC |
| Gene Kray, PA, proxy for Rep. Schroeder (LA) | Steve Meyers, NMFS |
| Loren Lustig, PA (GA) | Jaime Geiger, USFWS |
| Rick Cole, DE (AA) | |

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

Ex-Officio Members

| | |
|---|---|
| Larry Miller, Technical Committee Chair | John Sweka, Stock Assessment Subcommittee Chair |
| Pam Gromen, Advisory Panel Chair | |

Staff

| | |
|--------------|-------------------|
| Vince O'Shea | Bob Beal |
| Kate Taylor | Chris Vonderweidt |

Guests

| | |
|----------------------------------|---|
| Jeff Kaelin, Lunds Fisheries, NJ | Wilson Laney, USFWS |
| Rick Cole, DE DFW | Kristin Cevoli, Pew Environment Group |
| Peter Himchak | Ken Hastings, Mason Springs Conservancy |
| Karen Capossela, MD DNR | Jocelyn Cary, MA, Legislative Proxy |
| Katherine Shrogen, MD DNR | Alesia Read, Univ. of NH, Durham |
| Jason Didden | |
| John Carmichael, SAFMC | |

The Shad and River Herring Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, August 3, 2011, and was called to order at 4:47 o'clock p.m. by Chairman Malcolm Rhodes.

CALL TO ORDER

CHAIRMAN MALCOLM RHODES: I would like to call the meeting of the Shad and River Herring Board to order. I'm Malcolm Rhodes; I head the Shad and River Herring Board.

APPROVAL OF AGENDA

Everyone has received minutes and has received the agenda. Are there any additions to the agenda? Seeing none, we will approve that by consent.

APPROVAL OF PROCEEDINGS

Everyone also received the proceedings from the March 22 meeting. Are there any additions or changes to the proceedings? Seeing none, we will accept the proceedings by consent.

PUBLIC COMMENT

At this point we have time for public comment for any items that are not on the agenda. There was a sign-in list but I saw no names on it; but if anyone would like to make a comment, please come to the public microphone, state your name, your organization and make your comment.

MR. JEFF KAELIN: Thank you, Mr. Chairman and members of the management board. I'm Jeff Kaelin with Lund's Fisheries from Cape May, New Jersey. I did sign up on the sheet and it's still back here. I'm also a member of the AP, and unfortunately I wasn't able to get on the call last week. I was at the Scup Monitoring Committee in Baltimore all week.

I just talked to the chairman and I wanted to make a couple of comments. The report from the AP reflects some unanimous opinions of the AP. There are a couple of things that I wanted to mention to you that we don't agree with. We're very plugged into the Amendment 14 process at the Mid-Atlantic Council and the Amendment 5 process at the New England Council.

In fact, the New England Herring PDT meets next week. I don't think that mortality caps in the squid or mackerel fishery are necessary. We don't think there is any evidence that there is significant bycatch of

shad and river herring species in those fisheries. Effort is way down from where it used to be, and collectively the bycatch amounts in the directed pelagic fisheries are about equal to the sustainable legal fishery in the Gulf of Maine, about a million pounds.

We don't agree that river herring stocks should be designated as stocks in the fishery at the Mid-Atlantic Council. That is an option in Amendment 14. We have been part of that debate for months, and we think that the majority of the Mid-Atlantic Council members agree with our view on that.

We think that the council's Squid, Mackerel, Butterfish Monitoring Committee is singularly capable of addressing river herring and shad issues in Amendment 14 and we don't need cross-fertilization with the technical committee of the commission. We also disagree that the unknown herring and unknown fish designations by the New England Fisheries Observer Program represent a significant problem in identifying catches in the squid, mackerel, butterfish and herring fisheries of river herring and shad species.

Finally, we have been attempting to get the SMAS people come in and make a presentation to the board about the Bycatch Avoidance Program that we've launched this year in the mackerel fishery. We didn't have much of a fishery, but we are doing what SMAS with scallop fleet to identify the levels of yellowtail flounder bycatch.

We've replicated that in river herring and we're attempting to go through the technical committee to have those guys come in and give you an idea of what we're trying to do on the ground to minimize our bycatch of these species. I wanted to make those comments since I wasn't able to do that as an advisor, and I appreciate the opportunity to do that, Mr. Chairman.

CHAIRMAN RHODES: Thank you. We have another hand up.

MS. KRISTEN CEVOLI: Kristen Cevoli with the Herring Alliance and the Pew Environment Group. I just wanted to quickly take issue with a statement that was just made by Jeff Kaelin. In referring to the stocks in the fishery option within Amendment 14, I think it's a little inappropriate to describe the Mid-Atlantic Council members' opinions when this is something that hasn't been decided upon by the council. The council is still considering and fleshing out that amendment for full analysis. All that being

**These minutes are draft and subject to approval by the Shad and River Herring Management Board.
The Board will review the minutes during its next meeting.**

said, I just would like you to know that is not exactly an accurate reflection of the discussion that is happening at the council level. Thank you.

RIVER HERRING AND AMERICAN SHAD BYCATCH UPDATE

CHAIRMAN RHODES: Thank you very much. Any other public comment? Seeing none, we'll move on to the next agenda item; the River Herring and American Shad Bycatch Update. As a way of going through a history of what is going on, this board passed Amendment 2 in May of 2009 and Amendment 3 in February of 2010.

Amendment 2 was looking at the river herring, the blueback and the alewives, to address areas where it's not a sustainable fishery. Amendment 3 did the same thing for American shad. As part of that, we have addressed the river systems under our control, but part of it was looking at bycatch from other fisheries.

As part of that, the New England Fishery Management Council and the Mid-Atlantic Fishery Management Council have both worked to do Amendment 5 to the Atlantic herring and Amendment 14 to the squid, mackerel and butterfish. Many members here are on those councils and can address it more and more, but part of this is addressing all areas of incidental catch of shad and river herring.

At this point we're going to now deal with where we are in that process. It's a very great time to see that the commission and the councils are working together and it's time for us to be assertive in what we would like to see coming from both of these councils at this time. Thank you.

UPDATE ON DRAFT AMENDMENT 5 AND DRAFT AMENDMENT 14

MS. KATE TAYLOR: I'm going to start out with the timeline for the New England Council's development of Amendment 5 to the Atlantic Herring FMP. A recent draft of the amendment was posted on the council's website last week and it's there if anyone would like to view the very long and extensive document. In September the council is expecting to be approving the Draft EIS Statement and selecting their preferred alternatives.

The amendment will then be submitted to the National Marine Fisheries Service some time in November, and it's expected that public hearings will be held in early 2012 with the council choosing their

final alternatives in mid-2012 and implementation by January 1, 2013.

For Amendment 14 the FMAT is currently development the potential alternatives, which will be discussed later on in the meeting. In October the council will potentially be approving the Draft EIS for submission to the National Marine Fisheries Service and selecting their preferred alternatives. The document will be submitted to the Service in November with public hearings some time in the winter and the council reviewing the comments and choosing their preferred alternatives with the proposed rule some time next summer and final rule effective by January 1, 2013.

Both of the councils' timeline should hopefully sync up, and this is just a brief review of where the councils are with the development of these two amendments. It will be important to keep this in mind during the subsequent board discussions.

CHAIRMAN RHODES: Thank you, Kate. Any questions at this point? Kate, would you walk us through Amendment 14.

DISCUSSION ON COUNCIL AND COMMISSION COORDINATION

MS. TAYLOR: First I will walk the board through a recent motion proposed by the Mid-Atlantic Council, which was move that the council take a proactive approach with a letter to the commission outlining specific reporting relationships on significant issues that impact the river herring fishery and ask that the commission do likewise.

While the Mid-Atlantic Council was the organization that did request this information from the commission, this discussion could also be applied to many of the issues that are ongoing with the New England Council as well. Included in your briefing material was a document that outlined some of the specific ways to increase reporting of alocine-related issues and improve the efficiency of management between the council and the commission.

Starting off, the board can request increased reporting on a number of issues; the first being the annual SBRM prioritization. The councils can annually inform the board on the observer coverage in the CVs achieved in the previous fishing year and the coverage expected to be allocated for the current fishing year.

That's kind of outside of looking at the levels necessary for river herring. They could provide information on what the levels they expect to be occurring within just the squid, mackerel, butterflyfish fisheries. This prioritization usually occurs in January with the final levels approved a few months later. This is something that could happen outside of the Amendment 15 development at the Mid-Atlantic Council.

Second, the board can request seasonal or annual updates on bycatch estimates that are occurring within these fisheries, and these annual updates could also be added to the commission's FMP review; and if the board would like to see seasonal updates, then increased reporting could be necessary and this could be achieved through Amendment 14.

Third, the board could request updates on the status of any federal management measures, and specifically here those are the ones that would be approved within Amendment 14. Additionally, the annual status of the squid, mackerel, butterflyfish fishery update could be requested, and, of course, the commission can request the council to inform them of any information they would like to receive as needed.

On the commission side, ways that the board could contribute to the council process includes providing an annual update on the status of alocine stocks. Obviously, that's not something that can occur right now, and there needs to be some consideration on the ability to update the stock assessments annually, thinking about the stock assessment for shad was in 2007 and an annual update has not occurred, and the current update for river herring – the current stock assessment for river herring will be very similar to that of shad.

Alternative measures of stock status could potentially be developed if that was something that was requested. The board could also provide annual updates on the status of alocine fisheries as well as implementation of Amendments 2 and 3, as well as the status of state bycatch reduction programs, and annual updates on habitat and fish passage programs.

Additionally, this kind of gets back to the SBRM issue; the board could request the council annually send a letter to the Science Center requesting SBRM analysis considering shad and river herring. Right now the Science Center does not include shad and river herring in their annual SBRM prioritization or analysis, but the council could send a letter requesting that of the Science Center.

That wouldn't necessarily include them in their prioritization, but it could just add them to the analysis to know the levels that would be needed in order to achieve the 30 percent CV SBRM requirements. Including shad and river herring automatically in the analysis could be done through an omnibus amendment, and it is currently being looked at by the New England Council in Amendment 5. Additionally, the council could request additional information from the commission as needed.

Integration between the councils and the commission can be done in a couple of different ways. I'm giving some example here. The annual Commission FMP Review could include sections on, as I mentioned, the federal waters bycatch estimates, including observer coverage rates, information on state dockside monitoring program implementation; and dependent on what passes at the councils, the status of any federal management actions.

The ASMFC Board has regularly been briefed on the council's actions relating to shad and river herring bycatch and that has continued. Additionally, there could be joint meetings between the boards; additionally, the commission's technical committee and the council's SSC – and this is especially recommended depending on the final measures that are included in Amendment 14.

A couple of other options include an annual and an all-inclusive meeting such as the one that occurred in Philadelphia last fall, which brought together board members, industry, technical committee representation, advisory panel members, environmental organizations and other relevant stakeholders. Kind of the last option is the development of kind of a single website – or it has been called a portal – on alocine-related issues that could include all of the relevant management plans and whatever is developed in the future, as well as landing updates, meeting notifications, habitat and migration maps, funding opportunities. There are a number of other options that could be included in that website. Thank you, Mr. Chairman.

CHAIRMAN RHODES: Thank you; that's quite a menu of options. Do we have any discussion? Mr. Simpson.

MR. DAVID SIMPSON: Maybe with the help of Maine and New Hampshire and – well, several states who sit at this table who are also active in the New England Council – I was but I'm not anymore – a little more insight into where the council is going. I

can see the alternatives for addressing bycatch, but in terms of where the amendment might go – the Atlantic herring amendment might go in terms of ACLs and AMs for river herring species versus strictly a mechanism to address bycatch and to reduce that to the extent practicable; could Doug or somebody help with that?

MR. GROUT: I'll try. There are not measures in there for ACLs and AMs for river herring, straightforward. There are a number of measures in there to try and reduce the bycatch, and that's the simple straightforward of it, okay.

CHAIRMAN RHODES: All right, I'm trying to get an idea of the sense of the board. Should we start drafting a letter or looking towards integration and putting some of these areas into a formalized agreement between the commission and the council? Mr. Simpson.

MR. SIMPSON: I don't think, you know, the New England Council is further along. What they're doing makes perfect sense to me. The comment about an omnibus amendment would be required to incorporate river herring into the SBRM, I think that's an essential thing to do. I don't know how the federal government that has used their authority under Magnuson to manage anadromous species and use that to require saltwater fishing licenses in all our states would back away from its responsibility to those species in their own federal waters.

I think that's an important thing to do. Frankly, what New England is doing would be a good model – Atlantic herring would be a good model for the squid, mackerel, butterfish complex and the Mid-Atlantic Council develop mechanisms to provide the proper incentive for the industry to minimize their bycatch, and some of those alternatives provide them quite a bit of flexibility to do that in a way that's efficient for them that minimizes the impact on their fisheries but gets the job done from our perspective.

MR. PATRICK AUGUSTINE: Mr. Chairman, I think in all fairness to the members, we have Jason Didden in the back – and I don't think Rick is here, but Jason has worked extensively with the development of this Amendment 14.

To try to hip-shoot at this late date and come up with a letter that is going to include what we want and what we don't want, maybe the board might have questions for Jason or Jason could give the board an idea of what the intention of the council is in terms of their product going out for public review.

CHAIRMAN RHODES: Well, Pat, we will be discussing that in the next order of business.

MR. AUGUSTINE: Okay, thank you very much for that, Mr. Chairman.

CHAIRMAN RHODES: All right, we have gotten a specific request from the council that I think we need to respond to. Do we have any response to them? All right, trying to get a little better idea, this came from the Mid-Atlantic Fishery Management Council just to work on reporting relationships. We're getting mixed between Amendment 14 and this. I think there is a little confusion right there. Mr. Diodati.

MR. PAUL DIODATI: Mr. Chairman, do you know if we have in fact received a letter – has the board or the commission received a letter from the Mid-Atlantic Council on this issue?

MS. TAYLOR: We did receive a letter from the council just informing us of the motion and their intent to work with the commission on developing ways to improve the communication in reporting of alocine issues.

MR. AUGUSTINE: Mr. Chairman, it sounds like you want us to address the document that Kate produced. In listening and having participated in the council deliberations and the concerns that were voiced by one of our council members, Mr. Zeman, all the points that you have brought up that we are going to address, including being totally transparent with what is going on with the Mid-Atlantic and the New England Council relative to the shad and river herring bycatch – as Mr. Kaelin pointed out, their concerns were either lack of information or correct information – as Kristen pointed out, maybe there was a mischaracterization.

But in looking back and reflecting on what Kate put up there, it covers literally every single item that was asked for by the public that we should have an open book as to what occurs with shad and river herring from this day – actually from about six months ago forward. I'm not sure there is anything else we could add to it.

Now, if you'd rather go section by section, Kate, and refresh us back up on the screen again, maybe that would be the way to go. I think it's a complete document and if it requires a motion of some sort as opposed to just discussing it, I would be willing to move that motion forward.

CHAIRMAN RHODES: To elucidate a little bit, Pam, who is head of the AP, they did discuss this motion.

MS. PAM LYONS GROMEN: As mentioned earlier, the AP did convene a conference call on July 29th to review two documents, the Amendment 14 Alternatives Document and also the increasing the coordination between councils and commission document that Kate Taylor just reviewed for you. The AP produced the following statement on that document.

The AP is encouraged by the Mid-Atlantic Council's efforts to take a proactive approach to improve coordination with the commission outside of the important work that is progressing under Amendment 14. The AP believes joint meetings or cross-representation at meetings would of great benefit in improving the understanding of issues impacting shad and river herring as well as those impacting squid, mackerel and butterfish fisheries.

When planning for joint meetings, the AP requests that the board consider ways to increase communication between the management board and the Squid, Mackerel, and Butterfish Committee and its advisors. Joint meetings of the Mid-Atlantic Council's SSC and the Shad and River Herring Technical Committee could improve scientific analyses and review of stock assessments as the information pertains to federal management actions such as bycatch caps. Webinars are a cost-effective communication tool and should be utilized.

AP members noted the value of the information-sharing meeting and webinar hosted by the Mid-Atlantic Council last October. Webinars can also be recorded and they can be accessed by managers and the public at a later date. Thank you.

CHAIRMAN RHODES: Thank you; any questions of Pam? Pat.

MR. AUGUSTINE: Just a reiteration of what Pam indicated. I don't think Kate had on your list that one of the tools would be webinars; and maybe if it's not on there, we should clarify that. I think the advisory panel did a great job in presenting what the issues were. Do we need a motion; do we need to accept the advisory panel; do you want to go forward and accept the total protocol that has been identified by Kate? Tell me what you want to do, Mr. Chairman.

CHAIRMAN RHODES: I think that would be great if we accepted that protocol and responded in a letter to the board that we agree with those areas.

MR. AUGUSTINE: Thank you, Mr. Chairman, I so move that we accept the protocol as developed by – was it the technical committee or yourself – the laundry list including the communication tool of webinars and related –type devices to access all of the groups that have been identified, squid, mackerel, butterfish and related to shad and river herring. That may be too much, but I'm trying to cover them all.

CHAIRMAN RHODES: All right, do we have a second? Mr. Young seconds. Any discussion?

MR. TERRY STOCKWELL: Pat, maybe you can tell me exactly what that means.

MR. AUGUSTINE: What it means is we're going to be open and transparent. I guess what we're going to do is we're going to share more information than we have in the past, whether it's the SSC involved with our technical committee, the SSC from New England Council, the SSC from the Mid-Atlantic so that there is an open dialogue and sharing of information; and if possible – and again it may be a financial limitation – either using webinars for SSCs and the committees – here it would be the board and the council would be their committee – to share as much as they can of all this information.

Let's go forward with an open dialogue. This may be an example of how we can get the public totally involved and make them feel as though they are part of the process. I know our webinars have been very, very successful. Does that help you, Terry?

MR. STOCKWELL: So it's to set a principle?

MR. AUGUSTINE: Yes.

CHAIRMAN RHODES: Mr. O'Shea.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, just to review what has happened here in the last few minutes is you received a briefing by Kate on a white paper that was developed by the staff that listed some procedures for communicating with the Mid-Atlantic Council. It really wasn't a protocol. The only thing you had was a white paper that outlined a bunch of procedures, and maybe that's where some of the confusion is.

Maybe what the maker of the motion meant to say was that we accept the procedures described in the

white paper developed by staff and so on and so forth. That's what you're doing here. The white paper was in the meeting materials, Mr. Chairman.

MR. AUGUSTINE: Mr. Chairman, that would include sending a letter to the council telling them exactly what we have put forth, and this is what we believe they were asking for and go from there. Thank you for the correction of language up there.

CHAIRMAN RHODES: Yes, Adam.

MR. ADAM NOWALSKY: Mr. Chairman, in the presentation the information seemed to be grouped into three groups. One was information we would be receiving from the council; two was information we would provide; and then three was a formalized integration, including FMP reviews and spelling out joint meetings. Does this motion pertain to only one of those, specifically the information that we would be providing, or would this motion essentially call joint board meetings with the Northeast and the Mid-Atlantic councils and all-inclusive meetings?

CHAIRMAN RHODES: I believe this would be letting the council know information we can provide to them and then asking that information likewise be communicated to us.

MR. NOWALSKY: Okay, so this would pertain just to what was number two in that white paper out of the slides, information the SRH Board would provide to the councils?

CHAIRMAN RHODES: Well, it would be one and two with potential for three. That's going to be the cooperation of the council and commission moving forward.

MR. NOWALSKY: Okay, but three would be to be determined is what I'm hearing?

MS. TAYLOR: Those included are examples and there could be other examples that could be developed, and those are also just mechanisms for helping to assist with one and two.

MR. NOWALSKY: Specifically where I'm going with this is budget – you know, is there a budget now to send this board to multiple joint meetings as well as a third all-inclusive meeting if we're specifically calling for and/or recommending that be a course of action? That's specifically what I'm interested in knowing in order to properly assess this motion.

MR. ROBERT E. BEAL: I think where we are is if the board is comfortable with items one and two, which is communication from us to the Mid-Atlantic Council and back from the Mid-Atlantic Council to this board, there are details in there that are spelled out on what information would flow back and forth.

I think item number three is sort of a list of other vehicles and options that could be used in the future if necessary. I don't think approval of this obligates you or obligates the funds or requires that a separate website is developed and some of the other things that are listed here. I think those are tools that the two bodies could agree to down the road to use and enhance communication or enhance sort of the integration.

I think step one is to open up the lines of communication and essentially formalize the lines of communication between this board and the Mid-Atlantic Council in particular. Once that information starts flowing, then I think the next step is where do you go from here, what other steps need to be taken such as joint meetings or websites or other technical committee and joint committee things along those lines. That's kind of my interpretation of where we are.

MR. GROUT: I guess I'd like to ask our commission members that are members of the council that were there when this motion was passed is ASMFC and the Mid-Atlantic Council not communicating right now? Are we not providing the council with data to assist with their squid, mackerel, butterfish plan?

Is there something missing here that we don't have because I know we provide updates to the council, Terry, myself and Dave Pierce, about commission activities. I haven't heard of any lack of cooperation in providing data; so if I could have that question answered by either our council members or council staff, that would be helpful.

CHAIRMAN RHODES: Jason Didden.

MR. JASON DIDDEN: At that meeting there was discussion of – the commission and the councils had already started working together pretty well, attending meetings, exchanging data and things like that, but there was discussion at the council that they'd like to more formalize that kind of a relationship where at least on an annual basis the commission would send a letter to the council saying, "Hey, you know, these are some things we would like the council to consider doing. Here is some other

information that you might find useful” – and just formalize that a little bit.

In that letter could be more things that are – you know, what Adam was saying, that number three, if the commission decided in the future to go that way, but it was really just more a formalized, you know, that exchange of information, especially I think in the long run on those more higher-level policy type questions. I think it was in response to staff reporting that back-and-forth exchange has already ratcheted up quite a few levels, but the council still wanted to formalize it.

CHAIRMAN RHODES: Thank you, Jason. I think at this time of day we may be overthinking a lot of this. It’s things we’re doing already and this is taking a process that’s occurring but putting a formality to it where we are affirming our two boards discussing and having a more formal process for continued talks throughout time. It’s nothing that hasn’t been done in the past, but it’s just putting more of a formal stamp to it and an approval by them and by us. Mr. Augustine.

MR. AUGUSTINE: You’re exactly correct, Mr. Chairman, and that number three does give us the latitude, as you might call it a depth of management. The board has already looked at it and said in the future if we have to do that, we could do that without having to go through a long debate and discussion as to what we could do or not. It all depends on funding, staff and so on; so unless there are any other questions, I want to call the question after Mr. Gilmore gets through.

CHAIRMAN RHODES: Well, a couple of people. I won’t accept that yet. Terry.

MR. STOCKWELL: A question for the Mid-Atlantic folks. Jason, is this being incorporated into the amendment?

MR. DIDDEN: I think it’s separate from the amendment. It could be if the commission had certain concerns about how an amendment was proceeding or wanted a new amendment on something, this formalized relationship would just required kind of a touching base at least on an annual kind of level, but Amendment 14 I think is kind of separate from this.

MR. STOCKWELL: Okay, thanks for the clarification.

MR. JAMES GILMORE: I think going to your question, Doug, the common member is between the commission and the council and they both sit, so I think that coordination is fine, and I think that’s going back and forth. The one question I have maybe for Kate; I know on joint plans you have the staff from the technical committee and then the staff from the council and they work together sort of by process, and they have to.

I don’t know if – and you can tell me; are you working directly with the council staff or is that something that’s an ad hoc thing because I think that’s something we maybe need to formalize a little bit better so that we’re sharing the technical information between the two bodies. Thank you.

MS. TAYLOR: Yes, that is something that is just on a more informal basis between staff at the councils. There is no interaction right now between the Shad and River Herring Technical Committee and the SSC or any of those committees.

CHAIRMAN RHODES: Yes, Larry.

MR. LARRY MILLER: We did discuss this a little bit on a conference call last week amongst the technical committee. It was apparent to me that everyone on the technical committee did indeed endorse and would like to have more interaction with the councils and also in general that there was a lack of understanding on the basis of some of the technical committee members of the process that the council operates under.

I think that we would definitely benefit from more interaction with the council in order to understand how their process works. From a technical standpoint, I think that we would very much welcome this. At least that’s the sense that I got from the technical committee discussion last week.

DR. MICHELLE DUVAL: Mr. Chairman, I just have to say I have been very impressed over the past year or so with the increased coordination between commission staff and the council staff. I think I had a few hiccups at the beginning in terms of that, but I’m very supportive of this. I see no problem with formalizing the communication that is currently ongoing between the council and commission staff. I think Bob Beal clarified that quite well for us. I’m also very supportive of a lot of the options that are laid out in Kate’s white paper under Option 3 in terms of integration. I was going to ask and thank you to Mr. Miller for clarifying that the technical committee would like to have more interaction with

our counterparts at the council. I'm very supportive of that as well, so thank you.

MR. STOCKWELL: Mr. Chair, I'm generally supportive of the letter here, but I'm reading here "councils", and, Kate has there been communication with the New England Council before we formalize this into a letter?

MS. TAYLOR: The white paper was sent to the New England Council staff; and as you mentioned previously, the New England Council and the commission, there are coordinating efforts there amongst the council level and staff level. As I mentioned, these options could also apply to the New England Council as well.

MR. STOCKWELL: The Chair of the Herring Committee is right beside and we have not had a Herring Committee meeting or any discussion on this at all.

MR. GROUT: Yes, that was part of my – one of my comments so I agree. I'm a little bit leery about putting this "councils" in there at this particular point in time. Obviously, we coordinate already so it is already there and it's just to whether we're going to formalize it or not. Could you tell me one other thing, Kate, that you mentioned; you know, we got to the annual updates; and I know when I was reading over this, that was the first red flag that went up.

It said would require updates of current stock assessment, and that to me is a rather significant time commitment on the part of our technical committee and stock assessment committee. Are we committing to this?

MS. TAYLOR: That was just an option to provide basically the status of alocine populations. As I said, there would have to be some development of methods to do that, whether it was looking at the current – you could use the current shad stock assessment and would there be a way to kind of provide an annual or biannual update from that document or would there would be other metrics that you could use to develop some sort of annual update that could be provided.

DR. DUVAL: Mr. Chairman, I think in lieu of – you know, just accepting the fact that we're not at a place where we can give any actual annual update given the status of our stock assessments, perhaps another tool that could be used is just our annual FMP update, ensuring that is communicated to the councils.

Just specifically to the motion at hand, it was my understanding that the motion that was communicated to the commission came specifically from the Mid-Atlantic Council, so it was my assumption that the motion that we have before us would apply to formalizing these ongoing communication mechanisms between the commission and the Mid-Atlantic Council right now.

I think certainly we always have the opportunity to do that with the New England Council should that be something that the council and commission wished to do, but I guess I was just assuming that this was in response to the motion from the Mid-Atlantic that was communicated to us and just I guess maybe clarification on that. Thank you.

MR. AUGUSTINE: Mr. Chairman, she is correct; it was to respond to the Mid-Atlantic Council.

EXECUTIVE DIRECTOR O'SHEA: I know you're trying to get through this, but maybe I'll try to do this quickly. Two points, I think; one is the Mid-Atlantic Council is at a different stage in dealing with the issue of river herring bycatch than the New England Council is. The New England Council has been wrestling with this for at least five or six years.

Different groups have brought this up, so the two are different. I think the second point is as the Mid-Atlantic Council has gone through the process of trying to take certain management actions relative to river herring, either to do an FMP about river herring or make it a stock of the fishery or other actions, there has been a discussion about what benefit would come from that.

Some of the stakeholders, the things that they would like to see happen, the answer they've been getting back is what is happening at the commission, the commission is doing that, the states are doing that; but when you have a squid plan by itself, there isn't an easy mechanism to get river herring information into the squid, mackerel and butterfish committee.

One of the suggestions that had been floated was the idea in a discussion with stakeholders to say, well, if this stuff is going on in the committee, maybe it would be helpful to put more visibility to that, to put more visibility on what the commission is doing, to quite frankly hold the commission's feet to the first; and on the flip side find out what the council is doing to reduce and address bycatch issues and hold that body accountable as well.

That was sort of the genesis of this. It's a combination of increasing the transparency of what the two bodies are doing, and I think the second is to give some assurance to stakeholders that this is actually going to happen and there is going to be something tangible relative to the exchange. I think Mid-Atlantic Council members are here if I've mischaracterized that and I'd willing to be corrected. Thank you.

CHAIRMAN RHODES: Thank you for that clarification. To that point, this motion would be at this point to the Mid-Atlantic Council, but it is something that we could easily send or share with the New England Council, also.

MR. AUGUSTINE: The idea, Mr. Chairman, was that it was all inclusive. In response to your comment, Vince, yes, true, we want all involved, including the New England Fishery Management Council, but there hasn't been a commitment. As Mr. Grout pointed out, he hasn't even seen it and hasn't heard about it.

In all fairness to the New England Fishery Management Council, who hasn't been a participant in it – although participative relative to information back and forth, you've been participating in that, but in this procedure you have not. If the only way we can pass is to have a letter go directly back to the Mid-Atlantic Council, then so be it.

Otherwise, go to both – the second one going to New England for information purposes and that we would love to have you commit, also, to the same interaction. Maybe it's going to require a paragraph, but I think we're at a point now where the decision should be to approve this and somehow alert the New England Council that this is on its way and this is the direction we're going in and this is what we have done and are doing with the Mid-Atlantic at the request of our board members. Thank you.

CHAIRMAN RHODES: Thank you. Do the states need to caucus?

(Whereupon, a caucus was held.)

CHAIRMAN RHODES: **All right, the motion that we're voting on is move that we accept the procedures identified in the white paper that was developed by staff and the AP recommendations, including use of the communication tools of webinars and related devices to access all user groups.** The motion was by Mr. Augustine and seconded by Mr. Young. All right, all in favor raise

your right hand; all opposed, same sign; abstentions; null. **All right, the motion passed 19, zero, zero.** All right, Kate, shall we move on?

DISCUSSION ON MAFMC AMENDMENT 14 ALTERNATIVES & FEDERAL MANAGEMENT

MS. TAYLOR: At the March board meeting the board postponed the following motion: move that the board send a letter via its policy board to the Mid-Atlantic Fisheries Management Council expressing its preference regarding the alternatives in the Squid, Mackerel, Butterfish Amendment 14, including whether to continue to consider alternatives to federally managed river herring and shad.

In your briefing material was contained a document on the alternatives that are included in Amendment 14. Some background in the document includes a preliminary analysis that has been conducted by the Mid-Atlantic Council's FMAT. Their preliminary analysis has found total incidental catch from 1989-2010 for river herring was estimated to be between a quarter of a million pounds to over four million pounds annually and shad estimates ranged from 80,000 pounds to almost a million and a half pounds.

The CVs in the most recent years were generally less than 42 percent. However, for prior years the CVs exceeded a hundred in some cases – the CVs exceeded 50 percent and in some cases even a hundred percent. The uncertainty increased in these estimates if catches were broken down further by species or region.

Additionally, there has been concern over the unknown herring category. These estimations were highly variable and ranged from 11,000 pounds to over 3 million pounds annually. This graph, which is in the briefing material, is taking into account the total incidental catch across the New England and Mid-Atlantic Council Regions.

It's just showing you which fishery in each region was responsible for the largest percentage of – here is river herring incidental catch, so catches in the bottom trawl fleet were historically more prevalent in the Mid-Atlantic Region, which is shown in orange, than the New England Region, which is here in red. The midwater trawl estimates are only included beginning in 2005, and you can see that which occurs at that time in purple and green.

The midwater trawl catches for river herring have about similar for the two regions since then. This

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graph shows the same thing for shad. As you can see, there is more variability in the primary gear responsible for the largest percentage of incidental catch and also in the region where the catch is predominantly occurring. Again, the midwater trawl estimates are included beginning in 2005.

As of now the options contained in Amendment 14 will apply the federally permitted vessels in those trips that land over 20,000 pounds of mackerel or 2,500 pounds of loligo. In 2010, just for your reference, this applied to 72 mackerel trips taken by 21 vessels and over a thousand loligo trips taken by 129 vessels.

As I mentioned previously, Amendment 14 is still being developed by the FMAT, but this gives the commission the ability to include their comments as it is being developed. As of now there are nine alternative sets included in the draft. The first five alternative sets deal with monitoring. Alternative Set 1 deals with vessel reporting and includes options for weekly VTR, requirements for VMS and pre-trip and pre-landing notifications.

Alternative Set 2 deals with dealer reporting. It includes options to increase electronic reporting as well as requirements for dealers to sort and weigh or weigh all species. Alternative Set 3 focuses on at-sea observer optimization and proposes options from requiring reasonable assistance to observers to requiring observers on both vessels of a pair trawl, as well as specific limits on the number of unsampled or slipped hauls allowed in given trip.

Alternative Set 4 deals with third party monitoring measures. Alternative Set 5 addresses at-sea observer coverage and proposes requiring from 25 to 100 percent of trips to carry observers. There are options for different funding there. And just as a reference, from 2005-2009 approximately 8 percent of the mackerel trips and 4 percent of loligo landings were observed.

The second half of the alternatives deal with the management options. Alternative Set 6 proposes a mortality cap, which could close the fishery if the cap is exceeded. Alternative Set 7 deals with restrictions in areas of high alocine bycatch. Proposed options within these designated areas include requiring the use of observers; the use of certain gears; or prohibiting the retention of mackerel or loligo.

There is also an option to make these requirements effective when a mortality trigger is reached and also to apply the hotspot requirements currently under

development in Amendment 5 to the Atlantic Herring Plan. Alternative Set 8 proposes some gear requirements. Alternative Set 9 is to add shad and river herring as a stock in the fishery within the Squid, Mackerel, Butterfish FMP.

National Standard 1 suggests that non-target species may be considered to be added as stock in the fisheries to existing FMPs, and this would essentially bring shad and river herring into the plan as equal to the existing species in terms of council management responsibilities. At the previous board meeting there was discussion on what exactly does this mean/

With no stock in the fishery designation, ASMFC maintains management authority over shad and river herring in state waters, and there is continued coordination between the ASMFC and the councils to manage bycatch of alocine in federal waters, and this could be done through federal amendments, framework adjustments or other ways.

Stock assessments will continue to be organized and funded through ASMFC. The shad assessment, as you know, was completed in 2007 and the river herring assessment will be peer reviewed next year. Additionally, habitat conservation and protection is accomplished through ASMFC's partner agencies that have authority.

There is an estimate that actually Larry developed that the total federal and state investment over the last five years was estimated at over \$48 million, and most of that was for fish passage and dam removal. Additionally, the rebuilding timeline is not a hard target here for shad and river herring.

For all stocks and stock complexes that are considered in the fishery, the council must include the following items per NS-1 in their FMPs; the MSY designation, status determination, the optimum yield and specification, the ABC control rule mechanisms for specifying the ACLs, which may be further divided into state ACLs and federal ACLs.

For stocks that harvest in state or territorial waters, the amendment must have accountability measures for the portion of the fishery under federal authority. There is some flexibility in the implementation of the NS-1 Guidelines in certain circumstances, and alocine species may fit under this category given their unusual life history.

In these circumstances the council may propose alternative options for satisfying the NS-1 requirements. Additional, a stock in the fishery

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designation would provide federal resources for stock assessments. There would be a rebuilding timeline and essential fish habitat would also be designated for all the life states.

Based on the board's postponed motion from the last meeting, board guidance here would be the preference on the monitoring and management measures contained in the document, which is Alternative Sets 1 through 8, and also the preference on the stock in the fishery designation, which is Alternative Set 9. Thank you, Mr. Chairman.

CHAIRMAN RHODES: Thank you very much. Pam.

ADVISORY PANEL REPORT ON MAFMC DRAFT AMENDMENT 14

MS. LYONS GROMEN: As mentioned, the AP also reviewed the Amendment 14 management options document and produced the following statement. The AP believes that the current suite of alternative sets is sufficient to address Amendment 14 goals. The AP noted that a diversity of options is important for the public comment period, which is currently for scheduled for December 2011.

Then the AP kind of broke the discussion and grouped it into the different alternative sets; first discussing monitoring alternative sets, which are Alternative Set 1 through 5. The AP determined that priority should be given to the vessel reporting at-sea observer optimization, third party and other monitoring measures and at-sea observer coverage requirements, which are Alternative Sets 1, 3, 4 and 5.

A combination of these alternatives will likely produce the most effective monitoring program and all should remain in the document for further analysis. Dealer reporting, Alternative Set 2, provides the least benefit for achieving the monitoring goal. Timely VTR reporting, weekly at minimum, is a more effective measure and should be prioritized.

For bycatch reduction, the AP strongly supports the development of options for mortality caps in the squid and mackerel fisheries, which is Alternative Set 6, and restrictions in areas of high shad and river herring catch, Alternative Set 7. Alternative Set 8, mesh requirements, is the least developed. Because mackerel and squid fisheries are small mesh, this option may greatly impact the catch of targeted

species while having only marginal benefits for river herring and shad.

As far as the complementary federal management through stocks in the fishery designation, Alternative Set 9, the AP feels strongly that Alternative Set 9 should set remain in Amendment 14 for further analysis and public comment. In comparing status quo versus federal management, the AP believes that complementary federal management could afford protections to shad and river herring that are not provided under the current management program such as federal waters bycatch limit, federal stock assessment resources and essential fish habitat designation.

Alternative approaches for satisfying the annual catch limit and accountability measure requirements of the Magnuson-Stevens Act should be explored and included within the Alternative 9 Set options. The roles of the ASMFC, the Mid-Atlantic Council and the New England Council need to be clarified as this alternative set is developed.

The AP reiterated the importance of both councils and the commission working cooperatively to effectively address ocean bycatch. Then there are some general comments not directly related to the alternative sets, but the AP felt that opportunity should be provided for the input of ASMFC staff, the Shad and River Herring Technical Committee, and the River Herring Stock Assessment Subcommittee in Amendment 14 analyses as appropriate.

For example, the stock assessment subcommittee's input may be valuable when developing bycatch cap options. Catch classified by at-sea observers as unknown herring or unknown fish is a significant problem impacting the accurate quantification of shad and river herring bycatch. The Mid-Atlantic Council has begun to investigate this in Amendment 14 analyses to date and should continue to do so.

Finally, while portside monitoring program options have been dropped from Amendments 5 and 14, the AP believes that the portside sampling programs provide important information on shad and river herring bycatch, especially for high-volume fisheries where catch may be difficult to sort at sea. Programs in place in Maine and Massachusetts that are funded for the Atlantic Coastal Cooperative Statistics Program should continue to be supported. Thank you.

CHAIRMAN RHODES: Thank you. Larry.

TECHNICAL COMMITTEE REPORT ON MAFMC DRAFT AMENDMENT 14

MR. L. MILLER: The technical committee also discussed this last week on a conference call. It is safe to say that as far as Alternative 9 went, the technical committee could not reach a consensus on whether to leave Alternative 9 in or recommend taking it out of consideration although a number of issues did out, and I can summarize some of those here.

A major concern of some of the technical members was the representation of the interests of the state agencies and stakeholders that were not part of the Mid-Atlantic Council. This is respect with to federal management. It was oftentimes referred to as a federal takeover although that may not be an accurate statement.

They were also concerned about how the acceptable biological catch, allowable catch limit and accountability measures would be developed and how the interests of the states and the river fisheries would be taken into consideration and how those would ultimately be applied to those types of fisheries. There was also a concern that Option 2 could potentially sanction fisheries for shad and river herring as incidental catch under inclusion as stock in the fishery at a time when the states are actually shutting down or have shut down their fisheries for shad and river herring, and they didn't see that as being a fair way to approach it.

The positive things were that they saw that Alternative 9 would provide for a definite management framework and that it would have a high accountability with respect to the resource. What they had hoped is that the council and commission could come together and develop a set of goals and objectives that would address the issues and concerns and interests of both management areas and be able to work together.

There was a lot of interest in being able to develop some sort of joint management, and that would be similar to what is under Option 1, which is listed as an alternative with no federal management. However, the biggest concern with this particular option was that it may have inadequate accountability. The process was uncertain.

There could be a reduction in resource allocation for priority management actions because of lack of resource to direct towards that. There could be a lack of existing management structure and uncertain

enforcement authority. Many did feel that a joint plan was the best way to actually work through these issues and achieve more certainty.

Some were also concerned about which entity would take ownership of the process and be accountable for its development and implementation. As far as the other alternatives go, Alternative 6, mortality caps, and Alternative 7, restrictions in areas of high shad and river herring catch, those were seen as the best of the alternatives.

There was concern with Alternative Number 8, mesh requirements because there was not adequate information. They didn't feel as though there was adequate information to actually assess that particular alternative in reducing the catch of shad and river herring. Some were concerned that you may actually let the smaller shad and river herring escape only to be caught at a later period when they reach a larger size and become adults.

It was also recognized that Alternatives 6 and 7 would require making appropriate selections of some or all of Alternatives 1 through 5, particularly that a cap in a fishery would be closed when a number of shad or river herring were captured. Alternative 6 would require increase observer coverage, weekly vessel reporting, reduced number of slip nets and better evaluation of catch at dealer processors.

There was a general consensus among the technical committee that now is the time to act as far as addressing mortality of shad and river herring in other fisheries that are occurring in the EEZ and that it would be best if the commission and the councils could come together to find a way to do this together. That's all I have.

CHAIRMAN RHODES: Thank you, Larry. If I wrote this down correctly, the AP is most interested in 1, 3, 4 and 5 and then 6 and 7; and the technical committee was 1, 3, 4 and 5 as well as 6 and 7; and then Alternative Set 9 is another discussion. I think we need to do the monitoring first, so I'm going to open it up to the board at this point. Any comment from the board? David.

MR. SIMPSON: Is the council looking for us to suggest paring down and taking out alternatives or adding some that aren't here now? Looking through it, I think there is the range of alternatives that the public should see and consider so I'm satisfied with it. I think it's a good range of alternatives.

CHAIRMAN RHODES: I think this came from the previous meeting, which I was not at, where the board was going to send a letter expressing its preferences regarding the alternatives and it got postponed to this meeting. At the previous meeting the full set of alternatives was not presented to the board. It has been presented and if it's the will of the board these are the highest priorities for us and it's all eight, then we'd do that or – Vince.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, I think another way to maybe get at this and where you're trying to go is Jason is here, so he is the one that's trying to pull this plan together. If the information he needs from us is whether the board's sense is this is the range of alternatives that need to be included in the document, that you might have the answer to your question.

CHAIRMAN RHODES: Well, I'm going to pass it to Jason right now.

MR. DIDDEN: Yes, I think that's reasonable interpretation. The council will likely put out a DEIS for public comment in October and then the alternatives will be fully fleshed out. I think the most important thing would be if the commission had a sense of things that it either would like left in or taken out, those are kind of the critical things right now.

I don't think there has been request from the council for such input at this point. The commission would have another opportunity during the – if the council puts it out in October, your November meeting, maybe before our public comment period actually started, but we would have the motions of what the council actually included.

REPRESENTATIVE SARAH K. PEAKE: Mr. Chairman, I would support sending this out with a full range of options as they have been presented. I feel like if I were to be asked today to pick and choose among them, that's almost like putting the cart before the horse. Typically I find that my opinion is informed by the public comment that we've received and we haven't had the opportunity for the public to comment here. I think to the degree we can lay out the largest array of menu options, in effect make the cafeteria as robust as possible, the better off we are. Are you looking for a motion or do you want more discussion first?

CHAIRMAN RHODES: I think we need just discussion at this point. Dr. Kray.

DR. EUGENE KRAY: I was going to make a motion, Mr. Chairman.

MR. STOCKWELL: Mr. Chairman, I like Sarah and David, I think it's a good range of alternatives for 1 through 8. I have very different thoughts about Alternative 9, but it's way premature for me to select anything preferred, particularly from a state quite far removed from the Mid-Atlantic.

MR. MARK GIBSON: I'll chime in as well. I think that they have a good range of alternatives at this point. I personally don't think the mesh restrictions are going to go anywhere. I don't think the technical information is going to be there to develop that for effective measure, but I don't see any reason to discount it at this point. My personal favorite is probably the area time closures and hotspots, but I think it's fine the way it is in terms of the range.

MR. AUGUSTINE: Based on all the positive comments we've had on it and in the interest of the public having a good feel for the full range of options that the Mid-Atlantic has developed, if you're ready for a **motion I would move that we support the document as prepared, Amendment 14, for the public.**

CHAIRMAN RHODES: You mean Sections 1 through 8 at this point?

MR. AUGUSTINE: **I stand corrected; that's correct.**

CHAIRMAN RHODES: Great and second by Representative Peake. Dr. Kray.

DR. KRAY: I was going to second it, Mr. Chairman.

CHAIRMAN RHODES: Okay, any discussion? Steve.

MR. STEVE MEYERS: Mr. Chairman, because this contains possible management measures currently under development from the council, I'm going to abstain on this.

CHAIRMAN RHODES: Thank you. Do we need time to caucus or are we ready to vote? All in favor raise your hand; opposed; abstentions; nulls. **All right, the motion passed 18, zero, one abstention.** Now at this point do we want take up Alternative Set 9 for discussion? Mr. O'Shea.

**DISCUSSION OF ALTERNATIVE SET 9,
MAFMC DRAFT AMENDMENT 14**

EXECUTIVE DIRECTOR O'SHEA: You have been briefed on what stock in the fishery would mean. I think one of the questions that might be helpful to have the answer to is what is the status of that Option Number 9, stock in the fishery? In other words, if the board were to decide to leave it in, what does that mean relative to the process?

Does that mean it gets further analysis and development and the council may choose to dismiss it further down or what exactly would that mean. I think that might be helpful to have the answer to that before you decide what the board wants to do with this. Maybe Jason could help you, Mr. Chairman?

MR. DIDDEN: The council in October will receive analysis and potential recommendations by the FMAT. It's our technical group. Then the council will decide either to – it could move alternatives from active consideration to considered but rejected. It could just leave things in with kind of no indication of a preference or the council can kind of put it out for public hearing, identifying any particular alternative as preferred.

DR. DUVAL: Mr. Chairman, a question for Jason; in this analysis of Alternative Set 9 for stocks in the fishery, there is an indication based on the document that Kate put together that there is some flexibility in National Standard 1 with regard to the setting of ACLs and AMs. I confess I have not been involved in that process at the council level. Suffice it to say I have observed that it is a very long process from what I can see. I'm just wondering if the analysis is going to include any legal opinion from the National Marine Fisheries Service regarding that flexibility should this be an option that the council might choose as its preferred.

Does the FMAT have that ability to provide that kind of legal analysis because that is something that I would want to see? The flexibility has been noted for us in here. I think a legal interpretation of whether that flexibility would apply to shad and river herring as being stocks in the fishery is something I would be interested to see. Thank you.

MR. DIDDEN: NOAA GC is on the FMAT. There have been significant discussions on the issue. They have noted a hesitancy that it could be a viable option, but it will be something to be explored further as we further develop the analysis.

MR. STOCKWELL: Mr. Chair, I have some angst about the designation of stocks in the fishery for a couple of reasons; starting off by noting that only one of the four sustainable harvest plans is in the states managed by the Mid-Atlantic. I feel somewhat disenfranchised from the state of Maine having the Mid-Atlantic Council having a direct impact on our sustainable harvest plan for our river fisheries.

Not that I don't think we'd be well represented; I'd probably think we would be probably less well represented. I think it's important for the commission to retain its authority. I feel comfortable about developing a stronger collaboration and shared sense of management, but for us to secede our authority at this point or even consider it is really not acceptable to me. I would be waiting to hear from what the FMAT reports back. I would be supportive if they would choose to potentially remove the Alternative Set 9 from the amendment; and after some discussion, I would have a motion, Mr. Chairman, to support that.

CHAIRMAN RHODES: Okay, any other discussion? A.C.

MR. A.C. CARPENTER: If he wants to make a motion, I'd second it.

CHAIRMAN RHODES: Mr. Stockwell.

MR. STOCKWELL: Mr. Chairman, I'd move to recommend that the Policy Board send a letter to the Mid-Atlantic Council stating that the commission does not oppose the removal of Alternative Set 9 from Amendment 14.

CHAIRMAN RHODES: Thank you and we had a second by Mr. Carpenter. Any discussion? Mr. Gibson.

MR. GIBSON: I would like to know what authority the states cede by having a full-fledged federal partner in management of river herring. That's not clear to me how you can't manage your state waters fisheries through the commission process. Are you concerned about the ACL or an AM or something like that?

MR. STOCKWELL: Absolutely!

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, I guess one of the things that I'm mindful of is we're engaged in litigation now over perceptions that the commission is not doing all that it can do to protect and restore river herring. In the board making this

decision today, I suppose the question is does this board have all of the understanding of the implications of what they would be doing today or is there a benefit in perhaps the additional analysis that Jason was talking about and the additional dialogue that the Mid-Atlantic Council is planning on doing prior to October and whether that would be helpful for the board to be aware of before deciding that this Alternative Set 9 isn't going to be helpful for river herring.

It's picking up a bit on the question that Mr. Gibson was asking about. I guess the other way to phrase it is if the board makes the decision today to say you don't oppose removing this, it seems to me that you're done. On the other hand, if you're silent on it for now – and maybe this is a question for Jason – wouldn't you have a chance once you get a bit more information to make a decision back in October once you have a bit more – and unfortunately I'm making this sound like I'm speaking for or against the motion and I don't intend to do that. I just want to have us pause and make sure you're carefully considering what you're thinking of doing here.

MR. SIMPSON: I think as I said before, there are alternatives in here that I like better than others and some that I dislike more than others, but I think it includes the reasonable range of alternatives as it is to flesh out to that next level is well worth the Mid-Atlantic Council staff time to do all that work to better inform us and so I think it would be worthwhile doing that and learning a little bit more about what it would mean to designate this river herring group as stocks in the fishery. My preference is to let all nine go through that next level of development and inform us a little bit better. Thanks.

MR. THOMAS FOTE: I'm always worried when we start making decisions after eleven and a half hours of meetings in a day. I've seen some of the worse motions passed at that time that we've come to regret later on. I admit I'm a little tired and my eyes are a little blurry looking at this. I'm not sure if it's premature to do this.

I really need to be convinced that it is not before we move forward because it's late at night, a lot of us are tired sitting around the table. I can see by their eyes looking. I'm trying to think this through but I'm still having a problem with whether to go forward or not.

MR. L. MILLER: The technical committee did discuss this on the call. I'll just read what my summary notes were. It was noted that the commission, through an amendment to the Atlantic

States Marine Fisheries Commission Shad and River Herring FMP, could have or can ask the Secretary of Commerce to implement measures in the EEZ. This was removed from Amendment 2 before it was passed.

It was removed because the Shad and River Herring Board requested emergency actions to protect river herring and felt that this would address the bycatch concern. However, the Secretary did not implement emergency measures as he felt the issue would be addressed through the upcoming councils' amendments, Amendment 5 and 14 in this case.

Someone mentioned that the commission does have jurisdiction over state waters and river waters and council exercises authority only over federal permit holders. Complementary management could be set up and total control would not be handed over to NOAA Fisheries for state waters. Some people said that this is an important consideration that needs to be made clear and that the commission still does have jurisdiction in state waters.

It was noted that this was a point of confusion and clearing this up could put state managers at ease with Amendment 14 and Alternative 9. The operational and process aspects of federal management were not clear to the technical committee and it may be more properly stated that federal management under joint Mid-Atlantic Fisheries Management Council and ASMFC.

Now, I didn't fact check that and I don't know if anybody here – and it goes to the question that Dr. Duval made about actually having a legal opinion on this and what it really would mean and how it would really impact the commission's ability to manage fisheries in state waters.

DR. JAIME GEIGER: Mr. Chairman, based upon some of the comments and advice given by the executive director, my sense is it is somewhat premature to do this at this time, right now. I would prefer to have the additional analysis done by the Mid-Atlantic Council and provided to this board at an hour that will be more conducive to clear, rational thought. Thank you.

MR. STOCKWELL: Thank you, board members. I just want to provide a little bit of clarification to the intent. The motion is not to advocate or request removal of this alternative but to support whatever decision the Mid-Atlantic Council makes after they receive the FMAT report. We have made comments on the other eight alternatives. If the will of the

board is to remain silent, that's fine, too. I'm trying to support what the Mid-Atlantic Council wants to do; and if they want to say no, that's fine with me.

CHAIRMAN RHODES: All right, thanks for the clarification. Dr. Duval.

DR. DUVAL: That was why I asked the question earlier. I'm echoing the comments made by Tom Fote and Dr. Geiger and those around the table. I would prefer to have all the information in hand. I asked a question of Jason just from a conservation perspective. I mean, I am interested in accomplishing the goals and objectives that we have laid out in our plan and trying to be true to the board's concern regarding bycatch of these animals in some of the Mid-Atlantic and New England Council fisheries.

I feel like we've come a long way in terms of the coordination between the councils and the commission. I want that legal interpretation because I would be concerned that should that be a preferred alternative and move forward, I am concerned about our stock assessments being robust enough to be used for development of ACLs and AMs.

I am also concerned about that timeline just given that I've seen how long it takes at other council meetings. I'm just not comfortable voting yea or nay on this motion at this time. Thank you; sorry to be so wordy.

DR. KRAY: Mr. Chairman, so that everything is transparent I'll just make one statement that a week from today, August 10th, my term on the Mid-Atlantic Council is up, so I'll no longer be on the Mid-Atlantic Council. I would like to make a motion that we table this motion for a time certain that would be the November meeting at which time we will have the FMAT material as Jason suggested earlier and a number of us have suggested.

CHAIRMAN RHODES: Would you postpone it instead of table it?

DR. KRAY: Okay, yes, I'll postpone it.

CHAIRMAN RHODES: Second by Mr. Adler. All right, at this point I believe we need to vote on this motion. All in favor signify by raising your right hand; opposed, same sign; abstentions; null votes. **The motion passes 17, zero, zero.** Thank you for the discussion on that. Mr. O'Shea.

EXECUTIVE DIRECTOR O'SHEA: So we postponed something according to the motion. I'm hoping what the intent was – you did make a decision on one through eight and that somewhere in here there is going to be direction per the motion of the last meeting to write a letter to convey leave one through eight in the document for analysis, and we're going to be, per this motion, silent on Number 9.

I suppose my question – or maybe the question you might want to ask Jason Didden is what is the impact of the commission's silence on Item Number 9 and not communicating until after the November meeting; what does that do to the document?

MR. DIDDEN: I don't know the council's preference on this alternative. I think the council will look at the analysis in October and decide whether to drop it, leave it in or indicate preference.

CHAIRMAN RHODES: Thank you. Any other questions on that? Mr. White.

MR. G. RITCHIE WHITE: I thought we were postponing this to get more information from the council to then make a decision to support this or not in November; am I incorrect in that?

CHAIRMAN RHODES: Correct, but we're sending a letter that we're going to be commenting on Alternatives 1 through 8 and we will have no comment on Alternative 9 with this postponement.

MR. R. WHITE: Isn't our comment to ask for more information so that we can make a decision?

CHAIRMAN RHODES: Yes; I misstated. All right, any further discussion on Amendment 14? No, then, Kate, move us down the road, sustainable fisheries management plan update.

SUSTAINABLE FISHERIES MANAGEMENT PLAN UPDATE

MS. TAYLOR: I will be very brief given the late time. Just so the board is aware, under Amendment 2 for river herring, there have been sustainable fisheries management plans approved currently for Maine, New Hampshire, North Carolina and South Carolina. The commission is expecting a sustainable fisheries management plan from New York, which the board will be able to review at the annual meeting.

All other jurisdictions need to have regulations in place prohibiting the landing of river herring beginning January 1, 2012. For shad we have

received sustainable fisheries management plans from Maryland and South Carolina. The deadline in Amendment 3 or the initial deadline in Amendment 3 was August 1st, so thank you to Maryland and South Carolina.

We have received word that we are expecting to receive plans from Connecticut, a joint plan under the Delaware River including New Jersey, Pennsylvania, Delaware and New York; North Carolina, Georgia and Florida, so those will be reviewed by the technical committee with recommendations to the board at the November meeting. Just as background, the jurisdictions without an approved sustainable fisheries management plan for American shad will close their commercial and recreational fisheries by January 1, 2013. However, catch-and-release fisheries are permitted. That's the report.

CHAIRMAN RHODES: Thank you very much. Any questions of Kate? Russ.

MR. RUSS ALLEN: Mr. Chairman, in regards to sustainability plans for river herring, since there are only four states that have those in place and all our conversations about bycatch in these big volume fisheries in the ocean, New Jersey is having a little trouble trying to figure out how to write up our regulations regarding no harvest.

We're curious as to how states that are already in a moratorium and the rest of the states that are going to moratorium are going to handle bycatch in EEZ waters as they come into state waters and landed in state during a moratorium. How is that going to be written up by different states because we're having real trouble doing that and trying to figure out how to do it? It's really a big issue for us. Since there are only four states that are allowing landings, we're going to have some sort of bycatch in the plan allowing a certain amount of bycatch to come into state waters that have a moratorium? That's a question out there for everyone on the board. Thank you.

MR. STOCKWELL: I wish I could give you an answer. We're working on a rulemaking right now.

MS. TAYLOR: I believe in the state of Massachusetts they do have a 5 percent by weights or number; I'm not sure. I can't remember which it is, but 5 percent by weight exemption for those federally permitted vessels.

MR. ALLEN: Well, that's not written in the plan because you have to show sustainability to have

landings. It is a concern for us and it moves to shad because we have a 5 percent landing of shad in ocean waters right now; but because we can't show sustainability of stocks that are closed, I'm not sure we can do that under Amendments 2 and 3. I'm looking for some help, wherever I can get it.

MR. JACK TRAVELSTEAD: Russ, all I can tell you is what Virginia is doing. We adopted a regulation last month that will go into effect on January 1st that will make it unlawful to possess in Virginia. Any boat coming into state waters would be in violation.

DR. DUVAL: Mr. Chairman, just to try to answer Russ' question, our regulation is very similar to Virginia's. It is unlawful to possess river herring taken from coastal fishing waters unless the river herring season is open. Our sustainable fishery plan includes a research set-aside, which is just that the herring festival, which had approximately 1,200 pounds of harvest to permitted folks only, so you can't come in with them.

MR. GIBSON: Rhode Island is closed and you can't possess them. It's just as simple as that.

MR. THOMAS O'CONNELL: That's the same way Maryland is proposing, no possession.

MR. GILMORE: I can't give you any details, Russ, because ours is really close to being done, but as soon as we get it we'll send it to you.

CHAIRMAN RHODES: I hope that was help.

MR. ALLEN: It is and it isn't because those big volume fisheries are going to come in with bycatch. That's easier said than done, as you know, A.C.

CHAIRMAN RHODES: Mr. Kaelin, did you have a comment?

MR. KAELIN: Jeff Kaelin with Lund's Fisheries. I do have a comment. A zero possession limit in the areas where we're landing herring and mackerel and squid would put those businesses out of business. This board has already dealt with this issue in the past and the determination has been made that incidental catches are not part of your sustainable fishery planning process. I think if we go back into the records of the boards and go over the many years we have been sitting around and talking about this, you'll find that's a decision the board has previously made. Thank you.

OTHER BUSINESS

CHAIRMAN RHODES: Thank you. Any other business? Mr. O'Connell.

MR. O'CONNELL: I think it's important before we leave here today to clarify that last comment because I think the board did have discussion. It went one way but came back and said incidental catches are not allowed. Given that this issue has been raised by the public, can we get clarity before we leave here today?

MS. TAYLOR: I believe the motion for river herring was to prohibit the retention of river herring in state waters – I'm sorry, landing of river herring in state waters; from state waters fisheries.

MR. TRAVELSTEAD: Well, not only that; regardless of what the management plan says, states have the right to be more conservative than the management plan and if they adopt a no-possession limit, that's the rule in that state. I think everybody around the table has just said that's the rule; no possession.

MR. FOTE: If I remember the last meeting, that was not the rule around the table. Some states said they were still going to allow vessels that fished in the ocean to land bycatches up to a certain percent. I think that was one of the states from the north, like Massachusetts. I could be mistaken.

Mr. Chairman, I think what we need is a document from all the states on what they're going to allow and so we all know what the rules and regulations in all the states are going to be. It should be public knowledge and it should be transparent when the rules and regulations are put in so we know exactly whether the state was – because I don't want to be surprised later like I got surprised yesterday by somebody saying you could do this in New Jersey, and you're not supposed to be able to but because it's in federal waters we'll be landing them anyway where the state boats can't land. That was on some other species but I want to make sure that we're clear among ourselves what we basically are doing in all the other states.

MR. GROUT: I think we've done that. For river herring we submitted a sustainability plan that has that document. It clearly states that for shad, which we're going to close. We submitted a document to Kate this month telling exactly what we're going to do.

CHAIRMAN RHODES: All right, we had one comment in the back I saw.

MR. PATRICK PAQUETTE: Patrick Paquette, recreational fisherman from Massachusetts. I just wanted to point out is the board is struggling with a question that has been answered here before through presentations. There is through that 5 percent possession loophole – there are instances where a large landing of incidental catch; river herring is – when it happens, when the rare event happens, there can be large – and are documented large amounts of river herring that are landed in extremely large amounts of sea herring in New England and end up being sold on the bait market.

There have been some grassroots investigations into where bulk bait was bought and river herring picked through where they're discovered; and when a large landing happens, river herring are actually sold in the bait market right now. It's one of the things that has some of us in New England irate.

When it happens, the rare occasion – and I'm pretty sure Lori Steele under an Amendment 5 update has brought that here, but you should have landings data that shows – the observer program showing amount observed on the boats and then there is an amount landed, and you can sort of do the math as to what kind of weight is filtering into the market. It's the largest source of mortality and it's coming ashore. It's a big giant loophole that a lot of us aren't okay with. I just wanted it to be clear, this is going on.

MS. TAYLOR: I just want to say that the actual wording of the motion was move that any state or jurisdiction that wishes to retain river herring harvested in state waters must submit a sustainable fisheries management plan for review by the technical committee and approval by the board.

MR. DIODATI: Just to clarify, we don't allow the landing of river herring from state waters. There is an allowance or tolerance, we should say, of bycatch in bait fisheries that are caught in federal waters, and it's by count. It's 5 percent by count; I misspoke when I said weight. It's by count of fish; so if enforcement looks at a batch of fish, whether it be totes of fish, barrels of fish or truckloads of fish, that constitutes a batch. If any particular batch exceeds 5 percent by count, that would be unlawful.

CHAIRMAN RHODES: All right, thank you for the clarification. I see one last hand in the back.

MR. TOM RUDOLPH: Mr. Chairman, I'm Tom Rudolph; I'm with the Pew Environment Group here on behalf of the Herring Alliance. I first want to say thanks for allowing me to comment and also want to commend the commission's actions to protect river herring in state waters as well as those of the states around the table that have taken very proactive and aggressive action to protect river herring in state waters only matched by the lack of aggressiveness to protect it in federal waters.

I just want to point out we didn't have an opportunity to comment previously and we would have urged you to endorse Alternative Set 9, especially in light of the fact that it's so poorly understood at this point and yet seems to hold so much promise to not only do a lot to protect river herring from overfishing but also to do so in a way that continues to allow the ASMFC to express its leadership.

I just wanted to come up and talk under this discussion because it's relevant here, too, because I think what is driving this confusion about how to implement your Amendment 2 is the fact that regardless of whether the commission expresses a favorable or opposed opinion on whether to designate it a stock in the fishery or what the Mid-Atlantic Council does, it is a stock in the fishery.

You have a new report. It's a new report done by the Mid-Atlantic staff. It's the best analysis I've seen yet of total removals of river herring from the EEZ, from federal waters, staggering numbers being landed and sold into the bait market every year. It is a stock in these federal fisheries. Whether we make it a, quote, stock in the fishery is a different question, but it is a stock in the fishery. I urge you to keep that in mind in all your deliberations. Again, I thank you for your time.

MR. O'CONNELL: I know everyone is exhausted and, trust me, I am, too, but if we don't get clarification today and if the staff could follow up, but we interpreted that actions from this board that there was no tolerance permitted unless you had an approved sustainable fisheries management plan. I hate to wait until November when this issue comes up again and puts states in a difficult situation if that is not allowed with meeting the January 1st implementation deadline. If we can't figure this question out specific to Paul's question today about fish caught in federal waters to have land in a state, I think we need to try to clarify that and send something out to the board as soon as possible. Thanks.

MR. CARPENTER: Well, I think Jack hit the nail on the head a moment ago when he said that states have the right to be more conservative than the plan. Regardless of whatever the plan says, the state has a right. If a state chooses to have a total moratorium on the possession of river herring, which Virginia has done, then you come ashore in Virginia with river herring from any source, whether they're state waters or federal waters, I think you're subject to penalty.

CHAIRMAN RHODE: Thank you. Would it be appropriate to get staff to send out the – Okay, I think what I'll do is if we can have the staff just send out our original discussion for us to review – we aren't going to answer the question tonight, but we've had this discussion in here – we can pull those notes up, send it out and bring it to everyone's attention.

ADJOURNMENT

If we need to discuss it again at the November meeting, we'll be armed with all the information from our previous discussions. I'm seeing a lot of heads nodding. Is there a motion to move for adjournment? We have a unanimous that. Thank you for your forbearance.

(Whereupon, the meeting was adjourned at 6:40 o'clock, August 3, 2011.)