

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

**Crowne Plaza Old Town
Alexandria, Virginia
February 4, 2010**

Approved August 3, 2010

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1. **Approval of Agenda by Consent** (Page 1)
2. **Approval of Proceedings of November 2, 2009** by Consent (Page 1)
3. **Move to adopt the fisheries-dependent and independent monitoring program as proposed in Amendment 3, Tables 2 and 3. If states and jurisdictions cannot meet the monitoring requirements, they can work with the commission to develop an acceptable alternative in their fishing/recovery plans as stated in Section 6** Page 15). Motion by Michelle Duval; second by Wilson Laney. Motion carried (Page 16).
4. **Motion to request the technical committee review and prioritize the data collection elements that are in each monitoring program, and that review should include a brief explanation of the importance of each element to the stock assessment** (Page 16). Motion by David Simpson; second by Terry Stockwell. Motion carried (Page 17).
5. **Move to recommend that states and jurisdictions address their in-river estuarine bycatch monitoring needs and intent in their sustainable fishery proposals and fishing/recovery plans** (Page 17). Motion by Michelle Duval; second by Terry Stockwell. Motion carried (Page 17).
6. **Motion to recommend that board and states collaborate with shad and river herring bycatch reduction efforts of the New England Fishery Management Council Amendment 5 and the Mid-Atlantic Fishery Management Council Amendment 14 ongoing FMPs** (Page 17). Motion by Terry Stockwell; second by Michelle Duval. Motion carried (Page 17).
7. **Motion to adopt Option 3, to close fisheries with exceptions for those systems with a sustainable fishery** (Page 17). Motion by Terry Stockwell; second by Jim Gilmore. Motion carried (Page 20).
8. **Motion to amend the previous motion by deleting “de minimis states are exempt from this provision”** (Page 19). Motion by A.C. Carpenter; second by Pat Augustine. Motion carried (Page 19).
9. **Motion to adopt Option 4, close fisheries with exceptions for those systems with a sustainable fishery and de minimis states are exempt from this provision** (Page 20). ***MOTION AMENDED WITH A FRIENDLY AMENDMENT ON PAGE 24: Motion to adopt Option 4, prohibit harvest with exceptions for those systems with a sustainable fishery. De minimis states are exempt from this provision.*** Motion by Terry Stockwell; second by Doug Grout.
10. ***SUBSTITUTE MOTION ON PAGE 24: Substitute motion to prohibit harvest and possession except in sustainable systems but allow states to permit catch-and-release fishing.*** Motion by John Duren; second by A.C. Carpenter. Motion carried (Page 24).
11. **Motion that fishing/recovery plans shall be submitted to the technical committee no later than August 1, 2011. Habitat plans shall be submitted no later than August 1, 2013. States failing to meet the sustainable fishery requirement would be required to close their fisheries by January 1, 2013** (Page 25). Motion by Michelle Duval; second by Terry Stockwell.

continued

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12. ***ABOVE MOTION REWORDED ON PAGE 29:*** Move that the fishing/recovery plans shall be submitted to the technical committee no later than August 1, 2011. The habitat plans shall be submitted no later than August 1, 2013. States without an approved plan for the sustainable fishery are required to close, with the exception of catch-and-release recreational fisheries, their fisheries by January 1, 2013. Motion carried (Page 29).
13. **Motion to approve the de minimis standard as set forth in today's presentation** (Page 29). Motion by Pat Augustine; second by Leroy Young. Motion carried (Page 29).
14. **Motion to recommend that the full commission approve Amendment 3 as modified today** (Page 29). Motion by Bill Adler; second by Pat Augustine. Motion carried (Page 30).
15. **Move to elect Michelle Duval as Shad and River Herring Board Vice-Chair** (Page 30). Motion by Terry Stockwell; second by Wilson Laney. Motion carried (Page 30)
16. **Motion to Adjourn by Consent** (Page 30).

ATTENDANCE

Board Members

Terry Stockwell, ME, proxy for G. Lapointe (AA)
Pat White, ME (GA)
Doug Grout, NH (AA)
G. Ritchie White, NH (GA)
Paul Diodati, MA (AA), Chair
Ben Martens, MA, proxy for Rep. Peake (LA)
Bill Adler, MA (GA)
Bob Ballou, RI (AA)
David Simpson, CT (AA)
Rep. Craig Miner, CT (LA)
Lance Stewart, CT (GA)
James Gilmore, NY (AA)
Brian Culhane, NY, proxy for Sen. Johnson
Pat Augustine, NY (GA)
Tom McCloy, NJ, proxy for D. Chanda (AA)
Tom Fote, NJ (GA)
Leroy Young, PA, proxy for D. Austen (AA)
Eugene Kray, PA, proxy for Rep. Schroder (LA)

Craig Shirey, DE, proxy for P. Emory (AA)
Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Roy Miller, DE (GA)
Tom O'Connell, MD (AA)
Russell Dize, MD, proxy for Sen. Colburn (LA)
Bill Goldsborough, MD (GA)
Jack Travelstead, VA, proxy for S. Bowman (AA)
Kyle Schick, VA, proxy for C. Davenport (GA)
Michelle Duval, NC, proxy for L. Daniel (AA)
Bill Cole, NC (GA)
Malcolm Rhodes, SC (GA)
Patrick Geer, GA, proxy for Rep. Lane (LA)
John Duren, GA (GA)
Jessica McCawley, FL (AA)
A.C. Carpenter, PRFC
Steve Meyers, NMFS
Wilson Laney, USFWS

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

Ex-Officio Members

Byron Young, Advisory Panel Chair

Staff

Vince O'Shea
Kate Taylor

Bob Beal
Chris Vonderweidt

Guests

Matt Cieri, ME DMR
Arnold Leo, E. Hampton, NY
David Perkins, USFWS
Bob Ross, NMFS
Pam Lyons Gromens, NCMC
Larry Miller, USFWS

Ray Kane, Chatham, MA
Patrick Paquette, RFAMA
Jason Didden, MAFMC
Sandy Burke, USFWS
Bob Sadzinski, MD DNR

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, February 4, 2010, and was called to order at 9:35 o'clock a.m. by Chairman Malcolm Rhodes.

CALL TO ORDER

CHAIRMAN MALCOLM RHODES: I would like to call the Shad and River Herring Management Board to order. I want to welcome all our guests and commissioners. At this point it is time to go ahead and move forward.

APPROVAL OF AGENDA

CHAIRMAN MALCOLM RHODES: I'm asking for approval of the agenda. Mr. Laney has asked to be added to the agenda and I've already done that. Are there any other changes to the agenda? Seeing none, we'll move on.

APPROVAL OF PROCEEDINGS

You've all received the proceedings from the November 2nd meeting in your packet. There was one change that needed to be made in the motions, Motion Number 6. It was stated "move to adopt Z-30 as a mortality index rather an overfishing definition."

This was subsequently changed during discussion and the motion was not reread. It should be "move to adopt Z-30 as a mortality benchmark rather than an overfishing definition", and I would like to see that change made. If there are no problems with that, we'll have that done.

PUBLIC COMMENT

CHAIRMAN MALCOLM RHODES: All right, it is time now for public comment. Byron Young.

MR. BYRON YOUNG: The Hudson River Estuary Management Advisory Committee asked me to read a letter into the record from them regarding the Shad Amendment 3 Plan. I'm going to read that in, and I will provide copies to the commission for their record. It is dated February 4, 2010; Atlantic States Marine Fisheries Commission; Shad and River Herring Management Board:

"The Fisheries Subcommittee of the Hudson River Estuary Management Advisory Committee is a diverse group of individuals that advises the New York State Department of Environmental

Conservation on fisheries and other issues facing Hudson River fish stocks. Our makeup includes professionals from academia, research, fishermen, consultants and an advocacy group.

"We recently met to discuss the status of the Hudson River shad stock. We arrived at a majority consensus that the stock condition warranted support of the NYSDEC proposal to close American shad fisheries in New York State. We have joined the NYSDEC in a common goal – recovery of the Hudson River stock of American shad.

"The long-term outlook for the Hudson River stock is not good. It has experienced a dramatic decline over the past 20 years, a decline that was documented in the ASMFC 2007 stock assessment. We understand that the ASMFC has accepted recommendations of the 2007 assessment and crafted Draft Amendment 3 to guide future management of coastal shad stocks. We urge the board to move forward and adopt this amendment as written. It provides a comprehensive multifaceted approach to the complexities of stock restoration.

"Many factors were identified in the 2007 assessment that affected American shad stocks, including directed fishing, bycatch and habitat problems. Individual states can address issues within state waters, but a few larger problems such as ocean bycatch can only be resolved through the interstate cooperation that ASMFC was charged to provide.

"These coastal issues are the purview of ASMFC as the Charter states "to promote the better utilization of stocks, by developing a joint program for the promotion and protection of such fisheries, and the prevention of physical waste from any cause." Therein lies ASMFC's strength, the joint effort to resolve issues that a single state cannot accomplish on its own.

"For the protection of such fisheries, Draft Amendment 3 identifies the needs for sound management based on scientific standards. Past amendments provided some protection, but did not go far enough as most stocks have continued to decline along most of the Atlantic coast. When the Hudson River Fishery closes this spring, only two rivers – the Delaware and Connecticut – along the entire Mid-Atlantic and New England coast will have barely surviving fisheries. How long will these stocks remain viable?

"Draft Amendment 3 outlines a set of monitoring standards that will provide the data needed to manage

shad stocks on a scientific basis. The implementation of these standards by ASMFC and the states will enable them to obtain needed stock data and plan for and obtain necessary funding for monitoring where needed.

“Draft Amendment 3 stresses combining management with an emphasis on habitat protection. It is unique in that is the first ASMFC amendment that utilizes an ecosystem approach. Habitat is no longer disconnected from the shad’s life history, but is scrutinized for problems and ways to resolve them in the development of river system habitat plans.

“Even if states cannot afford to resolve habitat problems at the current time, the habitat plans will provide the framework for improving shad habitat and thus shad stocks in the future when funding becomes available. For the prevention of physical waste from any cause, Draft Amendment 3 resolves to identify, reduce and eliminate coastal bycatch.

“ASMFC addressed the directed ocean fishery, a known source of mortality on coastal stocks, yet fishing in the form of bycatch has yet to be clearly addressed. When young shad leave their rivers, they are vulnerable to a variety of fisheries in nearshore coastal waters, which are clearly under the management purview of ASMFC.

“As shad move farther out in ocean waters, NOAA Fisheries needs to work with ASMFC. In addition, it is time to invite our northern neighbor, Canada, to the table to address the fisheries in the Bay of Fundy and Maritime Provinces. Stocks are at historic lows. Shad are now a rare occurrence when compared to the coastal mix of species. We encourage ASMFC to move forward in a new direction with Amendment 3 to save what shad we have left.

“Sincerely, Dr. John Waldman, Queens College, Hudson River Estuary Management Advisory Council Fisheries Subcommittee Chair; Dr. Isaac Wirgin, NYU School of Medicine; Dr. Karin Limburg, State University of New York, College of Environmental Science and Forestry; Mr. Bill Emslie, Coastal Conservation Association; Mr. John Lipscomb, Hudson River Riverkeeper; Dr. David Strayer, Cary Institute of Ecosystems Studies; and Tom Lake, Hudson River Estuary Program educator.” Thank you.

CHAIRMAN RHODES: Thank you. Any other public comments?

MR. PATRICK PAQUETTE: Patrick Paquette representing various recreational fishing organizations between Massachusetts and North Carolina when it comes to river herring, including United Mobile Sport Fishermen. Just on items not on the agenda, I just want to continuously – and I’m going to do this every month until it is corrected, but as of right now the fisheries management plan does not have a proposal.

River herring are being caught at sea, landed and sold. It may not be a directed fishery, but you’re going to see data once again today that river herring are being caught at sea and sold. The Shad Fishery Management Plan outlaws that or prohibits that, but river herring, it continues to happen. They are not even considered legally bycatch under that stuff. That is some of the reasons why we can’t get comprehensive data all together in one pool to see it clearly. Please, just continue to remember that because until that is corrected you’re going to continue to have these holes the data is falling through.

CHAIRMAN RHODES: All right, thank you. Further comments?

MR. JEFF KAELIN: I’m Jeff Kaelin from Winterport, Maine, representing Lund’s Fisheries from Cape May, New Jersey. I’m a shad and river herring advisor, and I would like to request that the letter that Mr. Young read into the record be made available to the advisors. Thank you.

CHAIRMAN RHODES: The staff can do that and we will do that. Any further comments?

MR. THOMAS FOTE: Byron, on that letter, I was listening to it interestingly, and I noticed that it basically talked about fishermen’s actions. We know as shad and river herring, that a lot of that is basically also being affected by power plants and other industrial users of water. Did they write a similar letter to New York State asking them to basically start correcting some of the problems with power plants having to help reduce the mortality?

I mean, you know, I always look at these letters and sometimes the real problems are other places where the mortality is coming, as we found out in many species, the hidden mortality, and have they looked at addressing that or sending a letter on that behalf?

MR. YOUNG: I’m not sure if they’ve written a similar letter, but this group has been heavily involved in the Hudson River Power Plant Issue. The

Hudson River Estuary Management Advisory Committee is a product of the power plant settlement of the 1970's. They review the power plant impacts, they work with the power plant impacts, and they have made comment to that. Whether it is in the same as a letter as this or not, I can't attest to at this point.

MR. FOTE: Yes, because it would be interesting. I mean, they are being paid by the – I'm familiar with the group and I would like to see their report on that information or the mortality on shad and river herring inside the Hudson River being caused – because I'm still waiting for that report that was basically alluded to here years ago about the 50 percent or greater harvest of shad, and I still never have gotten a copy of that report.

MS. KATHY HATTALA: I have a short response to Mr. Fote's concerns. The New York State Department of Environmental Conservation has issued draft permits to all those suspect power plants. All of them are to either go to closed-cycle cooling – especially Indian Point, which is the two nuclear stations located in the river. The other ones are either to go to closed cycle or something similar. Those are now approaching litigation, so that may last a while.

Some of the members, yes, Three Mac is supported by the Hudson River Estuary Management Advisory Committee as a whole. That is a consortium of a whole bunch of different groups. They are not supported by the power companies. Riverkeeper, one of the co-signers on the letter, is also very, very vocal about protecting fish stocks in the Hudson and has been a very active participant in the permitting process. Yes, they have been going after that.

RIVER HERRING AND AMERICAN SHAD BYCATCH UPDATE

CHAIRMAN RHODES: All right, any further public comment? All right, we will move on to the next item on the agenda. Matt Cieri has a 2009 bycatch update. This is an updated presentation that we had received back in 2008 for the years 2005 to 2007.

DR. MATT CIERI: Good morning; my name is Matt Cieri with the Maine Department of Marine Resources. As you guys all remember, at one point I gave a presentation dealing with basically bycatch estimations of river herring in directed Atlantic Herring Fishery. This is pretty much an update through 2008 with some preliminary data on shad at the request of ASMFC.

Just to give you a broad overview, the observer project, which is one of the data elements that goes into this analysis, is at-sea observers looking at bycatch of fish as well as marine mammal interactions. Many fisheries have this sort of observer coverage in varying degrees. For the Atlantic Herring Fishery, there was no real effort expended on Atlantic herring until about 2004.

In 2004 that effort was expanded due to management questions about haddock bycatch within the directed Atlantic Herring Fishery. The observer project dealing with the high-volume pelagic fisheries have recently declined after 2005 due primarily to a lack of funding. There are a lot of challenges in dealing with a high-volume fishery.

Most observer programs deal with what is known as discards, which means that you get on board and whatever is not retained is what really is analyzed by the observer. For many of these high-volume fisheries in which they pump very large amounts of fish, that can be very challenging to try to sub-sample each and every haul, and we'll get into some of those issues later.

There is also another piece of data that goes into sort of any analysis of bycatch for river herring in the directed Atlantic Herring Fishery, and this is the portside bycatch sampling project, which started in 2001 as a commercial catch sampling for Atlantic herring for use primarily in the Atlantic herring stock assessment. In 2002 it was expanded to include some mackerel trips, particularly in the Mid-Atlantic Region, but which land primarily in some of the New England states and to continue with some other sampling.

In 2004 this was also expanded to include a lot of portside bycatch sampling as well, and it is funded largely by ACCSP. For the method for the observer stuff, when I took a look at it, it primarily targets herring by gear type with a range from North Carolina up to Maine throughout the year.

In 2006 there were no observed trips for purse seines at all. Basically, the way it works is a sampler is present at the pumping from cod end, and they document bycatch in that manner, usually by sub-sampling by basket and by hand-select sampling larger items, larger fish. These fish are then weighed, measured and taken for biological sampling, and the data is then all centralized in the National Marine Fisheries Service data bases.

For the portside project, again it is targeted herring by trips and by gear type, a range of sampling from Maine through New Jersey throughout the year. The sampler is present at the offloading of a trip from boat to shoreside processing facility, and it documents all bycatch by lot. All the lots are from one particular trip, which may or may not be total catch for that entire trip.

And, again, bycatch and directed catch has taken biological samples, and then the record of the lot weight, statistical area fished, and gear type and month are taken as well. We sort of have two sort of sampling regimes to get at some of this bycatch information. For the analysis that I did with Gary Nelson and Mike Armstrong from Massachusetts DMF, we defined targeted Atlantic herring trips, and this is very important, as landed more than 2,000 pounds of Atlantic herring on any given trip, and that is how we defined a directed Atlantic herring trip.

We used a combination of both observer and portside sampling regimes that were stratified within each individual strata, and these strata contained year, area in broad view, being the Gulf of Maine, Georges Bank, Cape Cod and Southern New England. If you remember from my last presentation probably about a year ago, maybe a year and a half, I broke out the Gulf of Maine into two sort of sampling strata all by themselves, and for this analysis I've merged them together.

Then you looked at things such as gear type; in this case, single and pair midwater trawl, purse seine and then bottom trawl, and then the other part of the strata is quarter of the year. We used a ratio estimation, pounds of river herring, the pounds of Atlantic herring, and that is different than some of the other methods that are used. Then you propagate these errors through those simple ratios.

Again, here is our sampling area strata for which we combined samples and landings. There is the Gulf of Maine, Cape Cod, Georges Bank and then the Southern New England area, so three area strata. The results for river herring is that you can see there has been a large change by year in the number of trips that have been observed; 2005, you're looking at 251; down to a low in 2007 of 82. In 2008, for this update, about 126; the average over all the years is about 144 trips.

If you look at it as a percentage by weight, in 2005 the combined observer and portside sampling measured about 24 percent of the overall landings; 7 percent by 2006; 8 by 2007; and around 20 for 2008;

with an average of about 16 percent, so a little bit above average in 2008 in terms of weight. If you look at some of the discard estimates; in 2005 the discard estimates were about 200,000; when you expanded them up, almost 300,000; about 150,000 for 2006; over a million and a half for 2007; and at 2008 about half a million, a little bit more. 2008 comes in roughly a little bit less than the average for all of those years.

However, if you look at the confidence – the CV that is associated with some of these estimates, they're really quite high. You're looking at CVs approaching about 50 percent; some years down to almost 30; in other years, almost 70. When you look at something like this, for example, it is 262,000 plus or minus about 61 percent, so that is a fairly large confidence interval associated with that.

I did the same thing when it comes to shad, taking a look only at American shad that are caught in directed Atlantic herring trips; again, a landing greater than 2,000 pounds. Of course, the number of observed trips and the percent weight do not change. The discard estimates you see here vary quite highly from 64,000 pounds down to 10,000 pounds. In 2008 it was a little bit above the average at about 37,000 pounds.

However, one of the things I want to draw your attention to is the confidence of this; again, 64,000 pounds plus or minus about 96 percent, so that is a very large confidence interval associated with that and even much larger than what you would find for river herring. When we look at river herring again and if we look at what type of gear types contribute to some of the bycatch, in 2005 pair trawls and single midwater trawls; 2006, a fairly low level, some bottom trawl, some single trawl; by 2007, again, those large estimates; purse seine, bottom trawl is the dominant gear that affects estimates of river herring by catch; pair and midwater trawl; by 2008, again, pair trawls and single midwater trawls.

One of the things to notice is the size of these error bars. These are quite large for this type of a study. One of the questions is why are bottom trawls so highly variable? Well, when you actually break it down and take a look at how many samples occurred in one of the more dominant areas of which you have river herring bycatch being the Southern New England area, bottom trawls, there were only two observed trips in 2005 between portside and observer bycatch sampling.

By 2006 there were five trips that were observed; in 2007 there were seven trips observed; and in 2008 only three trips were observed. These are very small numbers of trips that are observed in this particular area for bottom trawls, so it is not surprising that you get this kind of variability. If you look at where some of this river herring bycatch occurs, fairly equally in 2005 among all of our strata, Georges Bank, Gulf of Maine, Southern New England.

2006 seems to be more dominated by Southern New England; in 2007, Southern New England and Georges Bank. Remember Georges Bank also includes that area just east of Cape Cod. Then in 2008, as you can probably predict, Southern New England, but then there is a fairly significant bycatch compared to Southern New England here in the Gulf of Maine, and, again, is for river herring.

If you looked on a map of where some of this river herring bycatch occurs, 2005 through 2008, you can get a better idea of where it occurs. It occurs in some cases in Cape Cod Bay; a little bit east of Southern Maine off of Jeffries; in that area of the Channel here; and then off of Block and a little bit further south; and then here, just south of Long Island. This is only observer data, and observer data has a better spatial resolution allowing you to do these types of analysis, so this does not include portside.

If you look at the estimated removals here, you know, 500 to a thousand pounds. If you look at when the river herring typically occurs, the bycatch occurs throughout the year, it seems to be dominated particularly Quarter 1. This is when the Atlantic Herring Fishery in particular tends to be operating south of Cape Cod with some bycatch occurring here in Quarter 4 and more strongly in Quarter 4 in 2008.

For shad, it is sort of a different story. If you notice the estimation, notice the change in the scale here from about 200,000 to 2 million; and if we look at the estimates for shad, we're talking 10,000 and 90,000, just to give you an idea of what the scale is. This was a significant change in scale. Again, pair and single midwater trawl, note the error associated with these. These are almost as high as the actual estimates are themselves.

Again, for 2006, pair and single midwater trawl; 2007, pair trawl. In 2008, however, we do see a significant bycatch in comparison with purse seines that occur as well; roughly about 10,000 pounds, which is slightly higher than what you see in single midwater trawls. If you look at where some of this

bycatch occurs, you actually get a little bit of a different picture than what you see for river herring.

There is some Georges Bank, a lot in 2005 in the Gulf of Maine and then in Southern New England. Again, note these error bars which are almost as high as the estimates themselves. In 2006, predominantly Southern New England with some Gulf of Maine; in 2007, roughly equal; and then in 2008, Gulf of Maine again dominates is where most of this bycatch occurs for shad.

Again, the scale change is much different than what you would see for river herring. Again, if you looked at the observed catch of American shad by gear and by area, you can get a good idea of where it occurs; the Gulf of Maine here, and then the area off of Cape Cod; and then some occurring south of Long Island as well as around Block Island and south of Massachusetts.

If you look at when shad bycatch occurs, again it is sort of a different picture. Here you predominantly find it in Quarter 4, but again the size of the error bars are really quite large. Some of the things that stand out is, for example, Quarter 1 and Quarter 3 in 2008.

So, some conclusions, this is pretty much the same slide that I used for my last presentation. Bycatch is fairly low, but may be significant to the stock itself. You're looking at bycatch rates of well less than 1 percent to around 2 percent by weight of Atlantic herring, but nearly 70 percent of your trips are zeroes. Nearly 70 percent of those catch events, you don't have any bycatch of river herring.

2008 is similar to the long-term estimates, long term being since 2005, and significantly reduced from 2007. The estimates are horribly variable. We've got CVs that are approaching one by strata. The variability among years is highly disconcerting, and it seems like some of this variability is connected by the number of samples.

The coverage is very, very limited, particularly lacking for bottom trawls on certain years and in certain areas. Much of the discards, however, gives you a feeling for discards – I'm sorry, and in this case bycatch occurs in Quarter 1 and Quarter 4, mostly around Cape Cod and in the Southern New England area.

For shad, again, the bycatch is very low in comparison with the coast-wide commercial removals; roughly less than 10 percent. The

estimates of removals, however, are nightmarish. Your confidence intervals are approaching one for entire year, plus or minus, nearly a hundred percent. The variability among years is huge, and it probably isn't very useful for estimations of shad discards.

Coverage, again, is very limited, lacking in certain areas, times and by gear type. However, you can get sort of the feel for where some of this bycatch occurs when you take a look at it, and much of it occurs in Quarter 1 and Quarter 4 in Southern New England and in general in the Gulf of Maine.

So, what is next? Data through 2009, the observer data is pretty much ready, as soon as I get access to it. However, the VTRs in the directed herring fleet are not ready. They will be finalized probably within the next few weeks and usually by about April the vessel trip reports for Atlantic herring are fairly set.

Maine DMR, I've got a grant from the National Wildlife and Fish Foundation for a two-year study to place observers on board directed herring small-mesh bottom trawl trips within the Gulf of Maine. We also received money to subcontract to increase observer coverage as a subcontract in the Southern New England Small-Mesh Bottom Trawl Directed Herring Fishery.

In addition, the state of New York has given Maine DMR some money to look at shad bycatch in the directed herring fishery, and so our sampler for a small amount of money is increasing portside bycatch, looking for shad bycatch in the area south of Cape Cod. Just some acknowledgements, I'd like to thank the Atlantic Herring Fishery.

These guys have been really, really good about allowing us access to the plants and data and those types of things. We worked pretty closely with Massachusetts DMF and have recently been working with the New York DEC. ACCSP funds most of this project as well as the Interjurisdictional Fisheries.

The NMFS Observer Program has been really, really helpful in funneling data, methods and in providing sometimes logistical support, as well as the Northeast Fishery Science Center, which has helped in some of the analysis, and as well as you guys. That's it.

CHAIRMAN RHODES: Matt, thank you for that presentation. I see hands with questions.

MR. DOUGLAS GROUT: Thank you, Matt, and would it be possible, first of all, to get a copy of this presentation e-mailed to us at some point?

DR. CIERI: Yes, absolutely.

MR. GROUT: Thank you. One of the things that struck me was going back to the number of observed trips which you were showing are very low in that one particular graph that you were pointing out. The thing that struck me, within our briefing material we had a report from Paul Rago and Susan Wigley on river herring discarding in '07/'08, and they indicated in Table 1 that in small-mesh otter trawl in New England there were 67 trips in that year. How does fit in with this? Is this just one section? Did you say this is just Southern New England trips or is that all trips in New England?

DR. CIERI: No, for one thing, this is just Southern New England. The second thing is they were doing it by gear type, so remember cut-off point is gear type and pounds landed. In order to be called and included in this analysis, you had to land more than 2,000 pounds as a gear type for that trip.

MR. GROUT: So, the ones in Paul's include trips that did not land 2,000 pounds?

DR. CIERI: Right, exactly.

MR. PAUL DIODATI: Well, it is not first time we've seen this information, Matt, but it gets more refined everytime you presented it. Good job and congratulations to you and all your colleagues in doing all this work. You mentioned your confidence intervals several times, which is driven by your CV rates, but it is not just the sample size.

I would think it is the prevalence of what you're looking for. Sometimes it is so low that your CVs are going to be higher, and you saw that I think in one of the river herring years that river herring was close to 2 million pounds and your CV was low because you incurred them. This is the common of trying to find a needle in a haystack.

Although you seem to be refining it and we've gotten a lot of direction from this work, overall it doesn't seem to be as problematic as you would think. These levels, even with those CVs, again there is an explanation for why those CVs fluctuate, but it seems to be it is a needle in a haystack. That is the message I'm getting out of this.

DR. CIERI: Yes, let me show you something. Again, just getting to Paul's point, again nearly 70 percent of your trips sort of have no bycatch at all and roughly 25 have a percentage of river herring to Atlantic herring of zero to 2.5 percent. So what you

end up finding, for example, is if you only have ten trips in a strata, that means that seven of them are going to have absolutely no bycatch of river herring at all and three are going to have a high degree of variability associated with them, and that contributes to some of these estimates.

Normally when you have a normal distribution – to get back to scientific jargon, which is what I'm more comfortable with, when you have a normal distribution you need a certain number of samples. When you have this sort of a distribution you need a lot more samples to figure out what things are, because, of course, 70 percent of your samples have nothing in them, so you need to bump up your sample size when you have this type of a distribution in your error structure.

MR. JAMES GILMORE: That actually sort of answered my question, but I'm still a little bit concerned that – I looked at those error bars, and if I remember biometry correct, is like all you've got is presence or absence because either bycatch is occurring and that's all we know. We really can't quantify it. If we're going to try to quantify that, we have to increase the samples dramatically based upon the size of those error bars.

I guess the question it gets to is the juice worth the squeeze? I mean, how much do we have to – you know, how much is it going to cost actually to get this to be predictive. We need to identify this, but if this is the level we're going to use, this isn't going to help us at all because it is not predictive at all with the size of those error bars.

DR. CIERI: Actually, Bill Overholtz, during the Amendment 5 process, went through and did a discard analysis and looked at confidence and what it would take as far as percentage coverage. The New England Council has been going through exactly that whole same question of what kind of observer coverage is needed and how should it be done and those types of things.

MR. TERRY STOCKWELL: Thanks, Matt, for a good presentation and that funding that you were able to get sure should help reduce the error bars, but I'm wondering – and I should probably know this – what percentage of trips do you anticipate observing over the two-year time period?

DR. CIERI: Over which two years?

MR. STOCKWELL: For your grant?

DR. CIERI: Well, we're hoping to get something around 25 percent for the small-mesh bottom trawl. The portside sampling covers anywhere between 8 to 10, and the National Marine Fisheries Service covers roughly 8 to 10, and then we have some overlaps that we can compare.

MR. STOCKWELL: And will any of those trips be in state waters?

DR. CIERI: Whatever occurs in state waters; it's sort of a catch as catch can, so my understanding is that some of them will occur in state waters.

MR. CRAIG SHIREY: I was wondering are we sort of looking for the horse in the barn after he has already left. To some extent, are these very low catch levels the result of very low total stock size, and, of course, you're not going to find much to look at; what is your feeling on that?

DR. CIERI: In general, as I sort of alluded to here, the bycatch numbers that you're looking at for river herring equal in some years the coast-wide commercial catch, so what you're seeing is your estimated removals, plus or minus 60 percent, are roughly on par with what is being removed from the coast-wide stock from the commercial fishery.

I guess that is one way of taking a look at it. In general there are no real estimates of river herring stock size over all the Atlantic coast, and so how this all figures together is something I don't know. I just sort of passed this off to some of the other scientists that work on river herring. Maybe Kathy here can give you a better handle.

MS. HATTALA: Yes, I have a couple of comments or questions for Matt. I liked Craig's question. I think it is fairly accurate to say at least for American shad we know the stocks have been declining precipitously. They're extremely low, so, yes, it is a needle in a haystack. Only because the stocks are very low, it is going to be a rare occurrence, but it is affecting what it is, it is finally returning to some of these almost nonexistent shad stocks anymore.

The same thing I think is going to be occurring for river herring. It is not really clear. I would really urge the board to move this to the stock assessment committee, who is already trying to deal with this issue in the river herring stock assessment. This was dealt as a huge black hole in the shad stock assessment.

I think we need to sit down, the technical people, all of them including the assessment, with folks like Matt and the National Marine Fisheries Service people and try and ferret out is this really a needle in a haystack or is it what Dr. Shirey suggested, stock sizes are extremely low, so, yes, bycatch is going to be very low. It is still very disconcerting when you get estimates, even though your CVs are extremely high, of nearly a couple of million pounds, which translates to nearly 4 to 5 million herring.

MR. DAVID SIMPSON: One piece of information in response to Jim's question about how hard do you have to squeeze for the juice and then another comment about changes from one year to the next in fisheries responsible for bycatch. Sue Wigley's work that Paul is the co-author on and there is a third one, actually answers that question.

Doug pointed out that there were 67 trips that went into the estimate of river herring bycatch, and result was a CV of 160 percent. To get down to a 30 percent CV, it would require 1,441 trips or 3,390 days at sea, so multiply that times a thousand dollars per day, and there is your answer. The observation I made was that there was high bycatch estimated for the Southern New England small mesh in the first quarter in '07, as I remember it, and it went down in '08.

I recall at the time the industry has been keenly aware of this issue, and my understanding was they were trying to avoid that area so there was less effort in that area and perhaps a real reduction in mortality or bycatch. The other thing I noticed was that the purse seine level in 2008 suddenly went from, on the axis to notable, and it seems to me there was regulatory change at that time.

I don't know if I have my timing right, but that forced some pair trawl boats to go to purse seines. I don't know if Matt can respond to that or someone from the industry – there are a couple of people here – but I think it would be noteworthy if there were behavior changes in the fishery to reduce bycatch, to be aware of that.

MR. LEROY YOUNG: I have two questions just so I'm clear. These estimates are estimates of the entire bycatch, although they're poor, for those three areas, these samples; is that correct?

DR. CIERI: Yes, that is correct; these are basically ratios that are scaled up to the entire fishery.

MR. L. YOUNG: The next question I have; do you have any idea of what proportion of the entire bycatch for the entire fishery in the United States as well as in Canada this would represent?

DR. CIERI: I'm not sure if I quite follow the question.

MR. L. YOUNG: What about any fishing south of the area you sampled or in Canada; what proportion would this be of all of that? Is there any guesstimate of that?

DR. CIERI: That I don't know. What it comes down is this was just looking at directed herring trips. That means herring trips that landed more than 2,000 pounds, and that means limited access permit holders. This was just for the Atlantic herring fishery.

MR. GROUT: I agree with Kathy's suggestion that this information does need to be sent to the technical committee for their input on this and their consideration in their stock assessment for river herring that is coming up. I will caution against using landings as a comparison because as we all know we have a number of states that have complete moratoriums right now on landings and harvest of river herring.

Even in my state where we do allow landings, we're only landing 9,000 fish a year, which is a very small amount. What we do need to know is to see, to the best of their ability, how this bycatch compares to total stock size. In our state we have 9,000 river herring being harvested every year, but we have just in the rivers that we monitor several hundred thousand river herring returning every year just from the spawning stock. That is really the indicator we need to do is to compare it to the total stock size and not to landings, because our management actions are reducing those harvests.

MR. BEN MARTENS: Matt, when we looked at one your maps, you had the locations where the river herring were mostly caught throughout the time. I was wondering do you have data that breaks that down in terms of time as well as area. I know there has been some work on river herring hot spots, and I don't know if you have any thoughts on that.

DR. CIERI: All this stuff for this particular map has the associated day and month in which it was observed and those types of things in general. Again, of course, because you're looking at directed herring trips, you're looking at the guys that actually go after herring, and so it follows along that they're going to

be catching river herring where there are Atlantic herring.

For example, here what you find is it follows the pattern of the guys that fish; you know, they're catching them here because they're catching Atlantic herring; and they're them down off Cape Cod because that's where Atlantic herring are. In general, you're not getting a cut of where river herring are; you're getting a cut of where the Atlantic herring fishery is.

MR. DIODATI: Matt, you've mentioned that there is going to be some continued or new funding coming along, and the Commonwealth of Massachusetts is still committed to spending similar amounts of money that we already have been spending on this, so I think what we can expect is a continued level and not likely an increased level, but continued at the level of sampling that has been ongoing for the past several years.

What that means for the board is that this picture is not going to become more refined over the next couple of years. I think our understanding of these bycatch levels, this is it, and I think that we will get more on the timeline, but it is not going to change, so the variability that you see, the variation around the estimates is probably going to continue.

I think we're going to have to decide whether this is useful information for us to make continued management decisions, to change those decisions, to add to them, whatever we're going to do, but I don't think we could expect to wait another year or two hoping that this information is different. I think we're just going to see a continuation of this type of information.

DR. WILSON LANEY: But to that point, and, Matt, correct me I'm wrong, I thought I heard you say that for at least the bottom trawl your NFWF grant was going to enable you to sample up to 25 percent of the trips, so that should reduce the CV at least for that particular gear type; correct?

DR. CIERI: You would certainly hope, but Paul is correct. By and large for the directed Atlantic herring fishery, we're not adding new personnel. We've got a couple of new initiatives, but you get what you pay for.

CHAIRMAN RHODES: Anything further from the board? We had a couple of public comments.

MR. PAM LYONS GROMEN: Pam Lyons Gromen with the National Coalition for Marine Conservation.

Matt, I thought from the last board meeting that we were going to hear a bit more about the herring unknown and fish unknown categories. Those have been very large in the standard bycatch reporting methodology data that has been reported the past few years.

We had in 2008 data 885,000 pounds of unknown herring that was observed, and this year's most current data there was almost 2 million pounds of unknown fish. Most all of it is attributed to the midwater trawl fleets. Can you explain or can we talk about that some more; do you have any information or can you enlighten us on what those categories are so large?

DR. CIERI: There is a reason why they're called unknown, and that is because you don't know what they are, and that is not because of the observer. It's probably because of some other things that are going on during that sampling period. I just used what was known within this analysis; because if you don't know it, well, you really don't know what it is.

For this analysis it was simply what was identified. If you want to talk with the Observer Program about their classification of what is unknown and what that might be, you probably would be best off talking to some of the folks that do the Observer Program. I'm just the analyst.

CHAIRMAN RHODES: All right, we'll take one more public comment. I think a lot of this information that Matt has gotten, if I'm reading the board correctly, will need to be shared if it is not already with the stock assessment subcommittees and the technical committees.

DR. CIERI: Yes, absolutely.

MR. PAQUETTE: Patrick Paquette once again with various recreational organizations. Three questions, Matt, and relatively simple ones; one, even though they are the same boats with the same crew coming out of the same ports on the same days, this does not include any of the mackerel fishery; correct?

DR. CIERI: It depends on how you define mackerel fishery. You can define a directed fishery in any way you wish to, whether it catches a pound or not. What it does do is these are the trips that landed more than 2,000 pounds of Atlantic herring. Now, under the classic targeting of mackerel, are there trips included in here in which they've caught a whole lot of mackerel; for example, it might be 98 percent

mackerel, absolutely, in which case they were included.

This just deals with the directed Atlantic Herring Fishery as we have defined it. So, yes, it includes trips that are in fact targeting mackerel and in fact might be targeting squid or butterfish or some of the other fish. The only requirement is that they landed more than 2,000 pounds of Atlantic herring, so they were limited access permit holders.

MR. PAQUETTE: The second question and it is a followup to what Ms. Gromen just asked regarding the herring NK because I made that original question when Chairman Diodati was chairman of this board about a year ago when they directed that this would be – that the herring NK, but in a followup to your response, is there a reason that you know of that they were called herring not known?

DR. CIERI: That is something you're going to have ask –

MR. PAQUETTE: Because they weren't called like bluefish not known or striped bass not known; they called it herring unknown.

DR. CIERI: Like I said, I wasn't on board.

MR. PAQUETTE: And my final question is in a press release by the Atlantic States Marine Fisheries Commission over a year ago the statement was made that Dr. Cieri, through his bycatch analysis, estimated that the at-sea or ocean bycatch possibly was estimated to exceed the known commercial landings of river herring; does that statement still apply?

DR. CIERI: As far as I know.

MR. KAELIN: Jeff Kaelin with Lund Fisheries; thanks for giving me an opportunity to speak following the other two questions. I just wanted to provide the board with a little bit of additional information beyond what Matt told about funding levels and initiatives and so forth. The industry did work closely with Maine DMR to also receive \$300,000 in the State Justice Commerce Bill to augment the onshore monitoring program, which we helped develop three or four years ago, so there is going to be additional monitoring money coming that represents, depending on how the money is going to be spent, twice the amount of coverage that the program currently provides through the level of funding that ACCSP did for a number of years.

In addition, after the board met in November, the Sustainable Fisheries Coalition, which represents the midwater trawl fleet, quite a few seiners, also, made a proposal to the National Fish and Wildlife Foundation for money for a river herring bycatch avoidance program in small-mesh fisheries. I have a copy of it that I will give to Kate, and I have it available electronically, also.

I didn't think about bringing it today. I didn't want to overwhelm you with information, but I think this is important, and what we're proposing is to develop a bycatch avoidance incentive system. This is partnering with FMAST in Dartmouth, Massachusetts, Dr. Stokesberry, who actually does have quite a bit of knowledge about Canadian catches as well. Someone asked about that earlier.

I think having Kevin involved in this will help inform this whole issue in time. We want to develop a predictive model of where river herring are likely to occur in space and time. We want to develop a real-time bycatch avoidance inter-fleet communication system, probably using the black boxes that we have where we can e-mail to each other where we're seeing river herring and hopefully attempt to avoid it not only in the midwater trawl fleets but also in the bottom trawl fleets; and, also, additional support for port sampling;

It is a \$400,000 request to NFWF. This also contains a code of conduct which I spoke to you about earlier where the fleets can use test tows, limited tows, tows of limited duration when they first go into an area where we think we're going to run into these things and attempt to mitigate the bycatch of them as much as possible. I'll make sure Kate see this. I'll give you an electronic copy also. Maybe the board might be interested in taking a look at it. Thank you very much, Mr. Chairman.

DR. LANEY: Jeff, do you know if that has been submitted to – do you have any idea when you will hear back as to whether it has been funded or not?

MR. KAELIN: I think that the cycle ends sometime within the next month or so, Wilson. I'm not sure. This is one of the first initiatives where we've actually gained the support of the Environmental Defense Fund. We have been working for several years to try to find some partnerships with some of the environmental groups that are concerned about our fishery, and this is an example of that effort I think, so hopefully you'll be interested in seeing in.

CHAIRMAN RHODES: All right, any further questions for Matt? All right, one last public comment; this will have to be our last.

MR. LORI STEELE: I'm Lori Steele. I'm the FMP Coordinator for the New England Fishery Management Council for Atlantic herring. I just want to make one minor clarification to some of the information that Matt presented. As he indicated, this information is a summary of catch information for trips that landed 2,000 pounds or more of Atlantic herring.

That is not necessarily the limited access fishery. Open access permit holders are restricted by a possession limit of 6,600 pounds or 3 metric tons, so open access permit holders that may be fishing in other fisheries that landed more than 2,000 pounds of Atlantic herring would be included in this information.

One of the things that we're going to try to do in the upcoming Herring Amendment, which we look at river herring bycatch, is come up with a more accurate definition of what a directed herring fishery or herring trip may be, because 2,000 pounds or more of Atlantic herring certainly can cover a lot of other fisheries that are not necessarily directing Atlantic herring. We may be taking this information, as we're paring it down, in the relatively near future to what we might be able to more accurately characterize as a directing herring trip. Thank you.

MR. GILMORE: Mr. Chairman, Kathy had suggested that maybe the technical committee get together with Matt and the Service to maybe go over this a little bit more, and I think Doug had supported that suggestion. Do we need a motion to do that or is that something that we can just charge?

CHAIRMAN RHODES: I don't believe we need a motion for that. Any further comment on this issue? Michelle.

DR. MICHELLE DUVAL: I know in light of Matt's presentation and while we're on this topic, I know staff has put together – all board members have received the National Marine Fisheries Service response to some of the letters that we've sent out requesting expedited action with regard to increased at-sea observer coverage.

Staff has put together sort of a little draft issue paper for options to respond to the National Marine Fisheries Service response to us, and I'm wondering if this might not be an appropriate time to have that

discussion, but I leave that to your discretion. Thank you.

CHAIRMAN RHODES: That was actually the next item on the agenda. All right, Matt, I wanted to thank you for your presentation. Michelle, would you like to lead us into this?

DISCUSSION OF REQUEST FOR SECRETARIAL EMERGENCY RIVER HERRING ACTION

DR. DUVAL: I can certainly try. Does everyone have the piece of paper that staff passed out? Just to back up a little bit; it was our intent in asking for emergency action from the National Marine Fisheries Service, the thinking was that we might actually get some action within a year to eighteen months as opposed to the lengthier, potentially, two-to-three year process of an amendment, recognizing that both the New England and Mid-Atlantic Councils already have actions underway and trying to see if there was some means for pushing forward on a little bit faster track some of those intended actions.

I don't sit on the Mid-Atlantic Council, and I think I'm sort of looking to some of the folks here around the table who have participated certainly more intimately and frequently in those discussions with regard to the development of Amendment 5 for the Atlantic Herring Fishery and Amendment 14 for the Squid, Mackerel, Butterfish Fishery as to their advice on how best to respond to the NMFS letter and what they might see as the best means of moving forward at this time.

MR. STOCKWELL: As Lori Steele just laid out, Amendment 5 of the Atlantic Herring FMP is underway. We have taken a brief period of time to finish Amendment 4 for the ACLs and AMs, but our work begins again at the end of March with a goal, I believe – you can correct me if I'm wrong, Lori – of having the document done this year.

The primary intent of the amendment is a comprehensive monitoring program, and addressing the river herring bycatch and also haddock bycatch are also primary goals of this plan. I think there are multiple people in this commission that sit in – Doug, myself, David Pierce, Mark Alexander from Connecticut, we all sit on the council and most of us are on the Herring Committee. It is our primary intent to move this forward in an expedited manner.

Of the bullets and the possible actions that I'm looking here, the NMFS response suggested

menhaden coverage should increase, well, from the state of Maine's perspective we've got a pelagic license that we've just submitted before our legislature and should that pass we're going to have some fairly comprehensive monitoring in the state of Maine, and we will be able to bring that data to the Menhaden Board and to the Commission to help fill in some of the gaps that we have that are quite wide now.

DR. DUVAL: One of the things that I'm certainly interested in is potentially developing a proposal to submit to the National Fish and Wildlife Foundation. I think Kate told me that the next RFP is sometime in April, I believe. Certainly, I think we received the message from NMFS that we here need to try to do something certainly with at-sea observer coverage within state waters and not just federal waters.

I'm wondering if there are any states around the table that would consider working together to perhaps submit a proposal, as did Maine, to try to fund some pilot observer program for at-sea observer coverage. I don't think we get very much coverage down in the North Carolina area, just from Cape Hatteras north.

Certainly, there could be some benefit there, but that would be something that I would certainly be willing to take on. Then the other thing I was wondering in terms of fully funding the SBRM recommended coverage, I'm wondering if there has been any cooperative efforts between the staff at NMFS as well as folks here at the commission to work together to try to promote the need for that funding.

MR. ROBERT E. BEAL: I can't recall the commission commenting on SBRM funding and the need to fully fund that project.

MR. STOCKWELL: Just for the record, I omitted the inclusion of Rhode Island on the council. Mark Gibson is on the Herring Committee. He has been a valuable addition to the whole process.

MR. GROUT: Maybe I could check in with the service to see if they have any idea – the president's budget was released; how is the fund for at-sea observers for the FY-10 or FY-11 budget year?

MR. STEVE MEYERS: It seems that everyone at this table except me has received a copy of the president's budget, so I will have to get back to you on that. Thank you.

MR. JASON DIDDEN: Jason Didden, Mid-Atlantic Council staff. Just an update on Amendment 14; we

will be doing scoping in the spring. Amendment 14 also has catch shares for squid fishery, so that is likely to be a multiple-year endeavor. At the Mid-Atlantic Council next week, we also will get a presentation on SBRM and prioritization.

I think that small mesh is down from last year. Last year the Mid-Atlantic Council requested and was granted extra days. We will see what the council wants to do, but I think the Mid-Atlantic small mesh was down about maybe more than half, and I forget about the New England small mesh, but I think it may have been down also.

CHAIRMAN RHODES: Thank you for the report. At this point, I guess as a board we can either take an action in response to the Secretary of Commerce – we can look at any of these other actions – or we can get further information at upcoming meetings. I don't get a feel that anyone has any actions to be taken at this other than the information that has been brought up; the acknowledgement that Amendment 5 and Amendment 14 are moving along, and that we will get further updates from the states involved. Michelle.

DR. DUVAL: I guess I do have one suggestion. I think perhaps once we get an answer back from our friends at the National Marine Fisheries Service with regard to what has been funded or not funded in the president's budget, it might be appropriate to write a letter, perhaps a joint letter I'm thinking from maybe the commission and the councils emphasizing the importance of this funding; and if it has not been fully funded or if the levels of funding that have been provided thus far are certainly not sufficient to provide the coverage that is needed to lower the CVs that we're looking at, that might be in order.

CHAIRMAN RHODES: Excellent suggestion and Mr. Travelstead would be happy to be on that committee. That being said, we'll move on to the next item on the agenda. Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: In response to your question about other things to do, one suggestion might be – the board is on record to the Secretary saying this is an emergency, and at the moment the Secretary doesn't agree with that.

There may an optic/visibility advantage of us committing to keeping this on your agenda every time this board meets to at least revisit the status and confirm that you're not going to take any additional action or eventually conclude there is no more emergency. It seems to me if you're going to say

there is an emergency and nothing has changed on our part, there may be some advantage in at least acting like the emergency is continuing. It is just a suggestion. It doesn't cost you anything.

CHAIRMAN RHODES: I agree to keep that placeholder in the meetings. We can have the follow up from the members that are on the councils and that are on the other boards looking at observer data and funding sources. I agree completely. All right, Kate.

AMENDMENT 2 RIVER HERRING SUSTAINABLE FISHERY PLAN SUBMISSION UPDATE

MS. KATE TAYLOR: This is just a brief update on the Amendment 2 River Herring Sustainable Fishery Plan. As you recall, Amendment 2 was passed by the board back in May. As stated in the amendment, states and jurisdictions are required to submit a sustainable fisheries management plan by January 1, 2010, and there was an option for states to submit plans with their annual compliance reports. States without an accepted plan in place must close by January 1, 2010.

Currently the states or jurisdictions that have submitted plans to the ASMFC include Maine for a recreational and commercial fishery. New Hampshire should be on that list for a recreational and commercial fishery; the District of Columbia for a recreational fishery; North Carolina for incidental harvest only fishery; and for South Carolina for a commercial and recreational fishery in the Santee-Cooper River.

The next steps include that the technical committee will be meeting to review these plans, and they will develop recommendations to the board. In order to help facilitate the technical committee's review, there was a request for information from any other states that are considering submitting plans so the technical committee can review all the plans in the most efficient manner possible. If any other states are considering submitting plans by the compliance report deadline, if you could let me know, that would be appreciated. That is my report, Mr. Chairman.

CHAIRMAN RHODES: Thank you; any questions?
Terry

MR. STOCKWELL: Kate, when do you anticipate the technical committee making the recommendations back to the board?

MS. TAYLOR: If there is a large number of states or jurisdictions that are going to be submitting plans prior to the annual compliance report deadline, it might be more efficient for the technical committee to review all the plans at once, so it could be after that. If many states do not express that they will be submitting plans, then it could be as early as the next technical committee meeting, which has not been scheduled, but it could be with the technical committee meeting week.

MR. STOCKWELL: As this is a new process for all of us, I hope that the technical committee will have a back-and-forth conversation so we can smooth out some of the wrinkles.

MR. GROUT: Isn't the compliance report deadline July 1; so if we're waiting until then, we wouldn't get any feedback no earlier than the summer meeting.

MR. ROY MILLER: We're trying to nail down that compliance deadline; can you help us out a little more, Kate, when the states should take action relative to Amendment, by when?

MS. TAYLOR: What action are you referring to?

MR. MILLER: If a state was going to close its fishery or demonstrate that they had a sustainable fishery; when is the drop-dead deadline for that action to take place?

MS. TAYLOR: For states that do not have a plan that has been approved by the management board, the fishery must be closed by January 1, 2012.

DRAFT AMENDMENT 3 FOR AMERICAN SHAD

CHAIRMAN RHODES: Any further questions of Kate? All right, Kate, we'll move on now to Draft Amendment 3. This, as you all remember, was deferred at the annual meeting, so we are going to pick up from that point.

REVIEW OF MANAGEMENT OPTIONS APPROVED AT ANNUAL MEETING

MS. TAYLOR: My presentation just includes a brief overview of the actions that were taken at the annual meeting just refresh anyone's memory, and then the document walks through the amendment so that we cover all of the issues contained in the documents. The first issue that the commission addressed at the November meeting was accepting the sustainable

fishery definition that was contained in Amendment 3.

That definition mirrors the one that is in Amendment 2, which is those fisheries that demonstrate their stock could support a commercial and/or recreational fishery that will not diminish the future potential stock reproduction and recruitment. The board approved this at the last meeting.

The board also looked at the overfishing definition. As you recall, the Amendment 1 definition of overfishing only looked at mortality from the directed fishing, and this definition was concluded to be no longer valid in the 2007 American shad stock assessment. At their last meeting, the board adopted the use of Z-30 as a mortality benchmark at the annual meeting.

The last item that the board addressed at the last meeting is the juvenile recruitment failure definition, which in Amendment 1 was that three consecutive JAI values are lower than 90 percent of all other values in the river-specific data set. The new definition that the board has adopted states that failure occurs when three consecutive JAI values are less than 75 percent of all other values in the stock-specific data series. It lowers the juvenile recruitment failure definition and is similar with that as you see with the striped bass.

CHAIRMAN RHODES: Does anyone on the board have any questions, concerns or problems with what has been previously passed before we move forward? Wilson.

DR. LANEY: Well, not a question or a concern, but a comment relative to the JAI threshold, that 75 percent number; those of you who are on the Striped Bass Board recall that we tasked that technical committee with looking at the whole JAI time series and the issue and trying to come up with a better way to assess and evaluate the JAIs.

The only thing I'll say is what I would suggest is that the Shad and River Herring Technical Committee may want to take a look at what the Striped Bass Technical Committee comes up with in regard to the striped bass JAI time series, and there may be some useful information gleaned there that the Shad and River Herring Technical Committee may want to take a look at and decide whether or not they want to stick with the 75 percent or whether there is a better way of using those data.

MS. TAYLOR: The next section is in the draft amendment document deals with monitoring fisheries independent and fisheries dependent, and this is where the board left off their discussion at the annual meeting. Staff did develop a memo with the technical committee on the specific monitoring differences between Amendments 1, 2 and 3. Amendment 1 refers to Addendum I to the Technical Addendum and Amendment 1. The board can pick up their discussion at this time.

DISCUSSION OF REMAINING OPTIONS

CHAIRMAN RHODES: What I would like to do at this point is put the options back up again to refresh the board. Everyone got those in your packets, but we have that right here.

MS. TAYLOR: Amendment 3 makes changes to the requirements that states currently have under Amendment 1. One of the most notable differences is that jurisdictions that share a river or estuary are considered equally responsible for their monitoring. It also advocates for increased coordination of data collection between freshwater and marine sections of agencies with the data provided to the ASMFC to help facilitate in the stock assessment process.

If you will refer to Table 2 that is contained in the draft amendment, that table lists which states would be required to conduct juvenile abundance surveys, adult stock structure and abundance surveys as well as hatchery evaluation programs if those are relevant to that state. When it comes to the fisheries-dependent monitoring, those are contained in Table 3 of the document. This would be required monitoring for the commercial and recreational fisheries. States or jurisdictions would still have the ability to apply to the board for de minimis status.

CHAIRMAN RHODES: All right, is there any discussion on the monitoring program or monitoring section? David.

MR. SIMPSON: I would just say largely it looks fine to me, but with the understanding that states are going to need some latitude in terms of what all can be accomplished between what is affordable and what in an ideal world we would like to have. One of the things, just for an example that pops out, is under the fishery-dependent sampling where it reads "mandatory reporting of" – it used to read "mandatory reporting of catch, numbers and weight and effort," and now inserted in there is "mandatory reporting of landings number and weight, catch numbers and weight".

Of course, that implies a comprehensive bycatch monitoring program. Catch I think used to be used loosely to mean the landings, but with this addition it clearly implies that some kind of comprehensive bycatch monitoring would be required. As we heard earlier, that could be quite expensive. I think it is fine to keep that concept in the plan, and we'll all strive to do as much as we can but to require a couple thousand sea days in Connecticut for this resource would be prohibitively expensive.

MS. HATTALA: In the amendment it really does address the issue that you just bring up. In three places in Amendment 3 it is drafted – and I can't remember exactly – in the bycatch monitoring description and also back in the compliance section the words, "Amendment 3 will allow" – and it is probably one of the first amendments that this commission has ever written – it allows alternatives to be proposed in lieu of what appears in Tables 2 and 3.

It also addresses the things which are concerned about bycatch monitoring. You have to understand the standards that were set by the monitoring requirements listed in all the tables, including bycatch, came out of the data gaps that appeared in the 2007 assessment. It sets the bar pretty high.

However, alternatives are allowed under the plan. What a state can do is say, "All right, I can do A and B; I cannot do C and D because of my fiscal issues", which I think most all states are in the same boat here, literally, you propose that as alternative monitoring. It goes before the technical committee.

In the implementation plan that is suggested under the new amendment you can address here is my target, here is my timeline for implementation, my alternative monitoring will get me to this first step. It won't me to the top of the heap. This is going to be a very step-wise progression, filling in the gaps as we go, because it recognizes that we can't do everything.

The alternative option that was written into this amendment is extremely important for this board to understand. It allows that flexibility, yet it keeps the standards high on the scientific standard that you need for all the data. No, you're not going to get it all at once; we recognize that. You can scale it back. Once approved by the board, your alternative plan can be substituted for the required monitoring in Tables 2 and 3. I think that is back in Section – it is either in Section 3 or 4. It is written into the amendment.

CHAIRMAN RHODES: Thank you for the clarification. At this point I think we'll need a motion. Michelle.

DR. DUVAL: First of all, I think there is some business from the last meeting that we need to take care of. I know that we had a tabled motion from the annual meeting. I believe that motion has to come off the table. It was a motion that I made and Mr. Simpson seconded. There are two things I want to do, two motions I want to make initially.

The first is to untable that motion and the second would be to withdraw it. I think that our minds were all a little bit cluttered at the last meeting by the late hour, and I would just like to withdraw that motion and propose that we have a fresh discussion and a fresh set of motions with regard to monitoring.

CHAIRMAN RHODES: Does the seconder consent?

MR. SIMPSON: I do, thank you.

CHAIRMAN RHODES: The tabled motion has been withdrawn with approval of the seconder.

DR. DUVAL: **With that, I would like to make a new motion to adopt the fisheries-dependent and independent monitoring program as proposed in Amendment 3, Tables 2 and 3. If states and jurisdictions cannot meet the monitoring requirements, they can work with the commission to develop an acceptable alternative in their fishing/recovery plans as stated in Section 6.** If could have a second to my motion, I would explain it a little bit more.

CHAIRMAN RHODES: Seconded by Mr. Laney.

DR. DUVAL: As the technical committee chair outlined for us, there is flexibility built into Amendment 3. I think this board needs to acknowledge what the PDT has outlined in those two tables the information that is necessary to restore the stocks of American shad and properly manage them.

There are a couple of places where that flexibility is clearly stated in the draft amendment. The first is in Section 3 on Page 17 in the Monitoring Section which says that the states or jurisdictions may propose an alternative monitoring as they develop a stock-specific definition of sustainable fishery or recovery targets, as the technical committee chair noted.

The second place is in Section 6 on Page 51, the second paragraph; again stating that the monitoring sections of fishing/recovery plan updates should address the state-specific monitoring requirements; and if a state can't conduct that required monitoring, the update should identify what can't be done and why so that the commission can work with the jurisdiction to explore alternative funding or an acceptable alternative. I think we need to commit as a board to working towards that full suite of proposed monitoring measures. We may not get there overnight, but we can certainly make positive progress in a step-wise fashion. Thank you.

CHAIRMAN RHODES: Thank you; any further discussion? All right, all in favor raise your right hand; any opposed; null votes. **All right, it passes 18 in favor, one opposed, no nulls.** Mr. Simpson.

MR. SIMPSON: I think to go with that and to help both the technical committee and the board, **I move that we request the technical committee review and prioritize the data collection elements that are in each monitoring program, and that review should include a brief explanation of the importance of each element to the stock assessment.** I think that will help the states to formulate their plans and work the assessment priorities against the cost of each one.

CHAIRMAN RHODES: Seconded by Mr. Stockwell. Any discussion? Any opposition? **Seeing none, this motion passes.**

MS. TAYLOR: The next section in the document deals with bycatch monitoring. As proposed now in the draft amendment, it states the jurisdictions will be required to annually monitor bycatch and discards in fisheries that operate in state waters of rivers and estuaries and that ocean bycatch and discards should be monitored cooperatively by coastal states through the commission in cooperation with the fisheries management councils and NOAA Fisheries.

CHAIRMAN RHODES: Any discussion? Leroy.

MR. L. YOUNG: Does that refer to recreational fisheries as well as commercial fisheries?

MS. TAYLOR: It deals with all fisheries, which would include recreational.

MR. L. YOUNG: So my question is what will be expected or anticipated in a, for example, recreational fishery where there are some discards, but it may be

so minimal that the cost of acquiring that data just doesn't make much sense?

MS. HATTALA: I think initially what the technical committee is looking for is, hopefully under MRIP – I have high hopes – that they can at least address the tidal water issues and where it is addressed in each of the states. I know that the line where sampling – quote, unquote – occurs varies from state to state.

For instance, for the Delaware, which is your concern, it will probably mostly be done in tidal water, which is down below Trenton. As I said, the alternative option as stated for the required monitoring also applies to the bycatch monitoring. For instance, we may have to start looking at how creel surveys are done; perhaps logbooks, which I know the state Pennsylvania performs up in the upper river; guide logbooks; et cetera. There are many alternatives that the states can explore to obtain that kind of data.

CHAIRMAN RHODES: Does that answer your question?

MR. L. YOUNG: Yes.

CHAIRMAN RHODES: Any further discussion? Yes, Paul.

MR. DIODATI: It sounded to me like the intent is really to capture recreational fishing activity through MRIP. If that is the intent, should we make this specific to commercial in-river fisheries? Would that give better direction to the states? That is what I would prefer. Well, there is no motion, but there was a recommendation there that if it was more specific to commercial fisheries, I think that is better understood. Otherwise, I think it leads to a whole area of new work for states that is going to be very difficult to piece together.

MR. THOMAS McCLOY: I guess I need a point of clarification regarding bycatch monitoring. We're already, by approving the last motion or the second to last motion, kind of indicated that bycatch was implied in there based on those monitoring requirements. Looking at the document, it talks about the amendment recommending ocean bycatch and discards be monitored.

Then when you look at the monitoring table, fishery-dependent monitoring, under bycatch it says "require monitoring and reporting of harvest". I think with the situation that we've all talked about for quite a while this morning, a mandatory bycatch monitoring

of all fisheries is going to be extremely onerous on most of us. Some of us may be in better shape to deal with some of that than others, but I guess from my perspective I'd like a clarification on whether this is a recommendation, which we can all agree to, or whether it is mandatory.

MR. MILLER: My question is somewhat related to Tom's. I was going to try to get some more clarification on the requirements for where recreational discard bycatch monitoring is required because MRIP, to my knowledge, will probably not go upstream of the extent of tidal water. In the Delaware that becomes problematic because where the tide ends at Trenton Falls, upstream of that point is where most of the sport fishery occurs, and so it isn't at all clear to me yet – I don't know whether Leroy is clear; it isn't at all clear to me whether the states of New Jersey, Pennsylvania and New York would have to do recreational discard monitoring in the non-tidal Delaware River for compliance with this plan. Thank you.

MS. HATTALA: As I said before, the state of Pennsylvania already has an angler logbook system. Actually, they're going on line with it; is that correct? There also is a guide logbook. The whole idea there is, as I said in the alternatives, a step-by-step process. The state of New Jersey has also looked at logbooks.

In New York waters, the way that the law was written by our legislature it requires a marine recreational license for individuals fishing on the New York/Pennsylvania section of the river. Our marine recreational license should allow us access into a data base perhaps of logbooks and/or phone surveys, et cetera. I think, like I said, the alternative sections in this amendment allows you to explore or further expand the logbook system, which can still get at that same level of information. It may not be perfect, but it is at least starting to crack the nut.

DR. DUVAL: If there wasn't anymore discussion, **I was going to try to offer a motion with regard to bycatch and given the flexibility that has been pointed out within the document, the motion is to recommend that states and jurisdictions address their in-river estuarine bycatch monitoring needs and intent I think in their sustainable fishery proposals and fishing/recovery plans.**

CHAIRMAN RHODES: Is there a second? Seconded by Mr. Stockwell. Michelle.

DR. DUVAL: I guess I'm hopeful that this will get at the availability of flexibility in the ability of states

and jurisdictions to propose some alternate and creative means to try to get at this need in a step-wise fashion.

MR. GROUT: Just for clarification, as I see this, since New Hampshire doesn't have any – we would prohibit commercial landings of shad, and the only thing we're required to monitor is the recreational fishery through MRFSS, and we wouldn't have to submit this within any plan we might to submit, because we're going to be de minimis. We're going to request de minimis. Is that everybody's understanding?

CHAIRMAN RHODES: I'm seeing a lot of heads nodding. Anymore comments on this motion? Any opposition to this motion? **Seeing none, the motion passes.** Terry.

MR. STOCKWELL: I have a follow-up motion to make which I think will complement the discussion we just had on the emergency action discussion. **The motion is to recommend that board and states collaborate with shad and river herring bycatch reduction efforts of the New England Fishery Management Council Amendment 5 and the Mid-Atlantic Fishery Management Council Amendment 14 ongoing FMPs.**

CHAIRMAN RHODES: And a second by Dr. Duval. Discussion. I think this goes well and ties in very well with our discussion that we had earlier. Is there any opposition to this motion? Seeing none, we move on to the next order of business. **The motion carried.** All right, the next option in this is the commercial fisheries management measures, which has just been put on the board. Kate.

MS. TAYLOR: The draft amendment contains a number of options for the commercial fisheries management measures, and the board can consider these options individually or can choose more than one option for combined management measures.

MR. STOCKWELL: Mr. Chair, I've got a motion when you're ready.

CHAIRMAN RHODES: All right, I think we're ready.

MR. STOCKWELL: Okay, **my motion is to adopt Option 3, to close fisheries with exceptions for those systems with a sustainable fishery and that de minimis states are exempt from this provision.**

CHAIRMAN RHODES: And we have a second by Mr. Gilmore.

MR. STOCKWELL: And my rationale for this option is that it is consistent with the board's discussion in Amendment 2 and underscoring the gravity of the measures necessary to restore the shad stock while recognizing that each state's and jurisdiction systems are and may be uniquely different

CHAIRMAN RHODES: Okay, thank you. This is also the AP's recommendation at this point. Is there any discussion?

MR. A.C. CARPENTER: I have got a question about the de minimis states are exempt from this provision. With shad landings as low as they are, becoming de minimis may be very difficult for a lot of states as other states close down their fishery. Has any thought been given to the implication of this and how that might work out in a few years?

MS. HATTALA: Good question, A.C. New York will be closing hopefully this spring. That leaves two on the Mid-Atlantic coast. That leaves PRFC and then the Carolinas and Georgia. I think what we'll have to do is go back and look because the de minimis as defined is less than 1 percent of the total coastal landings. You still may be able to achieve that. I think that will remain to be seen. 2008 or was it 2009 was 544,000 pounds. I can't quite recall what PRFC was. I know New Hampshire is going to be under it and Maine.

MR. CARPENTER: Yes, we're under that as well.

MS. HATTALA: So I think you would still retain your de minimis status, so we may have to examine that in the future.

MR. CARPENTER: I just question whether that sentence is even needed here. If you don't have enough landings that you are de minimis right now, then obviously you've got something going on in your system that is having a problem and maybe you do need to close what is left of it.

MR. McCLOY: Just to comment, I appreciate the sense of this motion in keeping consistency with river herring, and so in keeping consistent with river herring I will make the same comments I made at that point in time, which are essentially the wherewithal of my particular state to provide proof positive that we have a sustainable fishery is very problematic and most likely we will be forced to close. Based on that,

I can't support the motion knowing full and effect that it will be removing opportunities from our fishermen potentially based on our inability to do our work.

MR. GROUT: Well, I can take credit for the de minimis sentence here. My concern with having something like this in the commercial and then for any recreational measures, quite frankly I can count on these two hands the number of shad that come back. We have closed our fishery, which probably addresses it.

I shouldn't say we closed our fishery; we just prohibit commercial landings or commercial harvest of it within our state waters. What I'm trying to do is get away from the administrative burden of having to produce a sustainable fisheries plan for a one or two fish per day creel limit for shad and just allow us to have that under our de minimis.

CHAIRMAN RHODES: Any other discussion? All right, at this point I guess we vote on this motion. A.C.

MR. CARPENTER: Mr. Chairman, **I would like to amend the motion by deleting the last sentence.**

CHAIRMAN RHODES: To the maker of the motion; is that a friendly amendment?

MR. CARPENTER: I doubt it.

CHAIRMAN RHODES: All right, so a substitute motion has been proposed – or amended. A.C., would you like to read the amended motion?

MR. CARPENTER: If I can get a second, I'll read it.

CHAIRMAN RHODES: Any second? All right, Mr. Augustine seconds.

MR. CARPENTER: All right, **I move to amend the motion that was there by removing the last sentence; therefore, the motion would read "close fisheries with the exception of those systems with a sustainable fishery".**

CHAIRMAN RHODES: All right, the amended motion has been read and seconded. Wilson.

DR. LANEY: Mr. Meyers and I had a question for the technical committee chair. Steve and I were wondering what the technical committee position would be on this change or if you have a preference on that?

MS. HATTALA: You may not like my answer. If you have de minimis that means you don't have to prove that your fishery is sustainable and yet you still are harvesting. If you're still harvesting and any other indices indicate that the stock is declining, you would still be exempted and allowed to continue fishing. I think that is what that statement says. It is about linking your sustainable; i.e., is your stock stable or if it is declining and you still fall under de minimis status, but it is declining, with the statement that the initial motion would allow you to continue fishing, so there are certain implications there.

DR. LANEY: Followup, Mr. Chairman. So, do I interpret that correctly to mean that you would rather see that sentence excluded from the motion per Mr. Carpenter's amendment?

MS. HATTALA: Yes, I would prefer to see the de minimis sentence removed.

EXECUTIVE DIRECTOR O'SHEA: Just to let you know, the staff tinkered with the wording at Mr. Graham's suggestion. I checked with the maker of the motion and he assured me that the words we now have up there are what he meant.

CHAIRMAN RHODES: Thank you very much. The motion we are voting on is amending the previous motion by deleting "de minimis states are exempt from this provision". A.C.

MR. CARPENTER: I would like to speak to the motion. I think the report that we just got from Kathy is exactly what my concern was. The way the motion was initially drafted on the board there, a state could continue to fish a river system's stock into extinction because it was always de minimis. At least this way if you can't prove that it is sustainable, then close it and let Mother Nature take her course and hope for the best is my rationale here. I mean, that is the whole basis of this entire management plan that we're working on

CHAIRMAN RHODES: All right, are we ready to call the question?

MR. CARPENTER: **My motion is move to amend by deleting the words "de minimis states are exempt from this provision".**

CHAIRMAN RHODES: All in favor raise your right hand; opposed same sign; null; abstentions. All right, the motion passed 15 in favor, 4 opposed, no null and no abstentions. **The motion now on the floor would be the board moves to adopt Option 3, close**

fisheries with the exception of those systems with a sustainable fishery. This motion was made by Mr. Stockwell and seconded by Mr. Gilmore. Is there any discussion of this motion? Mr. Fote.

MR. THOMAS FOTE: I have been pretty quiet today. I can't support this mainly because I'm going to close fisheries that I know are sustainable. We don't have the information to do it and I will not have in the immediate future because of the money constraints in the state. I'm putting people out of the fishery because of the failure of the state to basically act upon on it. I'm having a tough time with it. I understand I'm going to vote against it, but it is just because – it is not because I don't respect it, but I just can't close fisheries – I can't support closing fisheries just because we have no money.

CHAIRMAN RHODES: Any other discussion? Do the states need to caucus on this? All right, I'll give a minute to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN RHODES: All right, are we ready? Mr. Miller.

MR. MILLER: A critical word in this motion is "sustainable" and so during that break we looked up the definition of "sustainable" in the plan, which is in Section 2.2 on Page 14. We have a question, if we may, concerning that definition. If I may quote, "Amendment 2 defines a sustainable fishery" – by Amendment 2 it is referring us to the sustainable definition from the river herring amendment – "Amendment 2 defines a sustainable fishery as those that demonstrate their stock could support a commercial and/or recreational fishery." My question for clarification is could a jurisdiction or a state close a commercial fishery while keeping a recreational fishery open by that "and/or" statement in the definition of sustainable?

MS. TAYLOR: Yes, the board did approve the sustainable fisheries definition at the last meeting. In the case of a commercial or a recreational fishery, the District of Columbia in their river herring sustainable fisheries plan has requested a recreational fishery for river herring to maintained open. In other instances there are commercial and recreational fisheries being requested to remain open, so it could be either/or.

MR. L. YOUNG: However, this motion is just on the commercial fishery, correct?

CHAIRMAN RHODES: Correct. I think his question was the sustainability, which we had passed previously. A.C.

MR. CARPENTER: I thought the question was that this motion would only apply to the commercial fishery. Okay, I stand corrected.

CHAIRMAN RHODES: Right, it was just sustainable definition which would be for either fishery. All right, all in favor please signify by raising your right hand; opposed; abstentions; null votes. **All right, the motion passed 18 in favor and 1 opposed.** Now, on to the recreational fisheries suite of options. Discussion? Is there a motion? Terry.

MR. STOCKWELL: At the risk of having A.C. helping me again, **I am going to make a motion to adopt Option 4, close fisheries with exceptions for those systems with a sustainable fishery and de minimis states are exempt from this provision.**

CHAIRMAN RHODES: Seconded by Doug Grout. Terry.

MR. STOCKWELL: My rationale for including the de minimis particularly in the recreational fishery is we have a closed commercial fishery and a recreational fishery of two fish. It is a very small fishery that is enjoyed by a handful. To come up with a sustainable plan that would pass technical muster would probably be impossible. For the number of fish that are landed, from my perspective justifies a de minimis status.

MR. GROUT: To back that up, we're going to be using the MRFSS and the incidents of intercepts in this are extremely low, so any estimates that we would have of the catch are going to have tremendous CVs on it. I'm also hoping again to – which is the purpose of de minimis – to relieve our administration burden of having to develop a sustainable fisheries plan for it.

It took us quite a bit of time to put together our river herring sustainability plan. I felt it was well worth it for that particular species, but given the number of shad that we have in our state, and we have not fished it to extinction in thirty years, I think this is warranted.

MR. L. YOUNG: My concern with this motion is that in recreational fisheries, unlike commercial fisheries, catch and release is an option. My concern is that when we close fisheries – I guess we in

Pennsylvania could just apply for de minimis and deal with it that way. If we close these recreational fisheries, we also are going to reduce the interest by our anglers in the fisheries and just eliminate shad fishing I think is not a good thing. If we can allow catch and release, that still minimizes harvest or mortality of these fish and allows the fishery to continue.

CHAIRMAN RHODES: Is that a motion to amend this to add catch and release? These options can be combined so you could have a four-five hybrid as your –

MR. L. YOUNG: Yes, I would like to make a motion to amend the previous motion to say “close fisheries or allow catch-and-release fishing” to that motion.

CHAIRMAN RHODES: Okay, to try and perfect it, you would like to adopt Motion 4, or your motion would be to close fisheries with the exception of those systems with a sustainable fishery and allow a catch-and-release only.

MR. L. YOUNG: Correct, but I'm not sure how to word it, but that is the intent.

MR. ROBERT H. BOYLES, JR.: I understand where Leroy is coming from. One of the things that I think we need to think about at least in my state, fishing is defined in code and fishing is defined as taking or attempting to take. I think we just need to be very, very careful and deliberate about how we go about this. Thank you.

MR. CARPENTER: We don't have a recreational fishery within my particular jurisdiction, but this de minimis thing continues to bother me. You're now really mixing apples and oranges here in the sense that the only way that de minimis is even calculated is through the commercial landings. We have no good effort and recreational take estimates up and down the coast.

By that very mixing of apples and oranges here I think you're compounding this thing. If you have a recreational fishery occurring within any river system, is it recreationally de minimis or is it commercially de minimis? That still bothers me. I do like the attempt to say that you've either got to close unless you can prove it is sustainable or only allow the catch and release. I think that is a very good option, but I'm still troubled by the de minimis part of the initial motion.

CHAIRMAN RHODES: Well, towards your one question, I know our state does have to report recreational and commercial landings of shad and other states likewise. At this point we still don't have a seconder to this motion. Tom.

MR. FOTE: I'm just curious of how are we going to find the state de minimis. Since most of the states are closed and if you're catching four fish, you could be part of the practice that is going on there. I mean, we're arguing over de minimis, and I'm sitting here thinking about, well, most of the states are closed, so how many fish do you need to catch to be not de minimis, and I think it is going to be very few fish.

It is not one of those situations that we are on most species, but this species is going to take – I could see a hundred pounds being too much to be de minimis. Am I right or wrong? It is just a question I'm asking from the technical committee because I have no idea. I'm thinking about this process and we're arguing a long time over de minimis and I don't think anybody is going to be able to get de minimis if they catch more than three fish.

MS. HATTALA: To answer your question, de minimis is based on total coast-wide landings. There is the commercial category and the recreational category. We have a better handle on the commercial just because of the reporting systems. We don't have really a handle on the recreational. That was pointed out in the stock assessment. That is why we need to get better estimates. So, yes, your de minimis status for recreational fisheries will be extremely hard to prove because we don't have good, current, annual estimates.

MS. TAYLOR: Just for a point of clarification, Leroy, are you looking to amend the motion so that it is close fisheries with exceptions for systems with a sustainable fishery or to allow a catch- and-release fishery for those systems that do have to close?

MR. L. YOUNG: Yes.

MR. SHIREY: I would like to second that motion.

DR. DUVAL: Would it be possible as your sustainable fishery proposal for your recreational fishery to propose only allowing catch and release?

MS. TAYLOR: Yes, that could be a possibility, but this would eliminate the need for a state to have to develop a sustainable plan or target for – or just include this section in their plan when they submit it.

MR. L. YOUNG: And I think this makes it very clear rather than just implied.

MR. STEVE MEYERS: Mr. Chairman, I hate to add a wrinkle to this, but I'm reminded of the catch-and-release mortality in the striped bass fishery at high levels. If we have catch-and-release mortality in a catch-and-release fishery in a system that is not sustainable, what does that say? Thank you.

MS. HATTALA: There are very few estimates of catch-and-release mortality on American shad. There was done in Maryland which was approximately 1 percent. We attempted to do the same in New York a few years back. It was estimated at 1.6 percent as post-release mortality. However, I'm going to couch this with a lot of what-ifs. The holding time for the fish after catching; were it minimum only 48 hours or in the case of New York five days, and then our control started dying, so there is a handling issue and there is a more long-term mortality that is not clear with American shad.

Immediate catch and release is probably on the order of 1 or maybe perhaps 2 percent. Long term after that, because of the handling issues, it could be much higher, which we have yet to determine. So, yes, this is going to be an issue if you have it in a system where it is unknown, so this could be perhaps a research effort. New York has proposed this along with Pennsylvania on trying to get additional monies from other states to perhaps examine it in some of these other systems what this post-mortality estimate actually is further than what known studies have told us.

MR. SHIREY: I think the data on catch and release is spotty, but in those areas that we do have some good data, such as the Susquehanna in Maryland, they were supplying the fish for their hatchery program strictly as catch and release from hook and line, and it was very viable for years and years. I think in certain areas or in many areas the catch-and-release mortality is actually very low.

MR. JACK TRAVELSTEAD: I'm confused by the motion. It seems to say that if you can prove your fishery is not – if you can't prove your fishery is sustainable, then you can still have a catch-and-release fishery, but if your fishery is sustainable, which means you could have a directed fishery but you can't allow catch and release. It says you can allow a catch-and-release fishery only for those fisheries that have to close.

MS. TAYLOR: If a system is looking to remain open with a catch-and-release option, they could still do that in their plan; but in the instance of New Jersey, if they feel they don't have enough information to actually prove their sustainability, they could be allowed to remain open with a catch-and-release fishery. Does that answer your question?

MR. TRAVELSTEAD: Could you say that one more time?

MS. TAYLOR: For systems that feel they don't have enough information to prove that they have a sustainable fishery, they would be allowed to be maintained open with a catch-and-release fishery. To the maker of the motion, is that correct?

MR. L. YOUNG: Yes, this only addresses those fisheries where you cannot prove sustainability. If you can show sustainability, the fishery would be allowed. Obviously, there are various options in any fishery; various creel limits or catch and release, whatever the state would want to use obviously more restrictive than this, but if you had a sustainable fishery you could allow harvest or you may want to choose to go to catch and release.

MR. BOYLES: I share Jack's – I can't tell if we're being ambiguous or too detailed. I'm still stuck on a catch-and-release fishery is a possession limit of zero, and what I'm inferring from the discussion is that in fisheries that have an approved sustainability plan, that there may be a possession limit that is greater than zero, but at the end of the day all other fisheries would be a possession limit of zero. I remain concerned about the enforceability of that, but I would like to see where the discussion is going.

DR. LANEY: This may further cloud the issue, but a question to the technical committee chair, and that is this as great a concern – I'm talking about catch and release now – in the three southern most states in the range where the fish are going to die after spawning, anyway? That may be something the technical committee would need to discuss further.

I guess there would still be a concern about catch-and-release mortality if the fishery is occurring on pre-spawning fish; whereas, if the fishery was prosecuted on fish after they spawned, is it as big a concern because those fish are going to die, anyway, since there is limited or no repeat spawning in those southern populations south of North Carolina.

MS. HATTALA: I agree with your statement, Wilson.

MR. SIMPSON: I think I'm in the camp of I'm not sure we need this additional text, for clarity to Jack's point, I think if the motion were reworded to be motion to amend that motion to read "close fisheries with the exception of a sustainable fishery", period, and then begin a new sentence that says "those fisheries that do have to close are allowed a catch-and-release fishery only". Is that what is intended; does that help?

MR. L. YOUNG: I guess it depends on what the definition of a fishery is. If you say the fishery is closed – I mean, in Pennsylvania our view of a fishery is you're allowed directed fishing for that fish, but we have many catch-and-release fisheries, so this is saying two different things. With that change, closing the fishery and yet allowing a catch-and-release fishery; that is what is confusing me.

MR. SIMPSON: I guess here the practical difference is in terms of enforcement, I think it is extremely difficult to pinch somebody for catch-and-release fishing. They're not possessing anything. In my view, in the Connecticut River shad recreational fishing occurs in a very discrete timeframe, in very discrete places, with very discrete gear, and I think it would be clear enough to law enforcement that if you're throwing a shad dart below the Enfield Dam in April, you're probably shad fishing. I don't know that he would get a conviction, but this would be just saying clearly you can go ahead and do that as long as you let the fish go and you don't keep any.

MR. BOYLES: I think I understand the points. I'm not sure we're being ambiguous; I think we're being too detailed. I agree with Dave and I'll give you an example in the South Atlantic. Harvest and possession of Goliath grouper has been prohibited for a number of years and the regulation is simply that; harvest and possession is prohibited.

That is not to say that those things don't end up on the end of a line sometimes, but our anglers know that if you get a Goliath grouper you're not remove it from the water. I agree with Mr. Simpson; I think we're being a little too specific here. Again, in South Carolina, my jurisdiction, catch and release is harvest and possession is limited to zero; and if you happen to bycatch, as long as that fish is returned to water, I don't think there is a violation.

I'm quite certain that our enforcement officers don't write tickets along those lines. I would suggest to the maker of the motion that I think that is implied here, and maybe that gets out of this crack. Thank you.

MR. CARPENTER: Not in the case of the shad but in the case of striped bass, we have a provision in our regulation that if you're fishing for striped bass during the closed season, you have to use a barbless hook. One of the outcomes of that was when we were debating that, law enforcement said it is an unenforceable regulation.

The commission said, "Well, maybe it is and when you get case thrown out of court, come back and talk to us and we'll talk about changing it." That was about 15 years ago. We have never had a case challenged in court. The only thing that ever happened was it took a year or two for the word to get out that if you're fishing in January off the power plant, use barbless hooks.

I think it is same kind of concept here. It is a hook-and-release fishery, and one of the things that you can do is to say that if you're going to allowing a hook-and-release fishery, require the use of a barbless hook. It has worked for us and I think it has some potential here. You could include that in your state plan.

MR. TRAVELSTEAD: I think we're making this overly complicated. I really don't think the motion is needed. I think throughout the history of saltwater fishery management we've always assumed that when we're closing fisheries, that catch and release is still allowed. Now I know some states have some exceptions in particular fisheries to that, but I think this is the first time we've ever talked about addressing a catch-and-release fishery in saltwater.

I just don't think it is needed. I think it is going to be very difficult to enforce. What if somebody is fishing for hickory shad? How would you ever prove they were – are you going to cite them for illegal catch and release of an American shad when they're fishing for hickory shad? I just don't think it is needed.

MR. L. YOUNG: I think I'm understanding some of the problem here because freshwater fisheries are very different than marine fisheries in that context. There are many catch-and-release fisheries in freshwater systems, and in Pennsylvania you will be pinched if you directly fish for fish if you have a closed fishery. If we could go back to the original motion, I think I have an idea to maybe fix this. If we simply said "prohibit harvest in fisheries where there is no sustainable fishery", I think that would perhaps fix this.

CHAIRMAN RHODES: All right, I may need the parliamentarian here to figure out which we can take off or if you've just added a friendly amendment. Do we have to vote down the first motion or are you withdrawing that, Leroy?

MR. L. YOUNG: I would withdraw it – I guess I withdraw it in hopes of fixing this thing to make it work better for everybody.

CHAIRMAN RHODES: All right, so at this point we're back to the original amendment, and you would like to make a friendly amendment to that which would read?

MR. L. YOUNG: **"Prohibit harvest with exceptions for those systems with a sustainable fishery. De minimis states are exempt from this provision."**

CHAIRMAN RHODES: And the maker accepts that and the seconder? All right, Mr. Boyles.

MR. BOYLES: I think I understand Leroy's problem. This may be just my issue in South Carolina, but when you're prohibiting the harvest, the way our code is that includes attempting to take. I think we're being overly prescriptive here. The technical committee will review the sustainable fishing plans and I think each state can craft their sustainable plan to include the potential for catch and release.

I'm afraid we're being a little too prescriptive and we're getting down in the weeds and it is going cause me some issue back home. I'm just wondering if there is a way that we can move the ball down the field so that everybody goes home and understands the intention and we're not overly prescriptive.

MS. HATTALA: I think where the clarification is is whether or not you can harvest, so I think Leroy's amendment of the original one gets at it, but the trouble is its intent, but the thing is you have to be very clear. Intent is everything; the proverbial road is paved with them. Sustainable fishery in my perspective means you're going out and directing harvesting on fish.

Prohibiting harvest would allow, under what Leroy is trying to do, is like, for instance, develop an allowable catch-and-release fishery. There is another wrinkle to this, as I've been listening, is that if the state does not have all the data to prove whether or not you can have a sustainable fishery, to prohibit harvest allows you to continue with a catch-and-

release fishery in the meanwhile. I think that is your intent, Leroy, yes. There is a fine line there, and I understand your concern where even if you have the intent of directing on a fish, that is considered by your law enforcement as directing and intent to harvest even they may not be.

MR. BOYLES: Could I suggest perhaps a friendly way out of this? Could we suggest “retention” rather than “harvest”? Will that get us where we need to get; replace the word “harvest” with “retention”. I don’t make that in the form of a motion; I’m just discussing this. Does that get us out of this crack?

MR. L. YOUNG: What does that mean?

MR. BOYLES: That is why I’m suggesting I think we’re being overly prescriptive.

MR. JOHN DUREN: I have some language I’ll put on the table as an alternate, but I think it captures what we’ve all been saying or what everyone has been saying. **This is the language “prohibit harvest and possession except in sustainable systems but allow states to permit catch-and-release fishing in unsustainable systems.” If any heads nod, I’ll make that a substitute motion.**

MR. MILLER: I’m sure this wasn’t John’s intent, but the way I read that it now would say that you could only have a catch-and-release fishery in an unsustainable system, and you might want a catch-and-release fishery in a sustainable system. That would be state’s or jurisdiction’s option. Maybe if he just struck out “in unsustainable systems”, he would cover all the bases.

MR. DUREN: That’s a good point, Roy.

CHAIRMAN RHODES: All right, do we have a second? Seconded by Mr. Carpenter for the substitute motion. Doug.

MR. GROUT: So the result of this, from our particular status, is that if we didn’t – I’m trying to relieve myself from an administrative burden, so I’m not going to submit a sustainability plan. As I see this, then would I be able to still have a catch-and-release fishery? Is there any way I could get a one-fish creel limit? That is what I was trying to get is just to maintain – if they’re going to catch it, we haven’t had our resource go extinct, it’s still there, and that’s why I wanted to have the de minimis exception.

CHAIRMAN RHODES: Well, is there any further discussion of this motion? Call the question, and I’m sure states do need to caucus. The motion we are voting on is to prohibit harvest and possession except in sustainable systems but allow states to permit catch-and-release fishing. The substitute was made by Mr. Duren and seconded by Mr. Carpenter. States may caucus.

(Whereupon, a caucus was held.)

CHAIRMAN RHODES: Is everyone ready? All right, all in favor please signify by raising your right hand; opposed same sign; null votes; abstentions. **All right, the motion passed 15 in favor, 3 opposed.** All right, all in favor of the substitute motion, which is now the main motion, please signify by raising your right hand if you’re in favor; opposed same sign; abstentions; null. **This has passed 15 in favor, 3 opposed.**

MR. GROUT: Just one clarification, Mr. Chairman. Since the motion to substitute was provided not by Mr. Stockwell and Mr. Grout, could we not get credit for the motion to substitute that is passed?

DISCUSSION OF IMPLEMENTATION PLAN OF DRAFT AMENDMENT 3

CHAIRMAN RHODES: It’s done. We are getting there; I think we just have one more section left to do, the implementation plan.

MS. TAYLOR: In the draft amendment there is a section on an implementation plan. This plan will consist of two portions. The first is a review and update of the fishing/recovery plans as required under Amendment 1 and the second is the Habitat Plan. The wording in document now states that these plans should be developed for all systems listed in Tables 2 and 3 and that states are encouraged to develop plans for any additional systems as feasible.

The implementation plan consists of two parts. The required part would be for all states submitting a plan, that existing and planned monitoring and existing and planned regulatory measures be included. Then if they’re requesting a fishery, that it includes a definition of sustainability, the development of benchmark goals, and a proposed timeframe to achieve these objectives.

The Habitat Plan should include a summary of current and historical spawning and nursery habitat, threats to those habitats, and a habitat restoration program. The habitat restoration program is not

required for implementation. The plan development team is recommending one year for the update of fishing/recovery plans and a three-year timeframe for the habitat plan.

MS. HATTALA: I have one comment on there. Under the fishing implementation plan, under the description of the proposed monitoring, this is where you would insert your alternative proposal for monitoring as allowed in the other written sections.

CHAIRMAN RHODES: All right, any discussion? Michelle.

DR. DUVAL: Mr. Chairman, **I was going to put forth a motion with regard adopting and submission of a fishing/recovery plan and the habitat plan, which should generate a little discussion, but my motion is that fishing/recovery plans shall be submitted to the technical committee no later than August 1, 2011. Habitat plans shall be submitted no later than August 1, 2013. States failing to meet the sustainable fishery requirement would be required to close their fisheries by January 1, 2013.**

Part of the rationale in the dates for allowing almost 18 months for updating of the fishing/recovery plans and then an addition two years beyond for the habitat plan is that I know at this time last year we approved Amendment 2 for river herring, and we said that states needed to submit their sustainable fishery proposals by January 1st of this year.

There were many states around the table that were unable to meet that deadline, and so they've had the option of pushing that back to July 1st of this year. With all of the work that the technical committee has to do, it seemed to me reasonable to not require submission of those plans until August 1st of next year. Thank you.

CHAIRMAN RHODES: Thank you; do we have a second? Mr. Stockwell seconds. Mr. Boyles.

MR. BOYLES: Mr. Chairman, just for discussion the timeframe that I'm sensitive to is the time between the technical committee review, the management board approval of those fishing plans, and the development of our legislative package. I believe it was at my urging or I was one of the folks urging, with Amendment 2, to give us time, recognizing that we have to legislate this.

My reason for mentioning that is our legislature would convene in January or 2012. We would need

to have a proposal before them preferably prior to that, by December, for the pre-filing date. I am wondering what the technical committee is imagining is a presentation – I can't imagine at the summer meeting but perhaps at the annual meeting, and can they make that timeline and can this board act and approve these fishing plans during the annual meeting to give us time to craft our legislative package?

CHAIRMAN RHODES: So your question, just trying to clarify, would be –

MR. BOYLES: How much time does the technical committee and this board needs to say grace over the fishing plans such that the states can go back and craft their measures for those of us who have to legislate such that we can get it in at the beginning of the session? The way I read this is the technical committee and the management board will have roughly between August 1, 2011, and January 1, 2012, so four months.

DR. DUVAL: I think what Robert is saying is that for him this timeframe that has been proposed is a squeeze because he has got to have something in hand to put before the legislature on or before January 1, 2012, if he was to meet that 2013 deadline of being able to have a fishery that is sustainable and open; am I correct?

MR. BOYLES: That is correct.

MS. TAYLOR: You would have the option to submit it prior to that date and could request that the technical committee review with regard to your situation.

MR. BOYLES: Perfect! As long as the technical committee and board are prepared to do that, then we will certainly do what we can. My concern again is that our legislature would virtually need to pass judgment on this in the 2012 legislative session, which means that we have to get it in there in January or 2012, which means that the management board will have had to have approved such a plan, which I presume we would want to hear from the technical committee. That is my concern/

MS. HATTALA: I think we need to clarify the two timelines because I'm a little confused here. July of 2010 is the drop-dead date essentially for river herring, correct, so that would move to the board perhaps by the November meeting; is that correct? Essentially, all plans have to be in and approved, otherwise, by 2012, so do you really think it is going

to take a year for river herring, given that we have, what, six plans so far for fisheries – maybe seven, one from New York.

To move this to 2013 is a bit far off in the future. I don't know if it is possible to shorten this. For instance, if you wanted to get something to the legislature for implementation in 2013, you have to have it by January 2012; correct?

MR. BOYLES: That is correct. Our legislature meets from January to June; and in order for them to say grace on it, for a January 1, 2013, they will have had –

MS. HATTALA: I'm just trying if we could speed it up a year because it seems to me the only systems that are going to be submitting sustainable fisheries for American shad are going to be those to the south; essentially, North Carolina, South Carolina and Georgia and perhaps PRFC for their bycatch fishery – well, Connecticut has one. I'm not sure what is going to happen in Delaware. There are not going to be whole lot of – there is going to be, what, six states, is that correct?

MR. BOYLES: Mr. Chairman, what I'm suggesting is I think we can live with this timeframe if the technical committee and the board can say grace over it. I just want to be sure of that because the way we are legislatively, if we're looking for a January 1 implementation date, for all practical purposes in South Carolina, because of the legislative process, we have to back that up a year, in essence.

DR. DUVAL: In proposing this date for submission of the fishing/recovery plans by August 1, 2011, I was trying to be kind to our respective staffs back home that have to develop these plans and also try to take into consideration the workload of the technical committee and allow you all enough time to review all those river herring plans plus whatever might be coming down the road for shad.

MR. DUREN: I'm concerned that the habitat conservation and restoration measures in this document are extremely complex and exceed the resources and scope of most of the state administration agencies that are sitting around this table. Also, if the Georgia DNR exhausted all its resources, it couldn't do a thorough job with all these things in this plan. We didn't get a chance to vote on any options on those habitat conservation and restoration measures, so this gives me a lot of trouble.

MR. CARPENTER: I'm somewhat confused by the last sentence there where it says “states failing to

meet sustainable fishery requirements are required to close.” Does that mean that states without an approved plan are required to close and wouldn't it be a little more straightforward if that is what it said?

To meet the sustainable fishery requirement may be different than actually – that to me says you're going to achieve what you have planned to do. You get a plan approved, you may not be able to achieve it, but you're going to have to close now. It is mincing words, I guess, so I'll be quiet.

DR. DUVAL: A.C., your phrase, whatever it was, could you repeat that? That is what I mean, states without an approved plan; I agree, that's much more straightforward and I would absolutely accept that. I think it is much clearer. Thank you.

CHAIRMAN RHODES: All right, does the seconder accept that? All right, the seconder accepts the change.

DR. DUVAL: I was just going to say strike the word “requirement” and “sustainable fishery”.

CHAIRMAN RHODES: Would you like to reread the motion.

DR. DUVAL: Move that the fishing/recovery plans shall be submitted to the technical committee no later than August 1, 2011. The habitat plans shall be submitted no later than August 1, 2013. States without an approved plan for the sustainable fishery are required to close their fisheries by January 1, 2013.

DR. LANEY: To Mr. Duren's concern about the outline that was suggested for the habitat plan – and our chairman, Kathy Hattala, may want to address this – there was discussion of that very point in the technical committee deliberations on that. If I recall correctly, the consensus of the committee was that those states that didn't have issues for particular headings wouldn't have to address those particular issues. That was Point 1 and Kathy can address that.

The second point, though, is that a lot of that work from my perception, anyway, is already done. A tremendous amount of effort was put into each state's wildlife action plan, so a lot of that information I think has already been gathered and is there in those plans, which just have to be basically lifted out and plugged into the appropriate section in these habitat plans.

For some of the information that may not be there, it is also present in the Diadromous Fish Restoration Plans that have been prepared for a little of different river basins for FERC relicensing of hydropower facilities and those are frequently filed with the FERC as comprehensive plans. Such to the extent that those plans are already there sitting on the shelf, many of the state agency staffs were involved intimately in the preparation of those, so I think a lot of that information is already there. It is just a matter of cutting and pasting it and putting it together in this format.

MS. HATTALA: I can add to that. What Wilson said is correct. The habitat plan is basically, in some respects, a laundry list of the known threats to some of these stocks. What the plan is to entail is to do exactly what Wilson said, develop and begin off of existing plans that are known for your system. The other thing is to identify gaps; so if you don't know what power plant impacts are, then you state that; say there no collection mechanisms, there is monitoring, whatever, dealing with the permitting process.

The whole idea of the habitat plan is to identify what you do know and then where the data gaps exist so that leads into further research options, perhaps, within the ASMFC objections for these species, so it is to be comprehensive about what you just basically don't know and do know, identify gaps, and then perhaps ways to fill them, but you don't have to implement programs to fix everything.

MR. L. YOUNG: I hate to bring this up. Does this apply to both commercial and recreational fisheries is the first question?

CHAIRMAN RHODES: Yes.

MR. L. YOUNG: Then the second question is, is this in conflict with the motion we just passed, which would allow catch-and-release fishing in those fisheries that would otherwise be closed?

MS. HATTATA: No, the fishing/recovery plan outlines a timeline of expected work that your state has been doing. This is the monitoring that you will have. If you have targets that have been selected for you stock, as perhaps from '07 assessment or if you can develop targets, that would be laid out there, your alternatives will be laid out there, so that what you can do is to try and meet them. It is for both commercial and recreational. It is not to try and limit you in any way, but it is just to lay it out so that this is how your state will be approaching what your state

has envisioned for your American shad stocks. Does that help?

MR. L. YOUNG: What assurance do I have that I could catch-and-release fishing with this motion?

MS. HATTALA: Because the management option allows it. In your fishing/recovery plan you will state I'm implementing this part of the Amendment 3 management option to allow catch-and-release fishing. You're implementing the management measure in the amendment.

CHAIRMAN RHODES: But it sounds to me like this amendment may need to be altered a little bit to explicitly allow that if someone would like to make that motion.

MR. BEAL: I'll give it a try. I think the previous motion that the board grappled with in respect to sustainable harvest and catch-and-release fisheries and the details that were included in that motion, that described what the states could and could not do under their sustainable fishery program.

I think this motion that is currently in front of the board now is just talking about the timing of when the states submit plans and technical committee approval and then they have implement plans. I think the previous motion took care of the concern that Leroy has, which is stating that fisheries will be allowed to be – or catch-and-release fisheries will be permitted for systems that are not declared sustainable.

CHAIRMAN RHODES: I believe I had John Duren next.

MR. DUREN: I'm sorry, Mr. Chairman, let's get this issue resolved, and then I'd like to go back to another broader issue on habitat.

MR. SIMPSON: I think the comments made about the onerous habitat plan are well founded, and I am relying heavily on the expectation that there will be wide latitude in complying with this, because it really is a very comprehensive laundry list of everything that could possibly affect American shad.

I go down to F and it is programs to avoid, minimize or mitigate associated impacts to American shad migration and utilization of historic habitat from atmospheric deposition and climate change. Atmospheric deposition and climate change may impact restoration efforts and will need to be addressed through cooperative engagement with the

public and regulatory bodies that can influence positive change or eliminate, diminish the identified impacts. It goes on from there. I think it is a pretty comprehensive list and I'm hoping there will be some latitude.

DR. LANEY: Well, to David's point, once again, David, I can't speak for Connecticut but I know in North Carolina right now there is a tremendous amount of dialogue and work occurring with regard to climate change and impacts on all the resources within the state. One of the things that state is doing – and Michelle can speak to it, I think – is that they are looking comprehensively at updating their wildlife action plan and including measures in there for trying to adapt natural resources to climate change.

I think some of that information is going to be developed under the auspices of updating those wildlife action plans. Again, I think there is the opportunity here to meet multiple state mandates at the same time because I think the staffs are going to be working on the issue, anyway.

MR. FOTE: I wish I was as optimistic as Wilson. We have been trying to get Ohio and a few other states to clean their power plants for years and stop dumping everything from mercury and nitrogen in our waters, and it ain't happening and it hasn't happened. To start making that a requirement of plan; I mean, we've been told over the years that we can't basically put a compliance thing in a plan that we have no control over those agencies that do that.

This is going far afield from what we normally do in plans. If they're recommendations, that is fine, but as far as compliance or basically part of the plan, it becomes very difficult. I wish it all would happen, I wish it would happen immediately, but I live in the reality of life and not in dreams.

MR. DUREN: I would like to be real practical about Kathy and Wilson's comments. Let's suppose a state has got a power plant and the state says we know that the thermal discharges from that power plant into the river are detrimental to the shad habitat; however, the power plant is operating according to its permit. Now, when the state writes that in its report, is it going to have an approved habitat plan or is it going to be out of compliance and have to shut down its fishery? That is what I want to know and that is what this plan ought to say.

MS. HATTALA: If your power plant is permitted under your state, it is most likely under the water

quality or the clean – basically, it is under the Clean Water Act if you are under the MPDES System through EPA. New York State, on the other hand, I can speak from personal experience, the state has taken over that system.

If your permit, which has been written by your state, states thus and such, this is what is occurring, they consider this to be within water quality guidelines of existing state regulation, then that is what you state if it is a thermal discharge; or, does your plant do entrainment impingement, which is probably most likely the greater impact.

However, there are other things that as permits are renewed – MPDES permits are renewed on usually a five-year basis. If further information, depending on what your state requires for monitoring, indicates that there are impacts, because usually some sort of environmental impact statement is required, that perhaps down the road, as more information becomes available, that perhaps states can be advised.

This is a plan that is identifying the threats. You don't necessarily have to be – this is not a compliance issue to implement. We want to identify first and then as a group to start looking about how we can fix the problems. The habitat portion plan is basically an identification plan. It is not necessarily you have to implement and fix every single threat that is identified in it.

MR. DUREN: I wish that paragraph were written in there.

MS. HATTALA: It is.

DR. LANEY: Kathy made my point, Mr. Chairman. I was just going to respond the same thing to Tom and note that what we're hoping to get here is I think for the first time a comprehensive list of all the threats so that we can begin to deal with them in a systematic fashion. Certainly, the ASMFC doesn't have the authority to deal with them but other institutions do.

As I've pointed before, I think the ASMFC certainly has the ability and the authority, because of its position of stewardship for these resources, to point out to those other institutions that they need to be taking action to rectify some of these things. The first step in doing that is to write down what the threat is.

CHAIRMAN RHODES: Thank you for the clarification. Leroy.

MR. L. YOUNG: Bob Beal just made a suggestion to me, which I agree with, that would allay my concerns with this motion, and that is by adding the parentheses “with the exception of catch-and-release recreational fisheries”, and I’m just wondering if Michelle would be okay with that change.

DR. DUVAL: Yes, I would agree with that.

CHAIRMAN RHODES: And the seconder agrees also. Anymore discussion? **All right, we will call the question and we will reread the motion: Move that the fishing/recovery plans shall be submitted to the technical committee no later than August 1, 2011. The habitat plans shall be submitted no later than August 1, 2013. States without an approved plan for the sustainable fishery are required to close, with the exception of catch-and-release recreational fisheries, their fisheries by January 1, 2013. Motion by Dr. Duval and seconded by Mr. Stockwell.**

Do the states need to caucus on this? By a show of hands, all in favor; opposed; abstentions; null votes. **The motion passed 19 to zero.** Thank you.

MR. MEYERS: Mr. Chairman, if I may, I believe South Carolina may have a comment relative to this motion and the vote.

MR. BOYLES: Thanks, Steve. Again, I just want it on the record that it is going to require some fairly heavy lifting of the technical committee and this management board for us to comport with the requirement to close fisheries for which we don’t have the sustainable fishery plan. I just wanted to make everybody aware that we’re going to need to do some lifting in that timeframe. Thank you.

CHAIRMAN RHODES: Thank you very much. We have actually two more items. Before we move to the election of the vice-chair, I wanted to recognize Paul Diodati as chairman for the last two years. The annual meeting last year was his swan song, and he was never recognized as retiring from the chair, so I think we all owe him a round of applause. (Applause)

MR. WILLIAM A. ADLER: Before you move on to the next item, do we have to approve the amendment?

CHAIRMAN RHODES: I was just informed of that. I was trying to move ahead here.

DISCUSSION OF REQUIREMENT FOR DE MINIMIS STATUS

MS. TAYLOR: There is actually one more additional requirement, the requirement for de minimis. Currently de minimis, as it is stated under Amendment 1, occurs when the commercial landings are less than 1 percent of the total coast-wide landings, and de minimis applies to both the commercial and recreational sampling. It does not exempt states from fisheries-independent sampling. The board will need to determine de minimis for this amendment.

MR. PATRICK AUGUSTINE: Kate, what states do we have that you want to put on there or is this to say let’s keep the same ones on from last year?

MS. TAYLOR: This is not to approve the de minimis requests from states. This is to approve the de minimis standard for states.

MR. AUGUSTINE: Thank you for that clarification. **Mr. Chairman, I move to approve the de minimis standard as set forth in today’s presentation.**

CHAIRMAN RHODES: Seconded by Mr. Young. A.C.

MR. CARPENTER: In light of the earlier conversation about the use – this is strictly the commercial landings. If it is 1 percent less than the commercial landings, then you can have a recreational fishery that doesn’t get added into the calculation. It is not a combined recreational and commercial landings and then 1 percent of that number; it is 1 percent of the commercial landings only?

CHAIRMAN RHODES: That is correct. Any discussion? All right, any opposition to this motion? **The motion carried.**

MR. ADLER: **Make a motion to recommend to the policy board approval of Amendment 3.**

CHAIRMAN RHODES: To the full commission.

MR. ADLER: **To the full commission.**

CHAIRMAN RHODES: Seconded by Mr. Augustine. Any discussion? Mr. Simpson.

MR. SIMPSON: Just to add the standard as modified by – there you go.

CHAIRMAN RHODES: All right, the motion is to move to recommend that the full commission approve Amendment 3 as modified today. The motion was made by Mr. Adler and seconded by Mr. Augustine. Is there any opposition to the motion? **Seeing none, the motion passes.**

ELECTION OF VICE-CHAIR

CHAIRMAN RHODES: We do need to elect a vice-chair. Mr. Stockwell.

MR. STOCKWELL: Mr. Chairman, **I nominate Michelle Duval as vice-chair.**

CHAIRMAN RHODES: Second by Mr. Laney.

MR. AUGUSTINE: And I move that the chair cast one vote on behalf of the gentleman has presented and close nominations.

CHAIRMAN RHODES: **By acclamation the board moves to elect Michelle Duval as the vice-chair.** Thank you. Wilson Laney has one last piece of business.

OTHER BUSINESS

DR. LANEY: Just an FYI for the board; the Fish and Wildlife Service, Raleigh Ecological Services Office, recently hired Sandy Burk. Sandy, wave your hand, if you would, please. Sandy is in the audience today. A lot of you know Sandy. She is the author of the award-winning book "Let the River Run Silver Again", which is about the American shad on the Potomac River.

The material that she and our staff there in the Raleigh office developed is proving extremely popular. It is an updated educational package, multimedia, approved for curriculum use in North Carolina. Sandy is going to be contracting with our Annapolis Ecological Service Office and the Chesapeake Bay Program Office to transition that package for use in the Chesapeake Bay watersheds.

The two Fish and Wildlife Service Regions involved, the Southeast Region and the Northeast Region, are further looking to take that whole package coastwide. To that end, I met yesterday with Kate Taylor and Pat Campfield of the staff. Sandy made a presentation. We also had Jessie Thomas there, who is now representing American Rivers. The chairman of our technical committee was there.

The proposal that we have made is we would like for ASMFC staff and the technical committee to review that with a view toward determining whether or not ASFMC would like to partner with us in that endeavor. That partnership could take multiple forms. We've provided a set of possibilities to the staff, and at some future date we will report back to you on that.

In the interim, those of who might be interested in those materials, they are posted on the Ecological Services Website in Raleigh and Sandy is here. She will be around after this meeting. For any of you who would like to talk to her further about those materials and possibly acquiring them for use in your state, feel free to do so. Thank you, Mr. Chairman.

CHAIRMAN RHODES: Thank you. Any other business for the good of the board? Do we have a motion to adjourn?

MR. AUGUSTINE: Yes, motion to adjourn and one comment. You did a fabulous job and you worked your way through some very, very tough issues. I personally will tell you I've been through the fire, and you came out smiling. I think you were very effective in your approach to very, very tough issues today. Congratulations on that we look forward to more meetings like this and more chairmanships from you. Thank you, Mr. Chairman.

ADJOURNMENT

CHAIRMAN RHODES: Well, thank you for your indulgences; and with that being said, the meeting is adjourned.

(Whereupon, the meeting was adjourned at 12:48 o'clock p.m., February 4, 2010.)