

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

**Crowne Plaza Hotel  
Old Town, Alexandria, Virginia  
March 22, 2011**

Approved August 2011

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1. **Approval of Agenda** by Consent (Page 1)
2. **Approval of Proceedings of November 8, 2010** by Consent (Page 1)
3. **Move to untable the motion to approve the New Hampshire River Herring Sustainable Fisheries Plan with the addition of a fisheries-independent target that equates to a 50 percent average of the river herring returns to the fish ladders in the Great Bay Indicator Stock from 1990-2009. This equates to 70,369 fish. If the three-year running average of the annual river herring returns to the fish ladders and the Great Bay Indicator Stock falls below this target, New Hampshire will take steps to prohibit harvest of river herring in state waters** (Page 6). Motion by Doug Grout; second by Terry Stockwell. Motion tabled in November 2010 and motion to untable carried (Page 8).
4. **Substitute motion to approve the New Hampshire Sustainable Fishery Management Plan as recommended by the technical committee** (Page 8). Motion by Doug Grout; second by Terry Stockwell. Motion carried (Page 8).
5. **Move that the board send a letter via its Policy Board to the MAFMC expressing its preference regarding alternatives in Squid, Mackerel, Butterfish Amendment 14, including whether to continue to consider alternatives to federally managed river herring and shad** (Page 11). Motion by Gene Kray; second by Dennis Damon. Postponed until the August meeting on Page 14.
6. **Move to postpone the motion until the August meeting** (Page 14). Motion by Tom Fote; second by Steve Meyers. Motion carried (Page 14).
7. **Move to accept the terms of reference for the river herring assessment as amended to include the bycatch term of reference and without the minority report** (Page 19). Motion by Gene Kray; second by Bill Cole. Motion carried (Page 21).
8. **Move to amend the motion to remove the minority report as being a part of the term of reference** (Page 20). Motion by Pat Augustine; second by Roy Miller. Motion carried (Page 22).
9. **Move to adjourn** by Consent (Page 24).

## ATTENDANCE

### Board Members

Terry Stockwell, ME, proxy for N. Olsen (AA)	Loren Lustig, PA (GA)
Dennis Damon, ME, proxy for P. White (GA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Sen. Brian Langley, ME (LA)	Roy Miller, DE (GA)
Doug Grout, NH (AA)	Tom O'Connell, MD (AA)
G. Ritchie White, NH (GA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
Rep. David Watters, NH (LA)	Bill Goldsborough, MD (GA)
Paul Diodati, MA (AA), Chair	Steven Bowman, VA (AA)
Bill Adler, MA (GA)	Catherine Davenport, VA (GA)
Ben Martens, MA, proxy for Rep. Peake (LA)	Michelle Duval, NC, proxy for L. Daniel (AA)
Mark Gibson, RI, proxy for R. Ballou (AA)	Bill Cole, NC (GA)
Bill McElroy, RI (GA)	Mike Johnson, NC, proxy for Rep. Wainwright (LA)
David Simpson, CT (AA)	John Frampton, SC (AA)
Rep. Craig Miner, CT (LA)	Ross Self, SC, proxy for R. Boyles (LA)
Lance Stewart, CT (GA)	Spud Woodward, GA (AA)
James Gilmore, NY (AA)	John Duren, GA (GA)
Pat Augustine, NY (GA)	Jessica McCawley, FL (AA)
Russ Allen, NJ, proxy for D. Chanda (AA)	A.C. Carpenter, PRFC
Adam Nowalsky, NJ, proxy for Asm. Albano (LA)	Bryan King, DC
Tom Fote, NJ (GA)	Steve Meyers, NMFS
Leroy Young, PA, proxy for J. Arway (AA)	Jaime Geiger, USFWS
Gene Kray, PA, proxy for Rep. Schroeder (LA)	

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

### Ex-Officio Members

Kathy Hatalla, Technical Committee Representative	J. Bridi, Law Enforcement Committee Representative
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### Staff

Vince O'Shea	Bob Beal
Meredith Wilson	Chris Vonderweidt
Kate Taylor	

### Guests

Jeff Kaelin, Cape May, NJ	Rick Robins, MAFMC
Jason Didden, MAFMC	May Beth Tooley, Small Pelagic Group
Ken Hastings, Mason Springs Conservancy	Pam Gromen, NCMC
Patrick Paquette, MSBA/RFA	Erik Braun, E. Hampton, NY
Mary Beth Charles, NFWF	Chris Zeman, MAFMC
Frank Kearney, CCA-VA	James Ruhle, Wanchese, NC
Wilson Laney, USFWS	Wesley Patrick NMFS
Charles Lynch, NOAA	Benson Chiles, Chiles Consulting
Raymond Kane, CHOIR	Kristin Cevoli, Herring Alliance
Otha Easley, USDC/NOAA	Joe Fessenden, ME DMR
Jud Crawford, Pew Environmental Group	

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, March 22, 2011, and was called to order at 8:30 o'clock a.m. by Chairman Michelle Duval.

### **CALL TO ORDER**

**CHAIRMAN MICHELLE DUVAL:** Good morning, everybody. I'd like to go ahead and call the Shad and River Herring Management Board to order. Just for some of the new folks around the table, my name is Michelle Duval. I'm with the North Carolina Division of Marine Fisheries. I'm the vice-chair of the board and I'm filling in today for Dr. Malcolm Rhodes, who unfortunately couldn't be here.

### **APPROVAL OF AGENDA**

**CHAIRMAN MICHELLE DUVAL:** The first thing on the agenda is approval of the agenda. Are there any additions that we don't know of? I do want to let folks know that Chris Zeman, who is with the Mid-Atlantic Fishery Management Council, is going to be making a brief presentation after Kate runs an update of the activities of both the Mid-Atlantic and New England Councils with regards to Amendments 5 and 14. Are there any other additions to the agenda? Seeing none, we will consider the agenda approved.

### **APPROVAL OF PROCEEDINGS**

**CHAIRMAN MICHELLE DUVAL:** The next thing is approval of our proceedings from the annual meeting in November in Charleston. Are there any changes to the minutes from that meeting? If not, I'd entertain a motion to approve those minutes. Motion by Dennis Damon; second by Pat Augustine. Any discussion or dissent? The minutes are approved.

### **PUBLIC COMMENT**

**CHAIRMAN MICHELLE DUVAL:** All right, moving on, now is the time on the agenda for public comment. I do understand we have several folks in the audience who would like to make public comment.

**MR. JUD CRAWFORD:** My name is Jud Crawford. I am a biologist with the Pew Environment Group. I would like to thank Dr. Duval and members of the board for the opportunity to speak for a couple of minutes. I just wanted to draw your attention to a letter that I wrote and submitted on behalf of the Herring Alliance, which is in your supplemental material.

The letter focuses on the problem of at-sea catch of river herring and specifically requests that the board consider adding two specific terms of reference to the ongoing stock assessment for river herring to help deal with this issue. This is a significant issue for the management of river herring and the problem of at-sea catch. At-sea catch is substantial; something like 9 million fish caught a year over the past decade or so.

This body and others concerned are not going to be able to get a handle on this catch without working closely through the federal system and with the National Marine Fisheries Service to develop some limits for at-sea catch. It's a particularly difficult problem because when the river herring are caught at sea, intercepted by fishers looking for other target species, they can't be identified to river, so river-by-river assessments or even state-by-state assessments, while valuable, won't help the federal managers to begin to limit the at-sea catches.

If we want to recover the fisheries on shore, we have to understand what sorts of catches are happening at sea and what levels of catch are sustainable overall. I urge you to consider adding specific terms of reference that would establish a good estimate of what the total overall catch is and also that would encourage the ongoing assessment to include something called the coast-wide assessment that treats all of the river herring stocks, the individual river runs as a stock complex and begins to get at the problem of what the overall sustainable yield can be from that complex.

That sort of output of the assessment is anticipated by two ongoing federal processes, Amendment 5 or Atlantic herring and Amendment 14 for squid, mackerel and butterfish, and if the assessment doesn't provide the kind of reference points that the federal management system knows how to work with, then those amendments are not going to be able to deal with this problem in the way that I think many people are anticipating that those amendments might.

I urge you to work closely with the National Marine Fisheries Service and to call on their expertise and data to look at this problem and to provide the support that is needed of the excellent technical subcommittee that is working on the assessment for river herring now. Thank you.

**MR. PATRICK PAQUETTE:** My name is Patrick Paquette. I'm a recreational fishing advocate from the state of Massachusetts. I represent 37 different organizations and I'd be glad to read them all off for

you, but I don't think you want me to do that so I won't. I also would like to call your attention to a letter that I wrote.

I'll clear something up for Kate. Yesterday at the Atlantic Herring Board I made mention of this letter and misstated one piece. I attended the bycatch day at the stock assessment meetings held in Rhode Island last month. I was absolutely appalled to find out that the National Marine Fisheries Service and the Science Center were not in attendance and were not in attendance all week.

As somebody who has been participating in both the development of Amendment 5 and Amendment 14 at two different councils to try and help push the councils to address at-sea bycatch of river herring in certain high-volume fisheries, I think it's really important that this board is aware that at least the New England Fishery Management Council there is an actual option that is getting ready to go out to public comment that refers to information coming from this stock assessment that is not being discussed at this stock assessment.

There is an actual motion that is in the public comment document that states until a cap number is informed by the river herring assessment, it doesn't appear that those kinds of reference points are going to come out of the assessment. I really am hoping that council members that also duly serve here and at this management board; I would love to see this body write a letter to the Service asking them for specific information or for the specific kinds of things that you want to see included because I think it's little bit hypocritical for the whole system to continue to say that something else is coming from another body, and it's just the next level of what is going on.

So, please, this is the board that is at the center of all of it when there are members of this board that attend both the council meetings, and we continue to have this handoff. Although it really looks good that there is an Amendment 5 and Amendment 14 going, it really isn't good because the options continue to come back to talk about a stock assessment; but every time you hear people involved with the stock assessments tell us that there is not going to be these coast-wide reference points or coast-wide kinds of data.

I think we need to start getting to a little bit better detail in the letters that continue to go back and forth. I'm hoping that this board will take some action on that in the future. It just doesn't seem honest as the river herring scouts have just started to arrive in our

runs, and I believe we're at year seven or eight of being closed, and seeing that assessment without the Service and without the Science Center there was extremely depressing.

I mean, I continue to say if these fish had wings, the U.S. Fish and Wildlife would have pulled the trigger on a true assessment to find out if this was an ESA listing as threatened or not. Let's not have that. Let's give the public a shot at maybe seeing these fish again.

MS. KRISTEN CEVOLI: My name is Kristen Cevoli. I work at the Pew Environment Group. I'm here on behalf of the Herring Alliance today. I'd like to draw your attention to a sheet of paper that was passed out a little earlier. It's benefits to river herring and shad management from federal stock designation. It's a one pager, both sides.

The Herring Alliance has put together this little fact sheet for you guys because today I think you're going to hear a lot about what is going on at both the Mid-Atlantic and the New England Council. One of the options which is under consideration at the Mid-Atlantic Council is to designate river herring and shad as non-target stocks in the squid, mackerel, butterfish fishery.

From our standpoint, we see a lot of benefits to this option that is currently being considered at the council. We have tried to pinpoint a lot of the issues that the ASMFC has highlighted as problems with river herring and shad management and obstacles to better management from both the council and commission side.

We'd really just like to encourage you guys to look a that and to understand that there are currently a lot of options under discussion at the Mid-Atlantic Council and we see a lot of benefits should the ASMFC choose to support an option like this. We really hope today in your discussions that you'll support the further development of these options and know that this is not making a decision on whether or not these stocks are going to be included as stocks in the fishery. Thank you very much for your time; and if you have any questions about this sheet, please feel free to ask me or sent me an e-mail.

MR. PETER MOORE: Thank you for recognizing me. I'm Peter Moore. I work with a company in New Bedford, Northern Pelagic Group. It's a herring and mackerel processor. We have vessels catching herring and mackerel. I'm also a member of the Sustainable Fisheries Coalition. I wanted to

comment today just to put on the record some work that we're doing through the National Fish and Wildlife Foundation in conjunction with the Massachusetts Department of Marine Fisheries and also the School of Marine Science and Technology in New Bedford.

This is new to some of you and old news to others, but I just wanted to mention that since September of last year the midwater trawl fleet for herring and mackerel has been involved in an avoidance project, a river herring avoidance project that uses data gathering through at-sea observers and port samplers.

Fifty percent of the landings are sampled in New Jersey and Massachusetts in the fall/winter/spring fishery, and we're trying to feed that information or are feeding that information as well as the at-sea observer information to a communications point the School of Marine Science where the bycatch information is mapped, gridded out and resubmitted to the captains on the waters so that they can see where, when and why or where and when their encounters are and what kind of magnitude or not.

We're now developing some information to see where – basically the idea is that we're giving the captains an opportunity to modify behavior if they choose to avoid river herring and shad. The other part of this project is to develop a predictive model, an oceanographic model that will show where we think these fish would be and whether there are separations between the target species and these other anadromous species.

The reason I wanted to mention this today is that there is sometimes a vacuum of information or information mostly from one side or the other on these issues, and I would encourage – and I've talked to Kevin Stokesbury, who is the lead at SMST on this, and he has got a graduate student, Dave Bethany, who is working on this. Bill Hoffman at the Massachusetts Department of Marine Fisheries is the lead on the port sample side,

I think that as we are developing information, we would like to be able to provide or feed it into this process if it's appropriate and have them participate in some way in getting you sort of information that's real time. I note on the letter from Herring Alliance they talk about what the average catches have been over the last decade.

I think that one thing that's interesting about that is that we're pretty familiar with the data as well, and a lot of what is identified may be misidentified. There

is a lot of herring not known. There is river herring that is not river herring. There is herring that is identified as herring and vice versa.

I think that this project hopefully is going to be fine tuning better what at least this segment of the fleet is doing and what kind of bycatch we're seeing. The other part I wanted to mention is that we are initiating discussions with other gear types that have interaction with river herring; in particular the small-mesh bottom trawl fleet, to try and figure out how to cooperatively manage any kind of bycatch that the fleets are having.

I know that fleet has signed up or has expressed interest, I should say, in trying to develop a similar avoidance system with SMST. I don't know where those talks stand but we wanted to launch this project first and then bring other fleets into the similar system.

I just wanted to let you know that the industry is actually working at this and has been for several years, and this has been a great experience for us to be formalized with Massachusetts DMF as well as SMST. I have all the information if any of you want more. Thank you.

MR. JEFF KAELIN: Madam Chair, I appreciate the opportunity to speak just for a minute. I'm Jeff Kaelin with Lund's Fisheries, Cape May, New Jersey. We've been active in the herring and mackerel fishery for a long time. I wanted to support what Jud suggested earlier about the development of a coast-assessment of the stock.

I think I have mentioned to the board before that there is data from the NMFS trawl surveys that identify where river herring and shad have been encountered over time. It would be valuable I think to look at that information and see what kind of trends you see in abundance in the offshore component of the stock, because the ocean is where these fish spend the majority of their lives, as I understand it. The trend from that trawl survey information would be very valuable.

We've talked to Nancy Thompson about taking a look at that. I don't get the impression that the ASMFC assessment people are doing that. I don't know, but we think that is an approach that makes sense. The other thing I wanted to say is I am an advisor for this management board, and I was very disappointed to find out when we were at a scallop committee meeting in Warwick, Rhode Island, that the TC was meeting on the shad and river herring

assessment up in Providence, which was impossible to get to. That was the bycatch day.

I think it would be valuable if the commission developed a policy that would ensure that the advisors were aware of the technical committee's meetings so that we could schedule them in. The PDT is doing a better job – the New England Council is doing a better job of this from the PDT perspective and so is the Mid-Atlantic Council, but ASMFC it's sort of like you've got to be lucky to find out if these meetings are happening.

I think with this particular issue potentially threatening the viability of our fisheries that's a problem. The third point I wanted to make was that we would like to see some data that tries to estimate what the relative mortality effects are on this population, whether you're looking at it as a river-specific population or coastwide, because it's easy to go after the fishermen.

We have been on this beat for several years. We've never seen any comparative data on mortality, so I would hope that this assessment would provide the managers with some decisions about that because we know river herring has been caught in the herring fishery for probably as long as there has been a herring fishery, which goes back for well over a hundred years.

Effort has gone down offshore so I'm not sure we're taking as many of these animals as we have historically, but there needs to be some kind of a comparative mortality estimate I think. Otherwise, it feels like we're being singled out, frankly, so we'd like to see some of that kind of evaluation done so that we can make sure that we're not being singled out.

I'm glad Peter mentioned the bycatch avoidance project. We feel there is a duty under the law to avoid these fish to the extent that we can and we are attempting to do that. There is a million pounds that are legally landed in a fishery in the Gulf of Maine. It's not bad to kill river herring necessarily. I think we just have to look at some comparative data and estimate what our mortality effects are in the ocean.

If it's zero we're out of business; but if it's a million pounds, well, that's about what we're taking and the midwater trawl fleet is taking about half of that. We just need better data to be able to estimate exactly what is going on in the ocean and to be able to compare what the mortality effects of our fisheries including the small-mesh bottom trawl fleets impact,

which is about 50 percent of the mortality as we understand the data. Those are some of the points I wanted to make and I appreciate the time to do that, Dr. Duval. Thank you.

MR. JIMMY RUHLE: For those of you who don't know me, the name is Jimmy Ruhle. I'm fortunate enough to be the owner and the captain of the NEAMAP vessel. I'm very, very proud to be involved with that group. You are all very well advised of the success of that group, but 90 percent of the coast of VIMS. I have never worked with scientists I've been more please with; exceptional people.

I'm here to a little bit different approach on this river herring issue. I would really like to see this group be successful and all management groups be successful in their efforts to resolve the issues around the river herring and to bring the stocks back, but we need a reality check here, fellas, ladies and gentlemen. At some point we've got to recognize that some of it may never happen.

If we keep going forward with this as a multispecies management plan, as where you are right now, even though shad is somewhat separated from it, the alewife and the blueback are considered as one. I'll remind you of Dr. Ray Hilborn from the west coast; in any of his presentations that he makes, very well-known fishery scientist – this is his quote, "In the absence of fishing, any multispecies stock anywhere in the world will be experiencing 30 percent overfishing at any given time."

That is where the problem is with the river herring complex being summed up as one. I will guarantee you that the majority of the river herring bycatch in the herring fishery, both midwater, pair and single boat, is alewife. It is not river herring; it is not bluebacks. I am totally convinced and recognize Canada has a directed fishery for alewife. Maine has partially a directed fishery for alewife.

What needs to happen here for you all to be successful and the only way to be successful is separate stock assessments for each of the species and separate management plans completely separated from each other. Then you have the ability to identify which component of the fishery or which fishery gets what attention and what restrictions or what efforts need to be made.

We have come miles and miles in the commercial fishing industry in our success in mitigating bycatch. Since I got off my council term – my timing wasn't

very good that because I did sit on the sea herring committee and helped formulate Amendment 1, but I participated in that fishery in the late seventies, eighties and nineties off of Virginia and North Carolina and Jersey.

I'll tell you right then that was mackerel fishing. That was mackerel fishing; there was significant bycatch of all kinds of herrings but we didn't give a damn. Nobody else did either. But since I've got off the council, for whatever reason the river herring issue has blown to the top and unfortunately so many of the public testimonies that I've sat and listened to can't be substantiated; absolutely cannot. It has become an emotional issue.

You all need to make your decisions based on facts, and the only way for you to get those facts is to ask for – what I would suggest is something along the lines that Jeff Kaelin just mentioned; a protractive mortality analysis on each species. Find out where the problems are. The decline in river herring has been going on well over 50 years, and in fact the degradation of the habitat is going to play much more heavily on the blueback population than anything else. These fish are not gone. They have shifted. The regime that has taken place in the Mid-Atlantic and New England has encompassed the herring just like it has the plankton and everything else that goes with it.

You all need to recognize that you can't look at this the way that you historically did and be successful, and I want you to be successful. I can provide you documentation from the National Marine Fisheries Service for the observed trips that I've had. I had just crossed the 2 million pound mark yesterday with the trip that I landed.

I made a tow four miles east of Block Island yesterday, an hour and a half tow to finish off the trip, and I specifically asked my crew, as we were putting these fish down in the hole, pick out anything that is not a sea herring, anything, because in the description of river herring in the New England document it says any herring that is not a sea herring is a river herring. That's broad.

But, anyway, a 7,000 pound tow, we pulled out two sculpins, one small dogfish and one daylight flounder; that was it; that was it. My bycatch levels for this 2 million pounds of fish is less than one-quarter of a percent of everything, including the mighty dogfish. I have done what the law requires, a reduced bycatch to the extent practicable, and so has the entire herring fleet.

We are getting no credit for that; zero. We need to look not back but forward. Whatever it takes to get the industry involved – and it has been presented to you today that the avoidance program designed by SMST, which is a copy of what was very successful in the sea scallop fishery for the Nantucket closed area, the avoidance of yellowtail flounder – you put the industry together with an outside academic partner you get results, and that's exactly what has happened there.

But go back to what I said at first; if you do not look at these stocks separately and recognize that the Chowan stock, the Roanoke River stock, the Delaware River stock, the Connecticut River stock, they may never come back, never to the historical levels. It may be totally impossible and it has got nothing to do with commercial fishing.

However, if in Maine or in the Bay or Fundy or the rivers that are in Nova Scotia experience significant increase in the same species, it needs to be recognized that, you know what, we have rebuilt river herring; we have rebuilt bluebacks. That is what is taking place, but you not getting deep enough into it.

There is an entire list of issues that I would like to speak more about, but the main thing is to ask you to at least consider this approach because I don't think you have any chance at all of being successful. You have got a stock assessment coming up. You could take and split it and go forward with it and make management decisions that mean something to the fish and to the industries that support it.

But I'm not going to set back and be involved in a fishery as clean as I'm not in now – and I got pushed into this fishery because of events associated with my brother, but I'm in it now. I've fished, like I said, exclusively out of Newport, Rhode Island, since the first week in December. I know what the fishery is. I can see it. I know what the boats are catching. It's documented 100 percent with observer coverage. You can certainly shut us down. Any management measures can shut the fishermen down.

I'll tell you this and I'll tell it to you clear; there is no fishery that I have permit for that I can go prosecute tomorrow and fish cleaner than I'm fishing here. It's impossible; it is impossible. We've developed as a fleet methods that we have created avoidance. Alewife east of Block Island, you can set your watch by them.

You won't see one. Three o'clock in the afternoon at certain phases of the moon, poof, here they come, so what do you do; do you leave? You come back there the next morning and then you start all over again and watch your clock, because you'll see it. That's as good avoidance program as it is, but if you took a square box and said don't go there, you eliminate the potential of good producing area.

The scup GRA in the Mid-Atlantic is the biggest catastrophe the Mid-Atlantic ever did. It never did a damned thing to rebuild scup. It pushed the squid fleet into the butterfish, which is still dealing with the ramifications. You can't draw lines in the ocean. You put something together with industry and academic partners and you get results. There are ways to resolve this.

But, the bigger thing is, fellas, ladies and gentlemen, this fishery needs to be looked at closely and the success of the fishery needs to be documented, an analysis done on that, and decisions made based on that, because I think it's imperative, but you all need to recognize that don't consider a failure of river herring if you don't rebuild them in specific rivers. I think we're past that point.

There are too many species that we deal with that have made the significant shift. And don't worry about the mackerel fishery because the mackerel fishery for all practical purposes is collapsed in the United States. And I've said this how many times; nobody would listen, but this year we haven't cracked 1 percent, not 1 percent of the mackerel landings.

The mackerel fleet does not exist so the mackerel issues related to herring are a non-issue for the next four or five years. It will be that long before we start to see any mackerel of marketable size return. I did have 30,000 pounds mixing with some herring down in the Hudson Canyon back in January. I would not finish the day on those fish because they were that big. I'm sorry, I'm not going to stay there and drive that – that's the future.

That's my son's future and my grandson's future, but for all practical purposes the mackerel fishery does not exist in the United States and will not, so don't worry about it right now. Worry about what you're dealing with, and I certainly hope that you'll take some of this into consideration. If anyone has any questions, I'll be glad to answer them. Thank you very much.

## **PRESENTATION OF RIVER HERRING SUSTAINABLE FISHERY MANAGEMENT PLANS**

CHAIRMAN DUVAL: Thank you, Captain Ruhle, for your remarks. Okay, moving on, our next item on the agenda is presentation of river herring sustainable fishery management plans. We do have a tabled motion from our previous meeting in November, but what I'd like to do is have our technical committee chair Kathy Hattala go through her presentation, see if the board members have any questions for either her or Doug Grout and then we will consider untabling that motion. Kathy.

### **TECHNICAL COMMITTEE REPORT**

MS. HATTALA: Good morning. This is going to be my last here so I'll try and be brief. We'll get to that later. Just a quick a reminder of what the river herring sustainable fishery plans require to have in them. They need the sustainable target, all the supporting data, sufficient monitoring, a regulatory structure to keep the fisheries in check and a timeline on how they're going to achieve them.

Currently this is what it looks like on the east coast. Most all the states will be at moratorium by 2012 with the exceptions of Maine, South Carolina, a research set-aside in North Carolina. You will decide New Hampshire today; and then New York, I hope to finish ours by late this spring and submit it to the commission, so that's why New York is still in the gray, in the fog. I hope you noted the color. Everybody is going to moratorium.

For New Hampshire, New Hampshire submitted a couple of revisions to the technical committee. We are cautiously recommending approval of this one. It now contains a bunch of targets and also a bunch of analyses that New Hampshire did. For instance, they were looking at relationships. We asked them to look at all their age structure, et cetera, and they did some interesting comparisons between total mortality and exploitation rate.

The most disturbing factor was that once you used the GBI Index, which is their Great Bay Index, a combination of four different river systems, there was an inverse relationship existing, which means you can fish the heck out of them and total mortality will go down. That kind of disturbed the technical committee a little bit, and we think it's just a nuance in the data.

However, we would suggest that this calls for a more thorough analysis perhaps in the stock assessment. The other thing that we kept asking about was the juvenile data, thinking is this or is this not a juvenile abundance index. We finally, after many discussions with New Hampshire, decided that is not a usable JAI, so one of the things New Hampshire will do into the future is they have decided – and this was because of the small sample size and the current survey design. But as part of their future monitoring I guess you suggested you are going to look at the survey design to see if you can improve it at all; is that correct, Mr. Grout.

MR. DOUGLAS GROUT: Ms. Hattala, I was not aware of that at all.

MS. HATTALA: Well, sorry about that, then.

MR. GROUT: That wasn't brought to our attention at all.

MS. HATTALA: Yes, it was, it's in the technical committee memo. We'll get to that. Currently I guess what it is, is the JIs don't really measure a true abundance because there is absolutely no matching to the adults. This is where maybe some further analysis can go, and then it was thought just of the when and the where and how many. The sample size is pretty small so again more analysis.

The other indication was we did ask New Hampshire to evaluate whether there were other issues concerning habitat, and it turns out that there are. In the pools above the dams on some of the rivers there are some water quality issues during the summer which may affect survival of the young. In the SOP there are two targets now. They continue to use the Great Bay index exploitation rate of 20 percent.

This is among some of the higher values of the time series. There was some concern from a couple of committee members that there are few to no limits on effort in some of the rivers. They also included an escapement target of 350 fish per acre. This is equivalent to approximately 50 percent of the average run size since 1990. It's 70,000 fish, which is what I guess Mr. Grout suggested at the November board meeting when I wasn't here.

So with the two targets in mind, the technical committee basically felt more comfortable with the two targets in combination with each other. However, it still suggests that the stock could reduce down to a fairly low level, which is the 70,000 fish run size. The TC recommends approval with some

continued monitoring and then continued analysis through the stock assessment review.

This is what it looks like. The blue line is the Great Bay annual run size index. It reduced down, came down, went back up, dropped down and the data from '05 to '07 or '08 was affected by a lot of flooding so that's why the numbers were so low. I don't have the 2010 number, but I don't know if that went up or stayed the same as '09.

MR. GROUT: I don't know off the top of my head, but I think it stayed about the same as '09 is my thought.

MS. HATTALA: Okay, so then the dark red line on the bottom is the – that's the target run size so they are above their target run size. The dotted lines refer to the exploitation rate targets.

CHAIRMAN DUVAL: Thanks, Kathy; are there any questions for Kathy or questions for Doug? If there are no questions, we do have a motion that was tabled and I'm going to look to Mr. Grout for untabling it.

MR. GROUT: Yes, there was a motion by this board to table this until this meeting pending review of the technical committee. I'll just tell I'm going to make a motion to remove that from the table. If I get a second, then I'm going to have a substitute motion because our plan has changed at the request of the technical committee from what we had on the table at the November meeting. **I would like to make a motion to remove the motion from the table.**

CHAIRMAN DUVAL: Second by Terry Stockwell. No discussion and no dissent on that? The motion is untabled. Doug, do you have a substitute motion?

MR. GROUT: **Well, if there is no objection to removing it from the table, my substitute motion will be approve New Hampshire's River Herring Sustainability Plan that was dated March 2011.** It's the plan that's in your document that's been reviewed and approved by the technical committee.

CHAIRMAN DUVAL: Motion by Mr. Grout; seconded by Mr. Stockwell. Discussion on the motion? Pat.

#### **DISCUSSION OF SUSTAINABLE FISHERY MANAGEMENT PLANS**

MR. PATRICK AUGUSTINE: In response to what Ms. Hattala has mentioned about the technical committee possibly following on, could you give us a

little more clarification on that? You said there was some concern about how the analysis was put together; however, you do agree that they are recommending approval for New Hampshire. Would there be a follow-on by the technical committee after you've moved on as to what the result is of implementing this change?

MS. HATTALA: What the technical committee recommended was that this move forward as approved, but then that the stock assessment would delve into some of the reasons of the inverse relationship, perhaps the total mortality exploitation, do a little bit more further digging. There was a lot of age structure data, et cetera, available from New Hampshire. There were probably some additional analyses that can be done, and that can be done during the stock assessment to reevaluate the targets as they stand.

MR. GROUT: I just wanted to give the board an overview of this. As Kathy has stated, we came back – originally we had just an exploitation rate target of 20 percent. We've added in a fisheries-independent target that she has explained. This relates to 350 fish per acre. This greater than the density that was approved in the Maine plan of 235 fish returning per acre, so we think this is very conservative.

The exploitation rate translates into a minimum of 80 percent escapement, and that's we're very comfortable with this. I want you all to get a feel for the size of this fishery. Again, this is not a commercial fishery. This is people going out and trying to get lobster or striper bait, and our current harvest was roughly 13,000 fish; not pounds, fish, in a return that was 90,000.

Again, that's a minimum because when we have our Great Bay indicator stock, we're only able to document returns from four of the seven rivers in this indicator stock in this estuary because that's where we have fish ladders. We know there are more and they're small fisheries in the other rivers that we document via mandatory logbook reporting that we provide.

We feel we have a very good handle on the fishery. We feel this is a very conservative plan. The other thing that Kathy was talking about some of the analysis that we did, and one of the analyses we did was calculate total mortality from the scales that we have, and that's showing a declining rate of total mortality in recent years.

There is a declining trend and the reason for that is because we've taken management action in the one river where we have our largest fishery. This fishery accounts for 90 to 95 percent of our total return historically. We went from six allowable fishing days down to two, and we implemented a one-fish-per-day tote limit.

We've cut that down so that is a small fraction of what it is. The rest of the fisheries account for roughly about 1 or 2 percent exploitation rates in those rivers. Again, this is very small, very conservative. We feel comfortable with the size of our runs. If we do go below that magic threshold of about 72,000 fish for the four runs that we monitor, then we will take action to shut down the fishery. That's my justification for this.

MR. TERRY STOCKWELL: As New Hampshire's northern neighbor, we've been closely monitoring the development of their sustainable harvest plan partially in deference to enabling our plan but partially in support of any collaboration between the states that we can do to bring forward a sustainable harvest plan.

I've been working with staff and our staff is completely satisfied that the technical issues have been addressed. I've very pleased that New Hampshire has incorporated Maine's fishery-independent targets. It's a good example of states working together. This is a living document and we're all working with our sustainable harvest plans and the stock assessment. I support the approval of this motion and I hope the rest of the board will as well.

DR. JAIME GEIGER: Just a quick question for Kathy and a quick question for Doug. Kathy, I believe you said that adoption of this plan would result in increased assessment monitoring and evaluation requirements for the state of New Hampshire. If so, could you elaborate what those are? And then as a follow-up question, if there are increased monitoring requirements, is the state of New Hampshire prepared and obviously equipped to do the increased monitoring or assessment that may be required?

MS. HATTALA: It's not necessarily increased monitoring; it's that they will continue. Amendment 2 does require that they monitor their fish-lift data, that they monitor their fishery. And then there are issues with the JI, et cetera, so they will continue all of that. That's one of the conditions that the technical committee wanted to make sure would

continue so that we do have a good amount of tracking data.

MR. GROUT: I believe what they were referring to, yes, we will continue monitoring our runs. We do have a very active monitoring program as you all will see when the assessments come out the number of rivers that we have good information on here. Our plan is that we have a contingency that we will be reviewing our sustainability targets, the two targets that we've set, following the completion of the peer-reviewed stock assessment to see if there is some other method other than this minimum return per acreage that we can base our sustainability targets on. That is what our intent is to do with it.

CHAIRMAN DUVAL: Are there any other questions regarding the motion; any other questions for Doug or Kathy? Seeing none, are folks prepared to vote on the motion? The motion is move to substitute to approve the New Hampshire Sustainable Fishery Management Plan as recommended by the technical committee. Motion by Mr. Grout; second by Mr. Stockwell. Do folks need to caucus or are people prepared to vote? Dennis.

MR. DENNIS DAMON: Madam Chair, just as a question on a point of order; we have two motions on the floor at this particular point and how are we prepared to deal with the first one? We have a move to substitute, but the original motion which was made by Mr. Grout and seconded by Mr. Fote has not been disposed of, and for the record we need to probably get rid of it.

CHAIRMAN DUVAL: Good point; hang on.

MS. KATE TAYLOR: That was the wrong motion, so that is not the motion. The original tabled motion from the annual meeting was move to approve the New Hampshire River Herring Sustainable Fisheries Plan with the addition of a fisheries-independent target that equates to a 50 percent average of the river herring returns to the fish ladders in the Great Bay Indicator Stock from 1990-2009. This equates to 70,369 fish.

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

MR. GROUT: Just from a process question, I thought my original motion was to bring that motion back up to the table. I think we accepted that. **Now**

**I'm making a motion to completely substitute the original motion with this motion.**

CHAIRMAN DUVAL: So once we vote on this motion to substitute that, the substituted motion then becomes the main motion. Okay, are folks prepared to vote on the substitute motion? Please raise your right hand if you're in favor of the motion to substitute. **The motion passes unanimously.**

The substitute motion now becomes the main motion, so now we need to vote on the main motion. I'm going to assume that folks do not need to caucus on this again, so I'm going to ask again for a show of hands for those in favor of the main motion. **The motion passes.** Congratulations, Mr. Grout, and I'd also like to extend thanks to both Doug and his staff and Terry and some of his staff and to Kathy for all of their hard work on this issue. I know it has been a long road so thank you. The next item on the agenda is a quick update on river herring and American shad bycatch actions of both the New England and Mid-Atlantic Council, so I'm going to turn that over to Kate.

#### **UPDATE ON RIVER HERRING AND AMERICAN SHAD BYCATCH**

MS. TAYLOR: At the New England Council meeting in February, the council passed a few motions that pertain to shad and river herring bycatch with regards to the development of Amendment 5 to the Atlantic Herring FMP. The first deals with the removal of the portside monitoring program alternative. This was substituted for a requirement for dealers to accurately weight all fish.

For dealers who can demonstrate it is unfeasible to weigh fish, an exemption will be approved by the council. Additionally, the council removed the move-along rule option in the development of the documents. Additionally, the council added language to consider establishing a river herring bycatch cap through a framework after the ASMFC completes its stock assessment as one of several potential measures to reduce bycatch.

Additionally, it also included the development of catch trigger alternatives based on either the maximum, the average or the median for the 2005-2009 area-specific catch estimates. There will be two options once the triggers are reached. The first is that the hotspots in the affected stock areas are closed; and, two, that fishing in the hotspots in the affected areas are monitored 100 percent observer coverage.

At the Mid-Atlantic Council Meeting in February, the council passed a number of motions to advance for further FMAT analysis in the development of Amendment 14 to the Squid, Mackerel, Butterfish Plan. Alternatives 1 through 3 were advanced. Additionally, Alternative Set 5, which deals with the addition of 100 percent observer coverage as an option in the plan, was included for FMAT analysis.

Originally the plan had options for 25 and 50 percent observer coverage. Additionally, an option for the mortality caps was advanced for further FMAT analysis. Alternative Set 4, which deals with portside monitoring sampling was removed. Thank you, Madam Chair.

CHAIRMAN DUVAL: Are there any questions for Kate before we have Mr. Zeman come up to the microphone? Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Madam Chair, I think the question is the action by the New England Council and the Mid-Atlantic Council to apparently remove dockside monitoring from their plans, whether that will result in increased monitoring of potential river herring bycatch or will it diminish the monitoring for river herring bycatch. I think the question for this board is the board comfortable with that? Thank you.

MR. GROUT: I guess in response to this, I'm the Chair of the Herring Committee up in the council. The reason they removed the dockside monitoring was to go with the requirement to weight fish. The dockside monitoring program, as many of us know up here in New England and in the herring range, we have a state-run program. It's run by the state of Maine and Massachusetts to do the dockside monitoring looking for bycatch already in place.

If my memory serves me correct, we actually at ACCSP voted to increase the funding for this program, which means there would be – I believe this would mean we'd have an increase in monitoring that will be going on in subsequent years. I am personally very comfortable with the direction that this commission is going with monitoring the bycatch and monitoring the whole herring fishery here.

CHAIRMAN DUVAL: Thanks, Doug, for that clarification. Are there any other questions in relation to this? If not, Mr. Zeman.

## **PRESENTATION BY MR. CHRIS ZEMAN**

MR. CHRIS ZEMAN: Thank you for the opportunity to present today. My name is Chris Zeman. I'm a member of the Mid-Atlantic Fishery Management Council and also the chairman of the River Herring Ad Hoc Committee on the council. However, I want to point out before I start out today that I'm here today on my own behalf as a stakeholder and as someone living next to two rivers that have seen major declines in river herring and shad populations. My travel costs here are my own.

I wanted to come by today because I thought it was an opportune time because in April the Mid-Atlantic Council will likely be voting on the final range of alternatives in Squid, Mackerel, Butterfish Amendment 14. I thought it would be important for the commission to weigh in via a letter through its Policy Board stating its preference in terms of alternatives that it would like to see developed.

Specifically, there are alternatives in these plans that actually consider federal designation, so basically creation of a federal management designation for river herring and shad in these plans. I personally feel that is an important aspect here because of the additional protections it provides. But specifically what that provides is that it prevents these alternatives that are considered such as increased observer coverage to monitor river herring discards or any sort of catch programs, any sort of improvements that would incur costs by NOAA.

Those alternatives are absolutely discretionary for NOAA to fund unless there is federal management status given to river herring and shad. Is this a problem? Yes, because look at NOAA's responses to the councils and commission's requests for assistance for this resource. NOAA has refused the commission's emergency request for action.

NOAA has refused the New England Council's request for creation of a data-gathering FMP, sort of our initial FMP creation to assess whether or not you really actually need a plan or not. And it gets worse. In January of 2011 NOAA sent a letter to the Mid-Atlantic Council specifically stating that it will not fund river herring and shad alternatives in Amendment 14 that would increase observer coverage or increase catch reporting.

NOAA said that the council itself would have to identify funding sources for these alternatives. The key point I want to make here today is that if you relying on existing measures without federal

designation of river herring and shad, please be aware that the councils can vote in favor of all the right decisions here, but at the end of the day NOAA has no obligation to fund those alternatives because river herring and shad is a non-managed species.

If it is a managed species, it will be much harder for NOAA to make these arguments and NOAA would have to attempt to actually find funding resources for this. Therefore, that's one of the reasons why I support this. In my council role I really see this as – I see the status of river herring and shad, it really is a sad state of affairs in terms of resources, and I really want to help the commission on this.

I'm really surprised and frankly stunned by NOAA's responses to the commission and councils for assistance. I hope one day that NOAA will sort of see – will come around and see that river herring and shad resources are really a national treasure and that it plays a role in the recovery of that resource. But until that time, I think it's important that the commission and council really look toward your mandatory provisions that would increase the chances that we actually do get federal funding to assist the commission and the states with management of this resource.

There are a lot of other benefits of federally managed designation status, including EFH protection where we could actually address non-fishing impacts. I know in my experience that is something that a lot of fishermen told me that they would look to see is that we should be using EFH for non-fishing impacts.

This is an opportunity to actually designate EFH in Mid-Atlantic rivers, which has not been the case so far, and to really create a new sort of role of this council where we are a lot more active and assisting the commission and other federal stakeholders on addressing non-fishing impacts. That has not been the case in the past, but I hope that the past is not the judge of the value of that provision and what can be done with that provision.

I am available for questions here. I will be here today. I do have that letter from NOAA to the council if anyone wants a copy to see it. I am willing to take questions. I just want to clarify my last point, so again in April the council will be making these decisions and I would like to ask if this commission is willing – or this board is willing to make that motion to prepare a letter through its Policy Board to the councils stating those preferences, specifically in terms of also whether or not it wants to keep alternatives in there that would consider federal

designation or federal management of river herring and shad. Thank you for your time today.

CHAIRMAN DUVAL: Are there questions for Chris from board members? Jason.

MR. JASON DIDDEN: Just a quick point of clarification; there are two processes going on with the council right now. One is looking at should the council establish a separate FMP? Another is within Amendment 14 of what should be done in terms of bycatch reduction and an alternative in that is adding river herring and shad as a stock in the fishery. I anticipate that the council may take action in terms of a separate FMP issue at the April meeting, but I do not anticipate any action on the range of alternatives for Amendment 14. The April meeting will be more work in nature. FMAT will update the committee. I don't anticipate – and so right now that alternative is in the document and it will likely stay in the document. I don't anticipate any council action in terms of taking it out at this time.

CHAIRMAN DUVAL: Thanks, Jason, for that clarification. Chris.

MR. ZEMAN: Thank you, Jason; I would concur with all of his clarifications, but I do want to add that I do not believe the commission is meeting again until the fall and we will be having other meetings after the April meeting where that decision may be made.

DR. EUGENE KRAY: Madam Chair, I have a motion for discussion purposes. **I move that the board send a letter via its Policy Board to the MAFMC expressing its preference regarding alternatives in Squid, Mackerel, Butterfish Amendment 14, including whether to continue to consider alternatives to federally managed river herring and shad.**

CHAIRMAN DUVAL: Is there a second for the motion? Dennis Damon has seconded the motion for discussion purposes. Discussion? Terry.

MR. STOCKWELL: Gene, what does this motion mean?

DR. KRAY: I knew you were going to ask that, Terry. What we're trying to do is to get the council and the commission really working together to see what we can do to reduce the bycatch in the squid, mackerel, butterfish plan, and reduce the catch of river herring is what we're trying to do, essentially. Whether it's by a separate FMP or whether it's by

stocks in the fishery, those are the two alternatives that I see. It's not that clear in there but that's what I mean.

MR. STOCKWELL: Thanks for your explanation. You're asking this board to make a snap decision in the name of timeliness on a whole host of issues that have profound impacts on sustainable harvest plans. Now we have two sustainable harvest plans in New England that might potentially be managed by a council that we don't even sit on? We've got a huge infringement on state rights. We've got a federal agency saying they have no funds to move ahead with this. I'm feeling very uncomfortable about making any snap judgment.

MR. AUGUSTINE: I sit on the subcommittee that was created to address these issues as they are raised by Mr. Zeman. Mr. Didden, our staff person, spent hours and hours and hours accumulating data and references and looked at the New England Fishery Management Plan, looked at what the Mid-Atlantic is doing, looked at what ASMFC is doing.

At the end of the day the committee still has not supported the proposal that Mr. Zeman has put forth in either developing a letter or an FMP. It just seems to me this is another case where the emotion, if you will, has far outweighed the value of creating another document that is now being managed by two groups or three groups. It's like overkill.

We're doing it with another species of fish and we've done it with striped bass. We've had 18 stock assessments in 25 years. Because emotions run very high on it, we're going to be doing another stock assessment and there is a move tomorrow I guess to put some restrictions on mortality. In the case of shad and river herring and in the case of forage species of fish, there has been a movement, as most of you know, of developing an FMP that will deal with forage fish. I think that's a whole issue by itself.

For this board, as Mr. Stockwell pointed out, to take a position to go forward with any of this, I think it's out of hand and it's out of our control. We as states are trying to superimpose our will on two councils that have absolute responsibility in addition to what we have as a state stakeholders' responsibility for our shad and river herring plan.

I just think again we're spending an awful lot of staff time and effort addressing an issue that is being handled as best it can be, and I hope that's good enough for what we've got to deal with here as it can be handled. Each state has gone forward with their

plan. I questioned the New Hampshire Plan. It was a good plan, but it was too complicated to understand in one quick motion. It has been addressed. What we're doing and the way we're doing it is I think the best we can do with what we have to deal with. Therefore, I could not support this motion. I understand what Dr. Kray is trying to accomplish here, but it just fogs up the issue even more than it needs to be.

MR. THOMAS FOTE: I just wanted to clarify one of Pat's statements. Herring was an important food fish fishery for many years. It was pickled, it was sold, it was basically harvested. We basically have limited that fishery so now we have reduced it to a forage species. I want to make perfectly clear I'm looking back for the days when we can basically go harvest herring and basically pickle it again and basically it. I love pickled herring.

We have basically eliminated that fishery from being harvested for food because of the status of the stocks. I'm not sure if this is the right path, but I'm frustrated as I can be over the years about not rebuilding these stocks. Everybody asks the questions, well, how do we do it? Well, a lot of it has to do with habitat.

We all sit here and the Habitat Committee has said over the years, you know, we still haven't pulled out all the dams, we still haven't reconstructed some of the original habitat for herring and shad. I have real concerns and I'm looking at any kind of vehicle that would help along move along this process so we rebuild these stocks. It's like sturgeon and a few other species and bluefin tuna. I don't see these rebuilding in my lifetime, but hopefully it will be in my grandchildren's lifetime if I had grandchildren. Thank you.

DR. GEIGER: Madam Chairman, I really appreciated Dr. Kray bringing the motion up to the table. I think it is good to stimulate discussion, and I think it's overdue to have these kinds of discussions. Certainly, we've heard a lot wisdom today from the public comment, and I would hope that all of us are taking the comments, especially those from Jimmy Ruhle, very seriously.

I think Jimmy made some outstanding points. I know we've talked about this for several years, and certainly breaking up this complex into individual species with their own management is certainly doable. I can already predict what the answers from the commission will be and probably those answers will be rightfully appropriate given the financial and technical assistance we may or may not have to do

that. But, indeed, from a biological, ecological, social and economic benefit and from a rationale, it's the right thing to do.

I think we are spending millions of dollars on habitat improvement along the Atlantic coast, including millions of dollars and fish passage improvements trying to improve status of all anadromous fish stocks. I think shad and river herring are a keystone species that we need to put more emphasis on and we need to focus on and certainly we need to pay more attention to.

They are a keystone justification for what we do and why we do it. The benefit to those stocks and proving that we are showing some significant resource outcomes related to these particular species I think will go a long way to continue doing the necessary and appropriate habitat improvements that we need to do along the Atlantic coast.

That being said, Madam Chairman, I think this is just the beginning of the discussion. I would hope that I would think that it should start with this particular management board. I would love to see the technical committee give us some additional recommendations on what it would cost to break these stock assessments into separate species, what additional resources may be necessary to achieve that goal in mind and how we can work much closer with the Mid-Atlantic and the New England Fishery Management Council.

I know from the Fish and Wildlife Service we have not participated as actively as we should in some of the council activities, because quite frankly we don't have a vote at the table. However, in discussions with Chris, certainly I recognize it is becoming more important for all federal agencies to engage on a whole variety of different activities because resources are getting thin, both physical resources and fiscal resources, and we're all going to need to jump in and try to help for common goals and objectives. That's the only we're going to get progress done. Again, I thank Gene for this motion. Unfortunately, I don't think I can support it, but I do appreciate putting it on the table and I do appreciate stimulating the discussion and the debate.

MR. AUGUSTINE: This isn't rebuttal. I was to going to reiterate exactly what Dr. Geiger just said. Before we go forward with trying to develop another plan, let's go back and do exactly what Captain Ruhle suggested and Jeff Kaelin suggested and others suggested; take a look at what we really lack in data. Let's embellish what we have right now.

Let's look at what the estimates are relative to mortality and what is going on out there. Let's look at the mortality rates in all the ocean fisheries. Let's look at the separate management plan; can we do it? Can it bring it to alewives, river herring and shad? Can we break them out into three; does it have to be two? Let's look at those before we do anything and then go forward and make a rational decision as opposed to jumping into another plan.

MR. BEN MARTENS: I guess one of the things that I'm a little bit concerned about is just that listening to some of Pat's comments is we haven't been handling the species very well. Since I've been working with ASMFC, I've watched this bounce back and forth between the Mid, between New England, between ASMFC, and it's an issue that nobody really wants to deal with right now.

Thank you so much for bringing this up. I think one of the problems that we're looking at is it's a bit of a last minute. We don't really understand what it means. I wonder if there would be some chance at a future meeting for a presentation that would show what this actually could mean for the species, what it would take, what kind of resources would be needed, and what that would look like not only for the Mid, for ASMFC but also New England and the different plans that have been developed that are there.

CHAIRMAN DUVAL: Thanks, Ben; excellent suggestion. Roy.

MR. ROY MILLER: My problem with the motion as stated is I'm not exactly certain what that letter is going to say, and that concerns me about passing a motion to send a letter when I don't know beforehand what the specifics will be in that letter. I think I'm in general agreement with Dr. Kray's line of reasoning, but the lack of specificity as to what the Policy Board will say concerns me at this point in time. I think it's premature to approve the motion.

CHAIRMAN DUVAL: Thanks, Roy. Are there other comments around the table right now?

MR. DAMON: Madam Chair, this discussion was exactly the reason why I chose to second the motion for the discussion. Though there are valid concerns that have been raised about the content of the letter, the timeliness of it and perhaps what might come out of it, those are all real and valid considerations, but what is also real and valid is the status of these stocks; the fact that apparently we're trying to continue or somehow we're being forced to continue to work in silos – us, the New Atlantic Council and

the Mid-Atlantic Council – to try to come out of it with some comprehensive plan that will be helpful to the stock.

I think we have to break that down and we have to be at the table and we have to know what is going on and we have to have a say in it so that we can have a comprehensive plan. I'm not going to be able to say it as eloquently as Dr. Geiger did, but it in my mind these forage stocks are fundamental to the improvement or to the sustainability of so many of the other stocks that we are here to manage. If we overlook that, I think that we have defeated ourselves in the long run. Though this motion may well not pass today, this discussion must remain and we must have a redoubled effort to bring these stocks back, and that's why I seconded it.

DR. KRAY: Madam Chair, a lot of things are going to happen in the next several month, action by the council on Amendment 14, but Amendment 14 is going to take a while to put together. As Jason indicated earlier, most likely we'll leave in the stocks in the fishery alternative in the amendment.

That being said and with the discussion that we had, I would hate to lose the discussion. The ship has already left the dock in terms of whether this passes or not, but I would like to table it until we get some more information as to any actions by the Mid-Atlantic Council at its April and June meetings. I'm not sure that I can request the tabling of that motion until our fall meeting.

CHAIRMAN DUVAL: I'm consulting with staff on process. I think we can request to postpone, but I think someone else has to make that motion to postpone it until a time certain.

MR. FOTE: **I'll make the motion to postpone it not to the fall but to the August meeting.**

CHAIRMAN DUVAL: There is a motion postpone this motion until the August meeting. Do I have a second for that motion? Steve. Do we need to caucus on voting on this motion? A.C.

MR. A.C. CARPENTER: To the motion to table, what are we going to have in August that we don't have here now? Is there going to be a draft letter for us to talk about? Tabling this motion really doesn't do anything. I think the thing to do is to vote the motion down and have a better-prepared motion, if there is going to be one presented, presented at the August meeting. Tabling it doesn't do anything.

MR. FOTE: The reason I basically made the motion to table was basically to look at what comes out of the council meetings and to have an opportunity and put this on the agenda so we're not stuck with just five minutes, so we can have a worthwhile discussion and allocate the time at the next meeting.

It's just a placeholder to have this discussion at the next meeting on where how far along are the councils in the system. They're our partners; we have to do that; and that's why I'm looking at it. It won't be the exact motion, the same way as we amended Doug's motion when we basically took it off the table today, so that's what I'm looking at.

MR. STOCKWELL: Is it the intention that the letter will be drafted and perfected so we'd have something to read before the summer meeting? I completely agree with A.C. I would just as soon as vote it down – the issue is not going to go away – and bring it up when we have some substance to work with.

CHAIRMAN DUVAL: What I'm hearing around the table is that there is valid reason to have a more extensive discussion about this topic precipitated by Dr. Kray's motion. I'm hearing varying viewpoints about the merits of that and that there is a lot of detail that warrants discussion that we're just not prepared to have right now. We're woefully over schedule as it is.

I think Mr. Martens made a good suggestion that perhaps there might be time for a presentation to consider exactly what the commission's role would be and what the councils' role would be for these various options. I believe I'm correct in saying that the option of stocks in a fishery is not going to be removed from the Draft Amendment 14 at any time.

The council will be considering whether to move forward with an FMP and then we have the track of Amendment 14 going forward. This board will continue to remain in the loop as those discussions progress. I'm in a little bit of a quandary what to do here. We have a motion to –

All right, the question has been called. All in favor of moving to postpone the motion until the August meeting – the motion made by Mr. Fote; seconded by Mr. Meyers – can we have a show of hands, please, all in favor of the motion; those against the motion; any abstentions; null votes. **The motion passes eight in favor, six against, three abstentions, and one null vote.** Doug.

MR. GROUT: Madam Chair, what I'd like to ask, if this has been postponed and we're going to have this at our next meeting, a discussion of this, would be to task staff with producing a white paper that has both the pros, which I think we have here already, and what are some of the ramifications of having the Mid-Atlantic Council include this as a stock in the fishery; two, the ASMFC management process and the overall management process.

The reason I am requesting this is because this commission has expressed concern – and you see it in our poll about our interactions with having multiple management plans for the same species between the federal and the state. It has been one of the contentious issues. It has an intent to be very cooperative and be something that would be beneficial, but clearly this commission has stated time and time again there are difficulties with having two bodies managing the same species. I would like staff, unless there is objection from the rest of the commission, to put a pros and con white paper together for discussion.

CHAIRMAN DUVAL: Thanks, Doug. Kate is nodding so I think we can certainly accommodate that, and I think it would be incredibly useful for discussion. Pat.

MR. AUGUSTINE: Madam Chair, to add to that, the paper that our staff person from the Mid-Atlantic, Jason Didden, put together – he spent several hours pulling together what each of the councils are doing and what the commission is doing, and I think that would be a meaningful document to include in that white paper.

EXECUTIVE DIRECTOR O'SHEA: Today some folks have expressed concern about not having enough time to deal with this issue, and now there is a clear signal for us to prepare a white paper. I guess I'm a little uncertain as to what the board expects to do in August relative to the Mid-Atlantic Council given that the Mid-Atlantic Council is going to decide in April whether or not to initiate an FMP on shad and river herring.

Unless I don't fully understand what is happening at the Mid-Atlantic Council, it's kind of like the train has left the station and then we're going to do a white paper and have a discussion in August here at the commission. I'm not against doing that, but it would be I think more helpful for us from a staff standpoint to set this meeting up in August that we have a clear understanding of what the intent of the meeting is and

what we're going to try to do relative to influence the Mid-Atlantic Council.

MR. GROUT: My intent with this, given that we've postponed this, is there was a motion up there to consider putting together a letter of support; and whether that FMP has already been initiated or not doesn't mean we cannot provide comments on that FMP at the appropriate time as to whether we support or do not support certain options within that FMP or the FMP as a whole. Having that kind of information at the August meeting I believe would be beneficial for us in making the decision because I believe this board is uncomfortable right now making that recommendation right now, and that's why they postponed the decision.

MR. FOTE: I think what I'd be looking at in a white paper is also – because I'm not attending the Mid-Atlantic Council and the New England Council. I read some of the documents – is to show what is available, what we're doing right now, what we plan to be doing. It's not just for an FMP but how we're going along in this path and how we're working together.

I have some ideas. I've heard some information, but I'm not clarified in my mind how the whole operation is working and I don't think most of us are, especially the people that don't sit on the councils unlike some of the state directors. This would give us an opportunity just to get an overall view of what is going on to come out, and that's what you do in a white paper. You explain things out and I support Doug in this move.

CHAIRMAN DUVAL: Thanks, Tom. So, even if the Mid-Atlantic Council votes to move forward with the development of a fishery management plan for shad and river herring, there is still value in having this white paper there in order for the board to be able to provide some unanimous input as to our support or lack thereof for such a thing; is that what I'm hearing?

EXECUTIVE DIRECTOR O'SHEA: Well, actually, I was thinking going the other way; that if the Mid-Atlantic Council votes in April not to go forward with a River Herring FMP – and we've heard statements from council members this morning saying they don't intend to support it – then I'm back to the question of what are we trying to influence within the Mid-Atlantic Council. Maybe it's input into the Squid, Mackerel, Butterfish Plan that Jason is working on; and if that's what the board is interested in trying to influence, then that would be helpful for

us to know and develop in the white paper and to frame the decision about what you want to do in August.

CHAIRMAN DUVAL: It is my understanding – and I don't attend the Mid-Atlantic Council meetings, but Jason can reaffirm this, but the stocks in the fishery option is remaining in Amendment 14 at this time and that would not be going out for public hearing before the fall; is that correct?

MR. DIDDEN: Correct, so the next substantial action on the stock in the fishery issue I would anticipate being our mid-August meeting. That will be at the earliest when the council selects preferred alternatives. The end results in terms of what is required by the council; an FMP or a stock in the fishery leads to the exact same thing. The structure of the documents and where it is housed might be a little different, but in terms of EFH, ACLS, AMs, the end result would be the same either way. Essentially it will be kind of a two-step – it will be kind of two decisions on whether to go in that direction.

CHAIRMAN DUVAL: Thanks, Jason. So it sounds like this white paper would still be useful for having that discussion and providing some input to the council, which our August meeting is going to be before their August meeting, so this would still be useful. Does that provide some more clarity, Vince? Gene.

DR. KRAY: I think it would helpful for us to think back to quite a few meetings ago of this board when we were discussing the issue of bycatch in the different fisheries, mostly squid, mackerel, butterfish, managed by the Mid-Atlantic Council, and this board sent a letter to the Mid-Atlantic Council asking for assistance – and I'm paraphrasing here – whatever it was possible to reduce the amount of bycatch.

That letter prompted this discussion, I believe, and the introduction of different alternatives that we saw to assist – and I'm speaking with my feet in both camps here – to do what we could to assist the Atlantic States Marine Fisheries Commission to reduce the bycatch of river herring. There was no intention of our seeking to get into a directed fishery.

It took some research on the part of Chris Zeman to ascertain that if we could actually even have an FMP without a directed fishery. We found that there is something of that sort on the Pacific Coast – under the rubes of the Pacific Council. We are simply trying to assist the commission from a request made by this board, and I will stop right there.

CHAIRMAN DUVAL: Thanks, Gene, and I think everybody appreciates that. It's really a concern of not having had enough time for the board to fully process all the ramifications of what a stock in the fishery or a non-directed fishery management plan might incur. I don't think there is – it doesn't sound to me like folks are not supportive of the efforts by the council to try to address those things that this board has asked.

DR. KRAY: I just want everyone to understand that we didn't create this out of whole cloth. We're acting on something that the commission asked for. It may not be the best way to do it, but there are several alternatives that we can follow; FMP is one of them; stocks in the fishery is another. Unless we come up with some other alternatives that we can implement, we're running out of ideas as to how we can help you.

CHAIRMAN DUVAL: Thanks, Gene. I think the white paper that staff will put together will really help inform this discussion in the future. Rick, if it's really quick, we're woefully behind schedule, but is there something you'd like to say to the board?

MR. RICK ROBINS: Rick Robins on behalf of the Mid-Atlantic Council. I will be brief and just to point out as Gene indicated in response to the letter that we did receive from this board, the Mid-Atlantic Council did agree to initiate an amendment to its Squid, Mackerel, and Butterfish Plan to address the interactions that occur within those fisheries with river herring.

We also agreed to put that on a fast track, and I think we've held to that. Right now the amendment is scheduled for final development by the end of this year, so we're moving very quickly through that. We would value any input that the commission has as we go through that. I think one of the things that we're going to be working on in there, though, specifically is how we can improve coordination of management across the different jurisdictions and so in coordination with our management partners, both here as well as the New England Council.

I think that's an area where we can continue to have a constructive dialogue. Perhaps as we continue to work through the development of this amendment, we can look at elements there that would improve coordination. Some of those may be structural, as has been suggested. Some may not be. Some may be simply administrative measures or data collection measures that would improve coordination across the different management bodies.

We would look forward to continued dialogue on that. We've also established an ecosystem subcommittee of our SSC that I think we've put ourselves in a position to make progress on accounting for the ecological significance of our management decisions as we continue to get advice from that subcommittee. I would look forward to the commission's input as we continue to go through the development of Amendment 14, which is on a quick timetable. Thank you.

CHAIRMAN DUVAL: Thanks, Rick, and I would certainly expect that as this white paper is developed for our August meeting that there would be lots of coordination between ASMFC and Mid-Atlantic and New England Council staff. Thank you, everyone, for your input on that. I think it's time for us to move along the next agenda item, which is the river herring stock assessment subcommittee update, and I'm going to turn it over to Kathy Hattala.

### **RIVER HERRING STOCK ASSESSMENT SUBCOMMITTEE UPDATE**

MS. HATTALA: Interesting discussion. The stock assessment subcommittee met at the end of February through the 2<sup>nd</sup> of March. Andy Kahnle is no longer the stock assessment chair. He has been replaced by John Sweka of U.S. Fish and Wildlife Service, so you will be seeing his face here soon.

What we ended up doing is we reviewed all the data submittals so far, including things like the – we're going to be starting to look very specifically – assessment members were assigned various data sets to go through the data that are there and available and also the data criteria worksheets; are the data that we are collecting – how well do they rate for use various stock assessment models, et cetera. All the tasks, like I said, were assigned.

We are hoping to have a draft assessment complete by the end of this year, which will be ready to initiate a peer review process, which will occur early in 2012. The next action item to be discussed is the terms of reference that will be contained in the stock assessment. There is a handout, which I'm not going to go into the great detail because some of the terms of reference are quite long.

I'm just going to briefly give you an overview of – there are ten for the stock assessment and then there are additional ones for the external peer review. Initially the terms of reference that the assessment committee came up with is characterize all the precision and reliability of the fishery-dependent and independent data.

This was determined by all the data submittals that the states have been doing and plus the data criteria worksheet, which will tend to rate it, so to speak, as to how useful it will be for inputs. Number 2 is to develop models to estimate population parameters and/or biological reference points, et cetera, et cetera.

Basically you can look at estimating population parameters either in a very broad perspective or at a very specific perspective. We wanted to leave it open. This will be as much as the data can bear. For instance, if you wanted to specifically hone into a particular river system which there may be data available for, you could do a river-specific assessment as to the status of that stock.

However, then there have been various requests about combining data from regions along the coast or perhaps a coast-wide population. This is why we wanted to leave it open and broad, depending on what the data will bear. This will play out as we move through some of the state reports to see how we can combine things.

Number 3; we're also going to state all the assumptions, of which there are many as you all very well know, for all the models and survival estimates. Any of the estimations that are going to be done, there will be assumptions made. However, what we're also going to include in that will be explanations of explaining what these assumptions will entail, what violations could occur, and what will be the outcome of a violation of those assumptions.

Number 4; where possible assess stock status based on the biological characteristics. For instance, in some rivers there are very little data; however, there are enough that you can at least begin to look at the trends that are occurring within the stock, either in long-term landings, historical indicators of abundance, et cetera, age structure, et cetera.

Number 5; characterize any uncertainty of the model estimates, biological or empirical reference points, which there may be a lot, there may be little, but this is so that this board can understand how confident we feel in the outputs. And then six; well, once you have your reference points, you will recommend stock status as relating to those points. Number 7; there are other potential scientific issues; for instance, comparing the reference points with known life histories of exploited stocks. We are seeing some disconnects in data. For instance, mortality estimates can remain the same yet stock size could be down, et cetera, so we will be attempting to explain these inconsistencies.

Number 8, minority report – this one briefly is for the majority and the minority. They need to explain the reasoning for or against adopting each other’s approach. Number 9; develop detailed future short and long-term prioritized research recommendations, data collection and assessment methods and improvements to be made by the next benchmark review.

And then in Number 10; recommend timing of the next assessment updates, et cetera, relative to the current management of the species. This is only one slide containing all nine of the terms of reference for the external peer review report. Basically they are similar in wording to the river herring stock assessment terms of reference.

However, the peer review TORs specify words like evaluation of the assessment data, all the methods that are used, recommendations – will these things stand the test of time – and then to prepare an advisory report including tasks to be completed. That’s all.

CHAIRMAN DUVAL: Thank you, Kathy. We’ve received a couple of letters asking about additional terms of reference for the stock assessment and with regard to coast-wide bycatch, and I was wondering if the stock assessment subcommittee has had the opportunity to review those.

MS. HATTALA: We had a very short flurry of e-mails. This letter came in last week, I guess it was, so the stock assessment subcommittee e-mailed each other back and forth discussing this. Opinions vary greatly. However, what we ended up doing is we actually tried to draft some wording. This was difficult only because given the number – and I think it focuses in today of all the public comments that there is a lot of data out there that the stock assessment subcommittee has not seen.

For instance, the captain from the NEAMAP, we have not had the opportunity to look at any of that kind of information; the industry/academic partners, et cetera. We know that there are lots of NMFS observers. Jamie Cournane has come and presented to the committee, et cetera. What we ended up doing is we drafted a draft TOR that we actually could revise into the future, and that TOR is up there.

It’s review existing estimates of river herring ocean bycatch retained and discarded; and if possible develop a time series of ocean bycatch and monitor fisheries where data permit and discuss the assumptions and applicability of such estimates to

management; and peer review TOR, evaluate what we just did.

However, like I said, most of the data is contained in the National Marine Fisheries Service; like, for instance, the industry SMST data. There appears to be a lot more information out there and/or portside sampling, et cetera, from Massachusetts that we need to all sit down with the stock assessment committee and all these individuals who are collecting this information to have a very thorough discussion of the data, so we could use additional analytical help.

CHAIRMAN DUVAL: We need to approve the terms of reference for the stock assessment at this meeting. Are there any questions for Kathy about the terms of reference? A.C.

MR. CARPENTER: Thank you, Kathy, I appreciate this. I want to go back to something that was brought up by Captain Ruhle. I know in our situation we don’t have any way to separate the blueback and the alewife in the harvest records because they were always combined. But, would it be appropriate to have as a term of reference here, one of them being to find out how much can we separate the data for each species?

We have independent young-of-year indexes for the two species, but we have a combined mortality in terms of harvest. We may be the exception to the rule or everybody may be in the same boat we are. I don’t know and I’m wondering if that’s something that now would be the time to try to figure that question out as part of this stock assessment terms of reference.

MS. HATTALA: What is implied in here, and I guess when we were writing the terms of reference, all data are requested to be separated by species and sex, so we will be attempting to do that separately. This is where, as what you just indicated, in many instances it’s combined as river herring. We requested it from the states as separate, so we will have to deal with that as we move through each of the data submissions; and if possible, we will do that. It’s not explicitly stated in the TORs, but we will try and take it to the species level.

MR. GROUT: One of the terms of reference just sort of stuck at me only because I haven’t seen this in my many years dealing with terms of references. It has a condition as assuming there is going to be a minority report, and I’m wondering – and I’m asking this from a staff’s perspective – is that really something that is necessary?

If it is to have that explicitly in there, how we'd like particularly the peer review to deal with it, that's fine, leave it in there. I have never seen this saying if a minority report; especially where we try to work on consensus here, although I know in the past particularly in this committee there have been minority reports, and I understand why the – but I was hoping just from a process standpoint is it needed? If it is not, let's take it out. If it is, let's keep it in the way the technical committee has recommended.

CHAIRMAN DUVAL: I think Katie has got an answer for it.

DR. KATIE DREW: The minority report term of reference is actually not part of our standard peer review terms of reference; and since these are approved fairly far out in terms of the completion of the stock assessment report, we want to include it both in this assessment and also in general just so that we are completely prepared to know how to deal with a situation where the technical committee cannot come to agreement.

Obviously, I think this is a worse-case scenario and that we would strive to come to agreement as much as possible. If we do not need to submit a minority report, then for this term of reference in the stock assessment report it will simply say no minority report was submitted and we'll check that off. But, should the worse happen and we do come across deep divisions, which we did during the shad assessment, this will be in place so that the committee knows how to deal with it and so that the peer review knows how to deal with it when it goes to review.

EXECUTIVE DIRECTOR O'SHEA: We've had over the years some real issues with minority reports and minority reports turning out afterwards to be problematic to the credibility of the entire stock assessment. I think this is an important question for the board, and I'm almost wondering if there is any concern from board members that by putting sort of the fail – you know, the escape option of a minority report, if that takes pressure off of the group to really come to consensus and whether or not it would be practical that if they can't come to consensus, to then come back to the board and seek permission to do a minority report. But if we go in up front and say if you guys can't come to consensus, you could do a minority report – again, I just remind us that we've had problems with those minority reports in stock assessments in the past.

DR. KRAY: Madam Chair, **I simply wanted to make a motion to accept the terms of reference as presented.**

CHAIRMAN DUVAL: Dr. Kray, **does your motion include the terms of reference as amended by the technical committee.** Ms. Hattala presented an additional term of reference that was added.

DR. KRAY: Yes, it includes everything.

CHAIRMAN DUVAL: Is there a second to that motion.

MR. AUGUSTINE: Point of information, Madam Chair; if we go forward with this motion, that will include the minority report?

CHAIRMAN DUVAL: Yes.

MR. AUGUSTINE: Well, another point of clarification; we're still discussing that; and if Dr. Kray would not mind, could we hold that in abeyance until the three or four people that have raised their hand concerning that – I want to speak to that point, also.

EXECUTIVE DIRECTOR O'SHEA: Well, actually I think this is the way to deal with it, get a motion up there that has that in there and then decide whether or not you want to include that in the motion.

CHAIRMAN DUVAL: So do we have a second for the motion so we can have this discussion? Second by Bill Cole. A.C.

MR. CARPENTER: I suspect this minority report portion of this could be problematic just as the executive director has stated. My initial thought was that this ought to go to the Policy Board because this is precedent-setting and it's going to apply to all species, but then I looked around the table and essentially the Policy Board is sitting here. Every state is represented. I'm still a little bit uncomfortable about it not going before the Policy Board, and I would like to hear other people's thoughts before I go anymore.

CHAIRMAN DUVAL: And hopefully to that point, Jaime.

DR. GEIGER: Madam Chairman, just for clarification with the motion; that does include the additional draft terms of reference for bycatch, does it not?

CHAIRMAN DUVAL: Yes.

MR. AUGUSTINE: **Madam Chair, I move to amend the motion to remove the minority report as being a part of the term of reference.**

CHAIRMAN DUVAL: Pat, I know there were a couple of other folks that had things that they wanted to say. I didn't give Bill Cole a chance to speak up, but can we have a second to the motion? Roy.

MR. MILLER: Second the motion.

CHAIRMAN DUVAL: Second the motion, so move to amend the motion to remove the minority report as being part of the terms of reference. Motion by Mr. Augustine; seconded by Mr. Miller. Discussion? Roy, did you something else you wanted to say?

MR. MILLER: Like Vince, I remain troubled by the precedent-setting of including minority reports in our terms of reference. I think we're setting ourselves up for paralysis if we formally endorse up front inclusion of minority reports. If minority reports come about, so be it, but I can't see putting them in the advanced directive for this particular purpose. Thank you.

MR. ADAM NOWALSKY: Just to get clarification from the TC, my understanding of this is that not a minority report has to be included, but that if one is included that there should be a response from the majority opinion why that minority report should be not considered; is that correct?

DR. DREW: Absolutely; and further that this minority report is reviewed by the peer review and the peer review passes judgment on the reasoning behind the minority report and the reason for the majority report rejecting it.

MR. NOWALSKY: Thank you, and I appreciate that. If this was requiring that a minority report be filed, I would certainly oppose it, but allowing for a minority report to be filed and not to allow it to just be another two pages in the back of a 270-page supplemental materials package that we have to review, I think that this sets a clear path to allow for a minority report to at least be responded to and to have some consideration. I think that's important for us to consider and therefore I would support leaving that included in this document.

MS. HATTALA: I just wanted to comment briefly the actual wording is if a minority report has been filed, explain the majority reasoning against adopting

the approach suggested in that report. A minority report should explain the reasoning against adopting the approach suggested by the majority. Both reports, majority/minority, both have to explain the reason why they didn't use the other one. Otherwise, this is part of the stalemate issue. You have to get it out on the table why each of the two approaches don't seem to be compatible with each other.

DR. DUVAL: So a question for Katie; was a term of reference included in the shad assessment for a minority report?

DR. DREW: No, there was no term of reference for a minority report in the shad assessment. A minority report was submitted, and the peer review due to time constraints and because it was not part of their term of reference did not review the minority report. However, it is now part of the entire document of the stock assessment as an unreviewed minority report. We would like to avoid that situation if at all possible for this assessment.

CHAIRMAN DUVAL: So just to summarize, it sounds like you just want to make sure that you're prepared for such an event?

DR. DREW: Exactly; we don't –

CHAIRMAN DUVAL: You don't view it as setting yourself up for dissent?

DR. DREW: Exactly; like I said this is a worse case scenario would be to us as a committee that if we could not come to an agreement, I think that would be a deep concern for us, but we would like to be prepared for it to be able to present the best and most thorough assessment and review possible.

MR. DAVID SIMPSON: I think it's hard to judge a minority report or any report until you have seen it and you have the specifics in front of you. I think the issue of clear assessment guidance and clear peer review insight is helpful to us. There presumably is a little bit of a cost implication because more work is more time, it's more money. Has there been a comment? Did I miss that or is the staff or Vince able to respond to that? Does this pose a serious cost concern for the commission to include the peer review of the minority report?

EXECUTIVE DIRECTOR O'SHEA: I don't know. It depends how extensive the minority report is and it depends how much we've got to pay for peer reviewers and all. Frankly, I don't think it should be a cost issue. I'm not going to say it's no cost. I think

it's a policy issue of whether you want to get that thing out there. Well, I've already spoken my concern.

MR. SIMPSON: Okay, so if the commission doesn't have a cost concern about it, the point has been made that those documents are out there regardless of what we do. I think it's better to acknowledge them, bring them in, get the peer review on them, and then you have – instead of it being attached as an unreviewed component of the overall advice, they'll be reviewed or the TORs will force some better resolution up front. I actually oppose this motion and think it's a good idea to just keep them in the TORs.

MR. CARPENTER: I think there is an option here that we haven't really explored, and that is rather than put in the terms of reference now and essentially giving permission for a minority report to be developed, maybe what we should do is take it out as the motion states.

If the assessment team comes back to us and says, you know, this just isn't going to work, we've got a group of scientists here are debating, we need to have a minority report, we can certainly at that point say, okay, give us the minority report, and we can amend the terms of reference for the reviewers at the same time and ask them to review it, because the reviewers aren't going to get it until we give it to them.

That seems to me to be the direction that I think we ought to move is let's not give pre-approval to developing a minority report; and if they can't give us a concise, valid assessment report and there is a major problem that necessitates a minority report, have the board address it at that point and just amend the terms of reference to handle that situation.

DR. GEIGER: Madam Chairman, like Roy I'm troubled by this discussion. I think we have a couple of good suggestions on the table to remedy this. Madam Chairman, this is a policy issue, and again I think it should be considered as a policy issue. Right now I support this amendment to take it out.

I think this commission has always operated with the spirit of trying to achieve consensus. That's an operating and founding principle that certainly I'm aware of, and I think we should strive to continue that. If it does come up, I think we can address it very similar to what A.C. said, but right now I think we need to move on, and I suggest supporting this motion.

CHAIRMAN DUVAL: Thank you, Dr. Geiger, I tend to agree. Are folks ready to caucus briefly before voting on the motion? We'll go to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN DUVAL: All right, it sounds like folks are ready to vote. If we could have a show of hands in favor of the motion to amend, and that is move to amend the motion to remove the minority report as being a part of the terms of reference, those in favor; those against; null votes; abstentions. **The motion passes.**

The motion that we need to vote on now becomes move to accept the terms of reference for the river herring assessment as presented. This does not include the term of reference regarding a minority report and it does include the amended term of reference that Kathy presented to us on ocean bycatch.

The main motion is now move to accept the terms of reference for the river herring assessment as presented without the minority report and including the bycatch terms of reference as presented. I see Jeff with his hand up. You've got to be really brief, Jeff.

MR. KAELIN: Madam Chair, I know we're overtime, but I have a real problem with this bycatch reference being shown on the board briefly for a couple of seconds. It's not in the documentation for this meeting. I'm not necessarily opposed to it but the other request that the Herring Alliance made, one which we agree to that we evaluate the offshore trends from the surveys, isn't even touched on here.

I think this is seat of the pants on the bycatch thing. Why don't we come back in the summer and take a look at that, but to just roll the bycatch one and ignore the other data, the long time series of data that exists from the surveys, which is going to give you a lot more information than three or four years of bycatch data which we're trying to bring to the table. As a member of the public I think it's premature. We don't even have the language. I'm strongly opposed to this motion for that reason.

CHAIRMAN DUVAL: Thanks, Jeff, we're going to get that language back up. This reads review existing estimates of river herring ocean bycatch retained and discarded and if possible develop a time series of ocean bycatch in monitored fisheries where data permit and discuss the assumptions and applicability of such estimates to management with the peer

review TOR being evaluate the estimates of river herring ocean bycatch and the methods used to develop them. Is there further comment and discussion? Bill Goldsborough.

MR. WILLIAM GOLDSBOROUGH: Madam Chair, I believe I was the Bill that was on your list previously, but it wasn't about the other issue. It's actually about the second issue that Jeff just mentioned, but first I'll say I do think that this bycatch term of reference is exactly what we should be looking at.

I was going to raise the issue that the second suggestion in the letter that the Chair referenced about treating the various populations as a stock complex was not mentioned or addressed by the technical committee. It was my understanding that was based on an analysis that was presented to the joint meeting that we had with the two councils in Philadelphia last October. I wondered if the technical committee had a chance to evaluate that suggestion.

MS. HATTALA: The Term of Reference Number 2 states if possible develop models used to estimate population parameters. We specifically did not put in river-specific stocks, coast-wide meta-populations, regional populations, et cetera. We left it at population so that it can be open to any level of inclusion depending on what the data will bear.

MR. GROUT: A quick question for Kathy; when the data workshop was conducted and we were bringing all the data together, did that include the NMFS Trawl Survey Data; was that brought to the stock assessment committee so that they would be using that in there? That was one of the questions I thought Jeff was getting at. If that's already in there, then that's what we need.

DR. DREW: Absolutely; I assure you the NMFS Trawl Survey has been extensively considered and will be a major part of the analysis.

MR. KAELIN: Thank you for that clarification.

CHAIRMAN DUVAL: Are there any other comments from the board on the motion? Can we caucus briefly before voting on the motion, please?

(Whereupon, a caucus was held.)

CHAIRMAN DUVAL: We're just trying to do a little perfecting of the motion to make sure that it's clear that we would be accepting the terms of reference as amended so taking out the term of

reference for the minority report but including the bycatch term of reference. Are both the maker of the motion and the seconder okay with that perfection?

Move to accept the terms of reference as amended to include the bycatch term of reference and without the minority report. Motion by Dr. Kray; seconded by Mr. Cole. Can I see a show of hands in favor of the motion; anyone against; abstentions, 2; null votes. **The motion passes.** All right, we have been at this a long time; we're almost done. We have one brief item, I hope. Kathy has just a couple of quick slides with regard to committee membership and leadership.

### DISCUSSION OF COMMITTEE MEMBERSHIP AND LEADERSHIP

MS. HATTALA: Well, this is my last board meeting. I have reached my two-year term as technical committee chair. However, I've tried to bring to this board's attention several times that the vice-chair has been vacant for the last two years, for my entire term, so I've been doing all the jobs. I will be done as of next month. Some of the problems that this creates is, one, it completely disrupts continuity to the board. The technical committee now has very few experienced members; those that have been long standing on the committee.

Many of them have moved on and sitting at this table now rather than at the technical committee or have moved on to other jobs. Discussions, when they occur at the technical committee generally amongst the experienced members. Sometimes the newer folks tend to join in, but it gets very quiet on conference calls.

There are a lot of jobs ahead of you as this board and for the technical committee, so I just want to remind you that you're going to need a very strong Chair. Where we stand right now is that in August of this – well, first in July of this year they will be doing – the technical committee will have to do their annual compliance reports, any altered SFPs for river herring, et cetera, but in August all of the American shad recovery plans and/or sustainable fishery plans are due to the commission. That will be reviewed by the technical committee.

In addition, there will also be a joint meeting of the technical committee and the stock assessment subcommittee to discuss the river herring stock assessment. All of this will come back to the board in November if the technical committee can accomplish all these tasks. As I said, you will need a strong Chair. It's up to you. It has been fun!

CHAIRMAN DUVAL: Thank you, Kathy, for your dedicated service over the past couple of years. I know that we've all appreciated the years of experience that you bring to the board for that. We have a lot of tasks in front of us, a lot of task for the technical committee. You're hearing the plea here. I think there are other options available.

We could have co-chairs for the technical committee. I know, speaking for North Carolina, our technical committee member is relatively new. I would have some concerns about him stepping up to such a position on his own, but I'm looking to the states to step forward and check with their staffs and try to fill some of these voids that we're experiencing.

MR. GROUT: My TC member is in the same boat as yours; he has been on the – this is his first ASMFC technical committee and he has only been on for two years, but I am going to encourage him to put his name in for the vice-chair in the hopes that some of the states here that do have or agencies that do have people that are experienced in this might be able to encourage their technical committees to take on the chairmanship.

One of the things I also wanted to point out; I had a discussion with Vince when he sent out his e-mail out on this that when I was on the technical committees the commission provided an opportunity for people like Kathy and myself to have a sort of a technical committee version of meeting management – meeting leadership training workshop at one of the technical committee meeting weeks.

Since we've had such high turnover, I've asked Vince if he would be willing to look into that as a possibility and see if we have the budget and the available funds for that at one of the technical meeting weeks in the future; to provide this opportunity because I think a lot of these new people are very intimidated by taking on a leadership role so soon without having any knowledge of how to be a leader and run meetings here.

I think that would help if we could provide that opportunity to all our technical committee members so that they might be a little less intimidated by this process, particularly when you're dealing with such controversial species.

CHAIRMAN DUVAL: Kathy, do you have any recommendations for a successor?

MS. HATTALA: So you want to blame this one on me! This is my second time as technical committee

chair. I can go through the list on one hand. The last ten year it was me; then it was Russ Allen, who is now sitting on this board; it was Michael Hendricks from Pennsylvania; then the late Dr. John Ulney, who we miss very much; and then Bob Sadzinski from the state of Maryland; and then back to myself.

There are probably a handful of experienced members; starting to the north, Mike Brown in Maine; New Hampshire is new; Rhode Island has a long-term member, Phil Edwards; Massachusetts, Phil Brady just retired and they're replacing him with John Shepherd; Connecticut, Jackie is relatively new; then myself; then New Jersey is relatively new; Delaware has Mike Stangl, who has never held either position – he is a medium, I guess experience – Maryland, Harry Rickabaugh is new; Eric Hilton is relatively new in Virginia; North Carolina, Adam is new; Bill Post has some experience – he is quite overwhelmed down there – Don Harrison has been on for Georgia for a while, very good biologist; and Reed Heil is new.

The term new applies to most of the technical committee members of the entire coast. Oh, I forgot, Ellen in PRFC is one of our experienced members, A.C. D.C. is relatively new, too. I'm not going to make a suggestion. I made suggestions in the past. I was told that, oh, yes, such and such would be there. I called their member, congratulated them, and they said, "What are you talking about?"

I think it's up to this board to really recognize that if you want good sound advice from the technical committee, you have to rely on the experience that you have in your own office and then that person, if they are experienced enough and well rounded enough is what Doug was saying – you need that leadership training behind you that some of the more long-term technical committee members – that's the pool of candidates that you need to consider. Ellen would make a very good chair along with Mike Brown. Mike Hendricks has already been sitting in this seat, Mile Stangl from Delaware, no; and Bill Post, no. It's up to you guys.

CHAIRMAN DUVAL: Thanks, Kathy. I would strongly urge us to look – given some of the relatively young folks sitting around the technical committee – to strongly consider a co-chair situation. There is a lot of work coming ahead.

## ADJOURNMENT

We just tasked the technical committee and staff with developing a white paper for our August meeting.

Perhaps we can have some offline discussion amongst the board members and working with staff in regards to how to move forward with the technical committee. How does that sound to folks? We are woefully over our time. Can we have a motion for adjournment, please? All right, Pat and Jim Gilmore; thank you.

(Whereupon, the meeting was adjourned at 10:57 o'clock a.m., March 22, 1011.)