

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

The Langham Hotel
Boston, Massachusetts
November 8, 2011

Approved February 7, 2012

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1. **Approval of Agenda by Consent** (Page 1)
2. **Approval of Proceedings of August 3, 2011** by Consent (Page 1)
3. **Move to approve the Florida, South Carolina and New York’s sustainable fishery plans** (Page 2). Motion by Pat Augustine; second by Bill Adler. Motion carried (Page 2).
4. **Move to approve the 2012 Shad and River Herring Bycatch Proposals from Maine and Virginia** (Page 12). Motion by Pat Augustine; second by Bill Adler. Motion carried (Page 12).
5. **Move that the board preliminarily approve the PRFC 2012 Shad Bycatch Proposal for the PRFC and specify that the requirements of the technical committee be provided to the PRFC in writing for final action at the ASMFC February 2012 meeting** (Page 12). Motion by Pat Augustine; second by Bill Adler. Motion carried (Page 14).
6. **Move to recommend that the ISFMP Policy Board craft a letter to the National Marine Fisheries Service, providing technical information for the status review for river herring** (Page 17). Motion by Byron Young; second by Bill McElroy. Motion carried (Page 18).
7. **Move to accept the 2012 FMP Review and approve de minimis requests from Maine, New Hampshire and Massachusetts** (Page 20). Motion by Doug Grout; second by Bill Adler. Motion carried (Page 20).
8. **Move to adjourn by Consent** (Page 20).

ATTENDANCE

Board Members

| | |
|------------------------------------------------|----------------------------------------------------|
| Terry Stockwell, ME, proxy for P. Keliher (AA) | Bernie Pankowski, DE, proxy for Sen. Venables (LA) |
| Doug Grout, NH (AA) | Roy Miller, DE (GA) |
| G. Ritchie White, NH (GA) | Tom O'Connell, MD (AA) |
| Mike Armstrong, MA, proxy for P. Diodati (AA) | Russell Dize, MD, proxy for Sen. Colburn (LA) |
| Bill Adler, MA (GA) | Bill Goldsborough, MD (GA) |
| Rep. Sarah Peake, MA (LA) | Steven Bowman, VA (AA) |
| Mark Gibson, RI, proxy for B. Ballou (AA) | Jack Travelstead, VA, Administrative Proxy |
| David Simpson, CT (AA) | James Kellum, VA, proxy for Sen. Stuart (LA) |
| Rep. Craig Miner, CT (LA) | Catherine Davenport, VA (GA) |
| Lance Stewart, CT (GA) | Michelle Duval, NC, proxy for L. Daniel (AA) |
| James Gilmore, NY (AA) | Bill Cole, NC (GA) |
| Byron Young, NY, proxy for Sen. Johnson (LA) | Ross Self, SC, proxy for R. Boyles (LA) |
| Pat Augustine, NY (GA) | Malcolm Rhodes, SC (GA), Chair |
| Pete Himchak, NJ, proxy for D. Chanda (AA) | Spud Woodward, GA (AA) |
| Tom Fote, NJ (GA) | Aaron Podey, FL, proxy for J. McCawley, FL (AA) |
| Adam Nowalsky, NJ, proxy for Asm. Albano (LA) | Sen. Thad Altman, FL (LA) |
| Leroy Young, PA, proxy for J. Arway (AA) | Jaime Geiger, USFWS |
| Loren Lustig, PA (GA) | A.C. Carpenter, PRFC |
| Rick Cole, DE, proxy for D Saveikis (AA) | Steve Meyers, NMFS |

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

Ex-Officio Members

Pam Lyons Gromen, Advisory Panel Chair

Wilson Laney, Technical Committee Chair

Staff

Vince O'Shea
Kate Taylor

Bob Beal
Chris Vonderweidt

Guests

The Shad and River Herring Management Board of the Atlantic States Marine Fisheries Commission convened in the Wilson Ballroom of the Langham Hotel, Boston, Massachusetts, November 10, 2011, and was called to order at 8:45 o'clock a.m. by Chairman Malcolm Rhodes.

CALL TO ORDER

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

APPROVAL OF AGENDA

CHAIRMAN MALCOLM RHODES: We had previously sent out agendas and proceedings from our last meeting. Are there any changes to the agenda? Seeing none, any opposition to acceptance? Seeing none, we accept the agenda.

APPROVAL OF PROCEEDINGS

CHAIRMAN MALCOLM RHODES: You also received the minutes from the August 3, 2011, meeting. Were there any changes to that? Seeing none, any opposition to acceptable? Seeing none, we shall move forward.

PUBLIC COMMENT

CHAIRMAN MALCOLM RHODES: This is the time of the meeting where we have a space set aside for public comment for any issues that will not be discussed later. We had a sign-up sheet out front and there were no names that I saw on the sign-up sheet. Is there any comment from the public? Seeing none, we shall move on. The next item on the agenda is the Shad and River Herring Sustainable Fishery Management Plan Review. I'll turn it over to Wilson.

SHAD AND RIVER HERRING SUSTAINABLE FISHERY MANAGEMENT PLAN REVIEW

DR. WILSON LANEY: Mr. Chairman, I'm sitting in for Technical Committee Chairman Larry Miller this morning. With regard to the New York Plan, New York had requested a fishery in the Hudson River. Their target is less than the 25th percentile for young of year alewife and blueback surveys for three consecutive years. The technical committee recommendation is that the board consider approval of the plan.

There are a number of other shad sustainable fishing management plans from South Carolina, Florida, Georgia, Delaware Cooperative, Massachusetts, PRFC, Maryland, D.C, Pennsylvania, Delaware and New Hampshire, and we have received some of these and approved them previously, I believe, have not? We haven't on these.

Some of these we had some concerns with and we have requested additional information. Some of the rest of them we're going to recommend for approval along with New York. One of those is South Carolina. Their proposed regulations would close all the fisheries except for the Pee Dee, Waccamaw, Santee-Cooper, Edisto, Combahee, and Savannah River Fisheries. Their target is 75 percent of the annual mean of the catch-per-unit effort for recent years by river system. The TC recommendation is that the board considers approval of that plan as well as New York.

Florida is requesting status quo. They're using a spawning stock index and the TC recommendation is that board considers approval of that plan as well. There are other plans, again as I said, that were reviewed by the TC and we've requested additional information for those, and those are Georgia, the Delaware Cooperative, Massachusetts and PRFC.

We will be reviewing those plans as they are resubmitted along with Maryland, D.C., Pennsylvania, Delaware and New Hampshire and hope to get those done in the not too distant future, probably during January so that we have some more plans for action at your February board meeting. That's my report, Mr. Chairman.

CHAIRMAN RHODES: Thank you, Wilson. Any questions of Dr. Laney? Mr. Miller.

MR. ROY MILLER: Wilson, I was scanning through these and in the New York proposal for river herring there was something that troubled me that stood out. It was the fairly steady decline in the mean size at age of the river herring. Do you recall, Wilson, anyone on the technical committee noting that did that cause any concern?

DR. LANEY: Yes, we did note that, Roy, and that same change is evident coastwide. It's just something that we're keeping an eye on right now.

MR. MILLER: The only reason I bring it up is for someone to argue about sustainability in the face of that happening does make me concerned. Thank you.

CHAIRMAN RHODES: Any other discussion? Is there a motion for approval? Mr. Augustine.

MR. PATRICK AUGUSTINE: **Mr. Chairman, I move to approve – would name the states in the document?**

MS. KATE TAYLOR: New York, South Carolina and Florida.

MR. AUGUSTINE: New York, South Carolina and Florida be approved by the management board.

CHAIRMAN RHODES: Sustainable Fishery Plan.

MR. AUGUSTINE: Sustainable Fishery Plan; thank you, Mr. Chairman.

CHAIRMAN RHODES: Second by Mr. Adler. Any discussion? All right, the motion is to approve the Florida, South Carolina and New York's sustainable fishery plans. Motion by Mr. Augustine; second by Mr. Adler. Any further discussion? Any opposition? **Seeing none, we will move by consent.** The next order of business is Amendment 2 bycatch discussion by Kate.

MS. TAYLOR: At the technical committee meeting, the technical committee also reviewed what the sustainable fishing plan implement was going to be for 2012. At the last board meeting the board also had a question about what the state regulations would be for federal waters bycatch. The technical committee did compile a report on each state's implementation for Amendment 2 compliance as well as the federal bycatch provisions, what states might have for regulations.

Maine has an approved plan in place. There is a pending bycatch proposal for 2012. New Hampshire has the approved plan in place. Massachusetts had had a moratorium for river herring since 2005. They do have an exception for federally permitted vessels, which are allowed to land up to 5 percent by number of river herring per trip. Rhode Island has had a moratorium since 2006. Connecticut has had a moratorium since 2002. The New York Plan was just approved. New Jersey, there is a moratorium pending approval by the Marine Fisheries Commission and governor's office with a 5 percent bycatch allowance by weight from federally permitted vessels for river herring.

In Delaware the fishery will close in 2012. In Pennsylvania the fishery will close. Maryland will enact regulations for no possession with an exception

for river herring originating from waters not under their jurisdiction. The PRFC has regulations prohibiting bycatch that they will be reviewing at their December 2nd meeting.

Virginia will have a no possession allowance of river herring. North Carolina and South Carolina both have had plans approved by this board, and in Florida there is no directed fishery for river herring.

CHAIRMAN RHODES: Any questions? Mr. O'Connell.

MR. THOMAS O'CONNELL: Just for a point of clarification to follow up, Maryland is going to be a no possession unless you have a documented sale from another state that allows harvest.

DR. MICHELLE DUVAL: Mr. Chairman, just to clarify, North Carolina has no possession unless our very limited four-day season is open, when is included in our plan.

MR. A.C. CARPENTER: Mr. Chairman, I expect at our December 2nd meeting the Potomac River Fisheries Commission will have a no possession total closure.

CHAIRMAN RHODES: Thank you for the information. Any further discussion? We will continue moving on. Kate is going to bring us up to speed on where the Mid-Atlantic and New England Council amendments are.

FEDERAL COUNCIL AMENDMENT UPDATES

MS. TAYLOR: First I will be reviewing the New England Fishery Management Council's Amendment 5 to the Atlantic Herring FMP. For those that were at the Atlantic Herring Section meeting on Monday, Lori Steele went into detail on the progress of that amendment. The very abridged version is that management options included in the amendment are covering trip notification, reporting requirements, catch monitoring, access to groundfish closed areas, and, of course, the river herring bycatch. The amendment was approved for finalization and submittal of the Draft EIS to NMFS. Their PRT will be working on finalizing that document.

For the Mid-Atlantic Council, their work on Amendment 14 to the Squid, Mackerel, Butterfish FMP is dealing with shad and river herring bycatch. The board has been briefed on this amendment at the October council meeting. The council voted to

remove options relating to mesh requirements and the requirements for sorting and weighing of dealers, and they added in an option for portside monitoring among a couple of other options that they finalized at that meeting.

The big issue that the board discussed in August was the stock-in-the-fishery designation. There were some questions around the flexibility in the ACL/AM requirements; specifically whether or not shad and river herring, if designated as a stock in the fishery would fall under that as a species there would be given flexibility to.

The FMAT discussion has found that similar plans for anadromous species designated as a stock in the fishery are not really applicable; and additionally discards are not addressed in ASMFC plans so the council would really not be able to defer responsibility to ASMFC in order to cap mortality. Shad and river herring, if designated as a stock in the fishery, would not be given the flexibility in the ACL/AM requirements.

This analysis is supported by NOAA General Counsel. Additionally, I would just like to point out if shad and river herring were designated as a stock in the fishery, council staff has determined that it would most likely not be able to occur within Amendment 14, and it would have to be addressed in a separate amendment.

Right now both the New England Council and the Mid-Atlantic Council have had their draft amendments approved for finalization and submittal of their Draft EIS. At this moment we do not have copies of those amendments. They will be worked on by council staff and their respective PRTs. Potentially we might have copies available prior to the February board meeting, but with the timeline that was included in your briefing material that may not occur.

Public hearings are most likely going to be held during February and March for the two amendments and potentially some overlap in concurrent meetings. Both councils are expecting to approve final management in April 2012 with the amendments effective January 1, 2013. And just to make the board aware, the Mid-Atlantic has sent a letter to the New England Council requesting inclusion of the mortality caps in Amendment 5. The board at the last meeting did send a letter to the council saying that they support inclusion of Alternative Sets 1 through 8 in the Amendment 14 document by the Mid-Atlantic

Council, which included a catch cap alternative. Thank you, Mr. Chairman.

CHAIRMAN RHODES: Any questions? I think we have a good idea of where the timeline is. I believe this would be the point that we need to bring back a motion at the last meeting that was brought forward when we were sending a letter in regards to Amendment 14 with support of Alternatives 1 through 8 for the public hearing.

We did not comment upon Alternative Set 9, which was the stock in the fishery. At that point we were hoping to get more input from the councils and for the public input. Mr. Stockwell, you had made the original motion that was postponed to this time. Would you like to bring it up again or should we wait for the document to be released to the public?

MR. TERRY STOCKWELL: Mr. Chairman, I would be comfortable with waiting for the document to be released. The New England Council next week will be reviewing the letter from the Mid-Atlantic Council. I am assuming it will be included as part of Amendment 5, and we will be moving forward with our public hearings, Doug, sometime early this winter; is that correct?

MR. DOUGLAS GROUT: I believe Lori was saying March.

CHAIRMAN RHODES: All right, is any further discussion to that point? Dr. Duval.

DR. DUVAL: Mr. Chairman, I'm comfortable with that as well. I was the one who said that I wanted to see a NOAA General Counsel assessment of the flexibility that would or would not be afforded with the designation of stocks in the fishery. Now that that initial analysis that flexibility would not be allowed and likely a separate amendment would be required in order to move forward with stocks in the fishery, if that was what was chosen, I'm happy waiting until the complete document is put together and there is a little bit further analysis by the staff in terms of if that was chosen, how that would move forward, so I'd rather wait for that. Thank you.

CHAIRMAN RHODES: Thank you. Steve.

MR. STEVE MEYERS: Mr. Chairman, since this is a letter to a council, I, of course, will have to abstain until, of course, within the council process the recommendation goes to the secretary for approval.

MR. JEFF KAELIN: Mr. Chairman, I'm Jeff Kaelin with Lund's Fisheries. The reason why I came to the microphone during this discussion is that one of the key elements of both of these plan amendments we think is the bycatch avoidance program that we have rolled out within the last year at SMAS, similar to what we're doing in the scallop fishery to identify hotspots on the water in real time.

At the last Mid-Atlantic Council meeting, Dave Bethany who works for SMAS, came to the council and made a presentation about that project, which I believe the council members thought was very helpful in understanding how this kind of a project would work. We think it works better than closures would. Anyway, what I'm putting on the table today, Mr. Chairman, is we've tried to figure out how someone from SMAS could come before the board to kind of describe this project, and it looks like perhaps there would be time on your agenda in February to do that.

We have been told that the people from SMAS have to talk to Dr. Miller and the technical committee before they get a chance to come before you, but we've been talking about this for some months, and we'd love to be able to have an opportunity to get them on your agenda for February, Mr. Chairman.

CHAIRMAN RHODES: Great, thank you very much, and we can work with staff to try and make that occur.

MR. KAELIN: Thank you; I think you'd find it interesting.

CHAIRMAN RHODES: All right, so at this point this means we're waiting for the public information document for Amendment 5 and Amendment 14 to go out. Hopefully, they will be released by the February meeting, at which point as a board we can make a comment on it. If it occurs after that point, we're going to have to come up probably at the February meeting with some way to review the document and comment upon it as a management board. That's just this timetable whether it occurs before or after February, but we'll have to discuss that occurrence at the February meeting if the plan has not been released at that point. At this point we were asked to consider bycatch proposals and we're going to go through by state. Bob.

REVIEW AND CONSIDERATION OF 2012 SHAD AND RIVER HERRING BYCATCH PROPOSALS

MR. ROBERT E. BEAL: Real quickly before the board moves away from Amendments 5 and 14, the New England Council is going to be meeting next week, and there is a recommendation from the Mid-Atlantic Council to put catch caps back into the New England Amendment 5 Document. This board has commented to the Mid-Atlantic Council that they're comfortable with river herring bycatch caps going out for public comment. If the New England Council were to ask the commission is there a position on reinserting catch caps into Amendment 5, is there a position of this board that can be conveyed to the New England Council, or what is the position of this board regarding the Mid-Atlantic Council's recommendation?

CHAIRMAN RHODES: Does anyone have any comment? Dr. Duval.

DR. DUVAL: Mr. Chairman, I think if we were supportive of a bycatch mortality cap going out in the Mid-Atlantic Council's document, I don't see why we would not be supportive of the same measure going out for public comment in the New England Council's document.

CHAIRMAN RHODES: That would be my feel that it would be the consistency of this board to like public comment both ways. Mr. Gibson.

MR. GIBSON: Generally I agree with that position, but I would like to know what the technical committee's position is right now on the ability to specify meaningful catch caps from a stock status standpoint?

DR. LANEY: Mark, we really haven't discussed that with any great degree of specificity. I had a conversation with Jason Didden from the Mid-Atlantic Council about that issue last week because we were looking at – well, Jason and I had a general discussion, again absent from the rest of the technical committee, about the problem with river herring catches at sea.

We were talking about area and season closures and doing so in view of the new maps that they have prepared – at least they were new to me – that showed that river herring distribution is rather widespread. It doesn't appear to be; but based on the

information they have analyzed, it concentrated to the extent that some sort of area-over-season closure would be as effective possibly as a cap.

That's the extent of the conversation I've had with the Mid-Atlantic Council staff about that issue. The technical committee hasn't really discussed it as a TC, so that's something we would have to consider I think at our next meeting in January. To answer your question, we haven't discussed it yet.

MR. GROUT: I would like to give the commission sort of an overview of the dilemma that the two councils are dealing with right here. Our scientific bodies and the PDTs are at odds with each other on this issue. We have the Mid-Atlantic Council's PDT saying that area management, which is what the New England Council is proposing, is not feasible and that a catch cap is more feasible.

The New England Council's PDT is telling us that area management is more suitable because we're not at the point where we can do a coast-wide catch cap. Clearly, I think from my personal perspective I don't have a problem with it going out for public comment, but I think we're dealing with opposing scientists right here so it's making it very difficult to come up with something that will be uniform for an industry that's essentially the same industry here. That's sort of an overview of where we're at with this. It's not a clear shot, easy thing to do right now.

DR. LANEY: Thanks, Doug, for that additional explanation. What I might suggest to Kate is maybe at the January meeting of the technical committee if we could get some representation from both of those PDTs to come and discuss it with us, that would be greatly appreciated. Maybe we can sort through it all and come to some sort of a consensus or maybe not, who knows.

At least it seems to me in the interest of furthering the commission's desire to more closely coordinate with both of those councils, that would be a good thing is to get all the scientists together in the same room at least so we can have a thorough discussion of the issue and have everybody on the same page with regard to what data they're looking at and how they're interpreting them.

MR. AUGUSTINE: Mr. Chairman, please recall that the Regional Administrator will have final say so with her department in evaluating either one of those, either the New England and the Mid-Atlantic. I'm sure the way the regional office has worked in the past, Ms. Kurkul's staff has been very diligent in

making sure there are a limited number of real problems where it would affect either of the councils.

I think not supporting the Mid-Atlantic by ASMFC would be foolhardy. I think we have supported it along the way. Dr. Duval was very clear on that, and I would support that totally. Secondly, again, let's get the reaction from the public, let's determine what their drive and concerns are from the various sectors' aspects, and then move forward with that result. Please be aware that the Regional Administrator's Office will be very, very clear in what they will accept and what they will allow to happen. Thank you, Mr. Chairman.

CHAIRMAN RHODES: Thank you for that discussion. Mr. O'Shea.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: One of the discussions, for the information of this full board, at the Mid-Atlantic Council the point is made that the work that they're doing, a good part of the provisions is to include the monitoring of the bycatch and try to get a better handle on that.

It's going to take a number of years both for this amendment process to go forward as well as that monitoring, so the issue that the councils are sort of wrestling with – at least the Mid-Atlantic – is do they want an option in there that should there be all this information about – from the technical committees about bycatch information; do they want to retain the management option within the document so should, for example, that information become available that a cap is appropriate, that they have the mechanism to react to that quickly. That's the other part of the debate that's going on here. I'm not recommending one way or the other, but that has been some of response to this concern of lack of ability of the technical committee to resolve this. Thank you.

CHAIRMAN RHODES: I think it's great that we are actually providing a forum where three different bodies are deliberating species of similar concern. In the long run the resource is going to be what we're all aiming at, so it's good that we can hash out a lot of these difficulties and problems early on in development of a plan, so it's a great forum for it.

DR. LANEY: Mr. Chairman, in further response to Roy's question earlier about the size, Roy, I looked in my detailed notes from that meeting, and we did have a discussion of that. I had asked Kathy Hattala from New York whether that annual mean total length decrease was due to the older age classes dropping out of the age structure – and I presume that's your

concern as well – and Kathy responded that was the presumed cause.

I understand your comment about it difficult to maintain sustainability if you're not maintaining that age structure. I think the intent for the states in coming up with these sustainability plans was hopefully to set the mortality targets or the harvest targets, whichever target they choose, low enough to allow that age structure to rebuild, but it's all tied in pursuant to the discussion we just had about the offshore catch.

One thing I'm not sure about – and maybe Kate can help me remember – is whether or not in those monitoring programs they're getting age data on the composition of the river herring bycatch from the ocean. That might shed some additional light on how we're doing in terms of rebuilding that age structure.

I don't know, but that again is another discussion that I think we need to have with the two council PDTs is in addition to what the states are doing in-river; is there any way that – aside from areas or catches, is there any evident distribution of older fish versus younger fish in the ocean because that needs to enter into the discussion as well in terms of trying to rebuild the age structure of the stocks.

CHAIRMAN RHODES: Any further discussion on that point? Seeing none, we have received three requests for some shad and river herring bycatch proposals for 2012 from the state of Maine, the Commonwealth of Virginia and the Potomac River Fisheries Commission. Mr. Stockwell, I'll start with the state of Maine.

MR. STOCKWELL: Mr. Chairman, I will be brief. The state of Maine is requesting a one-year research exemption in order to conduct river herring bycatch experiments with a limited number of floating fish traps and weirs. This experiment was scheduled to have been performed this year and incorporated into our sustainable management plan but was delayed due to funding problems. We have funding in the protocols and are available if so approved for this next year. In the meantime the state of Maine is moving ahead with rulemaking to implement the full provisions of Amendment 2 and we will be in full compliance probably within 90 days.

CHAIRMAN RHODES: Thank you very much, Mr. Stockwell. Wilson, the technical committee reviewed this request?

DR. LANEY: Yes, sir, that is correct, Mr. Chairman. The TC recommends the board consider approval of the proposal for 2012 and allow the harvest of river herring and the final use of the fish, whether to sell those or not to sell, is up to the state.

CHAIRMAN RHODES: Thank you very much. Mr. Travelstead, the Commonwealth of Virginia had a request also.

MR. JACK TRAVELSTEAD: Mr. Chairman, this is Virginia's seventh annual request for a small bycatch fishery up on our spawning grounds, which has previously been approved by the board. There is a comparison of each one of those years in our report. Last year we caught a total of 131 shad. The number of permittees in this process continues to decline for a number of reasons, one which is just simply the aging of the fishermen and they're just moving on to other things. I'll be glad to answer any questions if there are any.

I think the one concern that we have, almost all of these fish that are now taken under this permitted process end up as biological samples at VIMS and are used to monitor the stocks. With the pending moratorium, this may be the last year that we allow this bycatch fishery, but that's going to pose some problems for us because of how else do we collect these biological samples in the face of a total moratorium. It's going to get a little bit more difficult. If you need a motion to approve, I'll be glad to offer one.

CHAIRMAN RHODES: We're going to review all three. Mr. Adler.

MR. WILLIAM A. ADLER: Mr. Chairman, may I go back to Maine just for a minute on their proposal. I'm not against the proposal but it seems to me I remember that unless you had a sustainable plan you were supposed to close the fishery. The wording in your document here says that there is no way you can come up with that type of a result, according to this. I'm not clear as to are you therefore saying that you want to do an experiment for a while instead of a closure; is that what you're doing?

MR. STOCKWELL: I'll be glad to answer your question, Bill. No, the state is moving ahead with full APA rulemaking to close the directed river herring fishing and possession and landing. However, there has been a request from actually six to eight different small floating fish traps and weirs that would like to continue fishing if possible.

Our staff has been working with them on a number of bycatch reduction models and methods that look very promising. We haven't been able to finish the data collection to in fact prove to ourselves that they are doing the job, and so we're proposing for the exemption to allow the research to continue and then come back to the board a year from now and request whether or not to incorporate them into our sustainable management plan.

MR. ADLER: All right, if I may, Mr. Chairman, so therefore the experiment will be to determine whether you can come up with a sustainable fishery plan which would allow you to keep going, right?

MR. STOCKWELL: Correct and let's remember part of our sustainable plan is based around our municipal river fisheries. That part the board has previously approved. This is outside of the purview of the municipal management and would be a handful of floating fish traps and weirs.

DR. LANEY: And just to follow up to, too, is that other states are also interested in the methodology that Maine is using here and whether or not it might be a viable approach to monitoring as well.

MR. THOMAS FOTE: How long do we have to do the experiments to find out if it is sustainable or not, because one of the things I have always worried about in New Jersey is that it would take us two or three years of information to prove – you know, you can't do it with one-year snapshot, so how many years will be able to do it before you prove that the runs are sustainable?

MR. STOCKWELL: We're asking for a one-year exemption. The work is underway at this point. It's simply a matter of monitoring the escape panels that will allow for the passing of the fish. It has shown promise. We haven't been able to document the results, and the intent is to run through next year's fishery, which is in the spring of the year, in order to populate the data to present to the TC for review.

MR. FOTE: Can I follow up?"

CHAIRMAN RHODES: Well, just a second. Just to be clear about this, this is actually – to use our southern terminology, this is a BRD experiment and they're going to be catching fully utilized weirs and then ones that have different methods to try and redirect the fish or have escape panels, and so it's looking at the difference – I guess a match set essentially – and see the percent escapement using a bycatch reduction device. Mr. Fote.

MR. FOTE: What do they usually catch as the directed fishery?

MR. STOCKWELL: They direct at mackerel primarily. River herring has been a bycatch that this fishery has every spring. It's a year-round fishery but limited by season. An important part, too, as a bait supply to both recreational and commercial fisheries is an important component of some of our coastal communities, and it's certainly from our perspective well worth the experiment to see whether or not we can sustain this fishery. As Wilson said, it's a bycatch reduction effort that we will happily share with all the other states and jurisdictions on whether it works out or not.

CHAIRMAN RHODES: Thank you very much. Any other questions about that? Otherwise, the technical report on the Virginia Proposal.

DR. LANEY: The TC recommends approval of the request. As Mr. Travelstead said, it is the same request as previous years, and our understanding is the same as his, that it would most likely be the last year requesting this limited bycatch fishery.

CHAIRMAN RHODES: Thank you very much, and, Mr. Carpenter, there was a request by the Potomac River Fisheries Commission, also.

MR. CARPENTER: Could we receive the technical committee's report first and then I'll explain.

DR. LANEY: PRFC was seeking a slight increase in the discard take from one bushel to two bushels to convert dead discards to harvest and eliminate waste. That doesn't sound like a whole lot, I grant you, but the technical committee doesn't feel comfortable recommending expansion of the bycatch allowance in 2012 because the benchmark has been met for only one year.

Aside from that, we did have an extensive discussion about the fact that most of the jurisdictions that are dealing with more than one other jurisdiction have come into us with a plan that rolls all of the information into one, basically, so our concern went beyond just the increase. I'm looking at my detailed notes here. The average had only just gone above the benchmark. It hasn't been above that level consistently at all. The TC felt that it was premature to take management action based on just that one data point.

There is other information that we would like to know in association with the Potomac River fishery;

for example, why the juvenile abundance index is decreasing. Ellen Cosby was the PRFC representative at the meeting. We didn't feel that the information they provided was inadequate; it was just incomplete. We know that, for example, Maryland and Virginia have additional information that could be shared with PRFC to develop a complete picture of the PRFC fishery. That was the biggest reason that we felt uncomfortable acceding to the request.

MR. CARPENTER: We submitted a plan to increase the bycatch because we have met the restored status target that was established in the 2007 stock assessment. If you look at the data – and I'll be glad to pass these around. There is enough for everyone, but there should be enough for at least one per state – there is a graph of the target. It's mostly a pictorial thing. In the 2007 stock assessment we established a restoration target of 31.1 as a CPUE of the pound net catch.

Given that we have a restricted harvest, and it was clear in the 2007 stock assessment document that we would be using a combination of harvest and discard information to determine the comparable number to the 1940's and fifties, if you will look at the green section of that graph that is coming around, we have been approaching this target every year incrementally since 2002, and we have been reporting that increase every year to the point that in 2011 we have actually gone over it.

This is a geometric mean, this is not a simple average, and I'd like to call attention to the fact that in eight of the last nine years the actual number has been well above the target, so we have had steady progress toward this. This is a question of establishing a target and meeting the target. We have met the target.

Some of the questions about the juvenile index, you'll notice that the 2010 index was low; yes, it was, but at the time that we submitted the proposal to the technical committee the 2011 data was not available. That has included on that graph now to show you that both the Maryland index and the District of Columbia index have rebounded in 2011, so I don't that's an issue of major concern.

The long-term average young-of-the-year index for Maryland is still well above what we had seen in the 1960's, so there have been a number of improvements there. With regard to the development of a basin-wide plan, that was submitted in the 2007 stock assessment and reviewed and considered to be

sufficient. There were questions raised about the biological data from the brood stock.

We have a number of people dipping fish out of the Potomac for hatchery production to be used in numerous other places. Maryland, Virginia, Pennsylvania, Delaware as well as the Fish and Wildlife Service are all dipping fish out. Part of their permit to take the fish to begin with involves returning 10 percent of the fry that are produced from those fish to the river as part of our continuing stocking efforts. We do collect the biological data from them, and we viewed that information as more a case of needing to be done in the case of a new stock assessment.

We're not asking to do a new stock assessment; we weren't expecting to do a new stock assessment. We were expecting to expand the bycatch fishery.

Our fishery is limited entry so there will be no new additional entrants into the fishery. With that, I will be glad to entertain any questions, but I don't think this was as much a scientific technical committee question. We have met the scientific and technical committee's definition of exceeding the target. I really think that it's a question of trying to change the rules after the rules have been established.

DR. LANEY: Well, just to point out that when the technical committee looked at it, the standard that we used or the calculation that we used is the geometric mean as opposed to the actual index, and the geometric mean had exceeded the target in only the last year. That is good news about the JAI going up. There were other concerns.

I guess the bottom-line concern was after a pretty thorough discussion was that there were additional data that we felt could be employed in the PRFC analysis. The technical committee just wasn't comfortable seeing a doubling of the bycatch based on that one year of having met the target given the risk and uncertainty involved. That's the bottom line.

We definitely don't want to kill off the fishery. Our intent is to restore the fishery. Again, we just had a sufficient number of reservations that we felt additional information and data analysis were needed. We were assured by the Maryland and Virginia folks that were present on the TC that those data were available and they'd be happy to share them with the Potomac River Fisheries Commission.

MR. THOMAS O'CONNELL: Maybe a question for Mr. Carpenter or Mr. Laney; I was informed that the

number of net days has decreased significantly from through the early 2000's to recently from somewhere in the 400 net day range to currently less than a hundred. I'm just curious if it's the prime nets that still remain today; could that have been artificially inflating the geometric mean of the pounds per net day. I'm just trying to see if there was any discussion about that.

DR. LANEY: I don't know that we had that discussion, Tom. I'm not sure that information was presented to us during the meeting. We'd have to go back and look at that.

MR. CARPENTER: I will note that Tom's observation is correct, but this has more to do with the cost of the gear, and it's a declining fishery. There are fewer people fishing fewer nets today than we have had in the past. The nets are still located in the same general area of where they always have been. We have lost the upper river nets, the nets above the 301 Bridge. There is no one fishing up there anymore.

We had done an analysis of their catch versus the lower river catch when we did have both sets of nets going and there was correlation between the two. I think that these nets are as representative today as what was occurring back in the 2000's and very closely associated with those that were being set in the 1940's.

DR. DUVAL: I was just looking at the proposal. A.C., you collect discard information on a weekly basis, it looks like, just the amount of discard as well as why they were discarded?

MR. CARPENTER: Yes, our reporting form, it's a daily logsheet that is submitted on a weekly basis and it does include bycatch information or discard information. They are requested to provide that by the reason it was discarded, season closed, it was either too small or too large, no market for it. We do have some information on that as well and that is submitted weekly.

DR. DUVAL: A followup; I was impressed by that level of discard information personally. I'm not sure how many other states around the table have that level of discard reporting. A.C., it would be your intent that if this were to move forward and that geometric mean fell below the target, you would be able to quickly reinstitute a one-bushel bycatch limit again and go back down to that?

MR. CARPENTER: Yes, that was part of our plan. It was stated in there that if the geometric mean fell below the target, we would automatically revert to the one bushel the following year, so that there is no chance that we'll overfish this fishery. But if you look at the discards and the harvest, I think one of the outcomes of allowing additional harvest is you'll actually get a little bit better estimate of the total combined, because now we'll have additional weight-outs as opposed to estimated discards.

MR. TRAVELSTEAD: Wilson, can you be more specific about the data the technical committee wanted to see from Virginia and Maryland; and are you suggesting that if you got that data, the technical committee could change their opinion on this?

DR. LANEY: Jack, I'm not sure that I have in my notes the specific data that were discussed. There was an indication that Maryland and Virginia had additional data that they were willing to share with the Potomac River. Kate, do you recall exactly what those discussions were?

MS. TAYLOR: No.

DR. LANEY: So, I'd have to go back and ask. The other thing that I did run across that we had discussed was whether or not it might be possible for PRFC to calculate a Z-30 benchmark for the stock, and there was discussion of that. I think the outcome of that was that while the data may be there that would allow them to do that, it wasn't possible for them to do that before this board meeting. That's one other thing that we discussed.

I don't know whether that would make a difference in the technical committee's feelings with regard to the bycatch. I think there was just a lot of concern that with the target having been exceeded in one year, that we just didn't feel comfortable of seeing a potential doubling of the bycatch allowance given the risk and uncertainty associated with one year.

MR. FOTE: This is a shared river system between Virginia, Maryland and Washington, D.C. Really before I'd like to vote to this, I would like to know what their feelings are on this because I guess for the most part you've shut down most of your fisheries on the river. I just would like to know their feeling on this.

CHAIRMAN RHODES: Does either state care to comment at this point? Mr. Grout.

MR. GROUT: Mr. Chair, I have a question for both A.C. and the technical committee. A.C., this is a pound net fishery, correct?

MR. CARPENTER: It is a pound net fishery. In 2004 we did approach the technical committee and were granted the ability to expand the bycatch to our gill net fishery. Again, the primary part of that was the fact that we were encountering some shad as the stock was rebuilding and we were encountering it in the gill net fishery as well.

The gill net bycatch is very minimal, and it is for the fact that our gill net season ends on March 25th. Most of the shad do come up the river after that. If you look at the report that we had, we have not had any discard mortality in the gill net fishery since 2009. In 2011 there was a zero gill net harvest of fish. In 2010 it was 31 pounds; in 2009 it was 209 pounds.

The year before that it was 160 pounds. It's a relatively minor encounter, so it is predominantly the pound net catch. The pound net catch this past year was 2,000 pounds; the year before it was almost 4,000 pounds. The year before that it 19,000 pounds. That gives you an idea of the scale of the two.

MR. GROUT: Of the pound net catch, which is the predominant fishery that you're talking about for doubling the bycatch allowance, are the fish that are discarded out of the pound nets dead or alive or is there some mixture? Do you have any idea of what the mortality rate is on that?

MR. CARPENTER: It is some mixture but I don't have the – we don't ask them about the mortality as part of the discard reporting. I'm assuming that there is a higher release rate in the pound net than there is in the gill net. The gill net is virtually all dead, but there is some possibility of some live being released.

MR. GROUT: And then my question for Wilson was just so I'm clear, there seems to be two concerns that I hear that the technical committee had. One, they're not comfortable with it exceeding the trigger – the restoration benchmark by just one year, so you're looking to see it happen two or three years before the technical committee would be comfortable approving that, that plus you wanted additional information to be brought forward. The specific information; have you relayed that specific information to their technical committee representative so they know exactly what you need for consideration. There are two questions.

DR. LANEY: Yes, Doug, that is correct. The technical committee didn't specify a number of years, but I think it's safe to say that they would be more comfortable with having seen several years in succession where the target was exceeded. And, yes, we did specify to Ellen exactly what we were looking for.

Again, to Tom Fote's point, I think given that it's a multi-jurisdictional stock that's running up the Potomac River, we just wanted to see the whole picture, a comprehensive picture. And then to your previous discussion and your question about the pound net fish, we asked that question. As A.C. pointed out, the bycatch is predominantly from the pound nets, and we did ask if those fish were alive, and Ellen Cosby did indicate to us that – well, she and Harry actually indicated that there are two different methods used for emptying the pound nets.

In those cases where the fishermen are hand-dipping their nets, there is no reason that those fish can't be released alive because they usually are alive. Others apparently use hydraulic gear to dump all the fish on the deck, and the latter method usually results in the death of far more fish, and so the indication was that is where probably a majority of these fish are coming from. Now, as to what proportion of the fishermen were hand-dipping versus hydraulic pumping, that information wasn't provided to us, but it did seem to us – again, taking concern for the stock into account – that there was an opportunity here maybe to release more of these fish alive. If you allow a doubling of the bycatch, then the likelihood is that maybe more of those fish would be retained instead of being released.

MR. GROUT: What I think would be helpful in cases like this where you have a trigger that has been met and the technical committee isn't comfortable with making a positive recommendation on this because it has only been one year, that the technical committee should as a body come to some kind of conclusion under how many years they would be comfortable with, so that a state is aware of what the standard is that they have to meet instead of just saying, well, we're not comfortable with one year. That sort of leaves it open. They could be three, four or five years and don't know it, so it would be helpful if the technical committee, when they make such a recommendation, that they come up with more specifics; we want three years or we want at least two years.

CHAIRMAN RHODES: Thank you. We had had a previous question and, Mr. Travelstead.

MR. TRAVELSTEAD: Mr. Chairman, in response to New Jersey's question, I would say that it is my understanding that the Potomac River Fishery Commission authorized Mr. Carpenter to prepare this proposal and present it to the technical committee and the board for your consideration; but I think in doing so, they also placed great deference on the opinion of the technical committee on whether or not it would stand up for review. That's all I would say at this point.

MR. AUGUSTINE: Mr. Carpenter was very forthright in talking about this mortality rate, and then the question was asked where does the highest mortality seem to occur. It sounded to me as though it was the hydraulic method of removing fish. Our familiarity with the weir fishery, you can literally let them all go unless you leave them in there forever and something drastic happens with water quality changes and that sort of thing.

Is there any way to control the method of hydraulically removing the fish? I don't have a clue as to how many millions or hundreds of pounds that we're talking about of other species such as mackerel at the same time we have the intermix of herring in that. I don't know if Mr. Carpenter can enlighten us on that.

It just seems to me that without further information that the technical committee said maybe A.C. could present in looking at the Maryland data; I would almost move to preliminarily approve their request based on any further information between now and whatever the date is that Mr. Carpenter could present to the technical committee.

We've got the most of the information on the table. We do have bycatch; he wants to go from one bushel to two bushel. We know the method that appears to be killing and creating bycatch and sometimes bycatch is worth the money because here in New York they're worth two or three dollars a piece. I just wonder if Mr. Carpenter might want to address that. Do they have any intention of trying to review more data or gather more data? Does the technical committee really feel they have the wherewithal to change their opinion and their recommendation or is it as it stands now? We are where we are and the Potomac River Group is not going to be approved by them, so I think we have two or three questions that we have to get answered before we move forward. Thank you, Mr. Chairman.

MR. CARPENTER: There have been a lot of questions. With regard to meeting the criteria for one

year, let me read some numbers. They were submitted with the plan to the technical committee. The 2011 number was 32; the 2010 was 30.2; the 2009 was 28.1; the 2008 was 23.8; 2007 was 21.3. There has been clear, demonstrated pattern of increasing geometric means increasing every year.

When we are asking the technical committee how long or how many years do you have to be above the target, that is an issue that I think truly has to be set by this board. Either you have a target and you meet it or you have a target that you have to meet for three, four or five years before you can do anything.

There is nothing in the plan that I'm aware of where it says that we have to have three years running, two years running or twelve years running before you can do anything. I don't think that is technical committee decision. The information; if we are going to be asked to go back, I would request that the request for information be put in writing because the technical person that we sent came back with a request for information about the brood stock biological data that they have available, and, yes, we do collect and maintain that.

We do it for the basin-wide and it was done for the 2007 stock assessment; that all of that information was pulled together. We were not prepared to do another complete stock assessment when the target had been established and met. One of the other sources of mortality that we can certainly control is to stop all of the fish-dipping from the hatcheries.

That's a significant number of fish that are taken, and these are ripe fish on the spawning grounds. If controlling mortality is the total picture here, there is an option that I think the commission could consider. I wouldn't recommend it to the commission because we feel that everybody has come to the Potomac to dip fish because there are fish there.

Sharing the wealth has been part of our goal here in providing this brood stock to other areas that need it. We have never argued against it or we have not put any limits on it. We do require them to provide us some basic biological data of their harvest. We have seen in that data returning shad, multiple spawning returns that they're running, so we can provide that information.

It's just that I didn't feel it was necessary or mandated that when you have an established, approved target that you have been on a trajectory for the last ten years restoring the stock, that was necessary. I will leave it at that and see if we can't

come to some conclusion here. I don't want to hold everybody up all day.

DR. LANEY: Well, just one additional point that I again have discovered in my notes here as I'm going through is that the U.S. Fish and Wildlife Service, Maryland Fishery Resources Office, actually provides an annual report on their activities and it contains a lot of information on the American shad removed from the Potomac River, including a catch-per-unit effort index. Larry Miller, who I'm sitting in for today, was going to provide that information to Ellen as well in terms of trying to develop a more comprehensive picture of the Potomac River stock, and hopefully he did so. That was another piece of information that we didn't have available to us when we considered the PRFC request.

MR. CARPENTER: Yes, and we have not gotten that as yet as far as I know; and under the conditions of the permit, I don't think they're actually required until the end of the year to submit that information. But, again, that information up through 2007 was included as part of the 2007 stock assessment. All of that information is there; it is being compiled, but I didn't see a need to have a complete stock assessment. If the plan had said that you need to have a complete stock assessment prior to asking for any additional fish, we could have complied with that. We would have complied with that, but the plan doesn't say that.

MR. AUGUSTINE: Point of information, Mr. Chairman; in response I didn't have an opportunity to respond to what Dr. Laney had said. But based on what Mr. Carpenter has said and what Dr. Laney has said, I think we're in a dead circle here. If the motion is made to accept all three of these, we're going to continue to banter back and forth.

At this moment, before we go any further with further debate, I would move to divide the question and consider that the 2012 shad and river herring bycatch proposals of Maine and Virginia be approved, and that I would make a second motion that we would address consideration of the 2012 shad and river herring bycatch proposal for the Potomac River – but that is the point, Mr. Chairman, at least to deal with the first motion.

MR. BEAL: Well, I think the first problem is you can't make a motion to divide a motion until you have a motion on the floor.

MR. AUGUSTINE: To that point, Mr. Beal, I move

MR. BEAL: I think, Pat, if you made a motion to approve some subset of these three proposals, that might be a starting point.

MR. AUGUSTINE: That sounds good; it sure got everybody's attention; didn't it? Okay, this will be an original **motion; move to support the Maine and Commonwealth of Virginia proposals for shad and river herring for 2012.**

CHAIRMAN RHODES: Second by Mr. Adler. Any discussion? All right, in favor please signify by raising your right hand; all opposed same sign; null; abstentions. All right, the motion which is move to approve the 2012 Shad and River Herring Bycatch Proposals from Maine and Virginia, made by Mr. Augustine and seconded by Mr. Adler, **passed eighteen** to zero. Now is there a second motion? Mr. Augustine.

MR. AUGUSTINE: **I move that the board preliminarily approve the Potomac River Fisheries Commission Proposal for 2012 Shad and River Herring Bycatch with the understanding that a final review of information supplied by the Potomac River Fisheries Commission meet the requirements of the technical committee.** Please wordsmith if you would like. Thank you.

CHAIRMAN RHODES: And there is a second by Mr. Adler. Mr. White.

MR. R. WHITE: Mr. Chairman, a question to A.C.; I assume this fishery is in the spring?

MR. CARPENTER: It starts in March.

MR. R. WHITE: So, is our February meeting, if it was approved at that point, would that be too late for you to implement?

MR. CARPENTER: The commission meets in December and we'll be setting the rules for 2012 at that time, so I don't see this motion much more than a motion to disapprove the plan.

MR. R. WHITE: If I may, Mr. Chairman, so if there was the ability to pass this in February, you would have no ability to implement it for the March fishery?

MR. CARPENTER: It would require emergency action, and I don't think liberalizing a fishery under our definition of emergency would meet that criteria, so I don't believe that we could get it done for 2012.

MR. O'CONNELL: A question for Mr. Carpenter, and I probably should know the answer because I serve on the Potomac River Fisheries Commission, but what is the possibility that the Potomac River Fisheries Commission at their December meeting could take action pending final action by this board in February; basically set the table, absent another meeting of the Potomac River Fisheries Commission, but giving you the direction to follow through with a regulation if this gets decided upon at the February meeting?

MR. CARPENTER: We have a legal officer who should be answering that, but I think that's something that we could consider, yes, if this were to be approved. I'd like to perfect that motion or amend the motion, if I could, to specify that the requirements of the TC be provided to the commission in writing so that I know exactly what it is that they want and that we would be able to comply with that.

MR. AUGUSTINE: Can we wordsmith it and include that, please, Mr. Chairman.

CHAIRMAN RHODES: So that's accepted as a friendly amendment?

MR. AUGUSTINE: Totally accepted; thank you.

DR. JAIME GEIGER: Mr. Chairman, I'm very comfortable with this amendment and I suggest we call the question. Thank you.

CHAIRMAN RHODES: That being said, do the states need to caucus? Mr. Adler.

MR. ADLER: If I could just ask A.C. a question; A.C., are you comfortable with this, that you can – in fact, this gives you the opportunity to move forward if you get that information; does that help you?

MR. R. WHITE: Mr. Chairman, point of order. I believe there was a friendly amendment proposed to that motion and I don't believe one member can just stop that from going forward.

MR. AUGUSTINE: Mr. Chairman, we agreed to it, both the maker of the motion and the seconder, not as a friendly amendment but as an addition to rather than going through the separate process of amendment, whatever. This is totally appropriate and meets the requirement. It's totally acceptable, Mr. White, and I think it clarifies what we're trying to accomplish here. It gives the Potomac River Commission the latitude to move forward with the information. And in a formal way with a letter in

writing, it verifies and validates that we now have a date and time certain.

MR. R. WHITE: So the friendly amendment was accepted, then?

CHAIRMAN RHODES: Correct, by the motioner and the seconder.

MR. ADLER: Mr. Chairman, did A.C. answer my question before Ritchie came in?

MR. CARPENTER: I was waiting for the chairman to recognize me before I answered your question. As I answered Tom, I'll have to talk with our legal officer about a preliminary approval at one meeting subject to action by the ASMFC in February.

I don't know whether this will solve our problem or not, but it seems to be the way that the majority of the people around here believe that we need to progress. The other option is that it will be 2013 before we can do anything.

CHAIRMAN RHODES: The motion before the board right now is move that the board preliminarily approve the PRFC 2012 Shad and River Herring Bycatch Proposal for the PRFC and specify that the requirements of the technical committee be provided to the PRFC in writing for final action at the ASMFC February 2012 meeting. The motion was made by Mr. Augustine and seconded by Mr. Adler. A.C.

MR. CARPENTER: One final thing; we only have a shad bycatch proposal. We have no river herring bycatch, so I don't know whether it's the single species or whether you want to include both in there.

CHAIRMAN RHODES: It should be single; very good, thank you. To read it yet again, the motion before the board is to move that the board preliminarily approve the PRFC 2012 Shad Bycatch Proposal for the PRFC and specify that the requirements of the technical committee be provided to the PRFC in writing for final action at the ASMFC February 2012 meeting. The motion was made by Mr. Augustine and seconded by Mr. Adler. Mr. Grout.

MR. GROUT: Is the board clear that what we're asking for from the TC is requirements for approval of the plan? Requirements is a generic term. Is that clear enough for the technical committee to understand or should we put something specific that says requirements for approval of the plan by the TC.

DR. LANEY: My understanding per comments from yourself and Mr. Carpenter is that the TC will compile a list of what it's looking for from PRFC and submit that in writing back to PRFC, so that it's clearly spelled out what they were looking for when we had the discussion during the TC meeting. I think between my notes and Kate's recollection and the chairman's recollection we can do that.

MR. CARPENTER: I think adding to Wilson's comments here that PRFC will compile the information, resubmit it to the technical committee and will be ready for board action at its February meeting.

DR. LANEY: And also, A.C., those commitments that were made by other TC members to provide information to PRFC during the technical committee meeting need to be followed up on so that you all have that information.

MR. CARPENTER: Yes, we'll get in touch with them.

CHAIRMAN RHODES: All right, that being said, do the states need to caucus? No, all right. All in favor of this motion please signify by raising your right hand; opposed same sign; abstentions; null votes. **All right, the motion passes 17 in favor and none opposed.** We somehow lost a state along the way.

Thank you very much; it was a lively discussion and I think it will bring up some future plans for just interactions with the technical committee and the board specifications on length of time for increasing bycatch, but that is for a future board to discuss. The next item on our agenda deals with a petition to list river herring under the Endangered Species Act. I'm turning this over to Kim Damon-Randall who will be discussing this.

PETITION TO LIST RIVER HERRING UNDER THE ENDANGERED SPECIES ACT

MS. KIM DAMON-RANDALL: I'm going to talk about the petition that NMFS received to list river herring under the Endangered Species Act. I'll just go through the ESA petition process, the ESA definitions, discuss a little bit about the contents of the petition, talk a little bit about the status review process for those of you that aren't familiar with it, discuss our response and next steps, and then talk about some possible outcomes.

Any interested person in the United States can petition the Secretary of Interior or Commerce to list a species under the Endangered Species Act. Upon receiving a petition, the secretary has to respond to that petition within 90 days to the maximum extent practicable as to whether the petition presents substantial, scientific or commercial information indicating that the petition's action may be warranted. The key words there are "may be warranted".

The definition of substantial information is the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. There are two outcomes. Once a petition is received, you can publish a negative 90-day finding. That says that the petition and/or information that was readily available in the agency's files at the time of the petition was received does not contain substantial, scientific or commercial information indicating that the petition action may be warranted.

If that's the case, then a notice is published in the Federal Register announcing the negative finding and that's the end of the process. The other outcome is you can have a positive 90-day finding that indicates that the petition and/or information readily available in the agency's files at the time that the petition was received is substantial enough to indicate that the petition action may be warranted.

If that's the case, then you publish a positive 90-day finding in the Federal Register. You can seek information in that notice on that species to help inform the status review, and the species under our process becomes a NMFS candidate species. At the time that you publish a positive finding, a status review or a review of the status of the species is initiated. This includes compiling the best available information on the species, conducting threats assessment or an extinction risk analysis, and submitting a report or information to the agency to make the listing determination.

Within 12 months of the date of receipt of the petition, NMFS must publish a determination as to whether or not listing is warranted. If the listing is warranted, then it's usually in the form of a proposed rule. Just to give you some ESA definitions in case you're not familiar with them, under the ESA a species includes any sub-species of fish or wildlife or plants or any distinct population segment, or DPS, of any species or vertebrate fish or wildlife which interbreeds when mature.

An endangered species is any species which is in danger of extinction throughout all or a significant portion of its range. A threatened species is any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Section 4(a)1 of the ESA states that the secretary shall by regulation promulgated in accordance with Subsection (b) determine whether any species is an endangered species or a threatened species because of any one or more of the following five factors. Those five factors are the present or threatened destruction, modification or curtailment of habitat or range; overutilization for commercial, recreational, scientific or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms or other natural or manmade factors affecting the species continued existence.

We received the petition on August 5, 2011, from NRDC. The petition requests that we list both alewife and blueback herring or distinct population segments of those species as threatened and designate critical habitat for those species. The petition notes dramatic declines in coast-wide abundance. Fishing-related mortality, water pollution, dams, dredging and global warming were identified as the primary threats to both species.

On November 2, 2011, NMFS published a positive 90-day finding concluding that the petition presents substantial information indicating that the petition action may be warranted, and the citation is there and Kate said that there were copies of the 90-day finding available. The 90-day finding also seeks scientific and commercial information be submitted to the agency by January 3rd for incorporation in the review of the status of the species, and more information is available on the website that is listed up there.

We've had discussions and been coordinating with the Atlantic States Marine Fisheries Commission as we're aware that the stock assessment is ongoing, and that represents a very significant effort on behalf of the ASMFC and the states to compile the available information on the status of the stock.

We recognize that is a very significant effort and contributes greatly to the status review. Our intention is to attend the TC meeting in January to learn about what is in the stock assessment and identify gaps for what we would need for the status review, things like the extinction risk analysis, which isn't obviously part of a stock assessment; Canadian information, and potentially others will be identified, and we will

focus our efforts on gathering that information rather than redoing everything that has been done by the stock assessment.

We'll form if necessary focus working groups to work on those gaps to bring people together to gather the best available information on those gaps. Those reports that we produce as a result of those working group meetings will most likely be independently peer reviewed and then used to make the listing determination.

As I said, the status review process is designed to compile the best available scientific and commercial information on the status abundance and trends of both of the species. We have to have to do the five-factor analysis – those are the five factors I mentioned – conduct a threats assessment or extinction risk, which can be quantitative or qualitative depending on the available data; and also consider information on the significant portion of the species range.

Are there areas that those species are DPS once were viable and no longer are viable or self-sustaining? We will also, during the status review process, consider ongoing or plan protective efforts that may affect the species. We'll present available information on elements of habitat that are needed for the survival and recovery. Those can be things like the size of habitat, number of different habitats needed for connectivity.

Also, under the ESA it's important to keep in mind that the economic impacts of a listing cannot be considered. The next steps, as I said we'll be looking at the stock assessment and identifying those gaps where we need to augment the status review. We have to publish a determination as to whether or not listing is warranted within 12 months of receiving the petition, so that has to publish by August 5, 2012.

There are essentially three different outcomes. The first is that we could determine that the species is endangered. If that's the case, then we publish a proposed rule, as I said. There is a 60- to 90-day public comment period, and most often public hearings are held throughout the range of the species. We would have to make a final determination no later than one year after the proposed rule.

If the final rule is that the species is endangered or both species are endangered, then all take is automatically prohibited, and take is defined by the ESA as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or attempt to engage in

any of those activities, so it encompasses pretty much anything you could do to those species.

Take from bycatch or incidental catch in directed fisheries would be prohibited unless it's authorized through Section 7 or Section 10 of the Endangered Species Act. NMFS would also have to designate critical habitat at the time of the final listing to the maximum extent prudent and initiate recovery planning for both species.

The other possible outcome is that NMFS could determine that the species is threatened. If that's the case, then the Secretary of Commerce must promulgate protective regulations under Section 4(d) of the Act, so it's often called the 4(d) Rule, and those are deemed to be necessary and advisable for the conservation of the species. Directed take, bycatch, importation and exportation would most likely be prohibited unless they're authorized through Section 7 or 10. Critical habitat would also still need to be designated and recovery planning initiated. The third potential outcome is that NMFS determine that listing is not warranted for either species, and that's the end of the process. Does anyone have any questions?

MR. ADLER: What is the PBR? We've gone through this with whales. One of my questions, however, goes back to when you had the showing of some of the reasons why they might be considered. It had to do with rules but you mentioned predation. What do you mean by that; do you mean that if there are other fish eating this thing, does that constitute that this endangered because of that, because I don't know what we could do about that. Is that part of the thing, if something else is eating it, which they are?

MS. DAMON-RANDALL: Yes, under the ESA we look at the five factors that I mentioned, and disease and predation are one of the factors, and we do look at whether or not predation is occurring at such a level that it threatens the continued existence of the species.

MR. ADLER: So, because striped bass or something are eating these fish, we can't get near them if we go through that process?

MS. DAMON-RANDALL: It would have to be proven that level of predation was not sustainable, and it's often as a result of the species having declined from other factors that level of predation is no longer sustainable.

MR. ADLER: Does this particular determination, rule or whatever have a potential biological removal?

MS. DAMON-RANDALL: No, PBR is under Marine Mammal Protection Act and not the Endangered Species Act.

MR. JAMES GILMORE: Mr. Chairman, I actually have two questions. That was a great presentation because I really understood a lot more about this than I did. The first standard seems to extinction, and that is really a harsh word, I guess. Is there a good definition within ESA in terms of what constitutes extinction, because we have an issue versus a severely reduced stock is not sustaining a fishery versus something that is about to leave the planet. That's Question Number One.

Secondly, if it was listed as endangered, are there standards that sort of lay out a process or some standards for delisting later on if essentially there were actions taken to rebuild the stock. I know in terms of the limited experience I have with this, which is mostly terrestrial things – I mean, once it's listed it's decades before it could even be considered, and that might not work here.

MS. DAMON-RANDALL: Extinction is not defined under the ESA. Generally we're looking at biological extinction so whether or not it's at a level where the threats are so significant that it's not going to be able to continue into the future.

Once those species is listed under the ESA, you have to develop recovery plans, and the recovery plan would identify measures that would be taken if it was listed as endangered to down-list to threatened and then eventually to delist it and take it off the Act. The whole point of ESA is to recover a species to where listing is no longer warranted, so that's how it's done through recovery planning.

MR. ROY MILLER: Mr. Chairman, I'm curious if perhaps Kim or maybe Jaime could answer this particular question. Did the Fish and Wildlife Service and the National Marine Fisheries Service agree that this particular request would be handled by the National Marine Fisheries Service and will the Fish and Wildlife Service be involved in this?

MS. DAMON-RANDALL: We talked about it when we received the petition. We weren't jointly petitioned on this one. It was to NMFS. There is an existing memorandum of understanding that divides the workload between the Fish and Wildlife Service and NMFS. We did talk to the Fish and Wildlife

Service and we shared our draft 90-day finding with them.

They reviewed it and provided comments which were incorporated. We intend to do the same with the listing determination. They are involved. When we have those working group meetings, if we end up having them and they have people that they think would good to have on those working groups, so we definitely have them on those panels.

MR. GROUT: Kim, I had just a brief question because I had read the petition there, and one of the justifications in the petition for potentially listing was that commercial landings had decreased by a certain large factor. Now, in our particular state our commercial landings have – not commercial but our harvest has decreased substantially since the turn of the century, but that has occurred because of regulatory action that we've taken and that you will be collecting information on the regulatory action as well as commercial landings and biological information so that you'll understand why certain things have occurred, I assume; correct?

MS. DAMON-RANDALL: Yes, that's correct.

DR. GEIGER: Kim, thank you for an excellent presentation. To the question, the Fish and Wildlife Service and the National Marine Fisheries Service I think enjoy a very good and very productive, collaborative and interaction on endangered species issues. Again, the Fish and Wildlife Service will continue to support the National Marine Fisheries Service on this issue and to work with them to provide all necessary information. Thank you very much.

DR. LANEY: And to follow upon Dr. Geiger's comments, I'll note that the chairman of the River Herring Stock Assessment Subcommittee is also a Fish and Wildlife Service employee, Dr. John Sweka.

CHAIRMAN RHODES: Pam, would you like to comment upon this AP Chair?

MS. PAM LYONS GROMEN: Mr. Chairman, the AP has not had a chance to get together to discuss this, but certainly would be very interested in looking at the initial finding, looking at the data gaps and providing some information back to the board, so we would appreciate the opportunity to get together and provide some feedback. Thank you.

CHAIRMAN RHODES: All right, thank you for an excellent presentation. I think it brings us all up to

speed and gives an idea of where we are. We're currently in 90-day period; and if someone would like to make a motion to recommend that the policy board send a letter offering our services with stock assessment, data gaps, along that line, it would be greatly appreciated so we can make our public comment.

MR. BYRON YOUNG: So moved.

CHAIRMAN RHODES: Mr. Young, would you like to craft the motion?

MR. YOUNG: **Move to recommend that the ISFMP Policy Board craft a letter to the National Marine Fisheries Service indicating that we would provide support and information necessary for the 90-day findings.** Any help in drafting that would be appreciated.

CHAIRMAN RHODES: I saw a second by Mr. McElroy.

MS. DAMON-RANDALL: I wouldn't normally do this, but we actually have made our 90-day finding, so the period between now and January 3rd is the time to submit information and then we have to make our 12-month determination. I don't know if you want to maybe reword that a little bit.

CHAIRMAN RHODES: Okay, so it would be for the status review instead of the 90-day finding. I think it would be move to recommend to the ISFMP Policy Board to craft a letter to the National Marine Fisheries Service providing support and information for the status review for river herring. That would be a motion by Mr. Young and seconded by Mr. McElroy.

MR. ADLER: Mr. Chairman, at what point along this route can we submit our opinion as to whether it should or shouldn't be; does that come after – when can we say, you know, we don't think it deserves this?

MS. DAMON-RANDALL: You can do that now during this comment period. It's not a typical comment period where we're looking for comments on whether or not you support the petitioned action, but you can do that. If we proposed to list the species, then that would definitely be when you would want to submit those comments, and that would be in August, if it happened.

REPRESENTATIVE CRAIG A. MINER: Mr. Chairman, I was listening to Doug Grout's

comments, and I'm thinking that whatever information has been gathered already has been put in different silos and a decision has been made that this somehow reaches a certain threshold. To go back to Doug Grout's comment that there are management decisions that have been made that justify decreases in commercial take or recreational take with those species, it seems like those might actually stack up on the negative side in terms of continued participation in both commercial and recreational fishing. Am I wrong in that?

MS. DAMON-RANDALL: I'm not exactly sure what you mean that they stack up on the negative side.

REPRESENTATIVE MINER: Well, if I understood your presentation correctly, there are thresholds and if the information in the folder is such that species could be considered for endangered species listing, then it must have met certain thresholds. If I understood you correctly, part of the information you looked at was whether or not commercial harvest had fallen below a certain level or was drastically reduced.

If we as a management group made that decision in an effort to maintain a certain population, it almost seems like that is counted – I'll use the words – against continued harvest. Once listing is made – maybe I don't understand this fully, but it seems to me that if this fish gets listed, we'll have a lot of free time on our hands here; because if I understood what you can and can't do, you can't even catch it by accident. I think how we submit our information to you is going to be critical because if we leave any gaps in our information that might lead you to list it, that's where I'm afraid we're headed.

MS. DAMON-RANDALL: It's definitely not counted against you. When we look at the overutilization factor, it's whether or not they're being overutilized to a point that it's driving the species toward extinction. We then also look at the inadequacy of existing regulatory mechanisms. That's how the Act is worded; I'm not making up the inadequacy part. We look at what regulatory mechanisms have been put in place. If those regulatory mechanisms are allowing the species to recover, then that is not driving the species towards extinction. It is not counted against you; it would be counted for you.

REPRESENTATIVE MINER: Thank you, and I meant counted against the species and not us or you. Thank you.

CHAIRMAN RHODES: All right, thank you for the discussion and the information. There is a motion from the board to recommend that the ISFMP Policy Board craft a letter to the National Marine Fisheries Service providing support and information for the status review for river herring. Motion by Mr. Young; seconded by Mr. McElroy. Is there any opposition to the motion? Dr. Daniel.

DR. LOUIS DANIEL: I'm not on this board but I appreciate the opportunity. This could be a big issue for us and I know everybody. It scares me to death to have "providing support" in this motion. I know what it means, but that scares me to death knowing how that could be construed without a lot of explanation. I would strongly suggest you not put the word "support" along with listing river herring in the same motion.

CHAIRMAN RHODES: Well, to the makers of that motion, if we put "technical support", would that solve the concerns that were brought up – "providing technical support and information for the status review of river herring". Representative Peake.

REPRESENTATIVE SARAH K. PEAKE: Mr. Chairman, respectfully, I would just propose taking the word "support" out and say "providing technical information for the status review," because I think support does tend to be a modifier where it implies support of a listing, perhaps, and that's what makes some of us nervous.

My understanding is we are going to be providing them with technical information for their status review, and I think taking the word "support" out that we get the message across that we're going to be providing them with information from the TC but without in any way seeming to endorse it through the wording of the motion.

CHAIRMAN RHODES: Does the maker of the motion and seconder accept the change?

MR. YOUNG: Yes, I accept that.

CHAIRMAN RHODES: All right, the makers accepted the change. **The motion now reads move to recommend that the ISFMP Policy Board craft a letter to the National Marine Fisheries Service providing technical information for the status review for river herring. The motion was made by Mr. Byron Young and seconded by Mr. McElroy.** Is this motion acceptable to the board; any opposition.

MR. MEYERS: Mr. Chairman, I need to abstain.

CHAIRMAN RHODES: **All right, seeing none we will move for acceptance by consensus with an abstention by the National Marine Fisheries Service.** Mr. Adler.

MR. ADLER: I know what we're trying to do here, but the way it words it says "board craft a letter providing technical", or is it the board would craft a letter offering to provide technical information because this letter isn't definitely going to provide the information in that one letter; am I correct?

CHAIRMAN RHODES: I think that is absolutely correct.

MR. ADLER: Now what do we do?

CHAIRMAN RHODES: That being said, Bob.

MR. BEAL: I don't think you necessarily have to go back and change the wording of the motion. If the understanding of the board is that we're going to – you know, the staff will work with the policy board and the executive director to send a letter over making the offer to provide information. I think the record is pretty clear there.

CHAIRMAN RHODES: Thank you very much for all the clarification. That being said, Kate, I think we turn to you for the Fishery Management Plan Review and State Compliance.

FISHERY MANAGEMENT PLAN REVIEW AND STATE COMPLIANCE REPORTS

MS. TAYLOR: Mr. Chairman, I will be brief in my 2010 Shad and River Herring FMP Review. As we are aware, there was a 2007 benchmark assessment for American shad, and we are currently undergoing a river herring assessment, which is scheduled to be reviewed by the management board in May 2012.

State landings in 2010 for American shad were estimated at approximately 555,000 pounds. This is a 12 percent increase from last year. The combined landings from North Carolina and South Carolina accounted for 71 percent of all coast-wide landings. No harvest was reported from Maine, New Hampshire, Rhode Island, New York, Pennsylvania, Maryland, the District of Columbia and Florida.

Under Amendment 1 there is a requirement for the 5 percent bycatch reporting. In 2010 there were 8,546 pounds of American shad reported. This is 1.53 percent of the coast-wide directed harvest. The harvest was reported from Maine, New Jersey and North Carolina. There were two trips in New Jersey that exceeded the 5 percent bycatch limit. However, when combined, the total American shad harvested as a bycatch percentage was only 1.2.

For hickory shad there were reported landings. Rhode Island, Connecticut, New York, Delaware, Maryland, the Commonwealth of Virginia and North Carolina were all states that reported hickory shad commercial landings. In 2010 the commercial landings increased by 17 percent with states landing approximately 128,000 pounds. North Carolina reported 84 percent of the total coast-wide landings.

For river herring commercial landings were reported from Maine, New Hampshire, New York, New Jersey, Delaware, Maryland, PRFC, North Carolina and South Carolina; totaling approximately 2 million pounds, which was a 9 percent increase from previous landings and a continued increase since 2007. The majority of the landings were reported by the state of Maine followed by South Carolina and Virginia.

States are required to report on any stocking efforts, and this was occurring in Maine, Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, D.C., North Carolina with support by the Fish and Wildlife Service. In 2010 there were approximately 21 million shad larvae and fry that were stocked in rivers and approximately 700,000 alewife.

States are also required to report on their Atlantic sturgeon interactions, and in 2010 there were 58 sturgeon interactions reported in various fisheries. States that were reporting these interactions include Rhode Island, New Jersey, Delaware, PRFC, Virginia, North Carolina, South Carolina and Georgia. All of the sturgeon interactions and the disposition of the sturgeons; they were released alive when this happened.

There are three states that were requesting de minimis. This is Maine, New Hampshire and Massachusetts, and it is the recommendation of the plan review team that these states be granted de minimis status for 2012.

CHAIRMAN RHODES: All right, any questions of Kate? Doug.

MR. GROUT: Kate, just a small question; there was a comment under New Hampshire's report that the PRT provided that said, "The ocean shad bycatch landings were under 5 percent, but the amount was not given." Then the next sentence says, "Table 3 lists zero bycatch, but the report states that there was small amount."

Now, I went back and reviewed the report and I couldn't find where that statement was that there was a small amount of bycatch. In fact, under the bycatch section it says no reported bycatch of shad in federal waters. I would like to see if you help me out in finding out what page had that indication that said there was a small amount.

MS. TAYLOR: Is that in the FMP Review or the PRT Report?

MR. GROUT: It's in the compliance report. It says, "Review of Shad and River Herring Annual Compliance Reports".

MS. TAYLOR: I would have to look through the report to find out exactly where that was.

MR. GROUT: Yes, if you could help us out with that because we couldn't find it.

CHAIRMAN RHODES: All right, any further discussion? Mr. Grout.

MR. GROUT: **I was going to make a motion to approve the plan review with the inclusion of the three states that requested de minimis.** Okay, we accept – I've been told that I need to use the words "move to accept".

CHAIRMAN RHODES: Second by Mr. Adler. Any discussion? All right, there is a motion to accept the 2012 FMP Review and approve de minimis requests from Maine, New Hampshire and Massachusetts. The motion was made by Mr. Grout and seconded by Mr. Adler. Any discussion? Any opposition? **Seeing none, we will approve that** unanimously.

OTHER BUSINESS

Is there any other business to come before the board? I'm going to have one last thing. It has been a pleasure serving for the last two years, but at this point, Dr. Duval, I would love to turn over the chair to you at the next meeting. It's been a very interesting time because we're getting through the second and third amendments and then working with the councils for these fisheries. It has been exciting

and an interesting change. It will be very nice to be on that side of the microphone. I have gained a lot more respect for all of you guys when you're up here. Mr. Augustine.

MR. AUGUSTINE: Final comment; Malcolm, you've been a great leader in this process and you have taken us through some pretty rough roads and rocky terrain. We have attacked some pretty serious issues here, and you're to be commended for sticking to the process, moving us forward and being a great leader. Thank you for your service. (Applause)

ADJOURNMENT

CHAIRMAN RHODES: Well, thank all you all. We are adjourned.

(Whereupon, the meeting was adjourned at 10:45 o'clock a.m., November 10, 2011.)