



# Atlantic States Marine Fisheries Commission

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Paul J. Diodati, (MA), Chair

Dr. Louis B. Daniel, III, (NC), Vice-Chair

Robert E. Beal, Executive Director

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*Healthy, self-sustaining populations for all Atlantic coast fish species or successful restoration well in progress by the year 2015*

December 5, 2012

Dr. Chris Moore, Executive Director  
Mid-Atlantic Fishery Management Council  
800 North State Street, Suite 201  
Dover, Delaware 19901

Dear Dr. Moore,

Please accept the following comments on behalf of the Atlantic States Marine Fisheries Commission Shad and River Herring (SRH) Management Board regarding the scoping document for Mid-Atlantic Fishery Management Council's (MAFMC) Amendment 15 to the Squid, Mackerel and Butterfish Fisheries Management Plan (SMB FMP).

Given the MAFMC has not yet determined whether it will move forward with Amendment 15 to designate shad and river herring as "stocks in the fishery", it is difficult to provide specific recommendations at this time. The Board is supportive of the development of a draft amendment, insofar as it is important to know what the proposed management alternatives and associated impacts are before a determination is made regarding the necessity of the management document.

In response to the questions posed in the scoping document, the Board offers the following comments and requests:

## **Effectiveness of Current and Planned Management**

The ASMFC has invested a considerable amount of time and resources in the development and implementation of the Amendments 2 and 3 to the ASMFC SRH FMP. These amendments required states to close any state shad and/or river herring fishery that is not determined to be sustainable. To date, six of the seventeen ASMFC managed jurisdictions for river herring and nine of the seventeen ASMFC managed jurisdictions for American shad have sustainable fishing plans in place. The remainder of the jurisdictions will be closed for both species beginning January 1, 2013. It will take, at a minimum, three to five years to begin to evaluate the effect of these management actions.

With regard to the recent actions approved under the New England Fisheries Management Council's (NEFMC) Amendment 5 to the Atlantic Herring FMP and the MAFMC's Amendment 14 to the SMB FMP, ASMFC agrees it is not yet possible to determine the effects of these management actions and it will likely take several years to do so. Both of these amendments require management actions that have the potential to reduce shad and river herring bycatch in the Atlantic herring and squid, mackerel, butterfish fisheries to the full extent possible, while allowing these fisheries to remain operational. ASMFC supported the management actions in both amendments.





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## Habitat Considerations

Impacts to shad and river herring habitat are of utmost concern for the successful restoration of these species. A determination of shad and river herring as stocks in the fishery would clearly require the designation of essential fish habitat (EFH) for these species. Section 305(b)(3)(B) of the Magnuson-Steven Act obligates councils to provide comment and recommendations to the Secretary and any federal or state agency regarding any activity that is likely to substantially affect the habitat of anadromous species under its authority. ASMFC requests the Council detail how it would address this requirement as well as designation of EFH should it move forward to include these species as stocks in the fishery.

## Management Approach

The scoping document details the range of existing complementary and joint management approaches pursued for other Council/ASMFC managed species as potential options. However, the Board believes the unique life history of shad and river herring would require a new approach that acknowledges and preserves the Board's authority to manage in-river state-water fisheries. Similarly, the Board agrees it is the MAFMC's responsibility to control bycatch of these species in federal waters and has consistently appealed to them to do so. As such, the Board requests that the MAFMC address the following concerns should a draft Amendment be developed:

- Clearly detail the process by which Annual Catch Limits (ACLs) and Accountability Measures (AMs) would be set. ASMFC prefers that ACLs and AMs apply only to catch/bycatch in federal waters. If this is not legally possible, ASMFC requests that it be the responsible party for determining any in-river portion of ACLs.
- The impacts of inconsistent federal and state water regulations on existing river-system-specific conservation measures, or regional approaches being considered.
- The potential for an amendment that only addresses federal waters bycatch and EFH designation.

Finally, the Board recommends that the MAFMC bring this issue before the Northeast Regional Coordinating Council should it decide to move forward with Amendment 15. Additionally, ample opportunity should be provided for discussion between the MAFMC, NEFMC, and ASMFC, as well as relevant stakeholder groups.

As always, the ASMFC very much appreciates the opportunity to comment on actions being considered by the MAFMC. We look forward to working with you further on this issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Beal", is written over a horizontal line.

Robert Beal

cc: ASMFC Shad and River Herring Management Board