

**From:** [Walt Boge](#)  
**Subject:** MAFMC Meeting  
**Date:** Monday, September 26, 2016 3:38:03 PM

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Sir,

I represent the Ocean Pines Anglers Club, a salt water sport-fishing club on the Eastern Shore of Maryland with roughly 150 members. While the nature of our club is non-political -- we mainly meet to share fishing stories, tips and camaraderie-- but when important issues arise that concern Maryland's fisheries, we will comment as representatives of the recreational fishing community.

At the October meeting of the Mid-Atlantic Fishery Management Council, fisheries managers will have an opportunity to make progress toward strong federal management measures for river herring and shad while they are in the ocean and at risk of being caught "incidentally" by commercial mackerel gear. I write to express our club's support for Amendment 15 to the mackerel, squid, butterfish plan, which would incorporate river herring and shad into that plan as "stocks in the fishery".

River herring are known prey for some of our favorite fish to catch, including striped bass. Our members can recall the thrill of catching shad, a fighter of a fish that anglers have enjoyed for centuries. Because of their low populations, shad fishing in Maryland has been closed to our state's residents since 1980. In addition to shad hatchery programs, dam removals and fish bypass projects, the recent ban on fishing for river herring in the state represents the continued sacrifices that have been made in Maryland to relieve pressure on these species.

Meanwhile, hundreds of thousands of pounds of these fish are caught by commercial vessels in the ocean, in waters that are managed by the Mid-Atlantic Fishery Management Council. Please pass Amendment 15 to the mackerel, squid, and butterfish plan, for the benefit of we anglers and the general public in Maryland and all Atlantic coast states.

Sincerely,

Walt Boge

Administrator

Ocean Pines Anglers Club

23 Harborview Drive

Ocean Pines, MD 21811

PS: Copy sent to Dr. Moore



**CHESAPEAKE BAY FOUNDATION**  
*Saving a National Treasure*

September 27, 2016

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Dr. Christopher Moore, Executive Director  
Mid-Atlantic Fishery Management Council  
800 North State Street  
Dover, DE 19901

RE: Federal Management of River Herring and Shad

Dear Dr. Moore:

**TRUSTEES**

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I am writing to express the longstanding concern of the Chesapeake Bay Foundation (CBF), its Board of Trustees and more than 200,000 members about the severely depleted state of shad and river herring in Chesapeake Bay and its tributaries and the intolerable waste of this important resource as bycatch in offshore fisheries. To address this problem, we urge you to extend Federal management to river herring and shad at the Council's October 2016 meeting.

Since its inception in 1967 CBF has been an advocate for the restoration of Chesapeake Bay and its living resources including migratory fishes. During that time period we have been the lead private voice supporting fish passage, hatchery stocking and habitat protection. Many millions of dollars have been spent to open thousands of miles of historic riverine spawning habitat and stock billions of shad fry in Chesapeake Bay tributaries. In addition, the Bay states have severely restricted shad and herring fisheries in an attempt to reverse their decline. In 1980 Maryland closed its shad fishery. In 1994 Virginia closed its shad fishery. In 2001 the Atlantic States Marine Fisheries Commission (ASMFC) closed the coastal intercept fishery for shad. And in 2012, the river herring fisheries for both states were closed.

And yet with all this investment and effort, shad and herring stocks are near historic lows coastwide. River herring were even considered recently for listing under the Endangered Species Act. The impacts have been dramatic for many Chesapeake watershed communities and for the Chesapeake ecosystem. Shad supported the most valuable finfish fishery for over two hundred years in the Bay region, but it is nearly forgotten now. Shad and herring juveniles once served a key role as forage during their downriver migrations in the fall, but that component of the food web is all but eliminated. Chesapeake striped bass suffer elevated natural mortality levels likely due to a serious disease (mycobacteriosis), for which poor nutrition has been identified as a contributing cause.

With this backdrop it is hard to imagine that bycatch of shad and river herring in large scale offshore fisheries is tolerated. That all directed fisheries for shad and river herring have been closed as conservation measures should demand aggressive steps to control and minimize such bycatch. Anything less violates the fundamental rule of range-wide management of interjurisdictional fisheries.

**HONORARY TRUSTEES**

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LOUISA C. DUEMLING  
RICHARD L. FRANYO  
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SIMON SIDAMON-ERISTOFF  
JENNIFER STANLEY  
THOMAS H. STONER  
AILEEN BOWDOIN TRAIN

The requirement for range-wide consistency was embodied in the 1984 Atlantic Striped Bass Conservation Act and was the primary reason that stock experienced such a robust recovery and led Congress to extend the same requirement to all other fisheries overseen by ASMFC. That some coastal migratory stocks extend their range into federal waters does not diminish the importance of this principle.

The Council has taken three years since first considering this issue, and no substantive reason not to directly manage and minimize shad and river herring bycatch in Federal waters has emerged. The Council's recent decision document that suggested the magnitude of the problem was tolerable missed the forest for the trees. It stated that "RH/S are already being actively managed by the ASMFC and state catches are already strictly limited within the context of approved state sustainability plans" – this is the point, i.e. that the states have done all in their power to reduce shad and herring mortality, including the closures of centuries-old traditional fisheries, but have not seen significant recovery. The ASMFC's closure of the ocean intercept fishery was based on the concern that any set of the net could potentially remove the last individuals from specific severely depleted runs. This is also the case with fisheries that take these species in Federal waters, and it should not be allowed to continue uncontrolled.

Therefore, the CBF urges the Mid-Atlantic Fisheries Management Council to develop an amendment to add river herring and shad as Council-managed stocks. This designation will ensure that the fisheries taking shad and herring as bycatch will be monitored and that science-based catch limits and accountability measures will be adopted.

On CBF's behalf, I thank you for considering these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "William J. Goldsborough".

William J. Goldsborough, Fisheries Program Director  
Chesapeake Bay Foundation

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**RECREATIONAL ANGLERS  
WORKING TO CONSERVE, PROMOTE, AND ENHANCE MARYLAND'S  
MARINE RESOURCES**

September 28, 2016

Mr. Michael Luisi, Chairman  
Dr. Christopher Moore, Executive Director  
Mid-Atlantic Fishery Management Council  
800 North State Street  
Dover, DE 19901

RE: Federal Management of River Herring and Shad

Dear Sirs:

The conservation and management of river herring and shad stocks is of the utmost importance to the members of the Coastal Conservation Association Maryland. River herring and shad are an important part of the regional ecosystem, and a vital forage source for the predatory fish that both recreational and commercial fishermen pursue. While many recreational anglers still enjoy a catch and release fishery for these species each spring, harvest moratoria have denied full access to what has historically been an important fishery for many stakeholders in Maryland.

We recognize the severely depleted state of river herring and shad, and have supported all state based management efforts to restore their stocks. To date, millions of public and private funds have been spent to restore access to historic spawning habitat, and support recovery through stocking programs, throughout the range of river herring and shad species.

Because of the diadromous nature of the species, efforts to improve riverine and estuarine habitat, and to conserve river herring and shad in state waters, are only a part of the solution to the issues that plague these important species. At sea catch in large-scale ocean fisheries has a direct negative impact on conservation efforts, and existing catch caps are limited in their ability to support improving the status of river herring and shad stocks. Full federal management of river herring and shad through a comprehensive management plan should be a top priority for the Council. By fully managing these species as they migrate within federal waters, the Council can join efforts to insure that range-wide inter-jurisdictional management can do its part to improve the status of river herring and shad.

Therefore, CCA Maryland urges the Mid-Atlantic Fishery Management Council to include river herring and shad within a formal management plan. Doing so can and will help support the return of these important species to higher levels of abundance, and work in partnership with the many other efforts to benefit river herring and shad throughout the region.

Sincerely,

David Sikorski  
Chair, Government Relations Committee

Frank Bonanno  
Chairman



September 28, 2016

Mr. Michael Luisi, Chairman  
Dr. Christopher Moore, Executive Director  
Mid-Atlantic Fishery Management Council  
800 North State Street  
Dover, DE 19901

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Dr. Tim Nifong, Ph.D., J.D.  
*General Counsel*

RE: Federal Management of River Herring and Shad

Dear Sirs:

The conservation and management of river herring and shad stocks is of the utmost importance to the members of the Coastal Conservation Association North Carolina (CCA NC). River herring and shad are an important part of the regional ecosystem, and a vital forage source for the predatory fish that both recreational and commercial fishermen pursue. While many recreational anglers still enjoy a catch and release fishery for these species each spring, harvest moratoria have denied full access to what has historically been an important fishery for many stakeholders in Maryland.

We recognize the severely depleted state of river herring and shad, and have supported all state based management efforts to restore their stocks. To date, millions of public and private funds have been spent to restore access to historic spawning habitat through the range of river herring and shad species.

Because of the diadromous nature of the species, efforts to improve riverine and estuarine habitat, and to conserve river herring and shad in state waters, are only a part of the solution to the issues that plague these important species. At sea, catch in large-scale ocean fisheries has a direct negative impact on conservation efforts, and existing catch caps are limited in their ability to support improving the status of river herring and shad stocks. Full federal management of river herring and shad through a comprehensive management plan should be a top priority for the Council. By fully managing these species as they migrate within federal waters, the Council can do their part to ensure that range-wide, inter-jurisdictional management can do its part to improve the status of river herring and shad.

Therefore, CCA North Carolina urges the Mid-Atlantic Fishery Management Council to adopt a formal management plan for river herring and shad. Doing so can and will help support the return of these important species to higher levels of abundance, and work in partnership with the many other efforts to benefit river herring and shad throughout the region.

Sincerely,

*Chris Elkins*

Chris Elkins, PhD.  
President, Coastal Conservation Association North Carolina



## Coastal Research & Education Society of Long Island, Inc.

PO Box 54, W. Sayville, NY 11796 ~ (631) 244-3352 ~ [www.cresli.org](http://www.cresli.org)

**Mike Luisi, Council Chairman**  
**Dr. Christopher Moore, Executive Director**  
Mid-Atlantic Fishery Management Council  
800 North State Street  
Dover, DE 19901  
September 26, 2016

Dear Chairman Luisi and Dr. Moore,

The Coastal Research and Education Society of Long Island, was founded 20 years ago to promote and foster the understanding and stewardship of coastal ecosystems through research and education by experts in marine mammal science, environmental sciences, education and conservation. CRESLI was formed for the purposes of conducting research, providing educational experiences and promoting conservation of coastal ecosystems.

Our research programs revolve around marine mammals like fin and humpback whales, harbor and grey seals whose diets consist of fish and including herring and shad. Herring and shad are key components of the food web in our rivers and oceans, serving as prey for sport fish, such as striped bass and tuna; as well as being fed upon by eagles, osprey and herons; and marine mammals. River herring and shad have declined to near historic lows and show little signs of recovery. Some runs have declined to as few as 100 fish returning to spawn each spring. These fish are at an all-time low but we still have the opportunity to bring them back if we act now. But we need your help.

We urge the Mid-Atlantic Fishery Management Council to designate river herring and shad as stocks in the Mackerel, Squid Butterfish Fishery Management Plan.

The continuing threat to river herring and shad from being caught at sea demands that these imperiled species come under the protection of comprehensive federal conservation and management through a designation as “stocks in the fishery” which will ensure:

- Enforceable, science-based annual catch limits and accountability measures.
- Identification of essential fish habitat by the National Marine Fisheries Service
- Improved monitoring of the industrial trawl fleet
- Better data collection and research on the status of the species

The failure by NMFS to list river herring under the Endangered Species Act makes the situation more urgent—federal managers must take action to address the continued wasteful incidental catch of the species.

Please do not make the same short sight-sighted ruling you did 3 years ago. List river herring and shad as stocks in the fishery now. Let’s give them a chance to rebuild, so that our marine life and our ecosystems can prosper.

Sincerely,

Arthur H. Kopelman, Ph. D.  
President,  
Coastal Research and Education Society of Long Island

**To promote and foster understanding and stewardship of  
coastal ecosystems through research and education.**



September 25, 2016

Jason T. Didden  
Fishery Management Specialist  
Mid-Atlantic Fishery Management Council  
800 North State Street, Suite 201,  
Dover, DE 19901

Kevin Collins  
Deputy Section Chief, Northeast Section  
NOAA Office of General Counsel  
55 Great Republic Drive,  
Gloucester, Massachusetts 01930-2276

Re: River Herring and Shad -- *United Cook Inlet Drift Association v. National Marine Fisheries Service*, No. 14-35928, slip op. (9th Cir. Sep. 21, 2016)

Dear Mr. Didden and Mr. Collins:

We are writing on behalf of our clients in *Anglers Conservation Network v. Pritzker* to bring a recently published U.S. Circuit Court opinion, *United Cook Inlet Drift Ass'n v. NMFS*, No. 14-35928, slip op. (9th Cir. Sep. 21, 2016) (“Opinion”) to your attention. This Opinion directly addresses issues before the Mid-Atlantic Council at its October meeting. The Opinion is consistent with prior holdings in cases like *Flaherty v. Bryson*, 850 F. Supp. 2d 38, 55 (D.D.C. 2012) and *Anglers Conservation Network v. Pritzker*, 70 F. Supp. 3d 427, 440 (D.D.C. 2014), and states that “[t]he Magnuson-Stevens Act unambiguously requires a Council to create [a fishery management plan] for each fishery under its authority that requires conservation and management,” slip op. at 19. We request that you incorporate a discussion of this case with its relevant holdings into the revised White Paper and Draft Decision Document, and explain these holdings to the River Herring and Shad Committee and the full Council at their October meetings.

The Opinion directly applies to issues before the Council because it makes clear that when making decisions under section 302(h) of the Magnuson-Stevens Act, the question the Council must answer is whether the fish stock(s) -- in your case river herring and shad -- need conservation and management, not whether river herring and shad need “additional” management, compare slip op. at 13-14, 19-20 (rejecting government argument that the Magnuson-Stevens Act does not require a federal plan when there is a good state plan) with 2016 Draft Decision Document at 4. The Opinion also resolves debate about whether National Standard 7 and its guidelines apply to the question of whether to manage a fishery, see White Paper at 8. They do not. The Opinion makes clear that National Standards 3 and 7 “only govern the contents of an FMP, not the decision whether to issue one.” See slip op. at 19 (italics in original). Finally, any reliance on the new or proposed National Standard 1 guidelines to claim that state(s) management may be enough was also soundly rejected. See slip op. at 19 (“The government’s advisory guidelines fare no better, as they do not have the force of law.”).

The Mid-Atlantic Council has not disputed the need for conservation and management of river herring and shad. *See* October 2013 Meeting Minutes, Mid-Atlantic Fishery Management Council, p. 158, [https://mafmc.squarespace.com/s/October-meeting-minutes\\_draft-ydpr.pdf](https://mafmc.squarespace.com/s/October-meeting-minutes_draft-ydpr.pdf). As the Cook Inlet Opinion holds, the fact that there is management in state waters does not relieve the Mid-Atlantic Council and NOAA Fisheries from developing and implementing a federal fishery management plan for these species. Please review the United Cook Inlet Drift Association Opinion and ensure that the holdings are fully explained and considered in the Council's October 2016 decision.

Sincerely,

/s/ Roger Fleming

Roger Fleming  
Erica Fuller  
Attorneys  
Earthjustice

*On behalf of their clients  
Anglers Conservation Network,  
Paul Eidman, Gateway Striper Club,  
And Philip Lofgren*

Cc: Dr. Chris Moore, Executive Director  
Mr. Michael Luisi, MAFMC Chairman  
Mr. Mitch MacDonald, NOAA General Counsel



**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

UNITED COOK INLET DRIFT  
ASSOCIATION; COOK INLET  
FISHERMEN'S FUND,  
*Plaintiffs-Appellants,*

v.

NATIONAL MARINE FISHERIES  
SERVICE; PENNY PRITZKER, in  
her official capacity as Acting  
United States Secretary of  
Commerce; KATHRYN  
SULLIVAN, Acting Under  
Secretary of Commerce and  
Administrator for the National  
Oceanic and Atmospheric  
Administration; JAMES W.  
BALSIGER, in his official  
capacity as NMFS Alaska  
Region Administrator,  
*Defendants-Appellees,*

STATE OF ALASKA,  
*Intervenor-Defendant-  
Appellee.*

No. 14-35928

D.C. No.  
3:13-cv-00104-TMB

OPINION

Appeal from the United States District Court  
for the District of Alaska  
Timothy M. Burgess, Chief Judge, Presiding

Argued and Submitted August 2, 2016  
Anchorage, Alaska

Filed September 21, 2016

Before: Raymond C. Fisher, Richard A. Paez,  
and Andrew D. Hurwitz, Circuit Judges.

Opinion by Judge Hurwitz

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## SUMMARY\*

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### **Magnuson-Stevens Fishery Conservation and Management Act**

The panel reversed the district court's summary judgment in favor of the government in an action under the Magnuson-Stevens Fishery Conservation and Management Act brought by two groups of commercial fishermen urging the rejection of Amendment 12, which removed the historic net-fishing area of Cook Inlet from the Salmon Fishery Management Plan ("FMP"); and remanded with instructions that judgment be entered in favor of plaintiffs.

The panel held that the National Marine Fisheries Service cannot exempt a fishery under its authority that required conservation and management from an FMP because the agency is content with State management. The panel held that the Magnuson-Stevens Act unambiguously

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\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

requires a Regional Fishery Management Council to create an FMP for each fishery under its authority that requires conservation and management. The panel further held that the Magnuson-Stevens Act allowed delegation to a state under the FMP, but did not excuse the obligation to adopt an FMP when a Regional Fishery Management Council opted for state management. The panel concluded that Amendment 12 was therefore contrary to law to the extent that it removed Cook Inlet from the FMP.

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### COUNSEL

Jason T. Morgan (argued) and Beth S. Ginsberg, Stoel Rives LLP, Seattle, Washington, for Plaintiffs-Appellants.

Ellen J. Durkee (argued) and Coby Howell, Attorneys, Appellate Section; John C. Cruden, Assistant Attorney General; Environment and Natural Resources Division, United States Department of Justice, Washington, D.C.; Caroline Park, NOAA Office of the General Counsel, Silver Spring, Maryland; Lauren Smoker, NOAA Office of the General Counsel, Department of Commerce, Juneau, Alaska; for Defendants-Appellees.

Seth M. Beausang (argued), Assistant Attorney General, Anchorage, Alaska, for Intervenor-Defendant-Appellee.

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## OPINION

HURWITZ, Circuit Judge:

The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801–91 (“Magnuson-Stevens Act,” or “the Act”), creates a “national program for the conservation and management of the fishery resources of the United States.” *Id.* § 1801(a)(6). The Act establishes eight Regional Fishery Management Councils, each of which “shall” prepare a fishery management plan (“FMP”) “for each fishery under its authority that requires conservation and management.” *Id.* § 1852(a), (h)(1). The Secretary of Commerce, acting through the National Marine Fisheries Service (“NMFS”), then reviews each FMP or amendment of a plan “to determine whether it is consistent with the [Act’s] national standards, the other provisions of this chapter, and any other applicable law,” 16 U.S.C. § 1854(a)(1). *See Or. Trollers Ass’n v. Gutierrez*, 452 F.3d 1104, 1108 (9th Cir. 2006).

The issue for decision is whether NMFS can exempt a fishery under its authority that requires conservation and management from an FMP because the agency is content with State management. The district court held that it could. We disagree, and reverse.

## BACKGROUND

### I. Factual and Legislative Background

Cook Inlet is one of the nation’s most productive salmon fisheries. Its salmon are anadromous, beginning their lives in Alaskan freshwater, migrating to the ocean, and returning to freshwater to spawn.

In 1953, the United States entered into the International Convention for the High Seas Fisheries of the North Pacific Ocean. In response, Congress enacted the North Pacific Fisheries Act of 1954 (the “1954 Act”), authorizing the Secretary of the Interior to promulgate regulations governing fisheries contiguous to Alaskan waters. *See* Pub. L. No. 83-579, §§ 10 & 12, 68 Stat. 698, 699–700 (previously codified at 16 U.S.C. §§ 1021–35). The Secretary then issued a regulation prohibiting salmon net fishing in the western waters of Alaska, but excepting Cook Inlet and two other areas where net fishing had historically been permitted under Alaska law; in those areas, federal regulation was to mirror existing Alaskan regulation. 50 C.F.R. § 210.10 (repealed).

Before 1976, the United States asserted authority only over waters up to twelve nautical miles from the coastline, and there was substantial concern that foreign fishers were depleting American fisheries. *See* Mark H. Zilberberg, *A Legislative History of the Fishery Conservation & Management Act of 1976* (“Legislative History”) 237–41, 352, 448–49, 455–56, 472–73, 476–81, 519 (1976). In 1976, Congress enacted the Fishery Conservation and Management Act (the “1976 Act”), Pub. L. No. 94-265, 90 Stat 331 (codified as amended at 16 U.S.C. §§ 1801–1891), later renamed the Magnuson-Stevens Act. The 1976 Act extended federal jurisdiction to 200 miles from the coastline, *id.* § 101 (codified as amended at 16 U.S.C. § 1811), and regulated foreign fishing in that area, *id.* §§ 201, 204 (codified as amended at 16 U.S.C. §§ 1821, 1824). States retained jurisdiction over the first three miles from the coast, *id.* § 306(a) (codified as amended at 16 U.S.C. § 1856), and the federal government had jurisdiction over the next 197 miles, originally called the fishery conservation zone (“FCZ”) and later named the exclusive economic zone (“EEZ”), *id.* § 101 (codified as amended at 16 U.S.C.

§ 1811). *See also* 16 U.S.C. § 1801(b)(1); *Exclusive Economic Zone of the United States of America*, 48 Fed. Reg. 10,605 (Mar. 10, 1983).

The federal government manages its waters through eight regional Councils. 16 U.S.C. § 1852. During the debate on the 1976 Act, Senator Gravel of Alaska criticized the concept of federal management on one side of the three-mile line and state management on the other, because fish freely travel across the three-mile boundary. Legislative History 412–13, 460–67. Senator Gravel suggested that a state should manage its federal waters under a plan approved by the federal government. *Id.* at 467, 471. Senator Stevens of Alaska, one of the bill’s managers, offered an even broader proposal, which provided for exclusive state management of “[t]hose fisheries capable of being managed as a unit, which reside principally within the waters of a single State.” *Id.* at 422. But, Congress instead approved a more modest substitute offered by the bill’s other manager, Senator Magnuson, directing Councils, if possible, to incorporate state management measures in FMPs. *Id.*; 1976 Act § 305(c) (codified at 16 U.S.C. § 1855).

In 1979, NMFS promulgated an FMP for salmon fisheries near Alaska. *See* Fishery Management Plan for the High Seas Salmon, 44 Fed. Reg. 33,250 (June 8, 1979) (the “Salmon FMP”). The Salmon FMP divided Alaskan federal waters into East and West Areas; Cook Inlet is in the West Area. *Id.* at 33,267. With respect to the West Area, the FMP tracked the regulations promulgated under the 1954 Act prohibiting commercial salmon fishing except in the three historic net-fishing areas, including Cook Inlet, which the State would continue to manage. *Id.* (“These fisheries are technically in the FCZ, but are conducted and managed by the State of Alaska as inside fisheries.”). The decision to

leave these fisheries in the hands of the State was not based on a finding that they were in good health; to the contrary, the Salmon FMP found that “[a]ll salmon species are at historic low levels in the Cook Inlet management area, with chinook stocks seriously depleted.” *Id.* at 33,309.

In 1983, Congress amended the Act to specify that a Council need only prepare an FMP with respect to a fishery “that requires conservation and management.” Pub. L. No. 97-453, § 5(4), 96 Stat. 2481, 2486 (codified as amended at 16 U.S.C. § 1852(h)(1)). The conference report explained this amendment was intended “to clarify that the function of the Councils is not to prepare a fishery management plan (FMP) for each and every fishery within their geographical areas of authority. Rather, such plans are to be developed for those fisheries which require conservation and management.” H.R. Conf. Rep. No. 97-982, 97th Cong., 2d Sess., at \*18.

Alaska had proposed to amend the Act “to direct the Secretary of Commerce to delegate authority of a domestic fishery in the FCZ to the adjacent state . . . if . . . 1) the fishery does not cross interstate boundaries; and 2) the State is capable and willing to provide conservation and management consistent with the National Standards.” *Omnibus Authorization Bill for the National Oceanic and Atmospheric Administration: Hearings Before the S. Comm. on Commerce, Sci. & Transp.*, Serial No. 97-118, 97 Cong. 310 (1982) [hereinafter *Hearings*] (statement of Ronald O. Skoog, Commissioner, Alaska Department of Fish and Game). But, this proposal was not enacted. *See* Pub. L. No. 97-453, § 5(4), 96 Stat. 2481, 2486 (1982).

The Salmon FMP was revised in 1990. The revised FMP stated that, under the regulation implementing the 1954 Act, 50 C.F.R. § 210, salmon net fishing in the West Area was

prohibited, with the exception of the three historic net-fishing areas, which “technically extend into the EEZ, but . . . are conducted and managed by the State of Alaska as nearshore fisheries.”

In 1992, a new international convention prohibited all fishing for anadromous fish beyond the EEZ. Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, art. I, III. Congress promptly implemented that convention and repealed the 1954 Act. North Pacific Anadromous Stocks Act of 1992, Pub. L. No. 102-567, §§ 801–14, 106 Stat. 4309 (codified at 16 U.S.C. §§ 5001–5012). The Secretary of Commerce then concluded that regulations promulgated under the 1954 Act, including 50 C.F.R. § 210, no longer had statutory support, and repealed them. Removal of Regulations, 60 Fed. Reg. 39,271, 39,272 (Aug. 2, 1995). But, the Salmon FMP was not revised, and Alaska continued to manage the three historic net fisheries.

In 1995, a fishing vessel, “Mister Big,” engaged in a massive unregulated harvest of scallops in the federal waters of Prince William Sound. *See Trawler Diane Marie, Inc. v. Brown*, 918 F. Supp. 921 (E.D.N.C. 1995). That scallop fishery was not covered by an FMP, but the Magnuson-Stevens Act provided that a State could regulate fishing vessels in federal waters that were registered in that state. *Id.* at 924, 926; *see* Pub. L. No. 98-623, § 404(4), 98 Stat. 3394, 3408 (1984) (“[A] State may not directly or indirectly regulate any fishing vessel outside its boundaries, unless the vessel is registered under the law of that State.”). The Mister Big set sail from Seattle, renounced its Alaska registration, and began fishing for scallops in the Sound. *Trawler Diane Marie*, 918 F. Supp. at 924. By January 26, 1995, the quota that Alaska set for the area, 50,000 pounds of scallops, had



been harvested, so Alaska closed the scallop season and Alaska-registered boats returned home. *Id.* But, the Mister Big continued to dredge, eventually harvesting 52,000 pounds of scallops before the Secretary of Commerce approved an emergency closure of the fishery. *Id.* at 925, 927. The North Pacific Council had drafted an FMP which addressed the possibility that an unregulated vessel might fish for scallops in the federal waters off Alaska, but had not adopted it “because of the belief that all vessels fishing in the EEZ would be registered in Alaska and thus bound by the state’s regulations.” *Id.* at 926.

The following year, Congress revised the provision regarding state authority to regulate fishing vessels in federal waters. *See Sustainable Fisheries Act*, Pub. L. No. 104-297, § 112, 110 Stat. 3559, 3595–97 (1996). After that amendment, the Magnuson-Stevens Act now provides, in relevant part:

A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:

(A) The fishing vessel is registered under the law of that State, and (i) there is no fishery management plan or other applicable Federal fishing regulations for the fishery in which the vessel is operating; or (ii) the State’s laws and regulations are consistent with the fishery management plan and applicable Federal fishing regulations for the fishery in which the vessel is operating.

(B) The fishery management plan for the fishery in which the fishing vessel is operating delegates management of the

fishery to a State and the State's laws and regulations are consistent with such fishery management plan.

16 U.S.C. § 1856(a)(3). The version of the bill reported out of the House Committee on Resources would have authorized Alaska to enforce its regulations in federal waters even absent an FMP. H.R. Rep. No. 104-171, at \*11-12 (1995). But, that version was not enacted. Pub. L. No. 104-297, § 112.

## **II. Amendment 12**

The North Pacific Council has jurisdiction over the federal waters of Cook Inlet. Six of its 11 voting members are from Alaska and the remainder are from Washington and Oregon. 16 U.S.C. § 1852(a)(1)(G), (b)(1), (b)(2)(C).

In 2010, the North Pacific Council began a comprehensive review of the Salmon FMP. As a result, NMFS “realized” that Cook Inlet was “not exempt from the FMP as previously assumed.” Council staff prepared a discussion paper, which summarized the situation as follows:

The FMP is vague on the function of the FMP in these areas. Though the FMP broadly includes these three areas and the salmon and fisheries that occur there within the fishery management unit and states that management of these areas is left to the State under other Federal law, the FMP does not explicitly defer management of these salmon fisheries to the State. The FMP does not contain any management goals or objectives for these three areas or any provisions with which to

manage salmon fishing. The FMP only refrains from extending the general fishing prohibition to those areas, where, as the FMP notes, fishing was authorized by other Federal law, [which has since been repealed]. Therefore, the FMP's reference to "other Federal laws" may no longer be fully effective.

The North Pacific Council circulated a draft Environmental Assessment, held five public meetings, and took testimony. In 2011, the North Pacific Council unanimously voted to remove the three historic net fishing areas from the Salmon FMP. In April 2012, NMFS solicited comments on this change, "Amendment 12," and proposed implementing regulations. 77 Fed. Reg. 19,605 (Apr. 2, 2012); 77 Fed. Reg. 21,716 (Apr. 11, 2012).

Two groups of commercial fishermen, the United Cook Inlet Drift Association and the Cook Inlet Fishermen's Fund (collectively, "United Cook"), submitted comments urging the rejection of Amendment 12. The comments cited a 51% decline since 1981 in the commercial catch of sockeye salmon. United Cook attributed this decline to two management failures by Alaska. First, United Cook argued that the State had failed to address the introduction of carnivorous northern pike into nearby lakes and streams. Second, United Cook argued that Alaska was not properly managing the escapement of salmon in Cook Inlet. The Magnuson-Stevens Act requires limits on the number of fish caught. 16 U.S.C. § 1853(a)(15). In contrast, Alaska manages commercial salmon fishing through escapement goals, *i.e.*, the number of salmon allowed to "escape" past a fishery to spawn. According to United Cook, "the State misses the high end of its escapement goal targets as much

as 35% of the time,” leading to a massive unharvested supply of fish, and “has no escapement goals at all for many runs in Cook Inlet.”

In June 2012, NMFS issued a final Environmental Assessment, finding that “the State is the appropriate authority for managing Alaska salmon fisheries given the State’s existing infrastructure and expertise,” and that “the State’s escapement based management system is a more effective management system for preventing overfishing than a system [like the federal one] that places rigid numeric limits on the number of fish that may be caught.” NMFS also issued a finding that Amendment 12 would have no significant impact on the environment because it would not change the management of the fisheries. NMFS approved Amendment 12, and, in December 2012, promulgated implementing regulations. *See Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Salmon*, 77 Fed. Reg. 75,570 (Dec. 21, 2012); 50 C.F.R. § 679.2 (definition of West Area).

### **III. Procedural Background**

United Cook filed this action in 2013, challenging Amendment 12 and its implementing regulations as contrary to the Magnuson-Stevens Act’s requirement that a Council prepare an FMP “for each fishery under its authority that requires conservation and management,” 16 U.S.C. § 1852(h)(1). United Cook also alleged that Amendment 12 was arbitrary and capricious and contrary to the National Environmental Policy Act, 42 U.S.C. § 4332(2)(C). The district court granted Alaska’s motion to intervene as a defendant, and entered summary judgment for the government. United Cook timely appealed.

## DISCUSSION

The Magnuson-Stevens Act requires that “[e]ach Council shall, in accordance with the provisions of this chapter—(1) for each fishery under its authority that requires conservation and management, prepare and submit to the Secretary (A) a fishery management plan . . . .” 16 U.S.C. § 1852(h)(1). Thus, the usual initial question is whether the fishery at issue even needs conservation and management. *See Anglers Conservation Network v. Pritzker*, 139 F. Supp. 3d 102, 114–15 (D.D.C. 2015). We review that administrative decision under the traditional arbitrary and capricious standard. *Id.* But we need not tarry over that issue here; the government concedes that the Cook Inlet fishery requires conservation and management.

But, the government argues that the Act only requires an FMP for fisheries that need *federal* conservation and management, and that Cook Inlet is in good hands with Alaska. The district court found the Act ambiguous, gave *Chevron* deference to the government’s interpretation, and found not arbitrary and capricious the agency’s decision that federal involvement was not necessary.

We determine whether to afford *Chevron* deference to an agency interpretation of a statute under a two-step analysis. First, we consider “whether Congress has directly spoken to the precise question at issue.” *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984). “If the intent of Congress is clear, that is the end of the matter.” *Id.* Only “if the statute is silent or ambiguous with respect to the specific issue,” do we go to step two, which considers “whether the agency’s answer is based on a permissible construction of the statute.” *Id.* at 843.

“We start, as always, with the language of the statute.” *Williams v. Taylor*, 529 U.S. 420, 431 (2000). Section 1852(h)(1) of the Act provides that a Council “shall” prepare an FMP for a fishery (1) “under its authority” that (2) requires “conservation and management.” The government concedes that Cook Inlet is a fishery under its authority that requires conservation and management. But it argues that an FMP is only mandated by the Act when “federal” conservation and management is required. Thus, the government asks us to insert the word “federal” into § 1852(h)(1) before the phrase “conservation and management.”

“[W]e ordinarily resist reading words or elements into a statute that do not appear on its face,” *Bates v. United States*, 522 U.S. 23, 29 (1997), and the government never persuasively explains why we should deviate from that rule here. *See Pac. Coast Fed’n of Fishermen’s Ass’ns v. Blank*, 693 F.3d 1084, 1095 (9th Cir. 2012) (rejecting a reading of the Magnuson-Stevens Act which “requires inserting the word ‘only’ or ‘solely’ into subsection [1853a](c)(5)”; *see also Stanton Rd. Assocs. v. Lohrey Enters.*, 984 F.2d 1015, 1020 (9th Cir. 1993) (stating that courts “lack . . . power” to “read into the statute words not explicitly inserted by Congress”). In arguing that we should insert the word “federal” into § 1852(h)(1), the government relies heavily on what it calls the “deferral” provision of the Act, § 1856(a)(3)(A)(i), which allows a state to regulate state-licensed vessels in federal waters when no FMP exists. The government argues that this provision assumes that NMFS can cede regulatory authority to a state over federal waters that require conservation and management simply by declining to issue an FMP. But, § 1856(a)(3)(A)(i) does not create an exception to the general obligation to issue an FMP when a fishery requires conservation and management;

rather, the provision only restates the longstanding principle that a State can regulate vessels registered under its laws in federal waters absent federal law to the contrary. This principle dates at least to 1976. *See* 1976 Act § 306(a) (“No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State.”).

The 1996 amendment to the Magnuson-Stevens Act did not expand that traditional state authority, but rather *limited* state jurisdiction over state-registered vessels to when (i) there is no FMP, or (ii) state law is consistent with the FMP. *See* Sustainable Fisheries Act, § 112 (codified at 16 U.S.C. § 1856(a)(3)(A)). This “deferral provision” would be a strange form of delegation of federal regulatory authority, as it does not allow states to regulate vessels registered in other states. In contrast, the next paragraph of the 1996 amendments, the so-called “delegation” provision, expressly authorizes NMFS to “delegate[ ] management of the fishery to a State” through an FMP, at which point the state can regulate any fishing vessel in the federal waters at issue, regardless of registration. *Id.* (codified at 16 U.S.C. § 1856(a)(3)(B)).

The Act is clear: to delegate authority over a federal fishery to a state, NMFS must do so expressly in an FMP. 16 U.S.C. § 1856(a)(3)(B). If NMFS concludes that state regulations embody sound principles of conservation and management and are consistent with federal law, it can incorporate them into the FMP. *Id.* § 1853(b)(5). Indeed, Amendment 12 expressly delegates management of the East Area – certain federal waters off Alaska not including Cook Inlet – to Alaska. Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Salmon, 77 Fed. Reg. at 75,570–71;

50 C.F.R. §§ 679.1(i)(2) (“State of Alaska laws and regulations that are consistent with the Salmon FMP and with the regulations in this part apply to vessels of the United States that are commercial and sport fishing for salmon in the East Area of the Salmon Management Area.”), 679.3(f). Amendment 12 could have expressly delegated management of Cook Inlet to Alaska as well, but it did not. The government argues removing Cook Inlet from the FMP amounts to delegation. But, the federal government cannot delegate management of the fishery to a State without a plan, because a Council is required to develop FMPs for fisheries within its jurisdiction requiring management and then to manage those fisheries “through” those plans. 16 U.S.C. §§ 1801(b)(4)–(5), 1852(h)(1). The “deferral” provision covers those waters where for some reason a plan is not in effect; it is not an invitation to a Council to shirk the statutory command that it “shall” issue an FMP for each fishery within its jurisdiction requiring conservation and management.

Although we find the statutory language clear, we also note that the legislative history of the Act belies the government’s argument.<sup>1</sup> The Act makes plain that federal fisheries are to be governed by federal rules in the national interest, not managed by a state based on parochial concerns. *Compare* 16 U.S.C. §§ 1801(a)(6) (“A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing . . . and to realize the full potential of the Nation’s fishery

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<sup>1</sup> “[W]e ‘cautiously adhere’ to the practice of consulting legislative history” at step one of a *Chevron* analysis, *Irvine Med. Ctr. v. Thompson*, 275 F.3d 823, 829 n.3 (9th Cir. 2002) (quoting *Am. Rivers v. Fed. Energy Reg. Comm’n*, 201 F.3d 1186, 1196 n.16 (9th Cir. 2000)), recognizing that “courts have no authority to enforce a principle gleaned solely from legislative history that has no statutory reference point,” *Shannon v. United States*, 512 U.S. 573, 584 (1994) (alterations omitted).



resources.”) and 1802(33)(A) (“The term ‘optimum’, with respect to the yield from a fishery, means the amount of fish which—(A) will provide the greatest overall benefit to the Nation.”) and 1811(a) (“[T]he United States claims, and will exercise in the manner provided for in this chapter, sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the exclusive economic zone.”) *with* Alaska Br. 13 (“The Alaska Constitution requires the State to manage natural resources for the maximum benefit and use for all Alaskans.” (citing Alaska Const. art. VIII, §§ 1–2)). Congress therefore repeatedly rejected proposals to provide for state management of federal fisheries without an FMP. *Compare* Legislative History 422, 467, 471, *with* 1976 Act § 305(c); *compare* Hearings, *supra*, at 310, *with* Pub. L. No. 97-453, § 5(4) (1982); *compare* H. Rep. No. 104-171 at \*11–12, *with* Pub. L. No. 104-297, § 112 (1996). We decline the government’s invitation to vest in Alaska the very authority that Congress abjured.

Alaska argues that NMFS has discretion not to adopt an FMP for federal waters requiring management and conservation, because “shall” sometimes means “may.” *See* *Sierra Club v. Whitman*, 268 F.3d 898, 904 (9th Cir. 2001). But, that is not the general rule; we recognized in *Sierra Club* that “‘shall’ in a statute generally denotes a mandatory duty.” *Id.*; *see also* *United States v. Monsanto*, 491 U.S. 600, 607 (1989) (stating that by using “shall,” “Congress could not have chosen stronger words to express its intent that forfeiture be mandatory”); *Brower v. Evans*, 257 F.3d 1058, 1067 n.10 (9th Cir. 2001) (“‘Shall’ means shall.” (quoting *Ctr. for Biological Diversity v. Norton*, 254 F.3d 833, 837–38 (9th Cir. 2001))). Our holding in *Sierra Club* that the Environmental Protection Agency did not have a mandatory duty to bring enforcement actions under the Clean Water Act

was driven by “the traditional presumption that an agency’s refusal to investigate or enforce is within the agency’s discretion,” and based on an “[a]nalysis of the structure and the legislative history of the Clean Water Act.” 268 F.3d at 902, 904. No similar factors here support reading “shall” as “may.”<sup>2</sup>

The government argues that § 1852(h)(1) does not expressly require an FMP to cover an entire fishery, noting that “the provision says nothing about the geographic scope of plans at all.” But, the statute requires an FMP for a fishery, a defined term. *See* 16 U.S.C. § 1802(13). No one disputes that the exempted area of Cook Inlet is a salmon fishery. But, under the government’s interpretation, it could fulfill its statutory obligation by issuing an FMP applying to only a single ounce of water in that fishery. We disagree. When Congress directed each Council to create an FMP “for each fishery under its authority that requires conservation and management,” *id.* § 1852(h)(1), it did not suggest that a Council could wriggle out of this requirement by creating

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<sup>2</sup> Alaska also argues that, if we fail to add the word “federal” before “conservation and management” in § 1852(h)(1), NMFS will be forced to issue an FMP for every fishery, because all fisheries require some conservation and management. However, the legislative history of the Act directly refutes this argument. A previous version of the statute required an FMP for every fishery under a Council’s authority. In 1983, Congress amended the statute to specify that an FMP is necessary only where a fishery “requires conservation and management.” Pub. L. No. 97-453 § 5(4), 96 Stat. 2481, 2486 (codified as amended at 16 U.S.C. § 1852(h)(1)). If every fishery required some type of conservation and management, this amendment would amount to a nullity. But, “[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.” *Stone v. I.N.S.*, 514 U.S. 386, 397–98 (1995)). The amendment thus indicates Congress understood that some fisheries might not require conservation or management.

FMPs only for selected parts of those fisheries, excluding other areas that required conservation and management. *See id.* § 1853(a) (setting out the required contents of FMPs).<sup>3</sup>

Finally, the government argues that its interpretation is supported by National Standards 3 and 7 in the Magnuson-Stevens Act, 16 U.S.C. § 1851(a)(3), (7), and the implementing guidelines for those standards, 50 C.F.R. §§ 600.305–355. But, the National Standards only govern the *contents* of an FMP, not the decision whether to issue one. *See* 16 U.S.C. § 1851(a) (requiring that FMPs “be consistent with the following national standards for fishery conservation and management”). The government’s advisory guidelines fare no better, as they do not have the force of law. *Id.* § 1851(b).

## CONCLUSION

The Magnuson-Stevens Act unambiguously requires a Council to create an FMP for each fishery under its authority that requires conservation and management. The Act allows delegation to a state under an FMP, but does not excuse the

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<sup>3</sup> The government also appears to argue that it fully discharged its statutory obligation when the Salmon FMP was adopted in 1990, because the FMP included Cook Inlet (albeit by placing it under Alaska’s authority), and that it was thereafter free under the Act to remove any parts of the West Area from the FMP. But, removing a fishery from an FMP is no different than excluding that fishery from the start. An amendment to an FMP, like the FMP itself, must conform to the statutory scheme. *See* 16 U.S.C. §§ 1852(h)(1) (“Each Council shall . . . prepare and submit to the Secretary . . . (B) amendments to each such plan that are necessary.”); 1854(a)(1) (requiring the Secretary to review an FMP amendment “to determine whether it is consistent with the national standards, the other provisions of this chapter, and any other applicable law”).

obligation to adopt an FMP when a Council opts for state management. Amendment 12 is therefore contrary to law to the extent it removes Cook Inlet from the FMP.<sup>4</sup> We reverse the judgment of the district court and remand with instructions that judgment be entered in favor of United Cook.

**REVERSED and REMANDED.**

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<sup>4</sup> Because Congress has spoken clearly, we need not reach *Chevron* step two. And, because we conclude that Amendment 12 is contrary to law with respect to its removal of Cook Inlet from the FMP, we need not address United Cook's other challenges to the Amendment.

September 26, 2016

FORVA DIRECTORS

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Rick Roth, Treasurer  
*Friends of the New River*  
Del. Watkins M. Abbitt, Jr.  
*Float Fishermen of Virginia*  
Juanita Callis  
*Friends of the Roanoke River*  
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*Environmental Consultant*  
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*Friends of the Shenandoah*  
Jeff Wold  
*Float Fishermen of Virginia*

**Mike Luisi, Council Chairman**

**Dr. Christopher Moore, Executive Director**  
Mid-Atlantic Fishery Management Council  
800 North State Street  
Dover, DE 19901

Dear Chairman Luisi and Dr. Moore,

The Friends of the Rivers of Virginia (FORVA) is Virginia's leading statewide river conservation coalition, whose mission is the conservation, preservation and restoration of Virginia's river resources. Coalition activities include addressing and resolving river related issues and providing objective information on the environmental, economic, recreational, scenic and historical values of the state's rivers. On behalf of our members, we strongly recommend that the Mid-Atlantic Fisheries Management Council (MAFMC) create a formalized management plan for river herring and shad.

River herring and shad are historically important to Virginia from both economic and cultural perspectives. Virginia's annual political "Shad Planking" event in Wakefield originally centered on the annual spring shad run, but today shad fishing in our state is under moratorium and shad runs are nearly nonexistent. Anglers, scientists and river restoration groups all recognize that herring and shad runs support not only community events and recreational opportunities, but a wealth of ecological value to other species that depend on their migration.

Unfortunately, the management of river herring and shad has fallen through the cracks. Recognizing the critical role these species play in our rivers and coastal waterways, state and local entities like FORVA have dedicated precious time, money and resources on dam removal and habitat restoration to help restore these populations, only to watch them be decimated at-sea in large numbers as by-catch in industrial fisheries targeting Atlantic herring, mackerel and other species.

This is unacceptable. Progress at the state and local level is improving habitat and creating cleaner rivers and removing barriers to migration. At the federal level the lack of real progress towards sufficient at-sea management of these anadromous fish species is undercutting their economic, ecological and cultural value. Full federal management of river herring and shad is the only way to protect these threatened species and uphold them as the valuable and renewable natural resource that they are.

Healthy river herring and shad populations support other commercially and recreationally important target fish species. Restoring populations of river herring and shad will bring important economic and ecological benefits to communities along coastal rivers and waterways, not just in Virginia, but along the entire U.S. East Coast.

Thank you for your time and attention to this important matter.

Sincerely,



Bill Tanger  
Chair, FORVA



## Great Egg Harbor National Scenic And Recreational River Council

**Fred Akers - Administrator**  
P.O. Box 109  
Newtonville, NJ 08346  
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**David Brown**  
Egg Harbor Twp.

**Bill Handley**  
Upper Twp.

**Dick Colby**  
GEHWA

September 23, 2016

Dr. Christopher Moore, Executive Director  
Mid-Atlantic Fishery Management Council  
Sent by email to [cmoore@mafmc.org](mailto:cmoore@mafmc.org)

RE: Begin an action to add River Herring and Shads as Council managed stocks.

Dear Executive Director Moore:

On behalf of the Great Egg Harbor River Council, I urge the Mid-Atlantic Fishery Management Council to begin an action to add River Herring and Shads as Council managed stocks.

The continuing threats to river herring and shad from ocean bycatch in federal waters demands that these imperiled species come under the protection of comprehensive federal conservation and management through a designation as "stocks in the fishery", which will attempt to ensure:

1. Enforceable, science-based annual catch limits and accountability measures.
2. Identification of essential fish habitat by the National Marine Fisheries Service
3. Improved monitoring of the industrial trawl fleet
4. Better data collection and research on the status of the species

We want the historical abundance of river herring to be restored to our federally designated National Scenic and Recreational River here in New Jersey.

It is time to put aside ad-hoc management measures and to instead make the financial commitment for federal conservation and management to restore the river herring and shad stocks like other stocks have been restored from past over fishing and past conservation failures.

Sincerely,

Fred Akers, Administrator

Dear Mid-Atlantic Fishery Management Council members and staff,

At the October 2016 council meeting, please vote to add river herring and shad as stocks in the Mackerel, Squid, Butterfish Fishery Management Plan (MSB FMP). The current management approach is failing to increase the populations of these forage fish from historic lows. Comprehensive protection at sea is the missing piece in the puzzle to help ensure that conservation efforts already underway are successful and not lost because of what is happening at sea.

Federal, state and local governments have invested over \$100 million to help river herring and shad populations return to rivers. But the large-scale catch of river herring and shad offshore is undermining this substantial investment and preventing the recovery of these imperiled species. The Mid-Atlantic Council can solve this problem by adding river herring and shad to the MSB plan. Bringing these critically important forage species under sound federal management will ensure that they are managed sustainably coastwide, through science-based population goals, annual catch limits set to rebuild stocks, and protection of essential habitat.

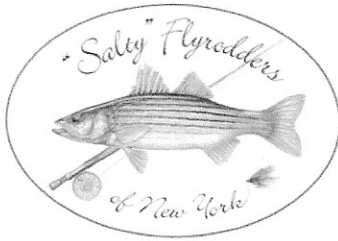
Restored river herring and shad populations will help support predator fish important to commercial and recreational fishermen--such as striped bass and bluefish--along with other marine wildlife, including shorebirds and marine mammals. Robust populations of river herring and shad will also bring important benefits to coastal Mid-Atlantic communities that once depended upon these fish as a key component of their local economies and cultures.

Restoring and maintaining river herring and shad populations will take commitment, cooperation and coordination from all authorities with management responsibility. The Mid-Atlantic Council has an opportunity to lead the way in addressing the threats these species face at sea.

Please act now to restore river herring and shad by adding them to stocks in the MSB FMP.

Thank you for your time and consideration,

Caleb Laieski



"Salty" Flyrodders of New York  
345 East 57<sup>th</sup> Street, Suite 2C  
New York, NY 10022

September 25, 2016

**Mike Luisi, Council Chairman**  
**Dr. Christopher Moore, Executive Director**  
Mid-Atlantic Fishery Management Council  
800 North State Street  
Dover, DE 19901

Dear Chairman Luisi and Dr. Moore,  
The Salty Flyrodders of New York was started in 1966 and has over 200 active members. Our club is actively involved in marine conservation, fisheries management and in the all-important fight for beach access. We love to fish. Period. That is why we are so concerned about the dwindling numbers of river herring and shad.

They are key components of the food web in our river and coastal waters, serving as prey for sport fish, such as striped bass and tuna, birds, like eagles, osprey and herons, and marine mammals. These fish are at an all time low but we still have the opportunity to bring them back if we act now. But we need your help.

We urge the Mid-Atlantic Fishery Management Council to develop and pass Amendment 15 to the Mackerel, Squid Butterfish Plan (MSB), and designate river herring and shad as stocks in the MSB Fishery Management Plan.

The continuing threat to river herring and shad from ocean by-catch demands that these imperiled species come under the protection of comprehensive federal conservation and management through a designation as "stocks in the fishery", which will ensure:

- Enforceable, science-based annual catch limits and accountability measures.
- Identification of essential fish habitat by the National Marine Fisheries Service
- Improved monitoring of the industrial trawl fleet
- Better data collection and research on the status of the species

Please act now before it's too late.

Sincerely,

Joel B. Filner Director



**Mike Luisi, Council Chairman**  
**Dr. Christopher Moore, Executive Director**  
Mid-Atlantic Fishery Management Council  
800 North State Street  
Dover, DE 19901

September 27, 2016

Dear Chairman Luisi and Dr. Moore,

Started in 1990, Operation SPLASH (Stop Polluting Littering And Save Harbors) is a volunteer non-profit organization with 3500 members that provides a solution to the growing problem of waterfront pollution through public awareness and individual participation. We clean up and remove debris that has found its way into our oceans and on our beaches. We run six boats and seven chapters that clean up from the Nassau/Queens border to Fire Island. We are committed to improving the quality of life along our Long Island shores. And that means the animals that also inhabit our waterways or should we say used to. Our members remember when the river herring and shad runs were plentiful because we live here and we grew up here.

They are key components of the food web in our river and coastal waters, serving as prey for sport fish, such as striped bass and bluefish that are commercially and recreationally important along our coast. Healthy river herring and shad populations benefit our town and coastal communities and tuna, birds, like eagles, osprey and herons, and marine mammals. These fish are at an all-time low but we still have the opportunity to bring them back if we act now. But we need your help.

On behalf of Operation SPLASH, we urge the Mid-Atlantic Fishery Management Council to designate **river herring and shad as stocks in the Mackerel, Squid, Butterfish Fishery Management Plan.**

The continuing threat to river herring and shad from at- sea-catch demands that these imperiled species come under the protection of comprehensive federal conservation and management through a designation as “stocks in the fishery”, which will ensure:

- Enforceable, science-based annual catch limits and accountability measures.
- Identification of essential fish habitat by the National Marine Fisheries Service
- Improved monitoring of the industrial trawl fleet
- Better data collection and research on the status of the species

In 2013, we sent in a similar letter to the council. Unfortunately river herring and shad were not added as SIF back then. We hope the council does the right thing this year and elects to vote them in this year.

Sincerely

Rob Weltner  
President  
PO Box 228  
Freeport, NY 11520

# WESPAC Foundation

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September 27, 2016

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**Mike Luisi, Council Chairman**  
**Dr. Christopher Moore, Executive Director**  
Mid-Atlantic Fishery Management Council  
800 North State Street  
Dover, DE 19901

Dear Chairman Luisi and Dr. Moore,

WESPAC is an organization that, since 1974, has been fighting for progressive social change in Westchester County, New York. Utilizing channels such as education, proactive organization, and demonstration, we work towards food justice, environmental justice, and recognition of indigenous peoples and their rights to food, land, natural resources, and equal treatment.

We have joined the fight against hydrofracking in efforts to avoid potential contamination of the Hudson River and other nearby water bodies; we are focused on protecting natural sources of drinking water, as well as the marine ecosystem that many people rely on. This includes many of the fish species that inhabit the area, including the imperiled River Herring and Shad; additionally, many indigenous people that we work to protect rely on these waters, and these fish in particular, as a source of food.


Hydrofracking isn't the only threat to River Herring and Shad populations; general water pollution, overfishing, degradation of spawning grounds, and catch-at-sea of these species are contributing to their rapid decline.

Without federal protection, these fish species have little to no chance at rebounding from near elimination of populations; by listing them in fishery stocks, management and protection can be ensured. This would include a concrete system for holding people accountable for continued damage to these species, along with effective catch limits that are based on collected data. Federal protection would also include help to limit at-sea catch of River Herring and Shad.

The situation that these fish species face is desperate, and without adequate recognition and support, the outlook is dim. Help these fish species and all that depend on them avoid a tragic end by voting "yes" for their protection.

We sent the council a similar letter back in 2013. We are hoping that 2016 is the year the council takes a stand to protect these important fish and include them as stocks in the fishery.

Regards,

  
Nada Khader  
Executive Director  
WESPAC Foundation  
White Plains, NY



September 28, 2016

Dr. Chris Moore, Executive Director  
Mid-Atlantic Fishery Management Council  
Suite 201  
800 N. State St.  
Dover, DE 19901

**RE: River Herring & Shad Stocks in the Fishery Decision**

Dear Dr. Moore,

On behalf of *Wild Oceans*, I am writing to urge the Mid-Atlantic Council to take immediate steps to bring blueback herring, alewife, American shad and hickory shad into federal fishery management in a manner that satisfactorily addresses the need to conserve and manage these species – a need that has been well articulated by the impressive number and diversity of stakeholders, organizations and agencies weighing in over the last six years to support a federal management plan for river herring and shad.<sup>i</sup>

Recovery of depleted river herring and shad stocks is crucial to long-term ecosystem health and demands a comprehensive management program that bridges state and federal waters to cover their geographic range. As anadromous forage species, river herring and shad are prey for a wide array of predators, including important commercial and recreational species in the Mid-Atlantic region like striped bass, bluefish and weakfish.<sup>ii</sup> Also important to the region's ecology is the unique role anadromous herrings play in transferring nutrients from the ocean to replenish coastal river systems.<sup>iii</sup> River herring and shad fishery closures enacted by the Atlantic states in response to historically low populations have come at great cost to the coastal communities that have worked hard to rebuild their runs for recreational and commercial fishing and tourism. It is unlikely that we will see these fisheries reopened until a comprehensive recovery plan is in place, one that includes management measures in federal waters where river herring and shad spend most of their lives, and where fishing mortality has yet to be accurately assessed and constrained.

Below we provide additional rationale to support river herring and shad stocks in the fishery designation and request that the River Herring & Shad Committee and full Council take these comments into consideration as they deliberate on the best course of action.

**P.O. Box 258 • Waterford, VA 20197**  
**WWW.WILDOCEANS.ORG**

***A stocks in the fishery designation decision must be grounded in the definition of conservation and management as described in the Magnuson-Stevens Fishery Conservation and Management Act (MSA).<sup>iv</sup>***

The fundamental question before the River Herring & Shad Committee and the Council is whether or not river herring and shad are in need of conservation and management in accordance with the MSA's definition.<sup>1</sup> We are disappointed the latest draft of the Decision Document for the October River Herring & Shad Committee and Council meetings constructs justification for and against federal management around MSA National Standards and National Standard Guidelines,<sup>v</sup> and we respectfully request that these arguments and their associated rationale be disregarded. The National Standards describe how to fairly and effectively manage marine fishery resources once the need for conservation and management is identified, and they should not be used to constrain Council decisions as to what resources merit federal management. As affirmed by the United States Court of Appeals for the Ninth Circuit in *United Cook Inlet Drift Association v. NMFS*, No. 14-35928, slip op. (9th Cir. Sep. 21, 2016),<sup>vi</sup> National Standards are only applicable to fisheries under federal management and are not intended for evaluating whether or not a stock should be managed.

Furthermore, the court's ruling makes it clear that the National Marine Fisheries Service (NMFS) cannot exempt a fishery under its authority that requires conservation and management from a fishery management plan (FMP) "because the agency is content with State management."<sup>vii</sup> In other words, the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan for Shad and River Herring does not absolve federal management authorities from the requirement to manage river herring and shad stocks in need of conservation and management.

***The Council should recognize the limitations and shortfalls of current voluntary working group efforts to conserve and manage river herring and shad.***

Three years ago, the Council formed its River Herring & Shad Committee as an interagency task force that will "work to comprehensively address river herring and shad mortality and stock status throughout their range."<sup>viii</sup> At that time, the Council committed, in three years' time, to conduct a formal evaluation of the effectiveness of the committee approach to determine if a different strategy is required to protect river herring and shad. Of the five terms of reference established to guide the work of the committee,<sup>ix</sup> limited progress is demonstrated. No abundance or population-based cap methodologies have been discussed, much less developed, and no alignment of river herring and shad caps has occurred between

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<sup>1</sup> The Magnuson-Stevens Act defines conservation and management as "all of the rules, regulations, conditions, methods, and other measures:(A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that: (i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis; (ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and (iii) there will be a multiplicity of options available with respect to future uses of these resources." [16 USC §1802(5)]

the Atlantic herring fishery and mackerel fishery to address overall catch. While catch caps in the mackerel fishery have been set and administered yearly since 2014, abysmally-low levels of at-sea observer coverage<sup>2</sup> allocated to Mid-Atlantic trawl fisheries create too much uncertainty to ascertain the effectiveness of these measures in achieving conservation goals.

The lack of coordination between the New England and Mid-Atlantic Councils is particularly troubling. In a Mid-Atlantic Council memorandum, policy differences between the councils are cited as a reason why a joint cap initiative will not be productive.<sup>x</sup> These policy differences are evident in the methodologies used by each council this year to develop caps as well as in the outcome of those methodologies, with the Mid-Atlantic Council recommending a lower cap, and the New England Council recommending area caps that amount to an overall 16% increase. By the Mid-Atlantic Council's own analysis from Amendment 14 to the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan, an incidental cap is unlikely to be effective at reducing the overall catch in federal waters unless the industrial mid-water trawl fishery that targets both Atlantic herring and mackerel, especially during the Quarter 1 winter fishery, is managed under a single cap.<sup>xi</sup> While we have lauded the Mid-Atlantic Council for its efforts to implement a robust river herring/shad cap that achieves the goal of reducing incidental catch, the New England Council Atlantic Herring specifications for the 2016-2018 fishing years, if approved by NMFS, will increase allowable catch of river herring and shad, amounting to over 500,000 more of these imperiled forage fish being removed from the ecosystem.<sup>xii</sup>

### ***River herring and shad species need and will benefit from MSA conservation and management.***

River herring and shad face a number of threats in ocean waters, threats that are exacerbated by the depleted state of each species and that could be mitigated by the tools and authorities granted to regional fishery management councils for species managed in a federal FMP.

### **Incidental Catch**

Through a qualitative threat assessment produced in response to a petition to list alewife and blueback herring under the Endangered Species Act (ESA), an ESA Status Review Team (SRT) identified 22 potential threats to alewife and blueback herring. Range-wide, incidental catch in federal fisheries was ranked as a moderate threat, meaning that it is likely to affect the species now and into the foreseeable future.<sup>xiii</sup> It is noteworthy that incidental catch was second only to dams and barriers in terms of its overall threat significance, and it also ranked well above directed catch.<sup>xiv</sup> While the number of dam removals per year is increasing, resulting in the elimination of 428 dams from mid-Atlantic river ways since 1973,<sup>xv</sup> river herring and shad runs continued to decline over the same period, suggesting that the other factors identified by the SRT are likely playing a significant role in hampering recovery.

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<sup>2</sup> "2015 coverage rates for relevant fisheries were 4.7% for mid-water trawl (MWT), 2.5% for purse seine, and 9.1% for small mesh bottom trawl (NMFS 2016)." See, Decision Document, p. 53.

It is important to note that the SRT identified genetically distinct alewife and blueback herring stocks based on the work of Palkovacs et al., a study that is referenced in the Decision Document (p. 41). Extinction risk analysis of the distinct stocks revealed that the mid-Atlantic blueback herring stock is significantly decreasing. Additional investigations by Hasselman et al. 2016 (summarized in the Decision Document on p. 42), analyzed the genetics of alewife and blueback herring incidental catch, primarily taken by the mid-water trawl fishery, and found that a disturbing proportion was from the most vulnerable stocks, originating in Mid-Atlantic states.

Bycatch overall, but especially in the Atlantic herring fishery, was disproportionately assigned to the most severely depleted genetic stocks (alewife southern New England stock—70% of assignments; blueback herring mid-Atlantic stock—78% of assignments). The authors suggested that mitigating bycatch on the southern New England fishing grounds may therefore benefit recovery efforts for alewife and blueback herring genetic stocks that have experienced the greatest declines in spawning adult abundances, though without absolute RH/S population information the impact is unknown.<sup>xvi</sup>

This recent body of research highlights the importance of evaluating the need for conservation and management on a stock or species level. Collectively referring to alewife and blueback herring as “river herring” and grouping otherwise distinctive stocks together for analysis not only masks stock declines but prevents the identification and prioritization of conservation efforts.

### Climate Change

All four shad and river herring species being considered for stocks in the fishery designation – hickory shad, American shad, alewife and blueback herring – are flagged as highly vulnerable to climate change in the Northeast Fish and Shellfish Climate Vulnerability Assessment conducted by Hare et al 2016.<sup>xvii</sup> For anadromous herrings, life history is closely tied to temperature, and warming temperatures are projected to diminish suitable habitat and alter ocean distribution.

Lynch et al 2015 emphasize that “conservation efforts that promote high-population abundance in the near-term will likely benefit river herring populations over the long term by making them more resilient to the effects of climate change.”<sup>xviii</sup> A federal management toolbox will allow the Council to construct more robust strategies for protecting river herring and shad at sea, focusing on areas where they are especially vulnerable. Incidental catch limits, temporal and spatial closures or gear restrictions could be administered consistently region-wide and fleet-wide regardless of the target fishery instead of placing the conservation burden on a subset of fisheries contributing to the problem as is happening now.

## Ocean Development and Ecosystem-Approaches to Management

With suitable habitat for river herring and shad expected to shrink as a result of climate change, federal management, which entails describing essential fish habitat (EFH) in order to trigger consultation with federal agencies to protect habitat, rises in importance.

The Mid-Atlantic region is being hit by an onslaught of offshore development activity (e.g., wind energy development, sand mining, coastal development and maritime commerce) that threatens fish habitat. In response, the Mid-Atlantic Council initiated a habitat project to more effectively collaborate with agencies to address threats and to improve how habitat issues are addressed. The project, which is focused on identifying and refining essential fish habitat (EFH), will develop overarching fish habitat goals and objectives connecting the Council's fishery management plans and will investigate the feasibility of multispecies Habitat Areas of Particular Concern (HAPCs). In addition, the Mid-Atlantic Council, as a member of the Mid-Atlantic Regional Planning Body, will help lead an interagency action to improve collaboration for the conservation of essential fish habitat once the Mid-Atlantic Regional Ocean Action Plan is finalized and approved.<sup>xix</sup>

Designating river herring and shad species as stocks in the fishery, through an existing or new FMP, will require EFH to be described, ensuring that river herring and shad are not overlooked when coastal and offshore development projects are proposed. Just as important, the designation will ensure they are not overlooked in the Council's own efforts to advance ecosystem-based approaches to management. We draw attention to the fact that the Ecosystem Approach to Fisheries Management (EAFM) Guidance Document, recently approved by the Council, focuses on FMP species and does not contemplate river herring and shad in analyses that will prioritize future EAFM initiatives.<sup>xx</sup>

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The Mid-Atlantic Council has a great opportunity to lead river herring and shad management in federal waters and take an active role in their recovery. For far too long, the lack of a federal component to fishery management has allowed conservation of river herring and shad stocks to fall through the cracks. The tens of thousands of stakeholders, representing diverse interests, who have taken time over the last six years to provide the Council with testimony and letters supporting stock in the fishery designation, are testament to the tremendous economic, social and ecological value of river herrings and shads as resources for our nation.

Sincerely,

  
Pam Lyons Gromen  
Executive Director

Cc: Jason Didden, Fishery Management Specialist

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- <sup>i</sup> Tens of thousands of comments supporting stocks in the fishery designation for river herring and shad species were received by the Mid-Atlantic Council during the development of Amendment 14 to the Atlantic mackerel, Squid Butterfish and Butterfish Fishing Management Plan (MSB FMP).and during scoping for Amendment 15 to the MSB FMP.
- <sup>ii</sup> See, predator data for American shad, alewife and blueback herring available at <http://fishbase.org>.
- <sup>iii</sup> Durbin, A. G., S. W. Nixon, and C. A. Oviatt. 1979. Effects of the spawning migration of the alewife, *Alosa pseudoharengus*, on freshwater ecosystems. *Ecology* 60(1):8-17.
- <sup>iv</sup> 16 U.S.C. § 1802(5).
- <sup>v</sup> See, River Herring and Shad - Potential Management by the Mid-Atlantic Fishery Management Council: October 2016 Decision Document, October 2016 MAFMC Meeting Materials, Tab 2, pp. 17-22 of the PDF.
- <sup>vi</sup> United Cook Inlet Drift Association v. National Marine Fisheries Service, No. 14-35928, slip op. (9th Cir. Sep. 21, 2016) Retrieved from <http://cdn.ca9.uscourts.gov/datastore/opinions/2016/09/21/14-35928.pdf>
- <sup>vii</sup> Ibid
- <sup>viii</sup> MAFMC. Press release: *Council votes to initiate interagency working group on river herring and shad*. 2013 Oct 11. Retrieved from [http://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/52581fafe4b0be7ccab7945/1381506991232/pr13\\_15\\_RHS-Working-Group+Am15.pdf](http://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/52581fafe4b0be7ccab7945/1381506991232/pr13_15_RHS-Working-Group+Am15.pdf)
- <sup>ix</sup> MAFMC. Memorandum from Jason Didden to River Herring and Shad (RH/S) Committee/Council. *June 9, 2015 RH/S Committee of the Whole, Tab Intro*. 28 May 2015. Retrieved from [http://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/5568d2b9e4b01aa67d11e21f/1432933049983/Ta b+03\\_RHS.pdf](http://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/5568d2b9e4b01aa67d11e21f/1432933049983/Ta b+03_RHS.pdf)
- <sup>x</sup> MAFMC. Memorandum from Jason Didden to Dr. Chris Moore, Executive Director. *River herring and shad (RH/S) cap – Potential for joint cap for mackerel and herring*. 23 Sept 2015. Retrieved from [http://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/5605933ee4b068a8e5d83423/1443205950220/Ta b16\\_ED-Report.pdf](http://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/5605933ee4b068a8e5d83423/1443205950220/Ta b16_ED-Report.pdf).
- <sup>xi</sup> Mid-Atlantic Fishery Management Council (MAFMC) in cooperation with the National Marine Fisheries Service. 5 Aug. 2013. Amendment 14 to the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan Final Environmental Impact Statement, pp.161-162. Retrieved from <http://www.nero.noaa.gov/regs/2013/August/13smbamend14prfeis.pdf>
- <sup>xii</sup> See, DRAFT 2016-2018 Atlantic Herring Specifications, <http://s3.amazonaws.com/nefmc.org/1-150908.DRAFT.2016.2018.Herring.Specs.for.Sept.NEFMC.pdf>.
- <sup>xiii</sup> “Endangered and Threatened Wildlife and Plants; Endangered Species Act Listing Determination for Alewife and Blueback Herring,” 78 Federal Register 155 (12 Aug. 2013), pp. 48944-48994.
- <sup>xiv</sup> Ibid, See Figure 3 (p. 48972) and Figure 4 (p. 48978).
- <sup>xv</sup> See, Decision Document, p. 62.
- <sup>xvi</sup> See, Decision Document, p. 42.
- <sup>xvii</sup> Hare JA, Morrison WE, Nelson MW, Stachura MM, Teeters EJ, et al. 2016. A Vulnerability Assessment of Fish and Invertebrates to Climate Change on the Northeast U.S. Continental Shelf. *PLoS ONE* 11(2): e0146756. doi: 10.1371/journal.pone.0146756
- <sup>xviii</sup> Lynch, P. D., Nye, J. A., Hare, J. A., Stock, C. A., Alexander, M. A., Scott, J. D., Curti, K. L., and Drew, K. 2015. Projected ocean warming creates a conservation challenge for river herring populations. *ICES Journal of Marine Science*, 72: 374–387.
- <sup>xix</sup> See, Draft Mid-Atlantic Regional Ocean Action Plan, p. 56. <http://www.boem.gov/Ocean-Action-Plan/>
- <sup>xx</sup> The example risk assessment presented focuses on “addressing *all managed species* and multiple risk categories [emphasis added].” Mid-Atlantic Fishery Management Council Ecosystem Approach to Fisheries Management Guidance Document. (2016 Aug 8). p. 36. Retrieved from <https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/57ab8599440243ba6de65c8b/1470858689147/EAFM-Guidance-Documents-Aug2016.pdf>
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September 30, 2016

Mike Luisi, Chairman  
Christopher Moore, Executive Director  
Mid-Atlantic Fishery Management Council  
800 North State Street, Suite 201  
Dover, DE 19901

Dear Chairman Luisi and Executive Director Moore:

I am writing on behalf of the Herring Alliance to urge the Mid-Atlantic Fishery Management Council to initiate an amendment to add river herring and shad as stocks in the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (MSB FMP).<sup>1</sup> Specifically, this letter emphasizes several important benefits that would result from management of these species in federal waters under the Magnuson-Stevens Act. River herring and shad (RH/S) are vital components of the Mid-Atlantic region's marine and coastal freshwater ecosystems. Fisheries for these species were among the oldest and largest in the nation. However, these fisheries no longer exist as RH/S populations have declined by an estimated 93 to 98 percent<sup>2</sup> due to overfishing, dam construction, and reduced water quality.<sup>3</sup> Harvest moratoria now exist in most states that prevent citizens from catching even a single fish to use as bait or for a traditional family meal.

Efforts to restore RH/S have resulted in significant improvements in water quality, the investment of hundreds of millions of dollars on state waters habitat restoration,<sup>4</sup> interim bycatch caps intended to limit increases in federal waters catch, and the prohibition of directed fisheries in most state waters. Despite these efforts, coastwide population levels have failed to rebound and there are few signs of sustained recovery at the individual stream or river level, particularly in the Mid-Atlantic region, because of the substantial continuing catch of river herring and shad at sea. A federal fisheries management plan is the missing piece of the management puzzle that

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<sup>1</sup> The four species of RH/S under consideration include alewife, blueback herring, American shad and hickory shad.

<sup>2</sup> See Limburg KE, Waldman JR. 2009. Dramatic declines in North Atlantic diadromous fishes. *BioScience*. 59:955–965, Table 2 (showing populations of all anadromous fish have declined dramatically (98% for RH and 97% for shad) from the historical baseline and concluding that the loss has corrupted ecological connections in the North Atlantic ecosystem); Hasselman, et.al. 2016. Genetic stock composition of marine bycatch reveals disproportional impacts on depleted river herring genetic stocks. *Canadian Journal of Fisheries and Aquatics Science*. 73: 1–13; see also NMFS Listing Determination for River Herring, 78 Fed. Reg. 48944, 48948 (Aug. 12, 2013)(noting landings have declined by 97%).

<sup>3</sup> See e.g., Palkovacs, E.P., D.J. Hasselman, E.E Argo, S.R. Gephard, K.E. Limburg, D.M. Post, T.F. Schultz & T.V. Willis. 2014. Combining genetic and demographic information to prioritize conservation efforts for anadromous alewife and blueback herring. *Evolutionary Applications* 7:212-226.

<sup>4</sup> Data provided by NOAA indicates that between 1998 and 2006 at least \$100 million had been spent from federal, state, and local sources. *Data and pers. comms. with NOAA's Restoration Atlas staff.*

will help by instituting: 1) science-based management goals, 2) enforceable conservation measures to rebuild populations and limit catch across fisheries and jurisdictional boundaries, and 3) measures to identify and protect essential fish habitat. River herring and shad can only be rebuilt through effective coastwide conservation efforts that include management in federal waters. The Mid-Atlantic Council must take responsibility for addressing the threats these species face at sea by voting to move ahead with a federal fisheries management plan that will establish the coastwide, science-based conservation measures necessary to restore RH/S populations.

Unfortunately, the revised Decision Document contains conclusions in section 9.0 that contradict the substance of the document, the record before the Council, and the law. In particular, the conclusion that “It does not appear that an FMP would substantially improve or maintain the condition of RH/S stocks because existing management authorities are already managing catch at levels that are a small fraction of historical catch, and abundance trends appear to be stable or increasing. Incidental catches in Federal fisheries appear to be decreasing.”<sup>5</sup> First, regardless of existing management by the Atlantic States Marine Fisheries Commission (ASMFC) in state waters, the law requires an FMP for river herring and shad caught in federal waters because they are caught in significant amounts in the MSB fisheries and need conservation and management. It is irrelevant whether that catch is a fraction of historical catch, particularly when these low catch levels result from these species being depleted by an estimated 93-98 percent.<sup>6</sup> Second, the Decision Document provides ample evidence of the detrimental impact of catch at-sea on RH/S populations and the potential benefits of federal management. Third, the conclusion that “abundance trends appear to be stable or increasing” is simply false with regard to the population trend for mid-Atlantic blueback populations. NOAA Fisheries has already determined that the population trend for Mid-Atlantic blueback herring is “significantly decreasing” and “at moderate-low risk of extinction.”<sup>7</sup>

When RH/S rebuild and are maintained at population levels significantly higher than the approximately five percent of historic abundance they hover at now, they will: support directed fisheries for food and bait; provide vast benefits as forage for managed and unmanaged predators such as many species of fish, birds, and mammals; reduce pressure on other forage stocks like Atlantic herring and mackerel; and help revitalize coastal economies and cultural traditions. By implementing conservation and management measures that protect essential habitat and the catch of these species in federal waters, the Mid-Atlantic Council can close the final significant gap in conservation for RH/S, thus allowing the public to finally receive its return on the investment of millions of dollars in federal and state habitat restoration efforts.

### **Benefits of Adding RH/S as Council Managed Species**

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<sup>5</sup> See River Herring and Shad October 2016 Decision Document at 92.

<sup>6</sup> See Limburg KE, Waldman JR. 2009. Dramatic declines in North Atlantic diadromous fishes. *BioScience*. 59:955–965, Table 2 (showing populations of all anadromous fish have declined dramatically (98% for RH and 97% for shad) from the historical baseline and concluding that the loss has corrupted ecological connections in the North Atlantic ecosystem); Hasselman, et.al. 2016. Genetic stock composition of marine bycatch reveals disproportional impacts on depleted river herring genetic stocks. *Canadian Journal of Fisheries and Aquatics Science*. 73: 1–13; see also NMFS Listing Determination for River Herring, 78 Fed. Reg. 48944, 48948 (Aug. 12, 2013)(noting landings have declined by 97%).

<sup>7</sup> See *fn* 2 NMFS Listing Determination for River Herring, 78 Fed. Reg. at 48992.

Although not explicitly targeted by fishermen in federal waters any more, there is significant catch of RH/S in federal fisheries, including the mackerel and squid fisheries.<sup>8</sup> Under the Magnuson-Stevens Act, stocks that are involved in a fishery and that require conservation and management must be added to a fishery management plan.<sup>9</sup> “Conservation and Management” is defined to include the need for rebuilding, restoring, or maintaining any fishery resource and the marine environment; assuring among other things, a food supply and recreational benefits; and avoiding long-term adverse effects on fishery resources and the marine environment. Once added, the Act requires the establishment of reference points (including the target population level, maximum sustainable yield, optimum yield, acceptable biological catch, and overfished/overfishing thresholds),<sup>10</sup> which enable managers to develop the appropriate set of measures that will prevent overfishing and rebuild stocks. These measures include, among other things, annual catch limits, accountability measures, measures to avoid and minimize bycatch, and measures minimizing adverse impacts to essential fish habitat.<sup>11</sup> Restoring depleted fish stocks that are impacted by federal fisheries and managing them at sustainable levels is the fundamental purpose of the Magnuson-Stevens Act.<sup>12</sup>

It is undisputed that RH/S need conservation and management in the Mid-Atlantic – the Council acknowledged this three years ago when they voted to study the question further and revisit its decision whether to develop an amendment to add RH/S as stocks in MSB FMP in October 2016.<sup>13</sup> Unfortunately, little has changed to alter this conclusion. Coastwide populations have not rebounded and there are few signs of sustained recovery at the individual river or stream level, particularly in the Mid-Atlantic region. Recent peer reviewed scientific papers, NOAA Fisheries, and the most recent river herring and shad stock assessment all agree that management in federal waters is needed.<sup>14</sup> The best available scientific and other relevant information confirm that the legal standard requiring a federal RH/S fishery management plan has been met. The following points explain some of the most important benefits a federal plan will bring.

<sup>8</sup> Amendment 14 analysis indicated that 1 million pounds of river herring and 120,000 pounds of shad were caught in federal waters annually between 2006 and 2010. *See* Amendment 14 DEIS at 111. Even these numbers are likely substantial underestimations due to low observer coverage levels, slippage, underreporting, etc. Recent data indicates that from 2013-2015, over 100,000 pounds of RH/S may have been caught annually between in the Atlantic squid fishery. *See* Discards Summary for the Longfin Squid Trawl Fishery, available at <http://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/57d1668fd482e9cbbd044de3/1473341072809/Discards+in+the+Longfin+Squid+Trawl+Fishery.pdf>.

<sup>9</sup> 16 U.S.C. §§ 1853(a)(2); 1852(h)(1).

<sup>10</sup> 50 C.F.R. § 600.310 (b)(2)(iv).

<sup>11</sup> 16 U.S.C. §§ 1853(a)(1)-(15), 1854(e).

<sup>12</sup> 16 U.S.C. § 1801.

<sup>13</sup> *See* (October 2013 Meeting Minutes, Mid-Atlantic Fishery Management Council, at 158, available at <https://mafmc.squarespace.com/s/October-meeting-minutesdraft-ydpr.pdf>).

<sup>14</sup> *See e.g.*, Hasselman, et.al. 2016 at 11, Palkovacs, et.al. 2014 at 224; *see also* Proposed Rule for 2016-2018 Atlantic herring fishery, 81 Fed. Reg. 40253, (June 21, 2016) (setting catch caps for RH/S in the herring fishery); ASMFC (May 2012). Stock Assessment Report No. 12-02 of the Atlantic States Marine Fisheries Commission: River Herring Benchmark Stock Assessment, Vol. 1, Section A Terms of Reference & Advisory Report of the River Herring Stock Assessment Peer Review, at pp. 10-12; Section C - River Herring Stock Assessment Report for Peer Review, at 8, 11, 12, 17-20, 56-58; ASMFC American Shad Stock Assessment Peer Review Panel. Stock Assessment Report No. 07-01 of the Atlantic States Marine Fisheries Commission, Terms of Reference & Advisory Report to the American Shad Stock Assessment Peer Review, at 16, 18-20.

1) Restored Populations Will Result in Millions More Fish in the Water to Support the Rebuilding of Depleted Fisheries and Improving Ecosystem Health, while Sustaining Coastal Communities with Historic RH/Shad Runs

If the catch of river herring and shad in federal waters is comprehensively controlled through an effective fishery management plan, it could be the final piece in the puzzle that jump starts recovery. As explained below, RH/S populations have the potential to be many times higher than current populations, resulting in nearly 1 billion more fish in the water.<sup>15</sup> We are aware of no scientific research concluding that these populations cannot recover, and recent peer reviewed science concludes that limiting federal waters catch may be the key to rebuilding success.<sup>16</sup> Although the most recent RH/S stock assessments technically classified river herring and shad as “depleted” instead of “overfished,” the assessments indicated that current mortality rates are too high and that management actions are needed to reduce total mortality in ocean intercept fisheries.<sup>17</sup> There are no published estimates of target populations for river herring or shad coastwide, but there are approaches that can be used to establish target populations and other reference points. As is the case with several stocks managed by the Council, even in the absence of an accepted and fully peer-reviewed coastwide stock assessment, proxies for reference points can be used for management purposes.<sup>18</sup> The Herring Alliance does not support waiting until 2020 for the possibility of a coastwide stock assessment<sup>19</sup> to take action; stakeholders have been advocating since at least 2010 for the Mid-Atlantic Council to take responsibility for developing a comprehensive management plan for RH/S in federal waters; continuing to promise future actions is no longer acceptable. The time for contemplation and review has passed and the time to act is now.

Two approaches that can be used to provide rough estimates of the potential abundance of RH/S populations are based upon estimates of historic catch and the steep decline of population levels over the last several decades. As noted above, scientific estimates and landings data indicate that river herring have declined by as much as 98 percent from historic levels, while shad populations have decline by an estimated 97 percent. Based on these percentage declines fully rebuilt RH/S populations could be as much as 50 times higher coastwide than they are today. Even 15 to 20 times higher RH/S populations levels would mean millions of more fish in the water and lead to significant benefits to predators, fisheries, and coastal communities.

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<sup>15</sup> Fish populations are considered rebuilt when their abundance is increased to a target population size that supports maximum sustainable yield. C.F.R. §§ 600.310 (b)(2)(iv); 600.310 (e)(1)(i).

<sup>16</sup> See e.g., Hasselman, et.al. (2016) at 11; Palkovacs, et.al. (2014) at 224.

<sup>17</sup> See *supra* at fn 13, ASMFC. Benchmark assessments for river herring and shad.

<sup>18</sup> *Id.* § 600.310(e)(1)(iv) (“When data are insufficient to estimate MSY directly, Councils should adopt other measures of reproductive potential, based on the best scientific information available, that can serve as reasonable proxies for MSY, Fmsy, and Bmsy, to the extent possible.”); NOAA Technical Memorandum NMFS-NEFSC-616. Calculating Acceptable Biological Catch for Stocks that have Reliable Catch Data Only, at p. 2-3 (“In the absence of biomass and fishing mortality reference points, the 1998 Technical Guidance (Restrepo et al., 1998) for implementing the NS1 guidelines suggested using the historical average catch from a period during which there was no evidence of declining abundance as a proxy for MSY”).

<sup>19</sup> See Decision Document at 45.

A second approach for estimating potential increases of river herring and shad populations would be to use the highest documented coastwide landings as an indicator of historic population levels. This method provides a conservative estimate of the lower bound of the size of potential increases of populations based on the common sense view that there must have been at least as many fish in the water as the total number caught. Ideally this methodology would incorporate all commercial and recreational landings (including offshore by foreign vessels) in state and federal waters by all gear types. Caveats to consider include that: 1) many more fish remained uncaught in coastal and marine ecosystems when these landings occurred; and 2) changes in habitat, water quality, and other environmental drivers could affect the ability of these species to fully rebuild to historic high levels.

Using the highest documented coastwide landings of river herring<sup>20</sup> as a relative measure of historic population levels, rebuilt populations could result in at least 700 million river herring in the water to benefit fishermen and the marine ecosystem. This is estimated using NOAA Fisheries' records of highest commercial landings for river herring (140 million pounds),<sup>21</sup> and the five fish per pound conversion described in Amendment 14.<sup>22</sup> Specifically, 140,000,000 pounds X 5 fish per pound = 700,000,000 fish. Similarly, using the highest documented coastwide landings of American shad as a relative measure of potential population levels, when rebuilt there could be at least 240 million American shad in the water.<sup>23</sup> This number is estimated using NOAA Fisheries' highest documented landings for shad (22,000 mt = 48,510,000 pounds). Specifically, 48,510,000 pounds X 5 fish per pound = 242 million fish.<sup>24</sup> Using the five fish per pound conversion factor may be imprecise since these estimates are based on landed fish, which were likely larger than those estimated as caught at sea in Amendment 14. However, this imprecision is easily balanced out given the high natural mortality rates of these species indicating there were many more fish in the sea than were caught and landed by fishermen.<sup>25</sup>

There are several reasons these population estimates represent only a lower bound for the potential increase in population sizes including: (1) hickory shad was not included (available

<sup>20</sup> See Historical Trends in Abundance of American Shad and River Herring in Albemarle Sound, North Carolina, *North American Journal of Fisheries Management* 16:257-271 (1996), at 262 (“Alewife and blueback herring records were not kept separately because the two species were (and still are) sold collectively under the name river herring. On the basis of analyses for several Atlantic coast rivers, alewives and blueback herring have very similar estimated growth and natural mortality rates, maximum sizes, ages at first spawning, mean fecundities, and population growth rates (Crecco and Gibson 1990), so a combined analysis may not be a significant source of error.”).

<sup>21</sup> See <http://www.greateratlantic.fisheries.noaa.gov/protected/riverherring/conserv/background/background.html> (“River herring have long represented an important fishery in North America because they were a highly abundant species that could easily be obtained by weirs, traps, and nets. Commercial landings peaked in the late 1960s at nearly 140 million pounds, and have been less than 4 million pounds since 2000.”).

<sup>22</sup> See Amendment 14 FEIS at 104 (“Ocean-intercept fish often are juveniles, so, if you assume five fish per pound, these numbers translate into around 5 million river herrings and 600,000 shads being caught each year on average.”).

<sup>23</sup> See <https://nefsc.noaa.gov/sos/spsyn/af/shad/> (“Most major rivers along the Atlantic coast have historically supported distinct spawning stocks of American shad. The species has been exploited for its meat and roe since the late 17th century. In 1896, Atlantic coast commercial landings exceeded 22,000 mt as compared to between 100 and 1000 mt annually since 1996.”).

<sup>24</sup> ASMFC data supports this number: “[H]ighest coastwide landings (late 1880s-early 1990s) were 50 million pounds/year of American shad.” See [http://www.asmfmc.org/uploads/file/Amendment3\\_FINALshad.pdf](http://www.asmfmc.org/uploads/file/Amendment3_FINALshad.pdf), p. 2, 7.

<sup>25</sup> See *supra* at fn 13 ASMFC River Herring Benchmark Stock Assessment, Section A (Terms of Reference) at 19.

data from NOAA Fisheries on peak commercial landings of hickory shad is not readily available); (2) alewives, blueback herring, and American shad, harvest from fishermen operating in-river, or from fisheries that are not federally licensed, might not be reported to NMFS;<sup>26</sup> (3) catch of RH/S in non-directed federal fisheries is poorly documented due to unreported and self-reported catch, low observer coverage, and slippage events that dump large numbers of unreported catch at sea., and (4) the estimates are based on landings and the number of uncaught fish remaining in the waters was higher, likely by several factors. If complete data on all four species were available these estimates would clearly be significantly larger, as will the target populations resulting from completion of scientifically robust coastwide stock assessments and reference points.

The benefits of RH/S populations restoring to these estimates are many fold. Increased populations of river herring and shad would provide more food for birds and larger predator fish, like bluefish, striped bass, and tuna. These important fish in turn fuel coastal economies from North Carolina to Maine through recreation and tourism industry spending. The growth of river herring and shad populations would also relieve pressure on other populations of forage fish, including menhaden, Atlantic herring, mackerel, and squid, which the Council and other management bodies are also tasked with conserving and managing. These increased populations would also help revitalize cultural traditions. River herring and shad have played important roles and enjoyed high cultural status throughout history for both indigenous and nonindigenous peoples because they could supply great amounts of food after long periods with little to eat. Coastal communities still celebrate the return of American shad, hickory shad, alewife, and blueback herring, although celebrations have diminished greatly in parallel with diminishing runs.<sup>27</sup> For many, river herring and shad fishing are family traditions and part of the fishing culture of their communities that have been passed down through generations. Prior Council analysis agreed, concluding that “if limiting RH/S catch, EFH [essential fish habitat] designation and protection, and increased federal-state cooperation . . . led to rebuilding, then the benefits of the action alternatives would be large.”<sup>28</sup>

## 2) Science-based Management Goals and Enforceable Conservation Measures Will Control Catch Across Fisheries and Jurisdictional Boundaries

Adding river herring and shad as stocks in the MSB FMP will provide the Council and NOAA Fisheries with additional tools necessary to achieve these far-reaching resource benefits. The Council will be required to establish reference points, including an “overall ACL” – the coastwide allowable catch that is derived from coastwide target populations for all four species of river herring and shads.<sup>29</sup> Reference points are usually based on the results of peer reviewed stock assessments, but as noted they can also be set using other scientific methods that result in

<sup>26</sup> See ASMFC Amendment 3 at 9.

<sup>27</sup> Waldman, JR. 2003. Introduction to the Shads. American Fisheries Society Symposium Vol. 35:3-9.

<sup>28</sup> Amendment 14 DEIS at 89-90; Amendment 14 FEIS at 380/526 (pdf).

<sup>29</sup> 50 C.F.R. §§ 600.310(c)(7). “Stocks or species identified in more than one FMP. If a stock is identified in more than one fishery, Councils should choose which FMP will be the primary FMP in which management objectives, SDC, the stock’s overall ACL and other reference points for the stock are established. Conservation and management measures in other FMPs in which the stock is identified as part of a fishery should be consistent with the primary FMP’s management objectives for the stock.”

“proxy” reference points.<sup>30</sup> The absence of a coastwide target population level to guide management is a significant shortcoming in current efforts to restore RH/S. Adding RH/S as stocks in the MSB FMP will finally trigger the establishment of this key management goal from which additional required and discretionary conservation and management measures will flow.

In contrast to the current catch caps (based on nothing more than recent catch), the overall ACL must be set at a level such that overfishing does not occur and overfished populations must be rebuilt based on the best available science and the biology of the species. In order to ensure that the ACL is met, catch in all fisheries must be accounted. To accomplish this, the Mid-Atlantic Council will need to look across fisheries and jurisdictional lines and establish “sub-ACLs” that account for catch in all relevant fisheries. The plan will also have to account for state waters catch. The two existing catch caps in the mackerel and herring fisheries do no more than limit catch to current “incidental catch” levels. This is effectively a “plan” to keep RH/S populations at roughly 5 percent of their potential size. River herring and shad need biologically-based rebuilding targets and catch limits that take into account catch throughout their range in all fisheries so they can rebuild and be sustained at healthy population levels.

Recent genetic analysis and fisheries data show that river herring that originate in Mid-Atlantic rivers are being swept up in trawl nets seeking Atlantic herring, mackerel, butterfish, longfin squid, and whiting.<sup>31</sup> Yet, the only measures for river herring and shad in federal waters under current management are a voluntary avoidance program that the fishing industry may or may not abide by, and the incomplete “catch caps” described above. Further, poor monitoring means even these catch caps cannot be effectively enforced. Only federal management of river herring and shad can create a comprehensive and effective plan to minimize the amount of these struggling species that are being killed, and complement other efforts underway in state waters.

The Mid-Atlantic Council has a solid recent track record of rebuilding managed species like summer flounder, black sea bass, and scup. Currently, no species under its management are overfished. Annual Catch Limits for river herring and shad set at levels intended to rebuild these depleted stocks will take effect in a few years, and because forage fish like river herring and shad are so productive, rebuilding progress could be seen relatively quickly.

Further, of particular concern to the Mid-Atlantic Council, recent science demonstrates the Mid-Atlantic blueback herring is being caught in significant amounts in the Atlantic herring fishery when it is operating in Southern New England. Mid-Atlantic blueback herring populations are severely depleted and at risk of extinction.<sup>32</sup> Once in a plan, the Council will have the authority to address this catch through the establishment of ACLs and accountability measures. Such accountability measures might include mandatory (as opposed to the current voluntary) time/area closures in order to make sure the ACL is not exceeded and to protect spawning migrations.

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<sup>30</sup> See *supra* notes 9, 10, and 17.

<sup>31</sup> See e.g., Palkovacs, et. al. 2014 at 224; see also Discards Summary for the Longfin Squid Trawl Fishery, *supra* at fn 7.

<sup>32</sup> NMFS Listing Determination for River Herring, 78 Fed. Reg. at 48992.

### 3) The Identification and Protection of Essential Fish Habitat Will Help Restore and Maintain Healthy RH/S Populations

The Magnuson-Stevens Act requires fishery management plans to identify essential fish habitat (EFH) and to minimize the adverse effects of fishing on EFH. The Act also requires federal agencies to consult with NOAA Fisheries on actions they authorize, conduct or fund that may adversely affect EFH and authorizes councils to comment on any actions that in a council's view may adversely affect EFH.<sup>33</sup> Federal agencies are required to respond to such recommendations explaining the actions taken to avoid or mitigate identified adverse impacts.<sup>34</sup> By including RH/S as stocks in the MSB FMP the Mid-Atlantic Council will activate these vital habitat protection tools that the Council can use to significantly aid in the restoration of RH/S and increase the resiliency of the marine ecosystem they support and depend upon.

Designation of EFH for RH/S would significantly increase the ability of the Council to protect their habitats throughout their range and all of their critical life stages -- both at sea and in state waters. The Decision Document and White Paper barely mention the potential benefits of identifying and protecting essential fish habitat, focusing only on state waters.<sup>35</sup> The Decision Document states that “designating essential fish habitat (EFH) for river herrings and shads would increase NMFS’s authority but not necessarily NMFS’s ability to conserve habitats used by these anadromous species, especially freshwater habitats used for spawning and as juvenile nursery areas that are most affected by a wide range of human activities.”<sup>36</sup> While this correctly points out that consultations could be required in most coastal rivers and their watersheds on the Atlantic coast, the documents fail to explain in any detail the potential benefits that can occur when a federal agency mitigates the adverse impacts of a project, such as inclusion of fish passage at a relicensed dam.

The Magnuson-Stevens Act defines EFH to mean those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity, thus it clearly authorizes measures that would protect RH/S EFH at sea. The Decision Document and White Paper completely ignore the potential for protecting habitat at sea through measures that could, for example, change gear requirements or close areas critical for juvenile fish (“hotspots”). It is important to consider that the Act’s requirement that conservation and management measures minimize the adverse impacts from fishing balance the need for protection with “practicability.” Specifically, the EFH guidelines state that when councils act to avoid or minimize impacts to EFH, they “should consider the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation, consistent with national standard 7.”<sup>37</sup>

Habitat protection is essential to the conservation and management necessary to attain optimum yield as required by National Standard 1, and NOAA and other federal agencies have

<sup>33</sup> See 16 U.S.C. §§ 1853(a)(7); 1855(b)(councils are required to comment on actions likely to substantially affect EFH); see also 50 C.F.R. § 600.815(a)(9).

<sup>34</sup> *Id.*

<sup>35</sup> Decision Document at 67-69 (after including the consultation process the document briefly acknowledges that consultations have been beneficial but then without support suggests there might not be resources available to consult); White Paper at 61-63 (same).

<sup>36</sup> Decision Document at 67.

<sup>37</sup> 50 CFR §600.815(a)(2)(iii).



identified habitat protection as a top priority for rebuilding resilience in ecosystems in the face of climate change.<sup>38</sup> The agency cannot rely on lack of resources to avoid its statutory mandate to identify EFH and minimize adverse impacts,<sup>39</sup> and it is counterproductive to make such arguments given NOAA, state, and private actors have spent over 100 million dollars for RH/S habitat restoration. Establishing RH/S EFH will allow the Council to better coordinate with state habitat protections, giving the Council the ability to support and shape federal actions that impact RHS throughout their range. The Council and NOAA Fisheries will be able to recommend habitat mitigation for -damaging projects inshore to help spawning fish and protect hotspots at sea that are important for growth to maturity, thus providing synergistic benefits to other restoration efforts such as limits on catch.

4) Addressing Catch in Federal Waters Will Close the Gap in Management That is Currently Undermining Millions in Federal, State and Private Spending to Restore Habitat and Improve Water Quality

By addressing the large catch of these species in federal waters, the Mid-Atlantic Council can close the last significant gap in conservation for RH/S, thus allowing the public to finally receive its return on the investment of millions of dollars in projects to restore habitat and improve water quality in coastal rivers and streams. From 1998 to 2006 alone, more than \$100 million in federal, state, and private dollars were spent to restore habitat through projects that removed dams, built fish passage, and overall opened up thousands of acres of healthy spawning habitat to RH/S. Millions more have been spent coastwide to improve water quality in coastal streams and rivers. Complimenting these actions, States have imposed strong conservation measures including moratoriums and strict catch limits on fishing for river herring and shad. But these investments in RH/S restoration have been relentlessly undermined because too many of these fish are dying when they are caught at sea in commercial fisheries targeting other species like mackerel, squid, and Atlantic herring.

The catch limits, measures to avoid and limit bycatch, and habitat protections that are the core requirements of federal fisheries management will significantly increase the number of RH/S that survive their ocean life cycle, enabling more to come back to their natal rivers and streams to spawn. River herring and shad have been managed in state waters for 30 years. While there have been some recent interim measures implemented in federal waters that seek to limit increases in incidental catch at sea, there is no evidence of sustained coastwide improvement in RH/S populations. Instead, the evidence shows that the same river herring and shad being saved by measures in state waters are being caught in federal waters and then either dumped overboard or sold, mostly as bait with Atlantic herring or mackerel.

The NOAA Fisheries' recent Endangered Species Act listing determination ranked incidental catch of river herring and shad at sea as the second most significant threat to river herring populations after dams and other barriers to upstream habitat.<sup>40</sup> As projects to remove dams, provide fish passage, and improve riverine water quality have steadily increased in the past 50 years, river herring and shad populations have plummeted. This supports the position

<sup>38</sup> NOAA National Habitat Policy (2015).

<sup>39</sup> Decision Document at 69.

<sup>40</sup> NMFS Listing Determination for River Herring, 78 Fed. Reg. at 48992.

that we must take on the unaddressed threats, such as catch of river herring and shad in federal waters in order to close the gap on restoration efforts.<sup>41</sup>

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The Herring Alliance is a coalition of 110 organizations, representing approximately 2.5 million individuals dedicated to the restoration and conservation of forage fish, including river herring and shad, which are vital to the health of our coastal ecosystems. Herring Alliance member organizations are actively involved in the management of watershed, coastal and marine ecosystems in nearly every state along the Atlantic coast. We have longstanding concerns about the impact of the mackerel fishery on RH/S populations and have commented extensively on the need to conserve and manage RH/S in federal waters, including by adding RH/S to the MSB and Atlantic herring FMPs as stocks in the fishery. This letter reflects the views and concerns of all 110 members of the Alliance.<sup>42</sup> We request that the record, including all summaries and analysis of the public comments on this important matter, accurately reflect that the comments represent the views of all 110 Alliance member organizations and their members, and that these views be weighted appropriately in your deliberations.

Tens of thousands of people have voiced support for conserving river herring and shad at sea by adding them to the MSB FMP. The public understands that these fish populations, once abundant in the Atlantic Ocean and in rivers throughout the coast, are natural resources that should be rebuilt, conserved, and enjoyed. River herring and shad can rebuild, just as dozens of other fish species have rebuilt throughout the nation. The Mid-Atlantic Council cannot give up on this vital component of the Mid-Atlantic ecosystem. While it is difficult to precisely quantify all of the benefits of managing RH/S as stocks in the MSB FMP, there is clearly a lot to be gained. The Mid-Atlantic Council has an opportunity to assume leadership in addressing the large significant catch of RH/S at sea through development of a plan that that can address the problems wherever they exist. This can only be accomplished by adding RH/S as stock in the MSB FMP. Management of these species in federal waters will close the management loop for river herrings' and shads' full life cycle, making all the millions of dollars invested in state waters conservation pay off, leading to recovery of these valuable forage fish and the ecosystems and fisheries that depend on them.

Thank you for considering these comments.

Sincerely,  
Peter Baker



Director, Herring Alliance  
Director, U.S. Oceans, Northeast,

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<sup>41</sup> See Hasselman, et.al. (2016) at 11.

<sup>42</sup> See <http://herringalliance.org/alliance-members>.

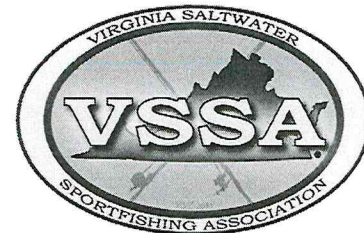
## The Pew Charitable Trusts

# Virginia Saltwater Sportfishing Association, Inc (VSSA)

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Mike Avery  
President

September 28, 2016

Curtis Tomlin  
Vice President

Mr. Michael Luisi, Chairman  
Dr. Christopher Moore, Executive Director  
Mid-Atlantic Fishery Management Council  
800 North State Street  
Dover, DE 19901

Kevin Smith  
Treasurer

Brent Boshier  
Secretary

RE: Federal Management of River Herring and Shad  
To Whom it May Concern,

The conservation and management of river herring and shad stocks is of great importance to the members of the Virginia Saltwater Sportfishing Association (VSSA). River herring and shad are an important part of the regional ecosystem, and a vital forage source for the predatory fish that both recreational and commercial fishermen pursue.

While many recreational anglers still enjoy a catch and release fishery for these species each spring, harvest moratoria have denied full access to what has historically been an important fishery for many stakeholders in Virginia.

We recognize the severely depleted state of river herring and shad, and support state based management efforts to restore their stocks. To date, millions of public and private funds have been spent to restore access to historic spawning habitat, and support recovery through stocking programs, throughout the range of river herring and shad species.

Because of the diadromous nature of the species, efforts to improve riverine and estuarine habitat, and to conserve river herring and shad in state waters, are only a part of the solution to the issues that plague these important species. At sea catch in large-scale ocean fisheries has a direct negative impact on conservation efforts, and existing catch caps are limited in their ability to support improving the status of river herring and shad stocks. Full federal management of river herring and shad through a comprehensive management plan should be a top priority for the Council. By fully managing these species as they migrate within federal waters, the Council can join efforts to insure that range-wide inter-jurisdictional management can do its part to improve the status of river herring and shad.

Therefore, VSSA urges the Mid-Atlantic Fishery Management Council to include river herring and shad within a formal management plan. Doing so can and will help support the return of these important species to higher levels of abundance, and work in partnership with the many other efforts to benefit river herring and shad throughout the region.

Sincerely,

Curtis Tomlin  
Vice-President of the Virginia Saltwater Sportfishing Association (VSSA)

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Curtis Tomlin

**From:** [Didden, Jason](#)  
**To:** [Clark, Mary](#)  
**Cc:** [Moore, Christopher](#)  
**Subject:** FW: NRDC Comments on River Herring and Shad Decision  
**Date:** Monday, October 3, 2016 6:41:20 PM  
**Attachments:** [NRDC Letter\\_MAMFC RHS Amendment\\_10-3-2016\\_Final.pdf](#)

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**From:** Masterton, Molly [mailto:mmasterton@nrdc.org]  
**Sent:** Monday, October 03, 2016 5:23 PM  
**To:** Moore, Christopher <cmoore@mafmc.org>; Didden, Jason <jdidden@mafmc.org>  
**Cc:** River Herring & Shad <RHS@mafmc.org>  
**Subject:** NRDC Comments on River Herring and Shad Decision

Dear Dr. Moore and Mr. Didden:

Please find attached NRDC's comments on the Council's upcoming river herring and shad decision. As stated in the comments, we respectfully request that the Council initiate an amendment to include river herring and shad as Council-managed stocks.

If you could please see that these comments are distributed to Council members electronically in advance of the meeting, we would greatly appreciate it. We apologize that we were unable to submit them prior to the briefing book deadline. I will be attending the Committee and full Council meeting sessions this week on behalf of NRDC, and I would be happy to answer any questions or discuss NRDC's position further in person.

Kind Regards,

**MOLLY MASTERTON**  
*Project Attorney, Oceans*

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October 3, 2016

Mike Luisi, Chairman  
Chris Moore, Executive Director  
Mid-Atlantic Fishery Management Council  
800 North State Street, Suite 201  
Dover, DE 19901

**RE: River Herring & Shad Stocks in the Fishery Decision**

Dear Chairman Luisi and Executive Director Moore:

We write on behalf of the Natural Resources Defense Council (NRDC) to request that the Mid-Atlantic Fishery Management Council include river herring and shad as Council-managed stocks. These four species—blueback herring, alewife, American shad, and hickory shad—are vital to the ecology of the Atlantic coast. They are equally important to coastal economies, having once supported some of the largest commercial and recreational fisheries along the Atlantic coast. But the fisheries that were once emblematic of our Atlantic coast’s productive ecosystems, making its rivers swell with runs of tens or hundreds of thousands of fish, are now severely depleted. Indeed, as discussed below, we believe that at least specifically the Mid-Atlantic portion of the blueback herring’s range warrants Endangered Species Act (ESA) listing as a threatened species. As the Council deliberates how to best manage these stocks, we urge you to apply the suite of tested, science-based conservation measures at your disposal under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). 16 U.S.C. §§ 1801 et seq. (2012).

Recognizing that overfishing and overfished fish populations can result in significant economic and ecological harm, Congress called upon the Councils to prevent overfishing and rebuild overfished fisheries through sound management and conservation measures in fishery management plans (FMPs). *See id.* § 1801(a)(5), (b)(4). Under the MSA, each Council “shall” propose FMPs and implementing regulations “for each fishery under its authority that requires conservation and management.” *Id.* § 1852(h)(1). By definition, “conservation and management” is applicable when there is a need for “rebuilding, restoring, or maintaining any fishery resource;” assuring a food supply; or avoiding “irreversible or long-term adverse effects on fishery resources and the marine environment.”<sup>1</sup> *Id.* § 1802(5). Unmistakably, the fisheries

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<sup>1</sup> We are concerned that the Council’s most recent Decision Document considers the decision of whether to manage river herring and shad in the context of the MSA’s National Standards and National Standard Guidelines. While the National Standards and the Guidelines are designed to assist the Council with development and review of FMPs, 50 C.F.R. § 600.305(a)(1) (2015), they should not be determinative in the initial decision of whether to bring stocks under an FMP. *See United Cook Inlet Drift Association v. NMFS*, No. 14-35928, slip op. (9th Cir. Sep. 21, 2016) (concluding that “National Standards only govern the contents of an FMP, not the decision whether to issue one”).

for river herring and shad, which have declined more than 98 percent in the last fifty years, require conservation and management.

Centuries of overfishing, habitat degradation, dam construction, and pollution of waterways have all played a role in the collapse of river herring and shad populations. The growing threats of climate change compound the challenges, as warming waters and increasingly volatile weather threaten to disrupt their life cycle and ravage spawning habitat. But there is one critical—and preventable—threat: the high levels of incidental catch of river herring and shad occurring in federal fisheries, including the mackerel and squid fisheries. Despite whole scale moratoriums in most state waters, and significant investments in inland and coastal habitat restoration, river herring and shad populations have failed to rebound due to ongoing and significant incidental catch in federal waters, where these fish spend the majority of their lives.

As the Council is aware, NRDC petitioned in 2011 for ESA listing of alewife and blueback herring specifically because of their alarming population trends and ongoing threats. NRDC has legally challenged the federal government's failure to at least list the Mid-Atlantic population of blueback herring despite record-low population level estimates and what the government concedes continues to be a significantly decreasing population trend. Our concern for this population is only heightened by recent genetic research demonstrating that the majority of incidental catch occurs in the Mid-Atlantic and New England, and Mid-Atlantic stocks of blueback herring, as well as alewife, are caught in large proportion by the Atlantic herring fishery operating off of Southern New England. *See Hasselman, et al. (CJFAS 2016).*

While we commend the Council for its efforts to protect river herring and shad stocks by implementing bycatch caps, such efforts are hampered by low observer coverage and underreporting. The New England Fishery Management Council's proposal to greatly increase its catch cap for the 2016-2018 fishing years threatens to further undercut conservation going forward. NRDC maintains that ESA protections are necessary to stem the decline and to recover at least the most depleted blueback herring populations because of management gaps, both across jurisdictions and within individual fisheries, and to address the full range of threats to the species and its habitat. Nevertheless, the Council could help speed this conservation process, as well as address the significant depletion of the remaining blueback herring populations, alewife populations and populations of the two shad species, by bridging the specific management gap resulting from failure to manage river herring and shad as stocks in the Mackerel, Squid, and Butterfish (MSB) fishery.

NRDC believes that inclusion of river herring and shad as stocks in the fishery under a coast-wide management plan will lead to significant ecological and economic benefits. Under the MSB FMP, the Council can develop biological reference points and more accurately assess mortality in order to develop biologically-based and enforceable catch limits with accountability measures. *See* 50 C.F.R. § 600.310(b) (2015). Under the core conservation requirements of the MSA, the Council has authority to establish measures to avoid and minimize bycatch and can build on its previous successes in rebuilding economically important stocks (e.g., black sea bass

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Furthermore, NMFS's proposed revisions to the National Standard 1 guidelines have not yet been promulgated in a final rule, and the Council's consideration of the National Standard 1 guidelines, to the extent necessary to define the parameters of an FMP, must be constrained to the current guidelines.

and scup) to create river herring and shad rebuilding plans rooted in sound science. *See* 16 U.S.C. §§ 1853(a)(1)-(15), 1854(e). Additionally, the Council will be able to deploy much-needed habitat protection tools to identify important and sensitive habitats for the stocks, and minimize the impacts of fishing and non-fishing activities on these habitats.

When successfully rebuilt and protected, robust river herring and shad fisheries will support a healthy food web for other managed species, reduce pressure on other forage stocks, and help to sustain an ecosystem more resilient to the threats of climate change. NRDC looks to the Mid-Atlantic Council to be in the vanguard of nationwide efforts to achieve sustainable fisheries and to move towards ecosystem-based management regimes. We hope that the Council will decide once more take the lead and actively work to restore river herring and shad by incorporation of these stocks into formal Council management.

Thank you for the opportunity to comment on this critical decision.<sup>2</sup> Please do not hesitate to contact us if you have any questions.

Sincerely,

Bradford H. Sewell



Senior Attorney  
Natural Resources Defense Council  
40 West 20th Street  
New York, NY 10011  
Tel: (212) 727-4507  
Email: bsewell@nrdc.org

Molly A. Masterton



Project Attorney, Oceans Program  
Natural Resources Defense Council  
40 West 20th Street  
New York, NY 10011  
Tel: (212) 727-4451  
Email: mmasterton@nrdc.org

Cc: Jason Didden, Fishery Management Specialist

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<sup>2</sup> Additionally, NRDC agrees with and incorporates by reference those comments submitted by the Herring Alliance and Wild Oceans. As explained in those comments, the existence of state management measures cannot exempt the Council from managing stocks in federal waters under an FMP when those stocks require conservation and management.



**From:** [Didden, Jason](#)  
**To:** [Moore, Christopher](#)  
**Cc:** [Clark, Mary](#)  
**Subject:** FW: River Herring and Shad - Stocks in the Fishery Decision Comments: 7,612 Signers to Pew Letter  
**Date:** Monday, October 3, 2016 6:39:58 PM  
**Attachments:** [The Pew Charitable Trusts: Sign-On Letter re RHS: 10.3.16.pdf](#)

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**From:** Zachary Greenberg [mailto:[zgreenberg@pewtrusts.org](mailto:zgreenberg@pewtrusts.org)]  
**Sent:** Monday, October 03, 2016 4:59 PM  
**To:** Didden, Jason <[jdidden@mafmc.org](mailto:jdidden@mafmc.org)>  
**Cc:** River Herring & Shad <[RHS@mafmc.org](mailto:RHS@mafmc.org)>  
**Subject:** River Herring and Shad - Stocks in the Fishery Decision Comments: 7,612 Signers to Pew Letter

Dear Mr. Didden,

Attached please find a letter signed by 7,612 United States residents supporting the development of a management plan for alewife, blueback herring, American shad, and hickory shad – collectively known as river herring and shad – in federal waters. Of these signers, 1,740 live in the Mid-Atlantic region.

Please let me know if you have any questions, and thank you for the opportunity to engage the public and provide comment on this issue.

Best,  
Zack

**Zack Greenberg**

Senior Associate, Environment  
The Pew Charitable Trusts  
901 E Street, NW, Washington, DC 20004  
o: 202.540.6797 | c: 603.729.6145 | e: [zgreenberg@pewtrusts.org](mailto:zgreenberg@pewtrusts.org)

**NAME:**

Christopher Lish

**EMAIL ADDRESS:**

[lishchris@yahoo.com](mailto:lishchris@yahoo.com)

**SUBJECT:**

Please add river herring and shad as stocks in the Mackerel, Squid, Butterfish Fishery Management Plan

**MESSAGE:**

Dear Mid-Atlantic Fishery Management Council members and staff:

At your October 2016 Council meeting, please vote to add river herring and shad as stocks in the Mackerel, Squid, Butterfish Fishery Management Plan (MSB FMP). The current management approach is failing to increase the populations of these forage fish from historic lows. Comprehensive protection at sea is the missing piece in the puzzle to help ensure that extensive conservation efforts already underway are successful and not wasted.

Federal, state, and local governments have invested more than \$100 million over the last two decades to help river herring and shad populations return to rivers. But the large-scale catch of these stocks offshore is wasting this substantial investment and preventing the recovery of these imperiled species. The Council can solve this problem by adding river herring and shad to the MSB FMP. Bringing these critically important forage species under sound federal management will ensure that they are managed sustainably coastwide through science-based population goals, annual catch limits set to rebuild stocks, and protection of their essential habitats.

Restored river herring and shad populations will help support predator fish important to commercial and recreational fishermen--such as striped bass and bluefish--along with other marine wildlife, like shorebirds and marine mammals. Robust populations of river herring and shad will also bring important benefits to coastal mid-Atlantic communities that once depended upon these species as a central part of their local economies and cultures.

Restoring and maintaining river herring and shad populations will take commitment, cooperation, and coordination from all responsible authorities. The Mid-Atlantic Fishery Management Council has an opportunity to lead the way in addressing the threats these species face at sea.

Please act now to restore river herring and shad by adding them as stocks in the MSB FMP.

Thank you for your consideration of my comments. Please do NOT add my name to your mailing list. I will learn about future developments on this issue from other sources.

Sincerely,  
Christopher Lish  
San Rafael, CA

Name	Email Address	Comments
Donald Orth	Dorth@vt.edu	These are all inter jurisdictional fish and fisheries which are harvested in coastal fisheries as bycatch and historically in targeted fisheries on spawning migration.all the states have been able to do is management spawning migration fisheries and moratorium is largely ineffective due to other unmanaged sources of mortality
Jason bishop	jasonpaints@aol.com	Please take steps to bring our river herring back . Both river herring and the ocean blue backs are both targeted by commercial nets and should be managed as one species. A dragger can take a whole streams river herring in one pass while they are staging outside the river mouths .
Brian Cuddy	bcuddy28@comcast.net	Please bring back the use of river herring for recreational fishing
Stuyve Pierrepont	stuyve.pierrepont@marsh.com	Council. I respectfully request you vote YES to protect this species in every way you can> They are being killed by the millions in the menhaden purse seine nets and other not discriminate fishing techniques as bi catch, and discarded. By stopping these fishing techniques, it will offset the destruction of this species in waters out of US control. Antiquated fishing techniques must be changed. If you implement plans that save these fish, you can change fishing strategies that would employ thousands of additional hook and line fishermen, increasing employment.. Allowing Omega Protein to grind up our forage fish for pig food is criminal. Please weigh in and support our Oceans rebirth by stopping destructive fishing of this species. Thank you. Stuyve
Guy Griffin	guygrif@hughes.net	To whom it may concern, As a recreational angler, I would like to see regulations considered for the preservation of River Herring and Shad. Obviously the moratorium placed on the recreational fishing community along with other conservation efforts has not been enough. By-catch from the commercial fishing industry should be a primary concern at this point. Please consider conservation efforts that will positively affect this and other fisheries that face the same dire situation. The future of a robust fishery depends on the decisions made by you and all regulators involved in fisheries management. Thank you.  Guy W. Griffin
Adam Zalewski	zalewski2000@yahoo.com	Please allow recreational fishermen to net,catch Herring to use for bait. It is ridiculous that they cant.  Remind the Council just how important River Herring and American Shad are to you as a recreational angler – please tell them that they should VOTE YES for these species to become stocks in the fishery!  Remember the days of netting your own herring and catching stripers on them?

		<p>For the past decade, we have been unable to do this not only because the herring have been vaporized from many of their historic spots, but because now there is a moratorium on catching river herring.</p> <p>Fact: Juvenile American Shad, adult Alewife and Blueback herring all migrate and swim together out at sea. They are being caught TOGETHER and sold in large numbers as "INCIDENTAL CATCH" or DUMPED OVERBOARD AS BYCATCH in other directed fisheries, like commercial mackerel, Atlantic (sea) herring and squid fisheries.</p> <p>Fact: Recent genetic studies show that the herring that return to our rivers here in the Mid-Atlantic Region are being depleted by industrial trawling in Southern New England.</p> <p>Fact: Over the last few decades, we have spent millions of dollars to remove dams, and committed thousands of volunteer hours scooping up and moving herring manually over dams, just to have trawlers up north catch thousands in a single tow.</p> <p>Fact: Recreational anglers are not allowed to keep a few fish for recreational bait use, but the trawlers are allowed to dump thousands of them overboard dead or retain them, day in and day out.</p>
Owen Zimmerman	ozimmerman@comcast.net	Please include river herring and shad as Council-managed species. The species are far too valuable ecologically and to the recreational fishing community to remain not managed by the council.
Edward Pierrepont	pierrepont15@gmail.com	<p>Council,</p> <p>I vote YES to protect this species in every way you can. We know they are being killed by the millions in nets and other not discriminate fishing techniques as bi catch, and discarded. We need to stop these fishing techniques tol offset the destruction of this species in waters out of US control. They should consider a STOCK Fishery. Antiquated fishing techniques must be changed. If you implement plans that save these fish, you can change fishing strategies that would employ thousands of additional hook and line fishermen, increasing employment.. Allowing Omega Protein to grind up our forage fish for pig food is criminal. Please weigh in and support our Oceans rebirth by stopping destructive fishing of this species. Thank you.</p>
Greg Brown	gabrown@ees-nj.com	<p>Dear Council</p> <p>I am adding my voice to urge you to vote yes to include the American Shad and River Herring in the recreational fisheries.</p> <p>I would also encourage you to take the necessary steps to reduce the waste and bycatch of the commercial trawlers and restore balance to the utilization of these fisheries.</p>

All too often, as was the case with menhaden and is increasingly becoming the case with other non-target species, commercial fishing is depleting forage fish with detrimental effects on the recreational fishery. Recreational fishing provides millions of dollars to the economy and provides valuable recreation to large numbers of private citizens. The commercial interests should

Not be given priority over recreational fishing.

Juvenile American Shad, adult Alewife and Blueback herring all migrate and swim together out at sea.

They are being caught TOGETHER and sold in large numbers as "INCIDENTAL CATCH" or DUMPED OVERBOARD AS BYCATCH

in other directed fisheries, like commercial mackerel, Atlantic (sea) herring and squid fisheries.

Recent genetic studies show that the herring that return to our rivers here in the Mid-Atlantic Region are being depleted by industrial trawling in Southern New England.

Over the last few decades, recreational interests have spent millions of dollars to remove dams, and committed thousands of volunteer hours scooping up and moving herring manually over dams,

just to have trawlers up north catch thousands in a single tow.

Recreational anglers are not allowed to keep a few fish for recreational bait use, but the trawlers are allowed to dump thousands of them overboard dead or retain them, day in and day out.

We need more balance in the regulations.

Greg Brown, P.E., L.S.R.P., President  
Eastern Environmental Engineering Services, Inc.  
9 Barlow Drive Califon, NJ 07830-3406

Vice President Manasquan Fishing Club  
PO Box 513  
Manasquan NJ 08736

Phone 908.832.5098  
Cell 908.256.0982  
Email gabrown@ees-nj.com



2005 Market Street, Suite 2800 P 215.575.9050  
Philadelphia, PA 19103-7077 F 215.575.4939

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901 E Street NW, 10th Floor P 202.552.2000  
Washington, DC 20004 F 202.552.2299  
[pewtrusts.org](http://pewtrusts.org)

The Pew Charitable Trusts presents this document on behalf of 7,612 U.S. residents; 1,740 of whom live in the Mid-Atlantic region.

Mid-Atlantic Fishery Management Council  
800 North State Street  
Suite 201  
Dover, DE 19901

Please add river herring and shad as stocks in the Mackerel, Squid, Butterfish Fishery Management Plan

Dear Mid-Atlantic Fishery Management Council members and staff:

At your October 2016 Council meeting, please vote to add river herring and shad as stocks in the Mackerel, Squid, Butterfish Fishery Management Plan (MSB FMP). The current management approach is failing to increase the populations of these forage fish from historic lows. Comprehensive protection at sea is the missing piece in the puzzle to help ensure that extensive conservation efforts already underway are successful and not wasted.

Federal, state, and local governments have invested more than \$100 million over the last two decades to help river herring and shad populations return to rivers. But the large-scale catch of these stocks offshore is wasting this substantial investment and preventing the recovery of these imperiled species. The Council can solve this problem by adding river herring and shad to the MSB FMP. Bringing these critically important forage species under sound federal management will ensure that they are managed sustainably coastwide through science-based population goals, annual catch limits set to rebuild stocks, and protection of their essential habitats.

Restored river herring and shad populations will help support predator fish important to commercial and recreational fishermen--such as striped bass and bluefish--along with other marine wildlife, like shorebirds and marine mammals. Robust populations of river herring and shad will also bring important benefits to coastal mid-Atlantic communities that once depended upon these species as a central part of their local economies and cultures.

Restoring and maintaining river herring and shad populations will take commitment, cooperation, and coordination from all responsible authorities. The Mid-Atlantic Fishery Management Council has an opportunity to lead the way in addressing the threats these species face at sea.

Please act now to restore river herring and shad by adding them as stocks in the MSB FMP.

Sincerely,

**From:** Squarespace [<mailto:customercare@squarespace.info>]

**Sent:** Monday, October 3, 2016 9:11 AM

**To:** Clark, Mary <[mclark@mafmc.org](mailto:mclark@mafmc.org)>

**Subject:** Form Submission - Contact Info - Please add river herring and shad as stocks in the Mackerel, Squid, Butterfish Fishery Management Plan

**Name:** Christopher Lish

**Email Address:** [lishchris@yahoo.com](mailto:lishchris@yahoo.com)

**Subject:** Please add river herring and shad as stocks in the Mackerel, Squid, Butterfish Fishery Management Plan

**Message:** Dear Mid-Atlantic Fishery Management Council members and staff:

At your October 2016 Council meeting, please vote to add river herring and shad as stocks in the Mackerel, Squid, Butterfish Fishery Management Plan (MSB FMP). The current management approach is failing to increase the populations of these forage fish from historic lows. Comprehensive protection at sea is the missing piece in the puzzle to help ensure that extensive conservation efforts already underway are successful and not wasted.

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Please act now to restore river herring and shad by adding them as stocks in the MSB FMP.

Thank you for your consideration of my comments. Please do NOT add my name to your mailing list. I will learn about future developments on this issue from other sources.



Sincerely,  
Christopher Lish  
San Rafael, CA

(Sent via [Mid-Atlantic Fishery Management Council](#))

**From:** ektn10@aol.com [mailto:ektn10@aol.com]  
**Sent:** Thursday, September 29, 2016 12:56 PM  
**To:** River Herring & Shad <RHS@mafmc.org>  
**Subject:** River Herring and Shad

Dear Mid-Atlantic Fishery Management Council members and staff,

It is my hope that you cast your vote in favor of adding the river herring and shad as stocks in the Mackerel, Squid, Butterfish Fishery Management Plan. As a member of one of several rural communities along the Middle-Cape Fear River in Riegelwood, North Carolina, I have had a front row seat to the decrease in population of the river herring and shad.

Since the current plan has failed to address my concerns, I am lending my voice to the call for a renewed effort that gets to the heart of the problem.- protection against commercial over-fishing in the Atlantic Ocean.

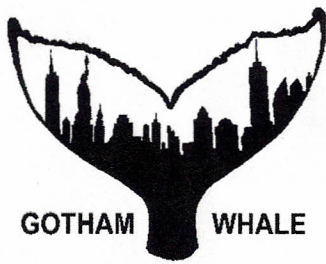
There was an effort on the part of the Corps of Engineers and Fish and Wildlife to address the problem by renovating Lock & Dam #1. The project has been completed with ladders that makes it easier for the endangered species to get over the dam to reach their spawning area. In addition, new regulations such as a shorter shad season, catch limits and net size were put in place, which placed an undue burden on the Riegelwood-area recreational anglers, boaters, and the two local fisherman with commercial license to fix the problem.

As a local historian, I am the voice of the descendants of the ancestors who in 1735 first saw the Cape Fear River, in all its beauty and bounty. They lived at the plantations along the river banks and were there to witness and celebrate the Springtime arrival of the American Shad. They sewed the nets, cast them out, and hauled in the bounty. After sun-curing the valued herring for market - they celebrated with a shore line feast of the discarded, but tasty American Shad.

The tradition continues, as one of the unique celebrations of a fish, a river and a people. Please do your part and vote to add the river herring and shad as stocks in the Mackerel, Squid, Butterfish Fishery Management Plan (MSB FMP).

Thanks to you all,

Earnestine Keaton, Historian, Lower Bladen Columbus  
Historical Society



Mike Luisi, Council Chairman  
Dr. Christopher Moore, Executive Director  
Mid-Atlantic Fishery Management Council  
800 North State Street  
Dover, DE 19901

October 4, 2016

Dear Chairman Luisi and Dr. Moore,

Gotham Whale is New York City's own whale research and advocacy organization, working to study, advocate for, and educate about the whales and marine mammals of New York City through citizen science. Central to our work is the importance of ocean planning and its contributions to the health of New York State's marine environment and how it supports jobs, fisheries and recreation.

Forage fish like river herring and shad are an important source of food for wildlife and other fish. As keystone species, they not only help support recreational and commercial target fish species like striped bass and blue fish, but they are also integral to a healthy ecosystem and functioning food chain. Unfortunately, despite the efforts of numerous states and local entities up and down the east coast, these fish remain at just five percent of their historic numbers. The problem is clear – river herring and shad are being caught in large numbers at sea, undermining the success of all other conservation efforts.

There is no better time than the present to take action and formally manage river herring and shad as stocks in the fishery. We know that river herring and shad are in trouble. Federal management is the missing piece to the conservation puzzle. With the current approach not improving the situation, it is up to the Mid-Atlantic Fishery Management Council to take responsibility and do what is necessary to recover these ecologically important species.

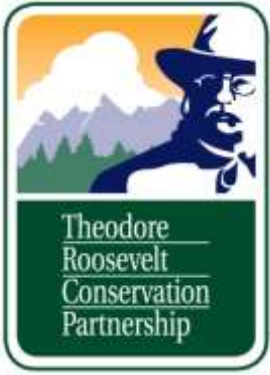
At Gotham Whale, we understand that responsible ocean planning requires strong cooperation among what oftentimes amounts to competing interests. That said, when it comes to river herring and shad, local fishermen, tourism and other maritime interests, and conservationists all have much to benefit from the return of these species.

Extending federal management to cover river herring and shad equips the council with the necessary tools to implement a significant course correction and reap the benefits of the responsible management of these important fish.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul L. Sieswerda". The signature is fluid and cursive, written over a white background.

Paul L. Sieswerda  
President, Gotham Whale



October 3, 2016

Mr. Michael Luisi, Chairman  
Dr. Christopher Moore, Executive Director  
Mid-Atlantic Fishery Management Council  
800 North State Street  
Dover, DE 19901

Dear Chairman Luisi and Dr. Moore:

The Theodore Roosevelt Conservation Partnership (TRCP), a national hunting and angling conservation organization dedicated to ensuring all Americans a quality place to hunt and fish, urges the Mid-Atlantic Fishery Management Council to formally include both river herring and shad in the mackerel, squid, and butterfish fishery management plan (FMP).

Any effort to restore the stocks of these critical anadromous species must take into account the entire scope of their range, from the upstream nursery grounds of state waters to the offshore waters managed by the United States. To this point, nearly all of the restoration efforts have been targeted at the state level, where millions of dollars have been spent to improve habitat and fish passage. However, despite these efforts on the state side, shad and river herring populations have not made a satisfactory rebound.

By ensuring the management of these keystone species formally includes federal waters, the Mid-Atlantic Fishery Management Council can help to ensure state-based efforts are more successful, and that these critical stocks continue to recover.

TRCP strongly supports the formal inclusion of shad and river herring in the mackerel, squid, and butterfish FMP, and urges the Mid-Atlantic Fishery Council to expeditiously take such steps. We appreciate the opportunity to share our position, and look forward to working with you to make shad and river herring conservation more successful.

With regards,

Steven K. Kline  
Director of Government Relations  
Theodore Roosevelt Conservation Partnership

Chris Macaluso  
Director, Center for Marine Fisheries  
Theodore Roosevelt Conservation Partnership

1660 L ST NW  
SUITE 208

WASHINGTON, DC 20036

202-639-8727

WWW.TRCP.ORG

*His Vision*  
~  
*Our Mission*