



**VIA EMAIL (comments@asmfc.org)**

October 22, 2009

Kate Taylor, Fishery Management Plan Coordinator  
Atlantic States Marine Fisheries Commission  
1444 “Eye” St., NW, 6<sup>th</sup> Floor  
Washington, DC 20005

**RE: Draft Amendment 3, ASMFC Management Plan for Shad and River Herring**

Dear Ms. Taylor,

Please accept these comments on Draft Amendment 3 to the Interstate Fishery Management Plan for Shad and River Herring (“Amendment 3” or “the Amendment”). Riverkeeper commends the ASMFC for its efforts on behalf of American shad and welcomes the opportunity to comment on **Amendment 3**. The following are Riverkeeper’s comments on the Amendment and address specific issues by section upon which the Commission is seeking public comment:

**Section 2: The ASMFC Must Act to Achieve Stock Restoration**

Riverkeeper strongly supports the stated goal of Amendment 3 which is to:

“Protect, enhance, and restore Atlantic coast migratory stocks and critical habitat of American shad in order to achieve levels of spawning stock biomass that are sustainable, can produce a harvestable surplus, and are robust enough to withstand unforeseen threats.<sup>1</sup>”

It is essential, therefore, that the ASMFC only permit actions which will specifically “protect, enhance, and restore” American shad and “achieve stock restoration.” No actions should be permitted which only serve to “prevent additional decline.” Neither maintaining the status quo nor simply preventing additional stock declines are acceptable goals in that they are in conflict with the Amendment’s stated goal of achieving spawning stock biomass that is sustainable.

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<sup>1</sup> Draft Amendment 3 to the Interstate Fishery Management Plan for Shad and River Herring (hereinafter Amendment 3), pg 12

### **Section 2.3 The ASMFC Must Incorporate the Definition of Overfishing from the *American Shad Stock Assessment Report for Peer Review (2007)* into its Fishery Management Plan**

Riverkeeper supports the Amendment's proposal for the ASMFC to incorporate the definition of overfishing (used for stock management) from the *American Shad Stock Assessment Report for Peer Review (2007)* ("Stock Assessment") into the Fishery Management Plan (FMP). The ASMFC's shad FMP aims to "protect, enhance, and restore east coast migratory spawning stocks of American shad, hickory shad, and river herring in order to achieve stock restoration and maintain sustainable levels of spawning stock biomass."<sup>2</sup> However, ASMFC's 1998 biological reference point, which was based on a fishing mortality rate of  $F_{30}$ , failed to adequately establish watershed-specific measures necessary for effective shad management and has failed to rectify the decline of the species on a coast-wide basis. The 1998 biological reference point's "one size fits all" approach focused only on fishing mortality, while the 2007 Stock Assessment incorporates both fishing and natural mortality to determine sustainable mortality rates. Furthermore, the 2007 approach allows for assessment of shad stocks by region.

Adopting the 2007 Stock Assessment's biological reference points as the definition of overfishing represents a significant step towards effective shad management. However, Riverkeeper maintains that adoption of the 2007 reference points and goals should be continually reevaluated and be replaced with an updated definition should additional data and resources offer further information about sustainable mortality levels unique to individual shad stocks. In addition, ASMFC must commit to a regular reevaluation of the effectiveness of the FMP to ensure that shad stocks recover on a regional and coast-wide basis.

### **Section 3 The ASMFC Must Require Monitoring and Reporting Programs for All States**

It is only with high quality data that American shad can be restored; therefore Riverkeeper supports all proposed fishery-independent and fishery-dependent monitoring requirements in the Draft Amendment. As stated in the Amendment "a well designed monitoring program provides measurable outputs that can be used to judge the effectiveness of the current management efforts in achieving the desired outcome."<sup>3</sup> Without this critical data the progress of management efforts and the effectiveness of specific recovery measures cannot be measured or evaluated.

However, there is a fundamental issue that must be addressed regarding enforcement of existing and future monitoring requirements. Currently, states which fail to achieve monitoring requirements are sometimes allowed to ignore them. This practice must change as monitoring requirements must be enforced to successfully protect fish populations. Section 9 of the

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<sup>2</sup> ASMFC, Amendment 1 to the Interstate Fishery Management Plan for Shad & River Herring, 31 (April 1999).

<sup>3</sup> Amendment 3, pg 17

Amendment, entitled Compliance, states that “[f]ull implementation of the provisions of this amendment is necessary for the management program to be equitable, efficient, and effective.”<sup>4</sup> The Amendment continues, saying that although the ASMFC does not have the authority to directly compel state compliance with these measures that states are expected to implement them faithfully under state law and that compliance with the Amendment is required under federal law. All states must be required to adhere to the conditions and requirements in the Final Amendment.

In addition to the prescribed monitoring requirements, Riverkeeper supports the mechanism in the draft Amendment through which states which “develop [a] stock specific definition of a sustainable fishery or stock recovery targets<sup>5</sup>” are permitted to propose alternative monitoring plans to the ASMFC for review and approval. However, no state or jurisdiction should receive approval by the ASMFC for any alternative monitoring plan which will fail to generate data sufficient to achieve the stated restoration goals for American shad and such fisheries “must not jeopardize long term stock persistence or the achievement of any stock recovery targets.”<sup>6</sup>

### **Section 3.3: The ASMFC Must Implement A Comprehensive Program to Monitor and Reduce Bycatch**

Riverkeeper believes that it is essential to immediately implement both intensive commercial fishery bycatch monitoring and effective management plans to greatly reduce bycatch. Such measures should encompass both at-sea/near-shore fisheries and fisheries in the waters of member states.

Riverkeeper strongly supports the Amendment’s proposed bycatch reduction measures which require states and jurisdictions to “annually monitor bycatch and discard of American shad in fisheries that operate in state waters of rivers and estuaries.”<sup>7</sup> Additionally it is of critical importance that the ASMFC adopt the Amendment’s recommendation that bycatch and discards be monitored coastwide “by coastal states through the ASMFC, in cooperation with Fishery Management Councils and NOAA Fisheries.”<sup>8</sup> To date observer coverage of ocean fisheries has been inadequate, uncoordinated between states, and underfunded. The ASMFC must increase the presence of ocean bycatch observers and expand portside monitoring through a coordinated effort between state and federal agencies.

In addition to a commitment to coordinated bycatch monitoring efforts in United States waters, the ASMFC must proceed with the Amendment’s recommendation to address the taking of American shad in Canadian waters in directed fisheries and through bycatch. Shad who migrate

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<sup>4</sup> Id, pg 51

<sup>5</sup> Id., pg 17

<sup>6</sup> Id.

<sup>7</sup> Id., pg 28

<sup>8</sup> Id.

to the Bay of Fundy and Gulf of Maine must be protected through monitoring and restoration efforts conducted in coordination with the Department of Fisheries and Oceans Canada.

**Section 4.1, 4.2: The ASMFC Must Not Maintain the Status Quo and Should Implement Measures to Close Commercial and Recreational Fisheries with the Exception of Systems with Sustainable Fisheries**

Given the continuing decline of American shad populations coastwide Riverkeeper supports Option 3 “Close Fisheries with Exceptions for Systems with Sustainable Fisheries.”

No commercial or recreational fishery should be permitted which prevents achieving the Amendment’s goal to “protect, enhance, and restore Atlantic coast migratory stocks and critical habitat of American shad in order to achieve levels of spawning stock biomass that are sustainable.”<sup>9</sup> This option allows for the ASMFC to permit fisheries in states that have petitioned and successfully demonstrated to the Commission that American shad stocks in their state or jurisdiction support a commercial or recreational fishery. This also places the burden on the state to substantiate the assertion that a sustainable fishery is possible with data on total mortality rates, juvenile abundance levels, fish passage, repeat spawning ratio, and other relevant evidence.

**Section 5 The ASMFC Must Stress Habitat Conservation and Restoration When Approving Individual State’s Habitat Plans**

Riverkeeper applauds and supports the numerous and excellent recommendations made throughout this section to address habitat conservation and restoration. We strongly support the recommendation that states and jurisdictions be required to address these habitat issues and incorporate habitat protection and restoration components in their proposed American shad management plans/Habitat Plans.

Riverkeeper suggests specifically that the ASMFC must work with member states to reduce fish kills at power plants and other facilities that use “once through” cooling systems. Currently power plants and other facilities up and down the eastern seaboard unnecessarily use hundreds of billions of gallons of water every year in once-through cooling systems. The intake of this cooling water kills billions of fish and other organisms every year. Far superior closed-cycle cooling technology which uses 98 percent less water to achieve necessary cooling can be retrofitted on older facilities. The ASMFC must encourage member states to follow the mandate of the Clean Water Act which requires the installation of Best Technology Available (“BTA”) to minimize impact on biota and require power plants and other facilities to drastically reduce their impact on the river herring populations by mandating the installation of closed-cycle cooling.

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<sup>9</sup> Id., pg 12

In addition ASMFC must work with member states to restore habitat, reduce barriers to migration, reverse the effects of channelization and dredging, and address the other factors identified in the draft amendment.

### **Conclusion**

Riverkeeper applauds ASMFC's ongoing efforts to address American shad decline through Amendment 3 and urges ASMFC to implement an aggressive management strategy that will restore shad vitality throughout its Atlantic range. This strategy must include closures of commercial and recreational fisheries that are not sustainable, bycatch assessment and prevention, and a broad-based approach to maintaining and restoring water quality and a suitable habitat for American shad.

Riverkeeper appreciates this opportunity to submit comments. If I may provide any clarification regarding the above comments, or additional information, please contact me at 914-478-4501 x247 or [jverleun@riverkeeper.org](mailto:jverleun@riverkeeper.org).

Respectfully Submitted,  
/Joshua S. Verleun/

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