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**Via Email (nmfs.ner.msbam15@noaa.gov) and U.S. Mail**

December 5, 2012

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

**Re: Scoping Comments on MSB Amendment 15**

Dear Dr. Moore,

Please accept the following comments from the Natural Resources Defense Council on the scoping for Amendment 15 to the Mid-Atlantic Fishery Management Council's Mackerel, Squid, and Butterfish Fishery Management Plan. In June of 2012, the Council voted to "begin Amendment 15 to add river herrings/shads as stocks in the fishery." The record is clear that river herring and shad are in need of strong conservation and management at the federal level. The most recent river herring stock assessment found that 23 stocks are "depleted," including 10 that are listed as "overfished."<sup>1</sup> The two species of river herring are listed as "Species of Concern" by the National Marine Fisheries Service and are candidates for listing under the Endangered Species Act.<sup>2</sup> The most recent shad assessment found "that stocks were at all-time lows and did not appear to be recovering to acceptable levels."<sup>3</sup> The Atlantic States Marine Fisheries Commission (ASMFC) has concluded that river herring and shad are "depleted on a coast-wide basis" and has implemented a moratorium on river herring and shad fishing within state waters unless sustainability of such catch can be demonstrated.<sup>4</sup> Despite the closure of most directed river herring and shad fisheries along the Atlantic coast, fishing mortality from the ocean-intercept fishery remains a significant source of continued mortality for these species.

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<sup>1</sup> ATLANTIC STATES MARINE FISHERIES COMMISSION (ASMFC), *River Herring Stock Assessment Overview* (May 2012); see ASMFC, *Stock Assessment Report No. 12-02, River Herring Benchmark Stock Assessment, Volume II* (May 2012), at 412 (finding 9 of 15 river herring stocks in Maryland and the Upper Chesapeake Bay to be "overfished"); *id.*, at 549-550 (stating that the Chowan River blueback herring population "remains overfished" and is "less than 5% of the amount necessary to replace itself in the complete absence of fishing.").

<sup>2</sup> 76 Fed. Reg. 67652 (Nov. 2, 2011).

<sup>3</sup> MID-ATLANTIC FISHERY MANAGEMENT COUNCIL (MAFMC), Amendment 14 to the Mackerel, Squid, and Butterfish Fishery Management Plan (April 2012), at 213.

<sup>4</sup> ASFMC, *Overview of Stock Status of River Herring and Shad*, available at [http://www.asafc.org/speciesDocuments/shad/shad\\_RiverHerring\\_StockStatus.pdf](http://www.asafc.org/speciesDocuments/shad/shad_RiverHerring_StockStatus.pdf).

The current status of these species makes clear that current management measures, including those adopted as part of Amendment 14, are inadequate. Bycatch mortality caps alone, while a step in the right direction, will have limited impact without an overall understanding of and control over total fishing mortality of these species. Status determination criteria, annual catch limits, accountability measures, essential fish habitat designation, and other management components required of "stocks in the fishery" are essential to the conservation of these species. These are all necessary ingredients of an adequate management regime for these species, without which it is likely that the populations will remain severely depleted and at risk of further decline. These issues must be clearly described and comprehensively analyzed in Amendment 15 and the accompanying environmental impact statement.

The Magnuson-Stevens Act requires that fishery management plans include all "conservation and management measures" that are "necessary and appropriate for the conservation and management of the fishery, to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery."<sup>5</sup> According to a recent court decision regarding whether to add river herring and shad to the Atlantic herring fishery in New England, a stock that "requires conservation and management" and "can be managed as a unit for purposes of conservation and management" must be added as a stock in the fishery.<sup>6</sup>

The MSA explicitly requires, "within each Council's geographical area of authority," that NMFS "identify those fisheries that are overfished or are approaching a condition of being overfished."<sup>7</sup> For any species determined to be overfished or approaching an overfished condition, NMFS is required to establish a fishery management plan, plan amendment, or proposed regulations.<sup>8</sup> As mentioned above, the most recent river herring stock assessment not only found nearly two-dozen stocks "depleted," but also found that at least 10 of these stocks are specifically "overfished."<sup>9</sup> The 2012 river herring assessment also concluded that "management actions to reduce total mortality are needed...includ[ing] reductions in directed commercial or recreational fishery mortalities, [and] reductions in total incidental catch (retained and discarded fish)..."<sup>10</sup> Amendment 15 must include a full and detailed discussion of the recent stock assessments for river herring and shad, including the current status of individual stocks.

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<sup>5</sup> 16 U.S.C. § 1853(a)(1)(A).

<sup>6</sup> *Flaherty v. Bryson*, 850 F. Supp. 2d 38, 55 (2012) (citing 16 U.S.C. §§ 1802(13), 1852(h)(1)).

<sup>7</sup> 16 U.S.C. § 1854(e)(1).

<sup>8</sup> 16 U.S.C. § 1854(e)(3).

<sup>9</sup> See ASMFC, *Stock Assessment Report No. 12-02, River Herring Benchmark Stock Assessment, Volume II* (May 2012), at 412 (finding 9 of 15 river herring stocks in Maryland and the Upper Chesapeake Bay to be "overfished"); *id.*, at 549-550 (stating that the Chowan River blueback herring population "remains overfished" and is "less than 5% of the amount necessary to replace itself in the complete absence of fishing.").

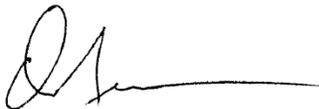
<sup>10</sup> ASMFC, *Stock Assessment Report No. 12-02, River Herring Benchmark Stock Assessment, Volume I, Section C, River Herring Stock Assessment Report for Peer Review*, at 58 (May 2012).

The type of cost-benefit analysis described in the Scoping Document (paragraph 1, page 7) is an inappropriate metric for determining whether river herring and shad must be added to the fishery. The MSA does not impose a cost-benefit analysis for determining what conservation measures are required to end overfishing, rebuild overfished populations, and protect, restore, and promote the long-term health and stability of the fishery.<sup>11</sup> Although not determinative of whether the stocks require conservation and management, the costs and benefits of managing and conserving river herring and shad should be considered as part of the comprehensive impacts analysis that will be conducted as part of Amendment 15. In this respect, it is important to include the social and economic costs to coastal and inland communities historically reliant on healthy river herring and shad populations and fisheries, and on fisheries that utilize these species for forage.

Amendment 15 should generally include a comprehensive analysis of the many benefits that would result from the recovery of river herring and shad stocks, including: additional commercial and recreational fishing opportunities, an expanded forage base for important species like striped bass, and the preservation of cultural heritage, non-market existence value and subsistence fishing for Native American communities.<sup>12</sup> Improved federal management would help realize these benefits through a combination of improved stock assessments and reference points, a better understanding of the relative contribution of various factors for decline of river herring and shad, reduced incidental catch, annual catch limits and accountability measures, and the protection of essential fish habitat.

Thank you for the opportunity to comment on this important matter and for your consideration of our recommendations.

Very Truly Yours,



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<sup>11</sup> Courts have concluded that “the purpose of the Act is clearly to give conservation of fisheries priority over short-term economic interests.” *NRDC v. NMFS*, 421 F.3d 872, 879 (9th Cir. 2005) (explaining that “the Act sets this priority in part because the longer-term economic interests of fishing communities are aligned with the conservation goals set forth in the Act.”); *see also NRDC v. Daley*, 209 F.3d 747, 753 (D.C. Cir. 2000) (finding that NOAA “must give priority to conservation measures”).

<sup>12</sup> *Id.*, at 442-43.