

**ATLANTIC STATES MARINE FISHERIES
COMMISSION**

**SHAD AND RIVER HERRING MANAGEMENT
BOARD**

**Mystic Hilton Hotel
Mystic, Connecticut**

November 2, 1999

The Shad and River Herring Management Board of the Atlantic States Marine Fisheries Commission convened in the East/Center Room of the Mystic Hilton Hotel, Mystic, Connecticut, on Tuesday, November 2, 1999, and was called to order at 3:20 p.m. by Chairman Byron Young.

CALL TO ORDER

CHAIRMAN BYRON YOUNG: Good afternoon, ladies and gentlemen. I think we'll try to get the Shad and River Herring Board commenced. Heather, I'd like you to call the roll.

(Whereupon the roll call was taken by Ms. Heather Stirratt.)

MS. HEATHER STIRRATT: Mr. Chairman, you have a quorum.

CHAIRMAN YOUNG: Thank you. Thank you, everybody, for coming back so quickly after your last meeting. I know you didn't have much of a break. We'll try to move this along.

The agenda is before you. I'm aware that there's an addition to the agenda. Gordon Colvin has a handout that he'd like to talk to us all about, about water quality standards and power plants. We'll add that to the end.

ADDITIONS/CHANGES TO THE AGENDA

Does anyone else have any additions to the agenda or changes to the agenda at this point? Tina.

MS. TINA BERGER: I'd like you to look at the AP nominations that I handed out and take action on those, if possible.

CHAIRMAN YOUNG: We'll put that under other business. Thank you, any other additions to the agenda?

TRANSFER TO THE CHAIR

Okay, moving right along, the first item on the agenda is something that I thought has been going on for about a year and a half now, or a year, the transfer of the Chairmanship to Ron Michaels from Georgia.

We have got it on the agenda this time and we're going to make it the first thing to happen. So at this point I'd like to introduce Ron Michaels. He will take over as the Chairmanship and I will step down.

I appreciate all of the hard work that you folks have done in working with me. Thank you. (Applause) (Whereupon, Mr. Ron Michaels assumed the Chair.)

ELECTION OF THE VICE CHAIR

CHAIRMAN RON MICHAELS: Thank you, Byron. Yes, I'm Ron Michaels. Good afternoon, everybody, and I notice on our agenda that the first order of business for me is to elect my replacement. So, what I'd like to do now is open up the floor to nominations for a new Vice-Chair. Lew.

MR. LEW FLAGG: I'd like to nominate Dick Snyder from Pennsylvania.

MR. DICK SNYDER: I will decline. I am here as a proxy and I will have to decline.

CHAIRMAN MICHAELS: Do we have another nomination for another individual, please? Roy Miller.

MR. ROY MILLER: I'd like to nominate Jack Travelstead.

MR. JOHN I. NELSON: Second.

CHAIRMAN MICHAELS: Boy, that was quick.

MR. NELSON: Move to close the nominations, Mr. Chairman.

MR. FREEMAN: Second.

CHAIRMAN MICHAELS: We have a motion and a second. Jack, do you accept the nomination?

MR. JACK TRAVELSTEAD: Reluctantly.

CHAIRMAN MICHAELS: Reluctantly. Are there any objections to the motion? Hearing none, congratulations, Jack.

APPROVAL OF THE MINUTES

CHAIRMAN MICHAELS: The next order of business on our agenda is the approval of the minutes. They've just been distributed at the beginning of this meeting. We can scan them quickly. We can approve them as submitted.

If it pleases the Board, not having had a chance to peruse them prior to the meeting, we can defer discussion and approval of these minutes to the following Shad Board meeting.

How does the Board feel about this? Does anyone have any objections to just holding off and approving these minutes at the next meeting?

MR. ROY WILLIAMS: They're verbatim minutes.

There's a court reporter there. What you're going to do, second guess him? I move we approve the minutes.

MR. PAUL PERRA: I seconded it.

CHAIRMAN MICHAELS: Okay, second by Paul. Are there any objections to going with this method of handling the minutes to the next meeting?

MR. WILLIAMS: No, I moved we approve the minutes.

CHAIRMAN MICHAELS: Approve at the next meeting?

MR. WILLIAMS: No, now, right now.

CHAIRMAN MICHAELS: We're going to accept them now. All right, then we'll go ahead and approve the minutes since there are no objections to that.

PUBLIC COMMENTS

Next on our agenda is public comments. I'd like to ask if there is anybody in the audience who would like to make a statement or a presentation to the Board?

Okay, well, hearing no one, we'll just move right along, then. The next item is a presentation by Heather on the Plan Review Team Compliance Report, which is a review of shad and river herring annual reports by state.

Please keep in mind that this is an action item. Heather.

PRT REPORT

MS. STIRRATT: Good morning, or rather good afternoon. The Plan Review Team met via conference call on September 14, 1999, to discuss the status of state compliance.

Upon the discussion of the annual reports, the PRT determined that a rating of partial completion in the compliance matrix, which were included in your briefing materials, was resolvable and bestowed no significant impact on the shad and river herring resources in question.

Understanding was generously afforded to the states given that this was the first year in a series that the Commission will be requiring annual reports of this format.

States should avoid partial ratings in forthcoming years by completing each reporting requirement as listed in Amendment 1 to the Interstate Fishery Management Plan for Shad and River Herring as well as by referring to the PRT's comments documented in the PRT report. As a result, the PRT report should be passed on to the appropriate personnel in preparation for next year's report.

As described in Section 5.2 under procedures for determining compliance, the PRT recommends the following findings relative to state compliance. For the record, I'd like to read these; Maine is in compliance; New Hampshire, in compliance; Massachusetts, in compliance; Rhode Island, in compliance; Connecticut,

in compliance; New York, in compliance; New Jersey, in compliance; Pennsylvania, in compliance; Delaware, in compliance; Maryland, in compliance; Potomac River Fisheries Commission, in compliance; Washington, D.C., in compliance; Virginia, in compliance; North Carolina, in compliance; South Carolina, out of compliance; Georgia, in compliance; and Florida, in compliance.

The PRT is recommending to the Atlantic States Marine Fisheries Commission Shad and River Herring Management Board that South Carolina be found out of compliance with regard to the recreational creel limit requirements under Amendment 1.

According to Amendment 1 in Section 4.2, all jurisdictions shall not exceed an aggregate 10-fish daily creel limit in recreational fisheries for American shad or hickory shad. South Carolina continues to lack a recreational creel limit of any kind within state waters.

Per the request of the Management Board at the August meeting, a letter was sent from the Atlantic States Marine Fisheries Commission to the South Carolina Department of Natural Resources in anticipation of this compliance decision by the PRT.

The letter, addressed to David Cupka and dated August 17, 1999, can be found in your briefing books and also in the meeting material packets found at the back of the room.

To date no known action has been taken by the state legislature to rectify this situation. However, I would like to add that there was a letter submitted by Billy McCord, which has also been included in the briefing books, that responds to some of the problems that South Carolina may be having in meeting the compliance schedule.

In addition, the PRT would like to make a few general comments to the states with regard to their respective annual reports. First and foremost, the PRT would like to thank you for submitting your reports in a timely fashion and for taking the time to address the clarification requests that we put forth.

The second comment relates to those states' reports exhibiting landings' discrepancies between the state and the National Marine Fisheries databases. The PRT is recommending that state personnel contact the National Marine Fisheries Service port agents to better understand and explain such occurrences in their annual reports.

With respect to the Potomac River, the PRT recommends that data collection be coordinated between all concerned state and jurisdictional management bodies. This recommendation could also apply to those states that share rivering systems for shad and river herring management.

Concern was raised by the PRT that a number of states

receive partial ratings relative to reporting Atlantic sturgeon bycatch. Atlantic sturgeon are documented as bycatch in coastal gillnet fisheries for American shad. According to Amendment 1 to the Interstate Fishery Management Plan for Atlantic Sturgeon, states must monitor and report annually on the bycatch of Atlantic sturgeon in other fisheries under their jurisdiction. This requirement is further supported by Amendment 1 to the Interstate Fishery Management Plan for shad and river herring by listing Atlantic sturgeon bycatch estimates under the format for annual state reports.

The PRT recommends that each state include a line on report forms and/or logbooks for this data collection purpose.

Finally, the PRT would like to commend the state of Georgia for a job well done with the content of their annual report. The PRT would like to suggest that other states look to this annual report as an example of how these reports should be written in future years.

SOUTH CAROLINA COMPLIANCE DISCUSSION

CHAIRMAN MICHAELS: Thank you, Heather. There are a number of recommendations in the PRT report. Of course, the most important one that requires action is the one regarding compliance or lack of compliance by the state of South Carolina.

So I would like to go to the Board now and see if there is a motion to find South Carolina out of compliance. Paul or David, would you like to address this?

MR. PERRA: Well, Ron, before we make a motion, let's hear if there's any action or pending action or something going on in the state.

CHAIRMAN MICHAELS: David.

MR. DAVID CUPKA: Thank you, Mr. Chairman. Of course, we were well aware that this action was coming.

We are not a regulatory agency in South Carolina. We are a legislative state.

And, consequently, any action to bring us in compliance would have to be approved by our legislature. Last year we submitted a major piece of legislation to completely revamp all our marine fisheries laws.

Included in that we tried to get the 10-fish recreational bag limit put into that piece of legislation. When the legislature got hold of it, they changed it to a 20-fish bag limit.

It didn't really matter because it didn't pass. Well, it's carried over for this year, the second year of our bi-annual legislative session. But even if it were to pass, it obviously is not going to bring us into compliance because it does call for a 20-fish bag limit.

Earlier this year I did draft a bill that would establish a 10-fish recreational bag limit for American shad. That bill was submitted to the National Resources Board and they did approve it as part of our legislative package for the coming session.

It will be one of the bills that will be submitted for consideration by our agency. Our legislature, however, does not convene until the second week in January, and so the earliest they could take any action on it would be after January 1st.

We have provided copies of the letters that I have received to our key legislative people. We are in the process of trying to set up a meeting to meet with key legislators, the Chairman of the House and Senate Committees, to try and point out to them some of the possible consequences if they fail to take action on this bill that we're submitting next January.

However, it is out of our hands, but we are doing all we can to try to bring them in compliance. My hope would be that we are able to convince them to pass this bill and it would become effective early in the session, before any further action would have to be taken either by the Commission or more so by the Secretary.

I know there is a provision, and in the past we have used this to recommend that we withhold taking action or submitting to the Secretary a finding of non-compliance to allow states who are working on actions to try and come in compliance.

So, whether we'll be successful, I don't know. Shad is kind of a funny creature in our state. There's a lot of people involved in it. It's a big cultural thing, actually. And some of the legislators themselves participate in this fishery.

So, whether we'll be successful, I don't know, but I can assure you that we are trying to do all we can at the agency level to try and bring us into compliance. But ultimately it is out of our hands.

So, that's where we are at this point. I don't know if Paul wants to add anything to that, but that's the current status.

DR. PAUL SANDIFER: One further comment, Mr. Chairman. As David pointed out, we did attempt in last year's legislative session to get this matter resolved, without success.

The bill has been drafted. I personally took it to our board in September. It was been approved then and then formally approved as a bill in October for submission.

We will be using all of our contacts and efforts that we can to get it passed when the general assembly reconvenes in January.

Anything that you can do to assist us in this regard would be appreciated. We will be doing everything from our end. But as David said, it becomes a

legislative matter since we do not have this type of regulatory rulemaking authority. Thank you.

CHAIRMAN MICHAELS: Bruce.

MR. BRUCE FREEMAN: Paul, would it be helpful to have this letter. this draft letter here, rather than be sent to David to be sent to the legislature or the President of the Senate or someone else in your state to bring to their attention the urgency of this?

Obviously, your state agency can only do so much so far as the legislature is concerned. My request would be how can we become more effective helping you get this legislation passed?

DR. SANDIFER: Bruce, that's a good question. I hadn't really thought of it, but perhaps the best way would be to address it to all three of our Commissioners, myself, David, and Senator Drummond who still plays a very significant role with the Senate Committee that will eventually have to see this bill and may be able to help us on the House side. And I would also request the Chairman of my Board be addressed with any communications. The Chairman of our Board, all of our Board members are gubernatorial appointees, which means that he could go directly to the governor with that information and, hopefully then, the governor's office would be willing to assist us in trying to move this through the General Assembly.

MR. FREEMAN: Mr. Chairman, I would suggest in order to help South Carolina in their efforts -- they are very much aware of what needs to be done, and obviously indicated they've been trying to do this -- is to send a letter to the legislators and the commissioners, as Paul has suggested.

As I understand it, they will not be out of compliance until January 1, so technically they are not out of compliance yet. But, a letter to the effect that the Board would have to reconsider this very quickly and perhaps take drastic action to impose a moratorium, but doing it in a positive way will help South Carolina's efforts to get the legislation passed.

CHAIRMAN MICHAELS: David.

MR. CUPKA: Thank you, Mr. Chairman. As I indicated earlier, I did provide copies of the letter that was addressed to me, to the other commissioners, obviously, and to some of the legislators that we're trying to set up meetings with now.

I also thought it was more appropriate and that the letter should have been addressed at least to all three commissioners rather than just myself. And I don't know if that's the way it's been done in the past, but if it has, it certainly needs to be changed, I think, to at least be addressed to all the commissioners, particularly the legislative commissioner who will play a key role in helping us resolve this issue. So, that I think would be a change we ought to make in the future.

CHAIRMAN MICHAELS: We have a suggestion by Bruce and supported by David that a letter should be sent to all the legislative commissioners as well as Dave Cupka, Paul Sandifer, and Senator Drummond, stressing the urgency in a positive manner as to the situation and the need for compliance before January 1st. I'd entertain a motion to this effect by a Board member.

MR. FREEMAN: I would move this, Mr. Chairman.

MR. JOHN I. NELSON: Second.

CHAIRMAN MICHAELS: Second from John Nelson. Discussion? Pete.

MR. PETE JENSEN: I have a question of South Carolina. If, in fact, legislation is successful, will this limit be in place before the start of your 2000 year shad fishery?

MR. CUPKA: It depends on how early in the session it starts. If it was passed almost immediately, it might get in under. But otherwise, it's probably going to be after the season potentially could start.

I will point out to you that our recreational fishery in South Carolina is very small. And it might be -- again, this is the call of the Secretary, but he would obviously have to prove that failure on our part to institute this is going to have a significant impact on the conservation of this resource on the Atlantic coast.

And given what we know about the level of recreational fishing, that may or may not be hard to do. But I would hope we don't get that far in the process of trying to deal with that issue.

CHAIRMAN MICHAELS: Further discussion. Paul.

MR. PERRA: David, barring failure by the legislature, does your agency have any authority to do other things that could be considered conservation equivalency to make up for the difference, like close an area, put in some other mesh sizes or things on the commercial fishery? Is that an option for the state?

MR. CUPKA: No, we really couldn't do that, unfortunately.

MR. PERRA: See you in January.

CHAIRMAN MICHAELS: I don't believe that was given as an option in the amendment. Pete.

MR. JENSEN: Well, I don't have any problem with a letter, but I think given the letter that's already been sent, the action that other Boards have taken in almost identical circumstances, my opinion would be the way to help them out is to find them out of compliance.

CHAIRMAN MICHAELS: Further discussion? Bruce.

MR. FREEMAN: Well, the motion is intended to take every opportunity to indicate the gravity of the issue. And I've no difficulty putting in the letter that no action

could very well result in non-compliance which then could very well shut down their commercial fishery, which appears to be much more important. I think by pointing this out we may end up having to do a non-compliance. But again, at this point, until January 1 they are not out of compliance. So it seemed it's still appropriate to send an additional letter. It may not help, but it certainly won't hurt. And the situation may well be that this next letter showing some of the repercussions may result in some action by the legislature.

MR. JENSEN: That's essentially what the August letter says, Bruce, and this Board cannot approve a plan by South Carolina because we are not meeting again until February.

MR. FREEMAN: Well, again, you can vote this the way you want. I just think it will be an additional letter. I think it would be helpful to stress the fact that this could lead to a position of non-compliance, which would have an impact on their entire fishery, including the commercial.

And then we could act if no action is taken, take a compliance issue up after the first of the year.

CHAIRMAN MICHAELS: Dieter.

MR. DIETER BUSCH: Mr. Chairman, I was wondering if South Carolina has some other suggestions, like is there something the Commission can do in person? Can we sacrifice somebody to send down?

MR. DAVID V.D. BORDEN: Dieter is volunteering himself.

CHAIRMAN MICHAELS: John.

MR. NELSON: Well, Mr. Chairman, it sounds like David has outlined that he felt it would be helpful if we did send a letter to other folks, even though he shared it amongst the letter that previously, apparently, had been sent directly to him.

Perhaps getting a letter in their own names might carry a little more weight. And, as Bruce has pointed out, they're not out of compliance yet so we ought to go that extra letter and just try to help the situation along.

We certainly know how to do a compliance letter after January 1st.

CHAIRMAN MICHAELS: Paul.

DR. SANDIFER: Mr. Chairman, I concur that despite the fact that it appears we will be out of compliance, we are not there yet, and I would appreciate the courtesy suggested by Mr. Freeman to present a strong letter to the state of South Carolina.

We will be glad to provide the appropriate people in addition to the ASMFC Commissioners to whom that letter should be specifically addressed, so that they do get it in their names.

The letter should be explicit as to what is required of the state. For example, it should clearly say that if the FMP calls for a 10-fish recreational bag limit, that's what the letter needs to say and not refer back to an FMP, because this is going to active representatives and senators who simply do not have the time nor the interest to go back and dig into an FMP and find out about it.

So it needs to be very explicit as to what is required and the timeframe that it really needs to get done. And if that fails, what the repercussions may be. That, I think, would be very helpful to us in our process.

And I can assure you for myself, as the head of the agency, and for Mr. Cupka, that we will do all we can to make sure that all of the leaders in the House and Senate and in our board and our governor's office are aware of the situation.

If we then fail early in the session, then it will be appropriate for this Body to consider other actions.

CHAIRMAN MICHAELS: Okay, Susan.

MS. SUSAN SHIPMAN: I believe we have a meeting week in early February. Does your session go in in January? Would it be helpful to put in that letter that we will be considering actions taken to date at our February meeting; and at such time, if action has not been taken, the Board will consider finding South Carolina out of compliance? Would that, perhaps, expedite their action early in the session?

DR. SANDIFER: I would not presume to draft the letter here, but I think that's exactly the kind of direct language that is needed in this situation.

CHAIRMAN MICHAELS: David.

MR. CUPKA: I feel a little strange helping to work on this motion, but we ought to say after Senator Drummond, and other key legislators, whom we will provide the names and addresses to the staff for, because we need to get it to those. But I feel a little strange helping to craft the motion, but it should reflect that.

MR. FREEMAN: I'll accept that.

MR. NELSON: So will I.

CHAIRMAN MICHAELS: David.

MR. BORDEN: Call the question.

CHAIRMAN MICHAELS: Okay, I'd like to go ahead. Even though everyone knows how to read, I'm going to read the motion that's up on the screen for everyone. The motion states: Move that the Management Board forward a letter to Dr. Sandifer, David Cupka, and Senator Drummond and other key legislators specifying the urgency with which South Carolina must come into compliance with the Shad and River Herring Management Board by January 1, 2000. Further, the letter should specify the specific actions

that South Carolina must take to come into compliance. If no action is taken by February 2000, the Management Board will take the necessary action to find South Carolina out of compliance.

MR. NELSON: Just perhaps a little friendly adjustment here. I think it's where we say "must come in compliance with the Shad and River Herring"; instead of "Management Board", it's the "Fishery Management Plan".

MR. WILLIAM A. ADLER: Yes, should it also indicate, as I heard earlier, the consequences of what a non-compliance could mean, to get the attention of what would happen in South Carolina? That was mentioned. That gets their attention, somewhere in the motion, somehow?

CHAIRMAN MICHAELS: Yes, this was discussed earlier. Paul.

MR. PERRA: I don't think we need to write the whole letter. I believe the original letter did say that, and this letter will reiterate that.

MS. SHIPMAN: If I may, I think a technical correction, it needs to be that the Management Board will recommend that the Commission find South Carolina out of compliance. Technically the Commission does the non-compliance finding; that the Management Board will recommend that the Commission find South Carolina out of compliance.

CHAIRMAN MICHAELS: If there is no further wordsmithing to the motion, the question has been called. State delegations caucus to take the vote. Let's have a roll call, please.

MS. STIRRATT: State of Maine.

MAINE: Yes.

MS. STIRRATT: New Hampshire.

NEW HAMPSHIRE: Yes.

MS. STIRRATT: Massachusetts.

MASSACHUSETTS: Yes.

MS. STIRRATT: Rhode Island.

RHODE ISLAND: Yes.

MS. STIRRATT: Connecticut.

CONNECTICUT: Yes.

MS. STIRRATT: New York.

NEW YORK: Yes.

MS. STIRRATT: New Jersey.

NEW JERSEY: Yes.

MS. STIRRATT: Pennsylvania.

PENNSYLVANIA: Yes.

MS. STIRRATT: Delaware.

DELAWARE: Yes.

MS. STIRRATT: Maryland.

MARYLAND: Yes.

MS. STIRRATT: Potomac River.

POTOMAC RIVER FISHERIES COMMISSION:
Yes.

MS. STIRRATT: D.C. (No response) Virginia.

VIRGINIA: Yes.

MS. STIRRATT: North Carolina.

NORTH CAROLINA: Yes.

MS. STIRRATT: South Carolina.

SOUTH CAROLINA: Abstain.

MS. STIRRATT: Georgia.

GEORGIA: Abstain.

MS. STIRRATT: Florida.

FLORIDA: Yes.

MS. STIRRATT: NMFS.

NATIONAL MARINE FISHERIES SERVICE:
Abstain.

MS. STIRRATT: U.S. Fish and Wildlife Service.

U.S. FISH AND WILDLIFE SERVICE: Yes.

CHAIRMAN MICHAELS: We have 15 in favor and three abstentions, so the motion carries.

I'd like to entertain a motion now from the Board to approve the PRT report.

MR. CARPENTER: So moved.

CHAIRMAN MICHAELS: A.C. was the maker of the motion. Phil Coates seconded. Discussion? All in favor of the motion, please signify by a show of hands; opposed. The motion carries.

Okay, the next agenda item is the 1999 FMP Review, which will be presented by Heather.

1999 FMP REPORT

MS. STIRRATT: The 1999 FMP review has been updated and is included in your briefing books as well as on the back table. It should reflect last year's information with the addition of the new information provided by the states in their annual reports.

This document has been reviewed and commented on by the Plan Review Team, and they have given their approval of this document. We just need to go ahead and see if this Management Board would also approve this document.

MR. PERRA: Which document?

MS. STIRRATT: The 1999 FMP review. It's entitled "1999 Review of the Atlantic States Marine Fisheries Commission Fishery Management Plan for Shad and River Herring." It's dated August 11, 1999.

This document also includes tables 1 and 2 which reflect the findings of the Plan Review Team relative to the annual state reports. It also includes the information relative to the fishing recovery plans.

If the Board wishes to delay approval of the 1999 FMP review until after the Technical Committee has given their report relative to the fishing recovery plans, that would be fine.

But by any means, I hope everybody understands that the table entitled "Table 1, State Shad and River

Herring 1999 Fishing Recovery Plan Matrix", those are the results from the Technical Committee review of the state fishing recovery plans, and we have not yet gone over that review.

MR. PERRA: Is there a problem with waiting for the Committee report? Well, I suggest we wait for the Committee report.

CHAIRMAN MICHAELS: Okay, we'll revisit this at the end of the meeting, then, and let Russ go ahead.

TC REPORT

MR. RUSS ALLEN: The Shad and River Herring Technical Committee met September 27th and 28th to discuss a variety of issues; mainly, to discuss what Heather just went over as far as the annual reports and the Plan Review Team compliance report.

We then went into discussion of the fishery recovery plans. You should all have a copy of that in your packet, a summary of what happened at the Technical Committee meeting, so I can go through this a little quicker.

I'd like to go through all the states; and then if you have any questions for me or comments, I'd go back to them at that time. We'll move north to south.

Maine was approved. The Committee agreed that Maine's de minimis status precluded them from participating in the ocean-landing stock composition study which is located in Table 3 of the Amendment. We did have a question on whether the MRFSS Survey collected data from fresh water areas.

New Hampshire was approved. Heather had mentioned in her report that just because a state gets a "P" on the matrices as far as the fishing recovery plans or the annual reports, it doesn't mean that they're not approved.

It just means for certain reasons the Technical Committee or the Plan Review Team decided that they were okay even though they couldn't complete that matrix.

And for New Hampshire, lack of spawning stock precluded development of restorations' goals, which they had a "P" in those areas. Since most of their stocks are less than 50 fish, it was pretty obvious.

Massachusetts was approved. De minimis status for the commercial fishery was approved at that time. There needs to be a discussion within the Technical Committee and also with the state of Connecticut on how to evaluate recreational landings in the Connecticut River.

Rhode Island was conditionally approved. A Table 3 error concerning Pawtucket commercial monitoring, but there's no fishery in the Pawtucket, needs to be

addressed. And also the conditional approval involves mixed-stock evaluation in the ocean fishery, which we'll talk about in a little while.

Connecticut was approved. As I mentioned before, there needs to be some continuity in the recreational landings monitoring. And they will also be updating the population target, which was 2 million, but they want to bring it down to a more realistic level for the Connecticut.

New York was approved. There was a 5 percent commercial trip limit for ocean fisheries. If regulation is approved, this will eliminate any bycatch issues that had popped up in New York's plan in the past.

New Jersey and Pennsylvania were approved.

Delaware was conditionally approved pending the mixed-stock evaluation update. Maryland was approved.

Potomac River Fisheries Commission and D.C. were both approved, although there is a question in regards to jurisdiction and cooperation within the Potomac River.

The Technical Committee didn't really know who was doing what inside the Potomac River, and we'd like to get a little bit more qualification to what's happening there.

We also agreed that the Potomac River Fisheries Commission needed to be added to Table 2. And they will also set goals and targets when possible. For the District of Columbia, there was another question in regards to U.S. Fish and Wildlife hatchery operations and who should report the data, and that will be part of the coordination in the Potomac River between D.C. and the Potomac River Fisheries Commission and there was another agency that does something -- okay, the Interstate Commission.

Virginia was conditionally approved. Once again, they had to update their mixed-stock evaluation, which we'll talk about in a little bit. North Carolina was approved.

South Carolina, for the same reason stated before in their annual report, were found out of compliance.

Georgia was approved. And the Technical Committee decided it would be good if the Altamaha River were included in Table 3 since a majority of the commercial occur there.

And Florida was approved with a few questions surrounding the one-fish per hour catch rate as a target.

And just after, that there is a list of 10 items or so, possible FMP addendum items which I don't think I need to discuss each and everyone of them now.

It would be helpful if the Board looked at these, and any future changes to Amendment 1 that the Technical Committee decided that these issues should be addressed in that addendum.

CHAIRMAN MICHAELS: Questions and comments on Russ' presentation on the fishery recovery plans?

David.

MR. CUPKA: Thank you, Mr. Chairman. I have a question on the addenda items or issues that were brought up. Are you suggesting that these be considered and possibly changed if the Board takes action on them as part of a revision to the amendment or just added on as an addendum?

What would be the proper procedure for trying to take action at the Board level on some of these issues that were raised and discussed by the Technical Committee?

MS. STIRRATT: David, to that point, my understanding is that any change at all that would be made to Amendment 1 would need to go through a formal process.

There are a number of processes which are listed in the Charter. The one that comes to mind appropriate to some of the addendum items which are listed here would probably be an addendum as opposed to an emergency rule or an amendment to the Plan.

As you will recognize, when you go through some of these lists or through these itemized lists, they're mostly of an editorial nature. Some of them are of an editorial nature; others are of a substantive nature.

For instance, in Table 2 relative to South Carolina, we suggested that South Carolina only sample three of the river systems instead of the seven or eight or nine that are listed in Table 2.

That's a pretty substantive change. Again, some of these are editorial, others are not, and that's up to the Board to decide. But I would suggest that an addendum is the appropriate mechanism by which to go through.

MR. CUPKA: In that case, Mr. Chairman, I agree, some of them are substantial in nature, and I think they should be addressed. They are, I think, valid reasons for some of the recommendations that were made and what not.

And I think until we actually do something, that a lot of these things are going to be in limbo. So, I would like to make a motion, Mr. Chairman, that staff be instructed to begin preparation of an addendum to the amendment to address these issues that were surfaced through the Technical Committee process.

CHAIRMAN MICHAELS: Do we have a second on this motion?

MR. PERRA: Second.

CHAIRMAN MICHAELS: Discussion? Lew.

MR. FLAGG: Thank you. Yes, I do think it would be appropriate to initiate an addendum. I did note that there is a provision that would remove some requirements for Maine to participate in an ocean-landing stock composition study, and that is an issue for us.

Fairly recently, in May of '98, in fact, our ocean waters, within three miles of the coast, are closed to fishing for American shad except by hook and line. There's a two-fish creel limit.

So, the only landings now that we do get are from the EEZ and it's a bycatch to the groundfish fishery in recent years. It used to be on the order of 90,000 pounds a year, but because of the mesh size increases in the Gulf of Maine, that catch has gone to less than 1,000 pounds.

So, clearly, we don't think that there's a need for that provision, and I'm sure there are others, likewise, that need to be addressed.

CHAIRMAN MICHAELS: I needed just a clarification on the addendum that the staff is supposed to start preparing. Is this with regards to the comments made under the heading, "The Following are the Technical Committee's Recommendations, Comments and Questions to the Management Board", that section which goes through that page and goes to about the top third of the next page, or does that include possible FMP addendum items?

MR. CUPKA: No, what I'm looking at is a report, after it goes through the state compliance, there's a section entitled "Possible FMP Addenda Items." There's no page number for that.

MS. STIRRATT: Just for clarification purposes, I believe that the items that we are discussing right now fall under the "Possible FMP Addendum Items" title.

CHAIRMAN MICHAELS: A.C.

MR. A.C. CARPENTER: One of those items that Heather just referred to says "to decide jurisdictional question regarding the Potomac River and how it should be monitored".

Is that something that needs to be done through an addendum, or is that something that -- I need to know what you want done there before I think you need to wrap yourself around an addendum item.

If it's a simple letter of agreement between the agencies involved, that's one thing, but I need some detail on what specifically is being asked.

MS. STIRRATT: A.C., to that point, I did not draft this particular document, but that particular item that you have mentioned, we are certainly open to any of the Board's suggestions.

If you feel as though that could be addressed in a more appropriate venue or avenue, then we would be open to that. It would go against the current motion as it's listed so you might need to perfect that motion.

MR. CARPENTER: In that case I'd like to withdraw that item from the motion as a friendly amendment.

CHAIRMAN MICHAELS: Russ.

MR. ALLEN: Yes, to help clarify a little bit, A.C., we were just confused as the Technical Committee because

we received the PRFC report and the Plan, and then we did not receive one from D.C. in a timely manner, and it took us a little while to get that in.

There was no representative from D.C. at the meeting, which has been a problem for a while now we didn't have any representative there. And then there was some confusion on which party, the PRFC or D.C. or the Interstate Commission, took care of which part of the river and whether or not monitoring was going to be required of all three states, who was going to be doing it.

Whereas, like on the Delaware River, the DRBC, the Delaware River Basin Commission, is going to coordinate that whole issue, and we know who is going to be sampling where and doing what, and we were just very confused on the Potomac River.

And it's not something that really needs to be done in addendum if you guys have a clear way of having that done so the Technical Committee and even this Board understands what was going on.

MR. CARPENTER: Well, I'm not sure that I can at all speak for the District of Columbia and don't even pretend to, but the District is a separate jurisdiction and it's a topic you may need to take up with the District of Columbia.

It's also a topic that somebody might want to take up with the Fish and Wildlife Service and the Interstate Commission rather than saying that it's PRFC's responsibility to coordinate some kind of an agreement between all of us.

I have absolutely no problem with us being included in Table 2, and that I think was an oversight of the original thing. But this is something that is beyond my control and influence, so I would like to have it removed from this particular motion.

CHAIRMAN MICHAELS: Pete.

MR. JENSEN: It isn't clear to me why we have to do an addendum for these things. I don't know that we've ever done it before, but, Dieter, I would ask you, is it not possible to simply publish these for public comment as technical amendments to the Plan?

It seems ridiculous, to me to put the staff through an addendum for this list of things which are mostly changing tables and identifying how we're going to monitor and who has jurisdiction.

MR. BUSCH: At first glance, it looks like you're correct. These are just editorial-type procedures, as long as the Board agreed with these changes, but I'm not sure. I mean, if you're taking away responsibilities that a state has to implement to be in compliance, I'm not sure, but we certainly will look at the easiest way to do it.

CHAIRMAN MICHAELS: Lew.

MR. FLAGG: Thank you, Mr. Chairman. I do tend to

agree with Pete that I don't think this is a very complicated process. But, by the same token, I think we do need to maintain a paper record. I think that's going to be very important because there are compliance issues involved here.

So I think the process can be fairly abbreviated, but I would hope we would have a paper trail which would have an explanation as to why things were changed as they were because things tend to get lost over time. And I think that would be unfortunate if we don't really make sure that we document those changes and go through the proper procedure to do that.

CHAIRMAN MICHAELS: David.

MR. CUPKA: Thank you, Mr. Chairman. My intent certainly wasn't to make this as difficult as possible. In fact, a simple as we can do it, the better. But, what I was trying to attempt was to put something down on paper that the Board could react to and take an action on so that we know specifically where we stand on these issues.

If there's a simpler way to do it than an addendum, then I'm all for that. I just want to have the Board take action on these things and not just have them linger. I think some of them are fairly substantial and may require some sort of addendum, I don't know.

Maybe what I ought to say is "if necessary" or something as part of that or "to prepare an addendum as necessary." If there are some issues in here that staff feels like we need to do through the addendum process, then fine.

If there's other ones that we could deal with some other way without going through the whole addendum process, then I'm all for that, too. But, I just want to get the Board to take action on these items.

CHAIRMAN MICHAELS: I have never personally seen an addendum to an amendment to an FMP and considering that some of the items are simpler than others. For instance, the one for Georgia seems very simple where it says "a possible addition of the Altamaha River to Table 3" adds another river system to our compliance requirements. Paul.

MR. PERRA: I think we need a good paper trail because there's a lot of changes. It could be quite confusing, whether it's an addendum or not. I mean, that's the normal way we've been doing things now. As long as it's not too long a process, I'd leave it up to the staff to prepare a document which says the changes, bring it before the board. If you want to call it an addendum, that's great. I'd let the staff decide on that. And, David, I think we need to clarify one thing, though. You're the maker of the motion, and I'm the second. Do you agree to dropping the Potomac River out of there? I do also, so that will simplify things.

CHAIRMAN MICHAELS: Dieter.

MR. BUSCH: After re-examining some of these issues, most of them are pretty much items that the Board could address. One exception might be the second from last "clarify target mortality and population goals".

If you talk about just clarification, then it could be done again by the Board and wouldn't necessarily have to be an addendum. If you're making substantial changes to that, in other words, if you're making changes so significantly that you would want to go to the public for input, then we have to follow the more formal procedure.

If the changes are just fine-tunings and clarification of the existing document, then those are more or less editorial-type changes that could be done in-house with staff support and at the pleasure of the Board.

So, most of these probably could be done in-house. If you want something more substantially done than that, then, of course, we have a short version of the addendum that could be followed. And then if it's more substantial and you need public input, then, of course, you have to go through the more formal procedure, including getting the public input.

CHAIRMAN MICHAELS: Paul.

DR. SANDIFER: I had a simple clarification. The motion as stated with the amendment indicates a PRFC Jurisdictional Issue. It should state "Potomac River Jurisdictional Issue" not a PRFC issue.

CHAIRMAN MICHAELS: Dieter, are you suggesting that an addendum might be an appropriate avenue for some but not all of the items listed under this heading, and some other items would have to be handled differently and not be done simply as an in-house addendum?

MR. BUSCH: Not quite. The only one that I think really catches my eye right now is the goals, the second from the last. If that is just a clarification, then I think most of these could be done in-house, maybe all of them.

CHAIRMAN MICHAELS: Susan.

MS. SHIPMAN: I mean, in looking at the Charter, I don't know that we've ever sat down and talked about technical amendments and what's going to constitute a technical amendment as versus what's going to constitute an addendum.

And we're going to be going through Charter revisions tomorrow, and maybe we need to give some thought to that. I'm not sure everything that you're saying in here can be done, technically can.

I think some of it may require an addendum the way the Charter is set up. But, I don't think we need to belabor it here. I just think if y'all want to allow for technical amendments, we may need to consider that in the Charter revisions, because right now there is no such

beast in the Charter.

CHAIRMAN MICHAELS: Paul.

MR. PERRA: And the motion says "if necessary", and I would defer to the Chairman and the staff to make a decision whether it needs to be a written document and what we call it.

I prefer it be called an addendum because then I can find it, be Addendum 1, 2, you know, amendment such and such. But I think we ought to move and just leave it to the Chairman and the staff to decide what to call it.

The main thing is to agree to make the changes.

CHAIRMAN MICHAELS: Heather.

MS. STIRRATT: I have no problem going through those avenues if that's what the Board requests. My only concern is that we will not have a paper trail if we go through some informal process, and I should probably get with Dieter and discuss this.

We have published Amendment 1, and it's out there. If we make these changes and others are not aware of them and there's no documentation saying that Amendment 1 has been updated to any degree, then that could cause some problems. It could create some miscommunication, and that's my only concern.

CHAIRMAN MICHAELS: Dieter.

MR. BUSCH: If you allow the staff to do the work that you're requesting them to do, we can prepare the paper trail by addressing these issues and identifying that no public hearings will be needed, no public consultation, and then present the results at the next Board meeting.

You will have had your paper trail.

CHAIRMAN MICHAELS: I think that's an appropriate way to handle it. I don't have any problems with going that route. Yes, Dieter.

MR. BUSCH: To finalize the comment I was just making, the motion as written would give us that flexibility.

CHAIRMAN MICHAELS: That's what I was just asking.

MR. PERRA: Ask for a show of hands, would you, it would be quicker.

CHAIRMAN MICHAELS: Does anybody want me to read the motion or does everyone have it clearly?

Okay, yes, I will.

The motion is that the staff be instructed, if necessary, to prepare an addendum to the amendment to address the issues raised by the Technical Committee November 2, 1999, regarding possible FMP addendum items, with the exception of the item on Potomac River Jurisdictional Issue.

I'll call a vote on this motion with a show of hands. All in favor of the motion; opposed. The motion carries. I'm going to turn the floor back over to Russ.

MR. ALLEN: Okay, continuing along with the Technical Committee meeting, I'm going to skip the

next section on tagging and we'll come back to that at the end.

The Committee also decided it was time to put together an aging workshop. At this time there was no available ASMFC monies to put together a workshop, but the Delaware River Basin states are planning on doing one December 9th and 10th in the state of Delaware.

Anyone interested in attending that, I believe we can put together 30 or 35 people for that workshop, and we need to know now if anybody wants to attend. So, you could talk to me after the meeting concerning that.

We discussed some bycatch issues where some clarification was needed concerning excessive alosine bycatch and harbor porpoise discussions. We were looking for some clarification on whether or not states with a directed fishery for shad in the ocean also needed to monitor their bycatch fishery in the ocean that was taking place at the same time.

There was no provision in the amendment for that. And in regards to harbor porpoise, there was a concern expressed by Committee members about the process in which NMFS handled the harbor porpoise take reduction matter without getting any technical advice from the ASMFC Shad and River Herring Committee. We don't really know what kind of effect the new regulations are going to have on various stocks up and down the coast. One thing we do know is that there will be larger catches of males and immature fish along the coast.

There will be, on the good side, an escapement of larger shad. And there was also a question on whether Delaware Bay should have been exempted from the mesh restriction since there was no harbor porpoise bycatch documented during the shad season.

We discussed the Delaware River population estimate for 1999, which was under 25,000 fish, by far the lowest on record. Considering 1998 was at 392,000 fish, it was a drastic reduction.

There didn't seem to be any increase in current fisheries, nor were there any new fisheries apparent. The Lehigh River, which is above where the hydroacoustic estimate is for the Delaware, had a slight decline, but it was one that was expected according to the models.

Most datasets showed there was a decrease in catch per unit effort within the Bay and the River, but there were some members of the Committee who thought that maybe 1999 was an anomaly, that for some reason there wasn't any fish showing up, even though the number was extremely low, and there was a need to obtain some groundtruthing of the hydroacoustic estimate, and further restrictions may be warranted if the 2000 run is low also.

We talked about some Stock Assessment Subcommittee's possible needs for getting together

since the last assessment only included data up to 1996.

And I talked before about lack of participation, and the Committee really seemed to consider that we haven't had a few people show up at the last four or five Committee meetings.

Two jurisdictions that really haven't shown up were D.C., as I mentioned before, and NMFS. It would be really prudent to have those people in our conversations. The last thing I want to talk about was that we decided on a protocol for tagging.

You all should have received a letter today to the Management Board from the Technical Committee in regards to the ocean-landing stock composition study recommending that the Board support be sought for the Fish and Wildlife Service to expand existing support for tagging American shad so that tagging requirements in Amendment 1 can be met.

And like I said, we put together a protocol on the number of fish to be tagged, which you have in your packet, what type or tags to use. We were hoping that ASFMC could provide some initial money for tags and tagging guns for this purpose that would be necessary for use by South Carolina and states in the southern area by January 1.

We also decided that it was okay to have joint ventures, sharing of money, resources, whatever, in this tagging program and utilize standard reporting as recommended by the Technical Committee.

If anyone wants to discuss the letter and the content of the letter, I'd be glad to take that now.

CHAIRMAN MICHAELS: Jamie.

DR. JAIME GEIGER: Did the Technical Committee have any estimated costs associated with this effort at all?

MR. ALLEN: Not at this time, no. We were basing the program on what has been done for striped bass and is already set up for striped bass. And sturgeon was also done in the same manner.

I think it was just a matter of having a person or two at the Annapolis office, and then the states would be responsible to get the data there, similar to striped bass, in a software that's useable by the staff at Annapolis.

DR. GEIGER: Certainly, the Fish and Wildlife Service will be more than happy to provide whatever support we can to the existing Maryland Fisheries Resources Office. Again, we're doing that for the striped bass tagging database. We're doing it for sturgeon.

But in order, again, in all due respect, to make a full commitment, I would like at least some preliminary estimates from the Technical Committee on any additional costs that may be forthcoming on this effort. And certainly, again, we'll do the best we can to try to support it to the best of our ability.

MR. ALLEN: It shouldn't take a whole lot to come up with a number at this time, because the process has already been set up because the Fish and Wildlife Service already takes care of New Jersey's tagging and also the Hudson River tagging phone calls, recaps.

CHAIRMAN MICHAELS: Jack.

MR. JACK TRAVELSTEAD: Mr. Chairman, have we moved into Item 7C now with discussion of ocean tagging issues? If we're at that item, I would --

CHAIRMAN MICHAELS: Not officially we haven't. We've sort of gotten into it, but we haven't officially gotten to it in the agenda yet. Jamie.

DR. GEIGER: Mr. Chairman, one more question for the Chairman of the Technical Committee, if I can. Did the Committee have any discussion in terms of their discussion with bycatch issues, about the take of migratory birds in anchored gillnets?

MR. ALLEN: We've discussed that in short spurts in different meetings. We didn't have time at the last meeting to discuss that, nor was it on the agenda. The Technical Committee did not see the presentation that the Board has seen in the past.

I think it would be very helpful if a presentation was done at the next Technical Committee meeting on that subject.

DR. GEIGER: Again, I'd be glad to arrange that. We have the latest information to be presented to the Technical Committee. Just provide me a time and place and we'll make sure that happens. Thank you.

MS. STIRRATT: I just wanted to mention, as we move into the next agenda item, that I have had numerous requests to discuss tagging as it is currently required within Amendment 1. Requests were submitted by both Jack Travelstead, as well as the state of Rhode Island. And I will turn it over to Ron.

CHAIRMAN MICHAELS: Go ahead, Pete.

MR. JENSEN: Do we need to take an action item to approve the recovery plans. I don't think we did that, did we?

CHAIRMAN MICHAELS: Okay, we're going to go ahead and discuss the tagging first, before we address the recovery plans. Roy.

MR. MILLER: Mr. Chairman, are we allowed to discuss the ocean tagging now?

CHAIRMAN MICHAELS: Okay, sure.

MR. MILLER: I have two questions. The term "mixed-stock fishery" seems to be interchangeably used with lower Delaware Bay stocks and ocean stocks. Russ, which are we talking about?

In other words, if the states have to mount a tagging effort, are we talking ocean stocks only or are we talking where mixed-stock assemblages occur in large bays such as Delaware Bay?

MR. ALLEN: According to Table 3 of the

Amendment, it states that certain states -- there were eight states that are required to participate in ocean landings' stock composition study, not mixed-stock.

MR. MILLER: So it is specific to ocean?

MR. ALLEN: According to the Amendment, yes.

MR. MILLER: That leads me to my next question. Can someone refresh my memory why this is an urgent item, considering we are proposing to close the ocean fisheries in five years?

MR. ALLEN: I think we've had this discussion at the last five Board meetings. I went through the minutes yesterday of the last five Board meetings and it came up in every one.

The answer always seems to be that there really wasn't enough information being brought forth to the Technical Committee, to the Board, to the stock assessment people, on the ocean fishery.

And somehow it ended up in Table 3 of the Amendment that we had to participate in this study and that tagging was the best way of determining stock composition throughout the ocean harvest.

Now, I don't know why we have to do it if we're going to phase out the fishery. But I also thought that, reading through the minutes, that it was the consensus among many of the members of the Board that if somewhere down the road you did three or four years of study and it turned out that, well, maybe the ocean fishery wasn't having as large an impact as first thought, then it was time to cut back on that closure; and also on the flip side, if it turned out after three years that it was definitely a major cause of stock problems throughout the East Coast, then maybe after three years there should be a closure instead of waiting the entire five. That's what I got through the minutes, and there were different comments from different members of the Board going both ways on that.

MR. MILLER: Mr. Chairman, I suspect I'm not unique, but this emphasis has put us in a difficult position of regulating the fishery out of existence while at the same time requesting their cooperation in helping tag.

And the two don't work together very well. To make it plain, we're rapidly losing the cooperation of our ocean gillnetters, and it's going to be very difficult to mount a survey with their cooperation when, one, they're subjected to mesh restrictions from the harbor porpoise reduction act; and two, they're going to be legislated out of existence in five years, if you see where I'm going with this. It becomes increasingly hard to imagine how we can do a credible job in an ocean tagging survey.

CHAIRMAN MICHAELS: Jack.

MR. TRAVELSTEAD: I think Russ has adequately described the reasons why we supported going forward with the tagging study. But, the reason I asked this item

to be put on the agenda, in recent months I began to discuss with the Virginia Institute of Marine Science how Virginia might comply with this requirement. They usually handle this type of thing in our state. And, as I began to discuss the tagging program with Dr. Olney and Dr. Hoenig, both at VIMS, they began to raise some serious concerns about what a tagging study may or may not provide us in the way of useful data. I know this subject has been discussed at a number of Board meetings. I know there are some states that don't want to participate in the program. As you know, I have been a proponent of going forward with the tagging study.

At one time I thought it would provide us with very useful information about the intercept fisheries, and that, hopefully, at some point in the future we could use that information to change the Board's mind about a total phaseout of that fishery.

After talking to Dr. Olney and Dr. Hoenig, I am now concerned that a tagging study specifically will not provide us with as valuable information as we once thought.

The problem in the Chesapeake Bay jurisdictions is that in order for a tagging study to be valuable, you must have fisheries ongoing that capture those tagged fish. And as you know, all the Bay jurisdictions are under moratorium, so you will learn nothing.

We will learn nothing about our stocks from a tagging program. With your indulgence, Mr. Chairman, Dr. Olney and Dr. Hoenig have prepared two documents that I'd like to pass around to the Board members. They very briefly identify some of their concerns about a tagging study, and they offer some suggestions to the Board as to other types of studies that might be conducted in the ocean to increase our understanding of what's going on there.

One of the alternate proposals has to do with the micro-chemistry of otoliths, which is a very technical type of work. Some of that work is going on in the state of Virginia.

Simon Thorl at Old Dominion University has done quite a bit of work in that area. And I have a copy of a recent study completed by him on juvenile American shad. I'd like to pass a copy of that to the Board members.

I realize I'm bringing this up at an eleventh hour, but I know that most of the states have concern about going forward with this study, and it just seems to me that we're asking all of the states to expend quite a bit of money and time and effort.

I would rather make sure that we are expending that time and effort and money on a study that will generate good science that can be utilized by this Board. With your indulgence, I would like to ask that Dr. Olney and

Hoenig be given a very brief opportunity to go through the information that I have passed out and share their concerns with you.

I know that there are others on the Technical Committee that do not agree with them, and I know some of them are here, and they, too, should be given an opportunity to speak.

I don't know that the Board can resolve this issue at this meeting. I do recognize that it is a compliance requirement that we must move forward with immediately if we are going to do something, and that presents somewhat of a dilemma.

Perhaps the final conclusion would be to send all of this information back to the Technical Committee for further discussion, but I'll leave that to you, if you'll allow Dr. Olney and Hoenig to just speak briefly.

CHAIRMAN MICHAELS: That'd be fine.

DR. JOHN HOENIG: Good afternoon, members of the Board. I'm Don Hoenig from Virginia Institute of Marine Science. Dr. Olney and I agree that it is important to determine the stock composition of offshore catches if the mixed-stock fisheries are going to continue.

But we don't believe that a tagging study can help; and as Jack indicated, the problem is that you get tag returns from where people are fishing. So I gave a little example there.

I said, supposing we tag 50,000 fish, which I think is a lot of fish, what might we expect to see? And I don't think it's hard to imagine why we could get some fish back from the Hudson River and some from the Connecticut River, but we'd hardly get anything back from the Virginia rivers or from Upper Chesapeake Bay.

And this does not mean that Virginia's fish are immune to capture in the offshore fishery. There could be a serious impact and we just would not see it. Some people suggested, well, what you'd have to do is not just compare the number of tag returns that you get back, but we would have to compare the number of tag returns we got per unit of fishing effort.

And there are several problems with this. The first is that in some states the fisheries are using drift gillnets. In Virginia we're doing monitoring with stake gillnets. There is absolutely no reason to think that a drift gillnet is equivalent to a stake gillnet, and so we wouldn't know how to interpret the data. If we wanted to do a tagging study to get stock composition, what we're really saying is -- and by the way there is a whole other set of studies that have to be done to get equivalents between pound nets and gillnets and stake gillnets and every other kind of fishing gear that is being used for monitoring, and that puts it in a whole different league of ambitious study.

The other thing is that where we have just monitoring fishing, it's not hard to imagine what we're going to get.

We'll get either zero or one or maybe two tagged shad per, say, 300 meters of gillnet.

If we get zero fish with tags in, say, the Rappahannock River, that does not mean that the Rappahannock River is not being caught, the Rappahannock fish are not being caught offshore.

It simply means that our monitoring is so paucity that we haven't a hope of actually seeing it. On the other hand, let's say, for example, from the Hudson River we're getting one tagged fish per 300 meters of gillnet. If by chance we only have 300 meters of gillnet out in the Rappahannock River and we get two tagged fish, we would now be in a position to conclude that they are hammering the Rappahannock River fish at twice the rate that they're doing in the Hudson River.

And it is based on two fish; it's just not reliable. We would never believe that those results are telling us anything useful. So I think that we'd be putting a lot of effort into something that just will not answer the questions that we want to know.

And I think we're better off putting our attention at thinking, well, what could we do? And I think that the natural elemental markers in the otoliths of the shad would be our best bet.

Simon Thorpe had good results when he tried it on fish collected in 1994. Since then the methodology has gotten even better, so we have even better chances of discriminating among the stocks.

The way it would work is you could collect fish from the spawning runs in each river and look at the core of the otoliths to see what's the chemical composition. So, if you have Rappahannock River fish or Hudson River fish and you look at the core, you now know what the water chemistry causes the otoliths to be like.

Then when you get fish from offshore, you just have to look at the core of those otoliths and match it up to the pattern that you're seeing from the different rivers.

Now it's possible that that chemical signature will vary from year to year, but we can deal with that, too.

Because, when we go to the spawning grounds and we collect adult fish, we'll get three-, four-, five-, six-year olds. For each age group we can look at what's the composition of the core of the otoliths.

If it's not varying very much from year to year, that makes our lives simpler. If it does vary from year to year, but it's still river-distinctive, then all we have to do when we take our samples from the offshore is look at the cores of the otoliths and refer to reference material of the proper age.

So I think that there's every reason to think that this approach can work, and I think we're better off putting our attention into new ideas with promise than into

something that just can't work.

If the Board does not agree with us and says, no, we want to stick with the tagging, then I would say that since we have a controversy, we ought to have an expert panel review it.

They ought to issue a report that can be circulated and reviewed. I wouldn't want to go ahead with a tagging study, my personal opinion, given these concerns that have been raised.

I think that for the elemental composition of the otoliths you have your choice, you can go full-blown right off if it's important. Otherwise, you can do a pilot study where we collect otoliths from all the rivers and see what is our ability to distinguish the otoliths from different rivers.

And we can try that out on adult fish and have that result within a year. Thank you.

CHAIRMAN MICHAELS: Questions or comments for Dr. Hoenig?

MR. TRAVELSTEAD: Let me just make one final remark before you get into the questioning. In case there are some who think that this whole process might be out of order, I would only point out that the current amendment does contain provisions where the Management Board on an annual basis can institute changes to this mixed-stock contribution survey under the provisions of adaptive measurement.

So the Board very clearly under the provisions of the Amendment does have the ability to change what we dictate to the state.

CHAIRMAN MICHAELS: Roy Williams, you had your hand up first.

MR. WILLIAMS: I'll pass.

CHAIRMAN MICHAELS: Okay, Russ.

MR. ALLEN: Well, first of all, from the Technical Committee's viewpoint, we have never analyzed Simon's work, for one, and we're not real sure how good it would really be.

Yes, it's nice. There's a nice little paper right here, and Dr. Hoenig gave a nice little report, but the Technical Committee has never seen this procedure done, never discussed it; neither did the Stock Assessment Committee.

And I think that would be, first off, necessary before the Board makes any decision. And the second thing is Virginia has already submitted a recovery plan that the Technical Committee has seen and conditionally approved that talked about a tagging program.

And this is a whole new plan that they might be submitting or thinking about, and that would also have to go before the Technical Committee, I would think.

CHAIRMAN MICHAELS: Preston.

MR. PRESTON PATE, JR.: Thank you, Mr.

Chairman. When this plan came before the Policy

Committee at our annual meeting last year, I put forth a motion not to approve it on these very grounds. I felt like that the whole array of monitoring requirements associated with this plan were extraordinarily onerous for the amount of return that we were going to get for our efforts, and the ocean tagging program was paramount in my mind when I made that motion.

It died for lack of a second. I feel somewhat vindicated now to hear that there was a good reason for having that motion on the floor a year ago even though I didn't elaborate on what those reasons were to the extent that they have today.

But there are two issues. One is whether or not what we're getting for our investment on the tagging program is cost effective and contributes to the science and the understanding of this stock.

And the other is whether or not what's being suggested to replace that tagging study has merit. And I didn't hear the Technical Committee Chairman take issue with the former of those, although he noted perhaps the short-comings of the second.

So I'm certainly in favor at this point of the Board giving serious consideration to making some adjustments to the compliance requirements on the tagging phase.

I feel like we can put our efforts into collecting information that's going to be much more cost effective and potentially much more meaningful for the management of this stock than tagging fish in the ocean.

CHAIRMAN MICHAELS: David, then Jamie, then Paul.

MR. CUPKA: Thank you, Mr. Chairman. Yes, I've had a concern all along about the cost of this and what we're going to get out of it, especially in light of all the other monitoring requirements we're imposing on ourselves.

I would be curious to maybe ask if there's any indication on how much something like this might cost relative to an ocean tagging study because I can tell you the ocean tagging study is not going to be cheap. It's going to be labor-intensive.

If there's any way we can do that to free up some staff time and get some good results, I would be in favor of that. I was just curious if you have any idea what the cost of something like this might be if it were to be an effective method to get some of these answers compared to what we're looking at with a tagging program.

Would there be any cost savings involved if we were to use an approach like this versus the ocean tagging study?

CHAIRMAN MICHAELS: I'll just go ahead and let Jack go first in answer to that question.

MR. TRAVELSTEAD: We do not have any type of per-fish cost to conduct this type of study here with us today, but I think that is something that certainly could be developed in a relatively short period of time.

Dr. Thorl at ODU has done these types of studies on several species, and I think he could provide that. I think that's the kind of information that the Technical Committee would need to look at if we ask them to compare this type of study with the tagging study. We would certainly seek his support in providing that information.

CHAIRMAN MICHAELS: Jamie.

DR. GEIGER: Mr. Chairman, I think that the most appropriate route would be to refer this to our Technical Committee and have them come forward to the Board with a recommendation on where we need to go from here.

I would certainly like it completely vetted out by the Technical Committee, both the pros and cons of any technique that can give us the best available science to make better management decisions. Thank you.

CHAIRMAN MICHAELS: Paul Perra.

MR. PERRA: Yes, I think we need to have this referred to the Technical Committee. We can't make a decision here. We've got a Technical Committee; it's a technical issue. Let's refer it to them.

But I am concerned when I heard the discussion about where the tagging needs to take place and we excluded Delaware Bay. I think, then, what we're doing is concentrating our tagging in fisheries that we are tending to wind down or get rid of and not addressing the mixed-stock fisheries that are left.

So, what I would like is to refer this issue to the Technical Committee with a little broader request that they revisit what we need to do to understand what's going on with the mixed-stock fisheries that would be left after the ocean stock fisheries are phased out.

I mean, if we want to undo tagging on those as we've phased them out, well, that's fine, too, but I don't think we should exclude Delaware Bay. It's a major area, and we know there are other stocks in there.

And there may be a couple of other areas where we have mixed-stock fisheries. And in the long run, if we're focusing on trying to manage the stocks in our rivers, in the long run that's where our problems are going to crop up.

CHAIRMAN MICHAELS: I'm going to let Heather and Jack and then I'll further address the Board's questions.

MS. STIRRATT: To this discussion, I would simply like to call the Board's attention to the fact that we are under the gun here in terms of time. According to

Amendment 1, the mixed-stock contribution surveys required section states that this tagging study must be initiated beginning in the Year 2000.

That's coming up fairly soon. A number of the states, in fact all of the states, have submitted their fishing recovery plans with some type of an outline as to how they are going to start to implement this requirement. It does take some time, and it is costly in terms of personnel, resources and otherwise. I would simply ask that the Board consider these time limitations in the request that you may make today.

CHAIRMAN MICHAELS: Roy Miller.

MR. MILLER: Thank you, Mr. Chairman. I think I'm ready for a motion in this regard. What I'd like to move is that the Board defer implementation of the ocean tagging study as outlined in the addendum until the Technical Committee has had an opportunity to review all available information on it to include the practicality and feasibility of other methods of ocean stock evaluation such as natural genetic markers, and to return a recommendation to this Board at the Board's next meeting.

MR. PATE: Second.

CHAIRMAN MICHAELS: Second by Preston.

CHAIRMAN MICHAELS: Roy, do you have that written down, I hope? Paul.

MR. PERRA: While they're writing that down, perhaps Roy could clarify whether his intent is to include Delaware Bay in the motion?

CHAIRMAN MICHAELS: I would entertain some discussion in that regard; and certainly, I wouldn't presume to say Delaware Bay is the only place on the East Coast where mixed-stock fisheries occur other than the ocean.

If you're going to do that, I would suggest that it be mixed-stock fisheries and not single out Delaware Bay as the only one.

MR. PERRA: And we'd leave it to the Technical Committee to give us advice on the mixed-stock fishery? I'd prefer the language say "mixed-stock fisheries", because that's really what we're interested in. I'd be much more comfortable if it said "mixed-stock fisheries".

CHAIRMAN MICHAELS: Paul.

DR. SANDIFER: Thank you, Mr. Chairman. I think I'm in favor of this motion. I've got to understand it fully. I do appreciate very much Virginia's bringing this to our attention, Dr. Olney and Dr. Hoenig's presentation.

I would urge that the Technical Committee, if this motion passes, that the Technical Committee pay very close attention to the conclusions and recommendations in this handout, specifically to evaluate the first conclusion from Drs. Olney and Hoenig that the

offshore tagging program would not satisfactorily address the questions posed.

That is their conclusion, but I take it from the standpoint of what's already been through the Technical Committee process, that the Technical Committee should consider that an hypothesis and give us feedback on it. Secondly, I believe that any process that we are about, any methodology that we are about to use to do stock assessments, should be subjected to peer review. So regardless of whether we ultimately decide on an offshore tagging program or something such as these markers, elemental analysis markers as suggested here by these two imminent scientists, that also should require peer review.

In other words, whatever the methodology that comes back recommended by the Technical Committee should be subjected to peer review at the appropriate time to be sure we are getting the best results we can with the resources we have available. Thank you.

CHAIRMAN MICHAELS: First of all, Heather has another comment on the timing of this.

MS. STIRRATT: It appears that if this motion should move forward, that we would also need to have some type of an action on the Board level relative to the implementation dates which are listed on page 63 of the Plan.

According to the Plan, all states must have an approved fishing recovery plan by January 1, 2000, in order to fully implement Amendment 1. So if this moves forward, that would certainly affect that implementation date being that the fishing recovery plans as they have now been submitted contain tagging protocols.

CHAIRMAN MICHAELS: Roy.

MR. MILLER: Mr. Chair, in response to Heather's comment, it was not my intention to delay implementation of Amendment 1, but simply to defer that aspect, this particular aspect of Amendment 1 implementation.

MS. STIRRATT: Then I would simply ask direction from the Board, should this go through, as to what you all feel is the appropriate action relative to approving fishery management plans until we make a decision as to what mechanism you would like to use.

CHAIRMAN MICHAELS: I have a hand up in the back.

MR. BILL McDONALD: My name is Bill McDonald. I'm the Marine Resources Director at the Island Institute in Rockland, Maine. I'll make my comments brief and then give additional information to the Technical Committee members, if you'd like.

But I just want to point out that the otoliths study is a technique being used by the National Marine Fisheries Service Northeast Science Center in Woods Hole currently for studying cod spawning and origins, and

basically the same technique described, the inner otoliths.

And Mike Sissonwine is the Director of the Northeast Science Center and Jay Barnett is the biologist working there. So, I offer that as neither for nor against what's before you, but I think there are some techniques out there that ought to be investigated.

CHAIRMAN MICHAELS: Thank you. Russ.

MR. ALLEN: Yes, I just want to comment. I mean, I've heard a lot of things about all of a sudden, just because someone came in and presented this paper, we've just nixed tagging and obtaining some of the best data, I think, we can possibly get over maybe the next year or two.

We're not just going to get stock composition of the ocean fishery with this. We're going to determine some survival estimates and things of that nature over a three-year period. The argument that's starting now defers any information being taken next year.

Now, this Board has voted to eliminate a fishery, and it just bothers me that you don't want to obtain any information on the fishery you're eliminating. I think that's not the right way to go with this.

I think we should be tagging in the ocean in 2000. And if this method is determined to be better than tagging, well, that's fine. You can have a pilot study where you're doing two different things on the same harvest in the ocean. There's a lot of different things you could do.

But from what I'm seeing here is you're determining not to bother to get any information out of the ocean harvest for next year.

CHAIRMAN MICHAELS: Jamie.

MR. GEIGER: I'm still somewhat concerned that we have not addressed Paul's comment in terms of mixed-stock fisheries. Again, the overall concern was the implication of some of these mixed-stock fisheries being impacted by the ocean intercept fishery, and certainly impacting million-dollar restoration projects that numerous states are undertaking along the Atlantic coast.

I would like some clarification from Roy. Again, is indeed the intention to basically look at mixed-stock fisheries? Is that what we're really concerned here?

CHAIRMAN MICHAELS: Roy.

MR. MILLER: It is a concern, yes, so if you were to substitute "mixed-stock fisheries" for the words "oceans" in that motion, perhaps that would address Mr. Perra's and Dr. Geiger's concern.

DR. GEIGER: Certainly I would offer that as a friendly amendment.

CHAIRMAN MICHAELS: I just need a clarification of where you want to substitute the wording.

MR. MILLER: It would be not under the first "ocean"

but the second time "ocean" appears.

CHAIRMAN MICHAELS: The expected benefits of? MR. MILLER: Mixed stock tagging, and the third time "ocean" appears as well.

CHAIRMAN MICHAELS: Jack.

MR. TRAVELSTEAD: Just to Russ' last comment, I don't take this motion to understand that the Board has already terminated the idea that we're going to do a tagging study. All we're asking for is a thorough analysis of that and other methodologies. And, in fact, the conclusion may be that the best thing to do is a tagging study, but right now there's enough doubt being expressed that we want a further evaluation.

One suggested change to the motion where it uses the words "use or natural genetic markers", actually the methodology that we're interested in does not concern genetic markers but rather otoliths micro-chemistry analysis.

MR. MILLER: I'm sorry, Jack, you're right. I think the term he used was "natural elemental markers."

MR. TRAVELSTEAD: Yes, I think that would be more appropriate. The only other comment I would have is to go back to Dr. Sandifer's earlier comments requesting some type of peer review of whatever final decision is made.

And I don't see that in the motion. I don't know if it's necessary to be in the motion, but I do agree with his request that whatever is decided should undergo some type of peer review.

CHAIRMAN MICHAELS: David.

MR. DAVID BORDEN: Thank you, Mr. Chairman. Jack actually just made one of the points that I was going to make. One of my concerns -- I intend to vote for the motion, so everyone is clear.

I think that enough questions have been raised that should be addressed in a more independent manner that I think we should go forward with the suggested strategy.

The one concern I have is this issue of a peer review. If we do a formal peer review, that takes usually that takes a long period of time to set up. And I guess I'd ask the staff if we follow the normal peer review process, when will we get a result?

MR. BUSCH: As you have heard from Dr. Kline a number of times, after the products are in to be reviewed, she would have to find the participants in this process. So you're talking about at least 60 to 90 days after we have the product. And that's fast-tracking it, and, of course, we didn't budget this either.

MR. BORDEN: Yes, just a follow up. My suggestion is that we ask for a full technical review of this issue with any scientists that want to participate in the deliberations and have that come back to us.

If there are differences of opinion, identify what the

pros and the cons of the different strategies are. And then at some point at our next meeting we would basically be put in the position of either formally delaying the tagging requirement or sending the report out for additional review. I have not gotten into some of the Rhode Island reservations about this whole program, but this strategy would address many of the concerns that Dick Sisson has raised in his letter to the Commission.

And I would also point out the alternatives that these two scientists have brought together would be much easier for the state of Rhode Island to comply with. We would be very happy to do tagging in the producer areas. We would also be very happy to go collect specimens on some of the intercept fisheries so that they could look at otoliths and so forth.

But the requirement to actually go out and do a tagging study in the ocean intercept fishery for the state of Rhode Island is simply not going to get done. We don't have the staff to do that type of thing. So, I think this is a reasonable alternative. Thank you.

CHAIRMAN MICHAELS: Russ.

MR. ALLEN: Two things. One was for Paul, but he already left, and that was concerning mixed stocks. I mean, we've been tagging in Delaware Bay, New Jersey has for the last five years. So I think that's pretty much taken care of as far as what he was suggesting.

But, I really have a concern on the timeframe of this. We're talking three or four months easily for this to be implemented, and at that time South Carolina's fishery has already started as has North Carolina's, and you're starting to come up the coast.

And I just think we're missing next year with this. And I don't care how many times you tell me that. If we're talking about the Technical Committee convening some time in December and then taking the time to review this method of analysis and then sending it out for peer review, I don't think you're going to implement this until March or April.

So I think you have to decide whether you want to start this year or defer it even to next year. I don't even know if the Technical Committee will understand this by December.

CHAIRMAN MICHAELS: Bruce.

MR. FREEMAN: The comments that Russ made, I can tell you right now, Russ, you're not going even get it until January because there's no money to meet to the end of the year. So, forget December.

And what it appears is that this delay may completely eliminate any tagging that would occur in the Year 2000. You indicated, Russ, however, there's other advantages that you would gain from the tagging, mentioning mortality estimates and so forth.

Would you care to elaborate on that? It seems that

we're reaching a point now where we're going to have to second guess from the technical side what is best to do. And I feel very uncomfortable about this.

MR. ALLEN: Well, many of the Board members here on shad and river herring were also on the Striped Bass Board, and they know what advantages we've come through in the last 10 or 15 years from striped bass tagging.

I mean, we've produced F estimates for the whole coast as far as the striped bass stocks. Now, yes, a lot of that depends on fishing. But the new requirements in this amendment on in-river fishery monitoring by individual states will give us an opportunity.

I mean, I understand that there's some reporting rates that can be different between researchers and commercial or recreational fishermen and things of that nature. We don't know what you can get out of a tagging program yet for shad.

We know some things from dealing with striped bass and Atlantic sturgeon and other species that came through tagging experiments. And, yes, this may be the best way to go down the road to determine that.

But at this time we know that tagging is the best way to go as far as the data we have in front of us right now.

And that's why it was in the amendment.

And to just at the last minute, say, oh, we've decided not to do it kind of bothers me. Now, if there's anybody else that wants to talk about the advantages of tagging, I'd appreciate it because there are other advantages.

We've already produced survival estimates on the Hudson stock and the Delaware Bay mixed stocks that are pretty much exactly the same, which kind of surprised us because one is a mixed-stock fishery and the other is on a producer waters.

And these are the kind of things that can be determined from doing this tagging. It's not just a composition study for a fishery that's going to be phased out.

MR. FREEMAN: Mr. Chairman, it seems that what we're asking the Technical Committee to do is do a thorough review, but look at the time sequence. They're not going to even begin this review until at least January.

If there's questions that need to be answered by the Technical Committee, it's going to take additional time.

And yet they're going to have to do this and get back to us the second week of February when the Board meets again.

And I have to feel uncomfortable that all this is going to happen that quickly. And in addition to that, any efforts that may be being developed for tagging this year will probably be lost.

And what appears to me, we're simply going to lose a year. We will not be successful at doing anything for the Year 2000. If we decide that, indeed, the use of

different inorganic chemicals is useful through the otolith technique, it appears that at best you'll have a pilot survey and even perhaps a halfhearted pilot survey.

This may now lead into a two-year delay. I just have concerns about if we're interested in getting this information. I'm not sure taking action on this motion is going to improve it. It's going to delay it.

CHAIRMAN MICHAELS: Kathy.

MS. KATHRYN HATTALA: I'm Kathy Hattala from the New York State DEC on the Shad Technical Committee. I just wanted to elaborate on Mr. Freeman's question and Russ' response.

When we initiated tagging in the Hudson in 1995, Russ also started doing that. And what we have learned from striped bass, like as he just mentioned, we do produce annual survival estimates from the shad tagging that has occurred from the past five years.

Those estimates have now called into question some of the mortality rates generated by Dr. Crecco and the coastwide assessment. Continuation of tagging on the coast would assure us of a time series and add to what we currently know on survival estimates in American shad in both the mixed stock and in the Hudson.

As Russ said, survival estimates are now about 0.23, which is a Z of about 1.3, somewhere in that nature.

They had been constant over the last five years. If we initiated tagging this winter, you need at least a minimum of three years of tagging to generate a reasonable estimate of survival using the Mark software.

This is the same, exact software that is being used to generate the striped bass tagging survival estimates that are used as groundtruth for the VPA. As they said, it will serve to either support continued assessment of mortality rates that are currently occurring on shad stocks throughout the coast, whether it be within a specific spawning river such as the Hudson or on a mixed-stock fishery as what occurs in lower Delaware Bay.

CHAIRMAN MICHAELS: Mr. Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. New York has talked about this already, and listening to Kathy and Gordon, we're not going to support this. Here's another issue where we've come a long way since October of '98 when Amendment 1 was adopted. If we go back and look at why that Amendment was adopted, whether we agree with all the contents of it or not is not the issue.

We discussed it for a year and a half, whatever it happens to be. We are now at a deadline time. It's not money. It's time for the Technical Committee, time for this study to be evaluated. It's time for a peer review. It's time to get back to the Board.

We're talking about not one meeting. We're probably talking about six months minimum; and, again, the delay of implementing this for two or three years. I mean, sooner or later we've got to bite the bullet and be practical.

Why was this amendment put in place? I'll read it right here, "As a result, Amendment 1 was adopted in October of 1998 to do the following: it focuses on American shad regulations and monitoring programs, but also requires states to initiate fishery-dependent and independent monitoring programs for river herring and hickory shad in addition to current fishery independent programs. Such monitoring programs will seek to improve data collection and stock assessment capabilities."

This may be difficult for us to accept. This motion tagging program sounds like it's in conflict with the fact that we are trying to eliminate the ocean intercept fishery.

The fact of the matter is we committed to go down this road to do something; and until the ocean fishery is eliminated, I think we have responsibility not only to the fishery but to the public and the user groups that we represent to continue on with what we said we were going to do in this Plan.

And so, my understanding is New York is not going to support this and would look for continuation and implement the tagging program that we've talked about doing and get it going in January. Thank you, Mr. Chairman.

MR. JOHN CONNELL: I think it's important that the issue that Jack brought up be followed through, but maybe not through this method. We really didn't have enough scientific evidence to justify closing the ocean intercept fishery.

I think we did somewhat make a commitment that within three years we would have enough scientific information to make a decision whether we should close it or consider leaving it open.

I'm not opposed to what Jack brings up. I think we should go ahead with the tagging program. I think we should refer this to the Technical Committee for their review, for peer review.

If in fact they approve it, then I would recommend the continuation of the tagging program but somehow building in a pilot program in the Year 2001, and then making comparisons with the results of these two programs to try by 2003 to come up with enough information so that this Management Board could finalize a decision on whether or not this fishery should remain open or should be closed.

CHAIRMAN MICHAELS: Lew.

MR. FLAGG: As we've been on record in the past, we have some very grave concerns about the ocean

intercept fishery and the mixed-stock fisheries, for that matter, because of the fact that many states, as Jamie Geiger had mentioned earlier, have invested millions of dollars.

I can tell you that in Maine we've required utilities to build \$15 million worth of fish passages. This is money that's coming out of rate-payers' pockets. We have an obligation to those folks to do whatever we can to protect these emerging stocks that we have.

We are having some limited success. We have some really grave concerns about the inability to control mixed-stock fisheries and to protect those weak stocks that need protection in order to rebuild adequately.

So I think that going down this road is a dangerous one, and I'm very concerned about the fact that whether you do tagging studies or other types of studies, the fish that are going to show up in these are going to be the robust stocks.

They're not going to be those stocks. There's going to be a very poor representation of the stocks that are in very poor shape. And I'm very concerned about backsliding on protection of these emerging populations that we're trying to restore at very great cost to our citizens.

CHAIRMAN MICHAELS: Dick.

MR. DICK SNYDER: Yes, from Pennsylvania I have to echo many of the points Lew made. I would like to see this technique addressed as a pilot effort and at the same time taking advantage of at least for two stocks that have a lot of hatchery marked otoliths, taking advantage of that possibility to gain some insights. We have literally millions of fish out there that are already marked. But I share the concern that we're sliding backwards, and I hate to lose the momentum, so Pennsylvania will vote against this motion.

CHAIRMAN MICHAELS: Russ.

MR. ALLEN: Yes, thank you, Mr. Chairman. A comment on something that Lew had mentioned back in Jekyll Island, I believe, in regards to restoration in the Northeast where most of the fish are taken from the Connecticut as brood stock and released in these different river systems, if these fish are taking the following year out on the coast, their otolith chemistry, micro-chemistry is pretty much going to say it's a Connecticut fish and not a fish from Maine or New Hampshire or wherever in the Northeast.

And you had mentioned that in regards to DNA analysis, I believe, back then. And this is a very similar issue that I didn't think to mention before, but I'm glad you said that then. It reminded me.

CHAIRMAN MICHAELS: Byron.

MR. BYRON YOUNG: Thank you, Mr. Chairman. I'm concerned, as Dick and Lew have stated, about several things here. The timing of this is awful. I think

rather than rehash all of those things, one thing I would suggest that we do this spring is if we're going to pursue this otolith issue, that we begin the collections this spring as well on all the spawning grounds so we have that database in hand if we decide to go that route.

I mean, it's another thing for us to do, but I would certainly urge us to begin some tagging programs, if we can, and make those baseline collections so that we can assess these techniques and not lose more time. We're losing all kinds of time every time we turn around.

Thank you.

CHAIRMAN MICHAELS: John.

MR. CONNELL: Yes, I'd like to offer what I discussed earlier as a substitute motion, that we proceed with the tagging program for the Year 2000, that we refer to the Technical Committee this new approach for it's review and for peer review for consideration of a pilot program in the Year 2001. I think that's what I'm looking for.

MR. YOUNG: Second

CHAIRMAN MICHAELS: Discussion on the substitute motion?

MR. BORDEN: Call the question.

MR. NELSON: Call the question, Mr. Chairman.

CHAIRMAN MICHAELS: Yes, I'm going to call the question on this. We're going to do this by roll call vote, please. Caucus first. Again, too, you don't like the substitute motion?

MS. AMY SCHICK: We need to make sure the motion is written up correctly. Give me a minute.

MR. CONNELL: That's correct. Byron, do you have any --

MR. YOUNG: John, I would suggest we collect the otoliths in the Year 2000 as well. That's where I was coming from, not to wait until 2001 to collect the otoliths, but to proceed with the tagging program in 2000 and collect otoliths from all the spawning rivers in the Year 2000 in the event we want to pursue this method.

MR. CONNELL: Okay, I'll accept that. Thank you.

CHAIRMAN MICHAELS: Come to the microphone, please.

MS. HATTALA: For Simon Thorval's method, they collected not otoliths from the spawners but otoliths from the young of the year that are produced within the system. This is how they did it for the Hudson.

This technique has never been tested on adults. We don't know how well the discriminatory nature will happen on a fish that's five or six years old because you have to focus in on the origin of the otolith.

I agree with your attempt to do a pilot study. Instead of otoliths on the spawning adult, though, however, it should be otoliths on young of the year produced in the system.

CHAIRMAN MICHAELS: Jack.
MR. TRAVELSTEAD: I would just note in Dr. Thoral's paper that one of his conclusions is that the techniques will work on adult otoliths.
CHAIRMAN MICHAELS: Okay, David.
MR. BORDEN: Thank you, Mr. Chairman. I just want to raise the same point I raised before. Rhode Island has concerns that are related to this, but I think really somewhat separate from this.
And what I would ask is the indulgence of the Board to discuss that as a separate item so that I don't have to raise all those issues right now and make an issue that's already quite confusing more confusing.
MR. CONNELL: As Pat would say, can I call the question?
CHAIRMAN MICHAELS: Has the wording been finalized on the substitute motion? Can I state it? The substitute motion states: "Proceed with tagging program and collect otoliths for Year 2000, refer to Technical Committee the otolith micro-chemistry approach for review and subsequent peer review, and consideration of a pilot program in 2001."
MR. TRAVELSTEAD: Isn't this a substitute motion?
CHAIRMAN MICHAELS: Yes, this is a substitute motion we'll be voting on.
MS. STIRRATT: Amy, perhaps you could say "move to substitute the previous motion."
MR. CONNELL: We'd entertain any comment from the Technical people, if there's any. Okay, then I call the question.
CHAIRMAN MICHAELS: Okay, the question has been called. The motion's been stated: "Move to substitute for the previous motion: proceed with tagging program and collect otoliths for year 2000, refer to Technical Committee the otolith micro-chemistry approach for review and subsequent peer review and consideration of a pilot program in 2000."
With that I'll allow the states to caucus. Okay.
MS. STIRRATT: Maine.
MAINE: No.
MS. STIRRATT: New Hampshire.
NEW HAMPSHIRE: Yes.
MS. STIRRATT: Massachusetts.
MASSACHUSETTS: Yes.
MS. STIRRATT: Rhode Island.
RHODE ISLAND: Abstain.
MS. STIRRATT: Connecticut.
CONNECTICUT: Yes.
MS. STIRRATT: New York.
NEW YORK: Yes.
MS. STIRRATT: New Jersey.
NEW JERSEY: Yes.
MS. STIRRATT: Pennsylvania.
PENNSYLVANIA: Yes.

MS. STIRRATT: Delaware.
DELAWARE: No.
MS. STIRRATT: Maryland.
MARYLAND: No.
MS. STIRRATT: Potomac River Fisheries Commission.
POTOMAC RIVER FISHERIES COMMISSION: No.
MS. STIRRATT: D.C. (No response) Virginia.
VIRGINIA: No.
MS. STIRRATT: North Carolina.
NORTH CAROLINA: No.
MS. STIRRATT: South Carolina.
SOUTH CAROLINA: No.
MS. STIRRATT: Georgia.
GEORGIA: Abstain.
MS. STIRRATT: Florida.
FLORIDA: Yes.
MS. STIRRATT: NMFS.
NATIONAL MARINE FISHERIES SERVICE: Yes.
MS. STIRRATT: U.S. Fish and Wildlife Service.
U.S. FISH AND WILDLIFE SERVICE: Yes.
MS. STIRRATT: We have nine in favor, seven opposed and two abstentions.
CHAIRMAN MICHAELS: So the substitute motion carries, so it's now the main motion. I suppose if there's more debate, now's the time. Hearing none I'll call the question on what's now the main motion.
MS. STIRRATT: Okay, we'll go through a roll call again.
CHAIRMAN MICHAELS: The substitute motion that just carried is the main motion that we're now voting. That's it
MR. PERRA: We voted to substitute. Now we have to vote on whether we want it.
MS. STIRRATT: We'll call the roll now for the vote. The state of Maine.
MR. FLAGG: Could I have a clarification? What are we voting on?
CHAIRMAN MICHAELS: To my understanding, the substitute motion carried, which makes it the main motion, which is now being voted on.
MR. PATE: But we just voted on it.
MR. NELSON: Point of order, Mr. Chairman.
CHAIRMAN MICHAELS: John.
MR. NELSON: I think, though, if we have a substitute motion and that is carried, that that was the motion. If you have a modified motion and you vote that in, then you vote on the main motion. But I think if you have a substitute motion, that there is no further vote if it carried.
EXECUTIVE DIRECTOR JOHN H. DUNNIGAN: Under Robert's Rules a motion to substitute is simply a form of a motion to amend. Of itself, it doesn't become the main motion until it's passed.

Once it's passed, it becomes the main motion and is on the floor for discussion and further amendment. Now you remember yesterday when John and I disagreed, he was right. But on this one I'm right. (Laughter)

MR. PERRA: Call the question.

CHAIRMAN MICHAELS: Okay, Heather will call the roll.

MS. STIRRATT: Maine.

MAINE: No.

MS. STIRRATT: New Hampshire.

NEW HAMPSHIRE: Yes.

MS. STIRRATT: Massachusetts.

MASSACHUSETTS: Yes.

MS. STIRRATT: Rhode Island.

RHODE ISLAND: Abstain.

MS. STIRRATT: Connecticut.

CONNECTICUT: Yes.

MS. STIRRATT: New York.

NEW YORK: Yes.

MS. STIRRATT: New Jersey.

NEW JERSEY: Yes.

MS. STIRRATT: Pennsylvania.

PENNSYLVANIA: Yes.

MS. STIRRATT: Delaware.

DELAWARE: No.

MS. STIRRATT: Maryland.

MARYLAND: No.

MS. STIRRATT: Potomac River Fisheries Commission.

POTOMAC RIVER FISHERIES COMMISSION: No.

MS. STIRRATT: D.C. (No response) Virginia.

VIRGINIA: No.

MS. STIRRATT: North Carolina.

NORTH CAROLINA: No.

MS. STIRRATT: South Carolina.

SOUTH CAROLINA: No.

MS. STIRRATT: Georgia.

GEORGIA: Abstain.

MS. STIRRATT: Florida.

FLORIDA: Yes.

MS. STIRRATT: NMFS.

NATIONAL MARINE FISHERIES SERVICE: Yes.

MS. STIRRATT: U.S. Fish and Wildlife Service.

U.S. FISH AND WILDLIFE SERVICE: Yes.

MS. STIRRATT: We have nine votes in favor, seven votes opposed and two abstentions.

CHAIRMAN MICHAELS: The motion carries. Yes, Paul.

DR. SANDIFER: Mr. Chairman, I feel compelled to point out that in a states' organization, the deciding votes were just cast twice by federal agencies.

MR. PERRA: We tend to be useful sometimes, broke the gridlock.

CHAIRMAN MICHAELS: Jack.

MR. TRAVELSTEAD: The motion having passed, I'm wondering now how many otoliths we need to collect? I assume we'll get some advice from the Technical Committee on that, and I'm wondering if we can collect the otoliths and then tag those fish.

CHAIRMAN MICHAELS: That might be hard to do. No, you're right, Jack, that's the logical thing to do is go ahead and get that information from the Technical Committee.

We're at the point now where we're going to be handling the action item regarding the approval of state fishing recovery plans. I'll open that up to discussion. Heather.

MS. STIRRATT: Just to revisit Russ' summary of the Technical Committee meeting, you should notice that the Technical Committee has actually made recommendations to the Management Board of approval and disapproval.

There were three states, because we wanted to discuss these tagging issues at this meeting, that were conditionally approved.

In other words, at the last Technical Committee meeting, the Technical Committee actually developed a protocol by which the states would have to say that they would be willing to adapt to, if you will.

The state of Rhode Island, we had some questions about their fishing recovery plan relative to these tagging issues, as well as Delaware and Virginia.

I guess at this point staff, as well as the Technical Committee, needs some direction from the Management Board as to how you all would like to approach these conditionally approved plans in the meantime.

As I read earlier, according to Amendment 1, these plans need to be approved by January 1, 2000, in order to fully implement Amendment 1. Therefore, we would need to take some kind of action based upon the recommendations of the Technical Committee in this regard.

CHAIRMAN MICHAELS: Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. To speed up the process a little bit, I jumped in before John got in on this, I'd like to make a motion that we accept or the Board accept those states identified as meeting the requirements which include: Maine, New Hampshire, New York, Delaware, Washington, Virginia, and Georgia.

Who did I leave out that was already done? I went through this list. Do you have a different list? What list are you using?

MS. STIRRATT: It's right after that one, Pat, in your book.

MR. AUGUSTINE: Okay, I stand corrected. All

right, start with Maine again, New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Potomac River Fisheries Commission, District of Columbia, North Carolina, Georgia, and the state of Florida.

I got them all, didn't I?

CHAIRMAN MICHAELS: We need a second on that.

MR. COATES: Second.

CHAIRMAN MICHAELS: Phil seconded.

MS. STIRRATT: If I may very quickly, I just want to make sure that the intent of the Board is to approve both Virginia and Delaware as it is written on the screen, given that they have only been conditionally approved at this point. I just want a confirmation on that.

MR. AUGUSTINE: Mr. Chairman, I did not include those as conditional. I only recommended that we approve those that were fully approved by the Technical Committee and that we should go back, actually, and address those others at the next go around.

CHAIRMAN MICHAELS: Roy.

MR. MILLER: Mr. Chairman, now I'm truly alarmed because our fisheries will start in February, and there simply will not be time to wait for an approval of Delaware's program for the Year 2000.

Can we not take the states that were conditionally approved in light of the motion that was just passed and require those states to submit their Plan for -- this is specifically what we're talking about isn't it, ocean tagging -- submit that Plan forthwith but not hold up their approval today.

MR. AUGUSTINE: Mr. Chairman.

CHAIRMAN MICHAELS: Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. My intention was to make another motion with the stipulation, as you had just stated, Roy, for those states that can or do have conditional approval according to the Technical Committee.

I felt it appropriate to just finish this and get it out of the way and then address each of these other issues. We might find that a common date would be acceptable to all those that have conditional approval and that may be inserted in that next part of the motion unless someone wants to go ahead and change this a little bit. It just seems it will extend the process. This is clean. It's a quick motion. It's done.

CHAIRMAN MICHAELS: Okay, I'm going to call the question on this motion. It's stated as "move to approve those states' fishing recovery plans identified as meeting the requirements by the Technical Committee, that being Maine, New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Maryland, Pennsylvania, Potomac River Fisheries Commission, D.C., North Carolina and Florida, and Georgia should be in there."

MR. AUGUSTINE: Oh, we did say Georgia.

MS. SHIPMAN: You certainly did, before Florida, I might add.

CHAIRMAN MICHAELS: But not South Carolina.

MS. SHIPMAN: Yes, South Carolina is not there.

CHAIRMAN MICHAELS: David.

MR. CUPKA: Mr. Chairman, just for clarification, as part of the Technical Committee report relative to the state recovery plans, there are some other comments on there or some other actions that they took. Will those be approved separately; for example, under Potomac River Fisheries Commission, adding them to Table 2 and the consensus that we can do our sampling on the Santee River and those sorts of things.

CHAIRMAN MICHAELS: Those addendum items are handled separately. Clarify which section you're referring to.

MR. CUPKA: I'm not talking about the addenda items.

As you go through where there's a state-by-state breakdown in regard to the fishing recovery plans, it's on the first page of the Technical Committee report. For example, there was some action taken, if you look at the last one under Potomac River Fisheries Commission, it says "The Commission needs to be added to Table 2."

If you look over on South Carolina, there was consensus by the Technical Committee to allow us to perform mandatory sampling on the Santee River for at least the first three years of Amendment 1.

Do we need to take action on those as part of the Committee report, separate from the compliance?

CHAIRMAN MICHAELS: A.C.

MR. CARPENTER: Mr. Chairman, we've already done that.

CHAIRMAN MICHAELS: Right, that's what I said earlier.

MR. CARPENTER: If you look at the possible FMP addendum items, I think the same things are repeated there and we've already voted on those a few moments ago.

MR. CUPKA: I don't think they are, I beg to differ with you.

MR. CARPENTER: Well, it may have been yesterday, now.

CHAIRMAN MICHAELS: Russ.

MR. ALLEN: Dave, just to get your question, the plans themselves were approved, but we found maybe a small problem in some of the wording of the amendment, or maybe in the plan somewhere it didn't give quite enough information on something that we really would have liked to have seen, but it's not in the amendment right now that says that they have to do it.

And we thought that their approved at this time. If next year or whenever the next addendum or, as we

discussed earlier, whenever all the different issues are fixed, taken care of, then they would have to submit a plan next year, say, if there was a change in any of that addendum items.

MR. CUPKA: As long as that's included because there are items in your state-by-state part that are separate and different from the earlier action we took on possible amendment or addendum items.

MR. ALLEN: Right.

MR. CUPKA: I just want to make sure those get approved as well.

MR. ALLEN: Those issues were brought to the Technical Committee representative for that particular state to bring to either the Board member or supervisor, whoever it happens to be, to discuss that, to fix it for next year's plan, just as we did in the annual reports. It's not going to be a compliance issue at this time, but let's try to get it streamlined, because since this is the first run on it, let's get it streamlined for next year.

MR. AUGUSTINE: Call the question, Mr. Chairman.

CHAIRMAN MICHAELS: Okay, call the question. We'll vote on this motion with a show of hands. All in favor; opposed. The motion carries.

MR. AUGUSTINE: Mr. Chairman, may I make another motion?

CHAIRMAN MICHAELS: Go ahead, Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. I'd like to make another motion that includes the conditional approval, so I move that we accept Rhode Island, Delaware, and Virginia as conditionally approved by the Technical Committee with the understanding that they will complete the required effort or activity the Technical Committee has requested them to do.

And I'm open for a date. We'd like to agree with January 1. What's a good date for those states who are involved in those conditional approvals?

CHAIRMAN MICHAELS: Heather.

MS. STIRRATT: Again, we're pressed for time here. There is a January 1, 2000, deadline, and just as we have with the previous proposals, these addenda, if you will, will need to be given to the Technical Committee to review once more to make sure that they have met the requirements that they were looking for.

This would, given the budget constraints, most likely occur via some other mechanism than a meeting. So I would suggest the sooner the better in terms of giving the Technical Committee enough time to call each other and discuss this via telephone or some other method, e-mail.

In the meantime, the only other concern that I would raise relative to this and timing is that this Management Board will not meet again until after this date. So as long as you're comfortable with conditionally approving

these plans and moving forward with that approval after the first of the year, that's fine.

CHAIRMAN MICHAELS: Jack.

MR. TRAVELSTEAD: Thank you, Mr. Chairman.

Dr. Olney informs me that we could certainly have a report to you by December 15th that would detail Virginia's participation in the tagging program.

Be assured we have every intention of participating in that program. It's just a matter of finding the cooperating fishermen, which I don't think we'll have any trouble finding, and coming up with the money.

MR. VITO CALOMO: I'd just like to second the motion, please.

MR. AUGUSTINE: Mr. Chairman, relative to the other states, are they ready to make either a commitment or try to abide by a December 15th date or an alternative?

MR. BORDEN: My preference would be to delete Rhode Island from here and just deal with it separately because I think our circumstances are somewhat separate, if you have no objections, and Vito has no --

MR. AUGUSTINE: No objection, Mr. Chairman.

Please delete Rhode Island.

MR. CALOMO: No objection.

CHAIRMAN MICHAELS: Roy Miller, comment.

MR. MILLER: Is it my understanding, Pat, that if Delaware and Virginia submitted a proposal, as Jack suggested by December 15th and it was approved by the Technical Committee, perhaps with a conference call or something like that, no further Board action would be required?

MR. AUGUSTINE: That's the intent of my motion, yes, as long as the rest of the Board agrees with it.

MR. MILLER: I would support that.

CHAIRMAN MICHAELS: If there's no further discussion, I'm calling the question.

MR. AUGUSTINE: Mr. Chairman, could we enter in there by December 15th, please?

CHAIRMAN MICHAELS: Okay, thank you. I'll read the motion now. "Move to approve the state fishing recovery plans from Delaware and Virginia as conditionally approved by Technical Committee with the understanding that they will address the issues identified by the Technical Committee by December 15, 1999.

Again, show of hands. All in favor; opposed. The motion carries. I think we actually finished an agenda item. David.

MR. BORDEN: Thank you, Mr. Chairman. I'll try to be brief in the interests of time. The problem that the state of Rhode Island has with the ocean intercept tagging was identified by Dick Sisson in a memo to the Commission, but I'll just summarize it here in case people haven't seen the memo.

Our ocean intercept fishery occurs in our nearshore fish trap fishery which in most cases is within 3,000 feet of the shoreline, and that fishery is not targeting on shad. What it is is strictly a bycatch fishery.

We have a fairly minor catch in the fish traps, and it's not terribly predictable as to what season it occurs, what companies catch the fish, and which traps by which companies catch the fish.

Now as most of you know, the state of Rhode Island participated in the striped bass tagging program with precisely these companies, and it was a wildly successful program. And the reason for that, that was a targeted directed fishery where the predominant catch was striped bass.

Our staff has looked at this issue and they have concluded, and I concur with this, that it is not feasible for the state of Rhode Island to mount a major tagging effort to try to tag shad in this fishery.

And the complication is if you've got 100,000 pounds of fish, which sometimes you do in some of these traps, it might be mackerel and whiting and a whole bluefish and a whole series of other fish, and then you've got 200 pounds of shad mixed in, the shad are dead by the time you get to them.

They're being brailled out of the traps, and they end up being culled so that the fish are abused. So, what I would suggest here, the state of Rhode Island is not trying to be exempt from the requirements, and we support the objective that's trying to be achieved here. But what we would suggest is that you approve our recovery plan, which the Technical Committee basically has concurred with, with the exception of providing us with an exemption, one-year exemption, from the tagging requirements so that we can further scope out with the Commission staff's technical representatives, anyone that wants to get involved, the feasibility of doing this.

We just don't want to go through this exercise and not meet the objective. Now the other problem that Dick Sisson has -- and I sound like a broken record on this particular issue -- with all the other monitoring requirements that the Commission is imposing, we simply do not have the staff to direct to this.

And we are at the point, because of the small staff, we're at the point we're going to have to start pulling people like Mark Gibson out of doing stock assessments or Naji Lizar and terminate their activities for the Commission to do stock assessments so that we can go off and do compliance requirements for a couple of hundred fish in a minor fishery.

We need some time. So what I would suggest here is that I would move to approve the Rhode Island fishery recovery plan but exempt the state of Rhode Island from the requirement of tagging shad for a

period of one year.

CHAIRMAN MICHAELS: Do we have a second on that? Phil, okay. The wording that you're saying right now is almost identical to what's on the screen, to make sure that's what you intend.

MR. BORDEN: Yes, that is what I intend. And my intent here is that we can work with the Technical Committee and we'll sit down -- if somebody wants to come to the state, we'll be happy to take them out and show them the fishery and actually do an evaluation of what the feasibility is.

And I would just add, as I have stated before, we are absolutely willing to participate in any of these other programs in terms of collecting specimens, tagging in the Pawkatuck River, we are willing to do and so forth. This needs a little bit of time.

CHAIRMAN MICHAELS: Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. One question. Dave, I guess I'd ask the Technical Committee, do you feel comfortable that their not doing this for one year will have any impact at all on your studies; I mean, to the point where it will be of a major concern?

MR. ALLEN: One of the problems we had when doing the stock assessment was the fact that there was a decline in the Pawkatuck stock. And even though the stock assessment declared that overfishing was probably not the cause of the Pawkatuck decline, there is a chance that the Rhode Island fishery, which takes enough fish to totally wipe out the Pawkatuck stock, could be doing major harm there.

And that is why they were included in the amendment and required to tag in the ocean fishery, because to us it was not a bycatch fishery because, according to the plan, there is a mechanism that says if total landings are less than five percent per trip, then it's a bycatch fishery. And this was not brought to the Technical Committee as such.

CHAIRMAN MICHAELS: Jack.

MR. TRAVELSTEAD: Russ or Heather, are there any other states that are currently exempt from the tagging program?

MR. ALLEN: The Technical Committee at our last meeting exempted Maine from tagging in the ocean because there was no commercial fishery in state waters.

MR. TRAVELSTEAD: But all other states are required to participate.

MR. ALLEN: All other directed fisheries in the ocean were required, yes.

MR. TRAVELSTEAD: All other states with directed fisheries in the ocean --

MR. ALLEN: Yes.

MR. TRAVELSTEAD: -- are required to participate?

If you don't have a directed fishery, then you don't have to participate, so how many states are we talking about participating in the program?

MR. ALLEN: There were eight in the beginning and we took out Maine so there would be seven.

MR. TRAVELSTEAD: And if we take out Rhode Island, then there would be six?

MR. ALLEN: Yes.

MR. TRAVELSTEAD: And is that sufficient to produce enough tagged fish to make the study reliable?

MR. ALLEN: That's a tough question because there's a different issue in a different jurisdiction. I mean, just because we tag from New Jersey south and then there's nothing in the north, it doesn't mean -- you know, if we exempt Rhode Island. And then that's up to you. I mean, there are technical issues.

MR. TRAVELSTEAD: Is there any state north of New Jersey that will be tagging?

MR. ALLEN: No.

MR. TRAVELSTEAD: No one, and we know that tagging off of Maryland and Virginia is probably not going to produce very reliable information for the Bay jurisdictions. So, it kind of brings us back to where we were before. Why are we doing this?

MR. ALLEN: Well, I don't know that. People tell me that if there's no fishery, you're not going to get any tag returns. But we know that there's a lot of pound net fisheries, gillnet fisheries in the Bay. There's also a recreational fishery in Conawingo, catch and release, we know that happens.

There's researchers out there who are tagging fish as part of the Upper Bay survey. We know there's opportunities to catch tagged fish now, so I can't really say that there's no opportunity to get any tag returns in the Bay.

MR. TRAVELSTEAD: Those pound nets that were set in Chesapeake Bay to catch shad were pulled out of the water in the 1950's. I mean, at one time we did have a pound net fishery that would catch shad. We don't any more.

MR. ALLEN: There is a bycatch from striped bass fisheries.

MR. TRAVELSTEAD: Very small.

CHAIRMAN MICHAELS: Paul.

MR. PERRA: David, I can see there's no sense in sticking a tag in a dead fish. Are you going to take any samples from the pound nets, any otoliths or any --

MR. BORDEN: That's what I said, Paul. I thought I made that clear. We'll be happy to do any of the other requirements in terms of collecting otoliths, and we'd even be willing to tag fish in the Pawkatuck River in order to meet this requirement.

In other words, it's just problematic of tagging fish with the fish traps. That's what's problematic. So, we'll meet

all the other requirements.

CHAIRMAN MICHAELS: Phil and then Pat.

MR. PHIL COATES: It's obvious that the potential for broadening the methodology for stock delineation has implications with regard to the intercept of fish other alive for tagging purposes.

I think this is a rather exciting prospect. We don't have a directed intercept fishery, but we certainly would be willing to contribute our otoliths for the purposes of our getting further information on what's going on up in the Northeast.

CHAIRMAN MICHAELS: Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Based on Dave's explanation of what they plan on doing and their commitment to the process, if you will, and what the Technical Committee indicated, it just seems to me that this is a case where the Board has to take into consideration a state's true problem and that they're going to do everything else they can to abide by the requirements of the Plan.

And I believe New York is going to support this because I think they're making an honest effort to meet the requirements of it. Thank you.

CHAIRMAN MICHAELS: Preston.

MR. PATE: And I agree with the comments that Pat just made and support the request that Rhode Island has put before the Board. But also for the record, I can't help but take the opportunity to say it's problematic tagging fish in the ocean for everyone.

The ocean off of North Carolina's coast in January and February is not a pretty place to be, folks. You're putting people in danger to do this. And we're not geared up, and perhaps will not be able to gear up, to put those people in that environment under safe conditions.

CHAIRMAN MICHAELS: David.

MR. BORDEN: Yes, call the question, Mr. Chairman.

CHAIRMAN MICHAELS: Okay, I'll call the question and state the motion as it's on the screen: "Move to approve the Rhode Island fishery recovery plan but exempt Rhode Island from the requirement of tagging shad in the ocean intercept fishery for a one-year period."

Okay, show of hands. All in favor; opposed. The motion carries.

Okay, according to my agenda we still have a few items to get through. We have not yet approved the 1999 FMP review. Heather.

MS. STIRRATT: Revisiting the 1999 FMP review, we pretty much tabled this in light of a forthcoming discussion regarding the fishing recovery plans.

Again, I would simply restate that this information, the text part of this document I pulled from a number of the annual state reports. Again, the Plan Review Team has

looked through this document.

They have commented on this document, and the document that you see before you has been through a number of review processes.

There are two compliance matrices attached. This basically is the summation of the Plan Review Team's assessment of state compliance relative to the annual reports.

There is also attached a matrix which covers the Technical Committee's approval of the state fishing recovery plans. There is no new information other than what you have already reviewed today here as a Board.

Therefore, it is up for approval to pass on to the ISFMP Policy Board.

CHAIRMAN MICHAELS: A.C.

MR. CARPENTER: Move to approve the report as submitted.

MR. CUPKA: Second.

CHAIRMAN MICHAELS: Second by David. We may have to wait just a few seconds to get the motion properly stated on the screen. A.C. was the maker of the motion and David Cupka seconded.

Okay, calling the question. The motion reads as follows "Move to approve the 1999 FMP Review for American Shad and River Herring." All in favor raise your hands --

MR. AUGUSTINE: Shouldn't it be in there, Mr. Chairman, something about being forwarded to the ISFMP for review? Shouldn't there be something in there about moving it to the ISFMP?

MR. CARPENTER: We'll allow the Chair to do that tomorrow.

MR. AUGUSTINE: I'm sorry, I got nailed earlier on it so I thought I'd correct somebody else.

MS. SCHICK: It is not required that the ISFMP Policy Board approve FMP reviews, so it would be fine to just say "move to approve the 1999 American Shad and River Herring FMP Review."

CHAIRMAN MICHAELS: Okay, let's see the show of hands one more time in favor; opposed. Thank you, the motion carries.

Russ, was there anything you had to add to your presentation. There was a section there called "Issues Raised at the August 4th Meeting."

MR. ALLEN: No, those were the addendum items.

CHAIRMAN MICHAELS: Those were the addendum items. Okay, under other business we have three items to take care of: the New Hampshire Advisory Panel nomination.

MR. WILLIAMS: Move approval.

MR. NELSON: Second.

MR. AUGUSTINE: Call the question.

CHAIRMAN MICHAELS: Call the question? Signify

by saying aye if you approve. It passes.

There weren't two other items, there's just one other item. There are some additional materials given out, and I think Gordon wanted to address the power plant entrainment impingement information and update on EPA water quality standards issues. Gordon.

MR. GORDON C. COLVIN: Thank you, Mr. Chairman, and I thank you and the Board for your indulgence in providing me a couple of minutes at this late hour to address this issue to you. I will try to be as brief as I can be.

It was my intention to bring to the attention of the ISFMP Policy Board some recent information that has come to the attention of us in New York. We're involved in utility regulation primarily on the Hudson River.

The principal fishery for which this information has been most recently updated, however, is American shad. And given the significance of the information or the conclusions that have come to our attention, I thought it appropriate to initially give this Board a heads-up as to the nature of these findings and the significance of them and to let you know what I will be recommending to the Policy Board, because it does have ramifications for shad management.

The state of New York has been overseeing the monitoring of utility entrainment and impingement impacts on the various fisheries in the Hudson River for over 20 years as part of the overall regulatory process that relates to utility permitting and the implementation of a consent decree involving a court action that the state, several federal agencies, environmental groups and the Hudson River utilities were involved in over 20 years ago now.

That data is now being reviewed. Models are being updated. New model techniques are being employed in the context of consideration of renewals of discharge permits for a number of the power plants operating on the Hudson River.

The conclusions that have been reached are briefly outlined in one of the two handouts that was given to you entitled "Power Plant Entrainment/Impingement Issues" the first of the two-pagers.

And I would ask the Board members sometime between now and the Policy Board meeting if they would look this over.

Let me cut right to the bottom line.

At the request of the Department, Dr. Richard Deriso of Scripps Institute has reviewed a number of the data sources and model runs and has concluded that under a middle, kind of a mid-range of assumptions that can be made, the maximum sustainable yield of Hudson River shad could be doubled from a half a million to a million pounds a year if utility entrainment impingement

mortality could be held to zero.

Now, that kind of impact on ultimate yield has great significance not just to New York, not just to the Hudson River shad and the fishermen in the Hudson River, it has direct ramification on the use of this resource by all of the shad users up and down the East Coast, particularly when we consider that this is one river, one spawning stock, and the ramifications may well apply to American shad stocks elsewhere where they may be subject to the same kinds of fishing mortality.

We think it's time for the Commission to put this issue on the front burner for examination and for the kind of cooperative activity that we have heretofore primarily reserved for other sorts of things, particularly fishery management and the regulation of fisheries.

This kind of impact directly affects our ability to achieve the goals and objectives of our management plans. We have not collectively worked together and shared information, pooled resources.

I don't recall ever talking to my peers in close to 20 years in this process about how we figure this kind of mortality into our decisionmaking, into the goals and objectives of our fishery management programs. I think we need to do that.

Why now? There are lots of good reasons to do it. First, there are a lot of things happening in the utility world right now, some of which are outlined in the material before you, that suggest that it may well be timely for fishery managers to join with others in pressing for the kinds of changes that can bring about an end or a near-end to impingement and entrainment of shad and other fishery resources.

Some of this stuff is outlined in the materials you have, and I won't go into it in any greater detail. But let me suggest that the economics are right to move away from once-through cooling.

Secondly, things are happening again on the 316B front. For over 20 years now, EPA has not adopted the regulations to set the standards under part 316B of the Clean Water Act. That's now moving again.

You have a briefing paper which is the second handout that was developed by Bill Sarbello of our staff for the International Association's Inland Fisheries Committee that outlines the status and basically can be construed to a call to action by the states to get involved in the process of completing these standards as we get to the point now where those standards will finally need to be elaborated within the next year or so.

Thirdly, we need to address the problems of the decline in shad and other stocks from all sources of defined and manageable fishing mortality. That much is clear to all of us, I think, in this fishery management program.

And if utility mortality is capable of having the kind of

impact on the population that Dr. Deriso's work suggests, then we need to work collectively, not just individually, not in isolation in each of our states, but collectively to address this problem.

You see the three recommendations on our paper. The first of these recommendations specifically focuses on shad. I would recommend that the Board ask it's Technical Committee to work further on this. Let me indicate that you have good resources in New York to work with.

Both Kathy Hatalla and Andy Kainley as well as Byron and others on our staff, Kim McKowen and others have been extensively involved in the Hudson River utility regulatory work and review and are fully much better informed on all these issues than I am.

But they are available to work with the Technical Committee on this. The second two recommendations are recommendations I will make specifically to the Policy Board and will elaborate more on them at that time.

But I would hope that any of you who have an opportunity to look at this between now and the time of the Policy Board meeting would ask me any questions or explore any follow-ups you might have on this.

Let me tell you that we also -- I'm addressing shad -- we have conditional mortality rate information on a lot of other fish in the Hudson River that is almost as eye-popping as this and is, perhaps in some cases, more so. So, we have concerns about other species, species under management and forage species that might well be of interest to you, as well. With that, Mr. Chairman, I thank you, once again, and I would ask any members of the Board if they have any questions or if they'd like to follow-up with us after the meeting adjourns.

CHAIRMAN MICHAELS: Roy.

MR. MILLER: I just want to thank Gordon for bringing this issue to the Board's attention. I would also reiterate the importance of the timing that Gordon mentioned because the Salem Nuclear Plant, which is the second largest industrial intake in the world, is coming up for permit renewal in the next six to eight months, and so the timing is very appropriate. I thank Gordon for bringing this up.

CHAIRMAN MICHAELS: Any other questions or comments for Gordon? Thank you, Gordon. Does anyone have any other business?

MR. AUGUSTINE: Make a motion to adjourn?

MR. CARPENTER: Move to adjourn.

CHAIRMAN MICHAELS: Hang on, not yet.

MR. McDONALD: Mr. Chairman, thank you. Name is Bill McDonald with the Island Institute in Rockland, Maine. I will be very brief since I'm the only one standing between everyone here and their lobster dinner right now.

But I'd like to raise an issue for consideration by this Board. I have a lot of respect for the way you do business, and particularly with species of river herring that are caught in a bit of jurisdictional purgatory, as well as highlighting the habitat needs that species have and often disconnect between different state agencies. And I'll very quickly try to spin this out and then, perhaps, get more information to support folks so you can expand upon it at a later date.

But in the St. Croix Watershed there's currently two blockages, two fully functional and operational fish ladders which have been shut off on the Maine side by action taken by the state legislature.

And I would just like to say in deference to Lew and George and Senator Goldthwait, this is a complicated issue that gets it from multiple jurisdictions.

But, state action taken has closed off two fish ladders on the Maine side, done because of perceived competition between juvenile alewives and juvenile small mouthed bass in the watershed, and alewives being specifically one of the species of river herring. The alewives have been labeled as the culprit in the watershed without much regard being given to the 14-foot vertical drawdowns that take place in the spring and summer from the hydroelectric dams located up there.

From the time these closures have taken place from a high of 2.6 million fish passing upriver in 1988, this year there were 25,000 fish counted. It's less than one percent of what has been recorded recently up there.

And this year, of the fish coming out, the counts of the fish being taken, more than 90 percent of the fish were exiting with their eggs, without having spawned because they couldn't get up into the watershed.

Basically 95 percent of the watershed is shut off at this point. I know this is outside of the jurisdiction of the ASMFC, but this is an issue where it's a fairly significant, as many as two million fish, a million pounds, that I think calls into question de minimis status, what are the negative impacts that are caused by habitat decisions that are made as well as the potential elimination of a distinct substock of a coastal stock that has, as we all know, an undetermined bearing up and down the coast.

What I put out to you is a request that you would consider action that you might take, perhaps a "Dear Colleague" or friendly letter from the ASMFC to the International Joint Commission, which is made up of Canadian and U.S. folks who are going to be meeting this week up in the St. Croix Watershed, which comprises part of the border between New Brunswick and Maine.

Chairman Borden chairs a group of U.S.-Canadian folks who are considering ocean herring. And I would

say this issue of habitat needs and jurisdictions should challenge all of us to seek out what's best for the resource.

And in terms of river herring, this is having a huge impact. So I would, as I say, make a request to you, particularly residents of southern states who, as you may know, the small mouthed bass is native to the southern states. It's not native to Maine but the river herring are.

And I would beseech you to consider any ways that you might help us in moving this issue forward. Thank you very much.

CHAIRMAN MICHAELS: Thank you. I have one suggestion, if it pleases the Board. I don't think there's any way a letter could be drafted by us in time, within a week, but this concern could be expressed to the Policy Board as well as us. Comments? David.

MR. BORDEN: Yes, I'd just offer the similar comment that I'm not sure we can draft a letter in a week. But I think that the thing that we have to do on this is to very carefully scrutinize whether or not the activities that are taking place here are totally consistent with the existing plans, particularly the habitat sections of the plans.

It's been some time since I read the plan, but I think that this may violate fundamentally some of the habitat directives that the Commission has. So, what I would ask is that the staff review it. And if, in fact, we need technical review the next time they have a Technical meeting, place this on the agenda.

CHAIRMAN MICHAELS: Lew.

MR. FLAGG: Thank you, Mr. Chairman. This issue has been going on for some time, and it is in need of dire resolution. But, I think that we do have some time to discuss this at some length, and perhaps we can come up with a proposed sense of the Committee of support for a situation which has been very unfortunate and that I think the Commission could play a role in helping us to resolve that.

CHAIRMAN MICHAELS: Pat.

MR. AUGUSTINE: Mr. Chairman, one final thing. It would seem like this might be an issue that the U.S. Fish and Wildlife folks might want to at least listen to or see if they can take some action on because their jurisdiction is all of the United States.

And then the second thing is I'd like to make a motion we adjourn.

MR. CARPENTER: Seconded.

CHAIRMAN MICHAELS: This meeting is adjourned.

(Whereupon the meeting was adjourned at 6:30 o'clock p.m., November 2, 1999.)
