

**PROCEEDINGS  
OF THE  
ATLANTIC STATES MARINE FISHERIES COMMISSION  
ATLANTIC STRIPED BASS MANAGEMENT BOARD**

**February 24, 2003  
DoubleTree Hotel Crystal City  
Arlington, Virginia**

## ATTENDANCE

### Board Members

Lew Flagg, **Chair**, Maine DMR  
George Lapointe, Maine DMR, proxy for D. Etnier  
John Nelson, New Hampshire Fish & Game Dep.  
G. Ritchie White, New Hampshire Gov. Apte.  
Paul Diodati, Massachusetts DMF  
Bill Alder, Massachusetts Gov. Apte.  
David Borden, Rhode Island DEM  
Gil Pope, Rhode Island Gov. Apte.  
Jerry Carvalho, proxy for Rep. Naughton (RI)  
Ernest Beckwith, Connecticut DMR  
Lance Stewart, Connecticut Gov. Apte.  
Fred Frillici, proxy for Senator Gunther (CT)  
Gordon Colvin, New York DEC  
Pat Augustine, New York Gov. Apte.  
Brian Culhane, proxy for Senator Johnson (NY)  
Bruce Freeman, New Jersey DFG&W  
Tom Fote, New Jersey Gov. Apte.  
John DePersenaire, proxy for Assemblyman Smith (NJ)  
Dick Snyder, PA Fish & Boat Commission  
Gene Kray, proxy for Jeff Coy (PA)  
Michael Doebly, proxy for Fred Rice (PA)  
Roy Miller, Delaware DFW  
Bernie Pankowski, proxy for Senator Schroder (DE)  
Eric Schwaab, Maryland DNR  
Bill Goldsborough, Maryland Gov. Apte.  
Pete Jensen, proxy for Senator Colburn (MD)  
A.C. Carpenter, PRFC  
Jack Travelstead, Virginia MRC  
Preston Pate, North Carolina, DMF  
Damon Tatem, North Carolina Gov. Apte.  
Melvin Shepard, proxy for Rep. Redwine (NC)  
Anne Lange, NOAA Fisheries

### Ex-Officio Members

Pat Keliher, Advisory Panel Chair

### ASMFC Staff

Bob Beal  
Megan Gamble  
Vince O'Shea

### Guests

Najih Lazar, RI DFW  
Devin Smith, Columbia University Student, NY NY  
Bud Brown, CCA-ME, Georgetown, ME  
Bill Utley, CCA-ME, Harpswell, ME  
Jay Sterne, Reed Smith, Washington, DC  
Douglas Parker, CCA-MA, Acton, MA  
Norm Hyett, CCA-MA, Winthrop, MA  
Mark Gibson, SB TC, RIDFW, Jamestown, RI  
Vic Crecco, SB TC, CT DEP, Old Lyme, CT  
Gary Shepherd, SB TC, NMFS, Woods Hole, MA  
Russell Cleary, Com. Angler's Assoc., Maynard, MA  
Don Swanson, CCA-NH, Derry, NH  
Bob Mitchell, CCA-NH, Goffstown, NH  
John J. Kelleher, Jr., CCA-NH, Ogonquit, ME  
Richard F. Colagiovanni, SB AP, Cranston, RI  
Richard Abele, Commercial Fisherman  
William Windley, RFA  
Walter Peter Kelly, Commercial Fisherman  
Ed O'Brien, SB AP & MD Charterboat Association  
Kelly Place, SB AP & Commercial Fisherman  
John Fuscaldo, SB AP, Charleston, RI  
Stephen Medeiros, RI Marine Fisheries Council  
Dick Brame, CCA  
Bill Hubbard, CCA-NH & SB AP, Rye, NH  
Bob Fjelstad, SB AP & Recreational Fisherman  
Arnold Leo, SB AP, E. Hampton, NY  
Zak Tucker, Swete Studios, E. Hampton, NY  
C. Wayne Lee, SB AP, Kill Devil Hills, NC  
Jim Moineau, CCA-MA, Swampscott, MA  
Neil Delanoy, Captree Boatmen, Babylon, NY  
Elgin Nininger, SB AP-proxy, Colonial Beach, VA  
Dave Pecci, SB AP, Bathe ME  
Fred Schwab, SB AP, Mattituck, NY  
Bruno Vasta, SB AP, MSSA, MD  
Rich Novotny, MD Saltwater Sportfishermen's Assoc.

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## MOTIONS

### **1. Substitute Motion:**

**It is the sense of the Board that Delaware may retain a 20-inch commercial size limit, in the Delaware Bay shad gillnet bycatch fishery only, without a conservation equivalency penalty.**

Motion by Mr. Colvin, second by Mr. Borden; Motion carries (10 in favor, 5 opposed)

### **2. Main Motion:**

**It is the sense of the Board that Delaware may retain a 20-inch commercial size limit, in the Delaware Bay shad gillnet bycatch fishery only, without a conservation equivalency penalty.**

Motion by Mr. Colvin, second by Mr. Borden; Motion carries (10 in favor, 5 opposed)

**3. Move that the States of Delaware, Pennsylvania and New Jersey's recreational fisheries in the producing areas of Delaware Bay can maintain a 20-inch minimum size limit.**

Motion Mr. Fote, second by Dr. Kray; Motion ruled out of order.

### **4. Substitute Motion:**

**Move that the Board forward a request to Secretary of Commerce to allow the harvest of striped bass in the EEZ with a minimum size of 28 inches and a provision that states are allowed to adopt more restrictive regulations for fishermen and vessels licensed in their states. On an annual basis the fishery impacts on the resource will be evaluated by the Technical Committee and reported to the Management Board so that it may make appropriate EEZ management recommendations to the Secretary of Commerce at the end of each FMP planning horizon.**

Motion by Mr. Borden, second by Mr. Pate; Motion carries (6 in favor, 5 opposed, 3 null votes, 1 abstention)

### **5. Main Motion:**

**Move that the Board forward a request to Secretary of Commerce to allow the harvest of striped bass in the EEZ with a minimum size of 28 inches and a provision that states are allowed to adopt more restrictive regulations for fishermen and vessels licensed in their states. On an annual basis the fishery impacts on the resource will be evaluated by the Technical Committee and reported to the Management Board so that it may make appropriate EEZ management recommendations to the Secretary of Commerce at the end of each FMP planning horizon.**

Motion by Mr. Borden, second by Mr. Pate; Motion carries (6 in favor, 5 opposed, 3 null votes, 1 abstention)

**6. Move to recommend to the Commission approval of Amendment 6 to the Interstate Fishery Management Plan for Atlantic Striped Bass.**

Motion by Mr. Pate, second by Mr. Calomo; Motion carries (13 in favor, 2 opposed)

### **7. Tabled Motion from November 18, 2002:**

**Move that the Board accept the commercial component of the Massachusetts proposal to change its management program.**

Motion by Mr. Diodati, second by Mr. Carvalho; Motion fails (1 in favor, 10 opposed, 2 abstentions)

### **8. Move to accept New Hampshire's proposal.**

Motion by Mr. Grout, second by Mr. Fote; Motion carries.

### **9. Motion to approve Peter Whelan to the Striped Bass Advisory Panel.**

Motion by Mr. Augustine, second by Mr. Adler; Motion carries.

### **10. Tabled Motion from December 19, 2002:**

**Move to establish a single biologically based standard size reference point for all users and jurisdictions as part of the next addendum.**

Motion by Mr. Carvahlo, second by Mr. Frillici; Motion tabled February 24, 2003.

**11. Move to table the above motion.**

Motion made by Mr. Fote, second by Mr. Adler; Motion carries.

**ATLANTIC STATES MARINE FISHERIES  
COMMISSION**

**ATLANTIC STRIPED BASS MANAGEMENT  
BOARD**

**DoubleTree Hotel Crystal City  
Arlington, Virginia  
February 24, 2003**

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The meeting of the Atlantic Striped Bass Management Board of the Atlantic States Marine Fisheries Commission convened in the Washington Room of the DoubleTree Hotel Crystal City, Arlington, Virginia, on Monday, February 24, 2003, and was called to order at 9:00 o'clock a.m. by Chairman Lewis Flagg.

**WELCOME & INTRODUCTIONS**

CHAIRMAN LEWIS FLAGG: Good morning. If you could please take your seats, we'll begin. This is the meeting of the Striped Bass Board. Just a few introductory remarks, if I may.

There is and I believe you have a revised agenda that's coming around. I know there are a few proxies here; and when you speak, if you are a proxy, if you could just state your name and who you are a proxy for, so that Joe will be able to get you into the record, I'd appreciate that.

**BOARD CONSENT**

CHAIRMAN LEWIS FLAGG: I think we can immediately start with the agenda. We do have an agenda before us. Are there any additions, deletions or revisions to the agenda? Are there other things that folks would like to have included? Okay, seeing no hands, then we will proceed with the agenda as presented.

You have in your binders, and they were e-mailed to you earlier, the minutes of the December 19<sup>th</sup> meeting of the board. Are there any errors or omissions in those minutes? Are there any corrections that anybody would like to offer? Okay, seeing that there are no corrections, we'll declare the minutes confirmed as written.

**PUBLIC COMMENT**

CHAIRMAN LEWIS FLAGG: At this time we're going to afford an opportunity for public comment on Amendment 6. Is there anybody in the audience? Yes, Dick Brame, could you come to the microphone, please.

MR. RICHEN M. BRAME: I'm Dick Brame with the Coastal Conservation Association. I'm just here to reiterate what our committee came up with on Amendment 6, to make sure everybody understands it.

We believe the striped bass fishery is arguably the most important single species, saltwater species in America. It's very critical to the recreational fishery, and we believe it should be managed that way.

That's one of the reasons we asked for a reduction in F because we believe in order to manage for recreational fishery we need to be further from MSY rather than closer to it.

And also, in that sense, we had voted for a status quo on the allocation between the commercial and the recreational fishermen.

And in that sense, ipso facto means we were opposed to any increase in the coastal commercial quota. I just want to make sure -- some folks didn't seem to understand that. Thanks.

CHAIRMAN FLAGG: Thank you, Dick. Are there other public comments at this time?

**ADVISORY PANEL COMMENTS**

CHAIRMAN LEWIS FLAGG: Okay, seeing none, at this point we will have some comments from the Advisory Panel and I'll ask Pat Keliher to present that information.

MR. PAT KELIHER: Thank you, Lew. After the last Striped Bass Management Board meeting, I had several advisory panel members comment on their concern over the direction that the board has taken with Amendment 6.

I asked staff to send a letter out to the AP and ask them for additional comments before coming to this meeting. We had about six or seven people send me e-mails or make phone calls directing comments regarding the past meeting.

One of the members commented on the support of Amendment 6, support of the coastal commercial increase and support of the EEZ opening. I must say every other comment received by the advisory panel members on this issue were very much in opposition to the coastal commercial increase.

I have been hearing this from not only several of the AP members but the recreational community as a whole. There are also a lot of the AP members who, with the exception of two, got back to me and said, "Please remember our vote as an AP to keep the EEZ closed."

In regards to the options or the opposition to the coastal commercial increase, most of it came from the fact that the AP members, who were looking in this direction, were concerned that the board has lost sight that this is a recreational fishery and that the majority user group are recreational anglers.

They believe this ignores the value of the recreational fishery, and it actually, as Mr. Brame just pointed out, that it's moving back towards MSY and away from the conservation approach that this board has taken over the last bunch of years to get to the point where we are with Amendment 6.

We also had a lot of concern over the public comment period and what was perceived as the lack or a dismissal of the public comments in regards to the coastal commercial increase, as well as the mortality levels.

A lot of AP members really thought that the public comment was totally disregarded to move forward with the liberalization of the fishery. That's about what I have in a nutshell, kind of the "view from 50,000 feet" from what I've received from the AP. I'd be glad to answer any questions that the board may have.

CHAIRMAN FLAGG: Okay, thank you, Pat. Any questions of Pat?

#### **DRAFT AMENDMENT 6: DECISIONS FROM DECEMBER 19<sup>th</sup>, 2002**

CHAIRMAN LEWIS FLAGG: Seeing none, what we're going to do next is Megan is going to review the decisions that we made on December 19<sup>th</sup>, just to get everybody up to speed on the decisions that were made.

It's my intent that we're not going to revisit those actions that were taken, only to the extent that there is

any clarifications that are needed relative to those decisions that were made earlier on.

So, I'm going to ask Megan to go through the decisions that were made on December 19<sup>th</sup>, and we'll have some questions; and if anybody does have questions, we will have questions and clarifications. Megan.

MS. MEGAN GAMBLE: Thank you, Lew. I just wanted to point out, first of all, that there are extra copies of the revised version of Draft Amendment 6 on the back table in case people did not bring a copy with them.

And, also, you should have just received a significant packet of public comment, mostly commenting on the recommendation to the Secretary for the harvest of striped bass in the EEZ, but there are also a few comments pertaining to the increase of the coastal commercial fishery.

So, today I'm going to walk the board through some of the changes that were made during the December board meeting. All of the changes are reflected in the document that you have received on the CD or that is on the back table.

The only decision left to make in Amendment 6 is the recommendation to the Secretary. And then provided there are no major changes made by the board during this meeting, the board will then need to discuss approving this document and forwarding Amendment 6 to the Policy Board for final approval contingent upon staff making some minor changes to the document.

The first section I want to draw your attention to is Amendment 6, the Control Rule, and, also, I'm going to walk you through the Executive Summary so you can use that to follow along with this presentation.

And you can also note at the bottom of the slide, although in really small font, is the section that the issue refers to within the body of the document and also the page number in the executive summary.

The first decision in Amendment 6 made by the board is to apply a target fishing mortality of 0.30 -- that's an exploitation rate of 24 percent -- and a threshold of 0.41. The last column of this table shows the biomass target for the female spawning stock portion of the population.

The biomass threshold will be set at 30.9 million pounds, about the level at which the stock was

declared restored in 1995. The female spawning stock biomass target is set at 125 percent of the threshold which is 28.6 million pounds -- sorry, 38. Thank you, Doug.

The next slide is the stock rebuilding schedule. The management board decided that should this striped bass stock be declared overfished and rebuilding needs to occur, the management board will determine at that time the rebuilding schedule. The only condition on that was that it's not to exceed 10 years.

The next section is the planning horizon. And also if you're following along in the Executive Summary, I'm going to skip over the implementation schedule and address that at the end of the presentation.

The next section is the planning horizon, and the board decided that in the third year after implementation, the management measures are to be maintained for three years unless the triggers are violated.

I've just summarized what those triggers are, and they include exceeding the F threshold, exceeding the biomass threshold and exceeding the F and biomass targets.

And then, finally, the juvenile abundance index, if that shows recruitment failure for three years in a row, then it would initiate board action.

That brings us to the recreational management program and bag limits. To ensure that the F target is not exceeded, Amendment 6 uses bag limits, and they are remaining constant from Amendment 6, the two-fish creel limit at 28 inches.

There is a different bag limit for the Chesapeake Bay and the Albemarle Sound of Roanoke River. Their creel limit will be based on maintaining an F of 0.27. They will also have a 20-inch minimum size limit, but they can apply for conservation equivalency, implementing a size limit no smaller than 18 inches.

And, also, Amendment 6 allows for jurisdictions to implement any additional regulations to ensure that the target fishing mortality is not exceeded, like fishing seasons or harvest caps.

If a jurisdiction decides to use a harvest cap in the recreational fishery, any amount over that cap in a given year shall be deducted from the following year's harvest cap. Stop me if you have any questions or want to make any comments.

The next section is the commercial management program, and the size limit has been set at 28 inches. And, again, there is a different size limit for the Chesapeake Bay and the Albemarle Sound, Roanoke River. That minimum size limit is 28 inches and, again, with the minimum of an 18-inch size limit through conservation equivalency. Roy.

MR. ROY MILLER: Megan, I have decided to bring this up now rather than later. I don't recall taking any action at the December meeting establishing the 28-inch minimum size for commercial fisheries.

In fact, Delaware's commercial fishery limit is 20 inches, and that was established in the 1990s in response to a bycatch problem, particularly, in our commercial American shad fishery. The fishermen used 5 to 5.5 inch nets.

If we were to adopt -- that is the state of Delaware -- a 28-inch minimum size, all catch in shad nets of striped bass would become bycatch again. We'd be turning the clock back 13 years, causing a problem that we thought we had addressed in the 1990s.

I've talked to the framer of the motion, Pete Jensen, to see if that was his intention, that Delaware and any other coastal state that is presently has a commercial fishery at less than 28 inches should have to raise their size limit to 28, and that was not his intention.

So, I would suggest that this particular language came into the plan after the December meeting. It was not a discussion point at the December meeting or I would have raised that objection at that time. I'd like to hear some response to that, if I could, please. Thank you.

MR. ROBERT E. BEAL: A lot of heads are looking my way, Roy, so apparently I need to respond. I just kind of looked back through the motion. I think there is enough -- you know, the wording of the motion was a little bit loose. This is how staff interpreted that.

However, if the board does not want that -- if the board does not want to restrict or implement a 28-inch minimum size for all commercial fisheries, now is the time to make that change. So, it was just a staff interpretation of that motion. This is how it was carried forward in the draft. Things like this are exactly why we're having this meeting.

CHAIRMAN FLAGG: Roy.

MR. MILLER: Mr. Chairman, is it too late to add an amendment to Mr. Jensen's motion in this regard, or how could we handle a problem like this? The unintended consequence would be a drastic change in Delaware's commercial fishery. It may impact to some extent New York state. It may impact to some extent Rhode Island in their trap net fishery.

CHAIRMAN FLAGG: Well, I think you raise a good point, Roy. My recollection is that with respect to Delaware's commercial quota, it's not the same as the coastal state's commercial quotas. It's a little bit different, as we had that discussion.

I think there is some uniqueness in the Delaware situation that probably should be discussed and rectified if other folks feel the same way. I think while we're right on this, maybe this is a good time to try to get an understanding from all the board members relative to what they felt the intent of the passage of that motion was relative to Delaware.

So, if we need a clarification motion, we certainly can get one. If the board members feel that was the intent when they voted, that in fact Delaware's fishery would be a smaller minimum size limit, then if we could have a consensus to that effect, we will make sure that's reflected in the minutes. Are there others that would like to speak on that issue? Gordon.

MR. GORDON C. COLVIN: Roy pointed this issue out to me before the meeting, and I've been thinking about it since he talked to me about it.

It's an awkward situation that comes from the shift that we made to an abandonment of the producer area concept in management, and I don't want to go back through that door. I think that would get real sloppy real fast and we might be here for the next three days.

I do think that there may be a couple of different solutions to the issue, because I certainly don't think it makes sense to reduce a Delaware commercial quota and do so by requiring shad fishermen to discard dead striped bass. That just doesn't make any sense.

On the other hand, I'm not real crazy about the idea of saying that we'll set a different size limit in Delaware Bay than we have in, say, the Hudson River or a bunch of other places you could name.

So I'm wondering whether the solution might flow from an application of the conservation equivalency

provisions of the plan that we could somehow pave the way for with some board action or sense of the board today that suggests that it's appropriate to continue to provide for a more or less status quo situation in Delaware Bay and allows essentially a "no penalty" conservation equivalency at a size limit that is solely based on allowing for the productive use of striped bass taken incidental to the catching of shad in the Bay rather than setting a 20-inch size limit, which has a whole different set of outcomes and consequences. Maybe we can talk about that a little bit and see if that moves us in the right direction.

CHAIRMAN FLAGG: Thank you, Gordon. Tom Fote.

MR. THOMAS FOTE: Maybe I missed something at the last board meeting. I guess we got going along. I assumed that the 28-inch minimum size was for the coast and we were still having -- you know, I just looked at the recreational things and we've always allowed two fish at 20 inches in all the producing areas.

Now I see it's only allowed in Chesapeake Bay and Albemarle Sound. That was not New Jersey's intention on this. I mean, what we basically -- when we look at the coastal commercial catch, if you want to go below 28 inches, as New York does and I think Rhode Island used to do, you should take a conservation equivalency to get down to the slot limit you want.

Delaware's catch is from inside the Bay, which is in a producing area. So the producing areas all -- you know, why we have 20 inches in Chesapeake Bay and we no longer have 20 inches in Delaware Bay or 20 inches in the Hudson River -- I mean, the Hudson River is still -- if I remember the recreational catch above George Washington Bridge is still 18 inches.

I mean, this was not my intention and I think something has been interpreted wrong here. I mean, my intention was not that. My intention was the minimum size was 28 inches along the coast and the producing areas have the same regulations they had under Amendment 5.

CHAIRMAN FLAGG: Thank you, Tom. Other comments? Bruce.

MR. BRUCE FREEMAN: Thank you, Lew. Just to carry on the thought that was expressed, the way the plan reads, at least to me, is that there is a 28-inch minimum size throughout the fishery, and

then there is an exception of Chesapeake Bay, Albemarle Sound, and Roanoke River, which then has a 20 inch.

So, the phrasing of this is different than what we've had in Amendment 5 and all the previous amendments. And it may be suitable; I'm not objecting to that. But, there have been a number of changes and I just want to make sure people are aware of it.

As Tom as indicated, now it excludes Delaware Bay and the Hudson, which are producing areas. It also, in North Carolina, has excluded Pamlico Sound, and that's something Pres could address, but Pamlico Sound now has been excluded.

And my information on Pamlico Sound, it's not much different than Albemarle. But these issues I think need to be addressed and clear in everyone's mind so we don't get confused.

CHAIRMAN FLAGG: Thank you, Bruce. Other comments from board members? Yes, Eric.

MR. ERIC SCHWAAB: This is probably an appropriate time to bring up a related issue that I have noticed, and that is this return to this 20-inch minimum size limit.

We need to be clear for the record that the exploitation rate that's in the current amendment, in this draft of the amendment, which takes us to 0.27 from 0.30, in our opinion already reflects the conservation equivalency to move from 20 inches to 0.18 -- or from 20 inches to 18 inches.

I just want to make sure for the record that is the understanding of the board in that regard as well. I wanted to bring that up here while we're on this topic because I think it relates.

CHAIRMAN FLAGG: Tom Fote.

MR. FOTE: I don't think that's my understanding, Eric, but one question I really wanted to ask is when do you want a motion to try and correct what we think is --

CHAIRMAN FLAGG: Well, I think with respect to the Delaware, we're on this subject right now and it might be good if we could try to resolve that before we move on to other things. I don't want to -- I just don't want to let this hang and I know Roy has some very well-considered concerns about this so I would like to resolve this issue.

MR. FOTE: Well, Lew, I would have some real concerns too because this was never put out at the public hearings in my state, that we were basically changing the producing area size limits.

This was basically sitting at a meeting and maybe a quick decision, which I didn't interpret that way, basically came out. I mean, to me if we're going to do something like this, that's a major amendment or at least an addendum by itself to go out there to the public hearing process.

And so what I would -- my motion would be that we keep the language that was in Amendment 5. Now if we want to do an addendum and go out and change that, that's something else, but keep the language that was in Amendment 5 that allows producing areas and not just the Albemarle Sound; because, if I was going to do that, eliminate the 20-inch size limit, I'd eliminate it from every place and not just selectively the Chesapeake Bay.

So, if we're going to do that, we might as well do it to all producing areas the same way as the language was in Amendment 5. That would be my motion.

CHAIRMAN FLAGG: I think it might be helpful if we could really just try to focus on the Delaware issue now. That's the one that has been brought up. I haven't heard other folks talk about other issues relative to other producing areas. If they have concerns, I'm sure they'll bring them up.

MR. FOTE: Well, Lew, I have them there because I also have the Hudson River producing area. I didn't read that to interpret that.

CHAIRMAN FLAGG: Okay. A. C.

MR. A. C. CARPENTER: I was the one that seconded Pete's motion, and it really wasn't my intention to change the size limit in Delaware for their commercial fishery when I was seconding that. I don't think it was Pete's intention to.

As I recall, there was a good deal of discussion about the fact that Delaware's commercial quota was different than the base year periods at the time, and I think that the conversation got wrapped around that.

So, I would very much like to figure out a way to help Roy maintain status quo, and I think that Gordon may have been on the right track here a moment ago with his suggestion.

CHAIRMAN FLAGG: Tom.

MR. FOTE: The way to solve the problem is simply just add Delaware Bay and Hudson River in as a producing areas and we go back to that same regulation as we had under Amendment 5, 4, 3 and right along. As I said, we didn't go out to public hearings. We're changing the producing areas.

CHAIRMAN FLAGG: Gil.

MR. GIL POPE: Thank you very much. I'm looking at Appendix 4 in the back of the draft, and in Delaware it's 20-inch minimum, 193,000 pounds or so, but I don't see it split up, Roy, in Bay and ocean.

I just was under the assumption that every one of those 20-inch fish is a Bay-caught fish and not coming from the coast as well.

Because in my knowledge, even in the producer areas on the coast, there's a separate category, and it's usually 20 and then 28 along the coast, so I think it's 28 in most of the other coastal states unless I'm wrong. Thank you.

CHAIRMAN FLAGG: Gordon.

MR. COLVIN: Just a couple of follow-up points, Mr. Chairman, based on some observations that have been made on the record. I know that this whole issue is kind of confusing because we have made a transition in this amendment as the board acted on it to desist from the depiction of a producer area-based and a coastal area-based management program.

And it wasn't accidental; it was deliberate. It was discussed; it was on the record. I think that there were a number of options in the public hearing and public comment draft that were consistent with that decision by the board.

I don't think there is a lack of support for it in the options that went for public review. I can assure you that we fully understood in New York that when this amendment is adopted and when a compliance schedule is adopted by the board, which should happen today, that at the end of that compliance schedule, our size limits and creel limits in the Hudson and Upper Delaware will need to conform.

We're well aware of that and we're already on the road to making that happen as soon as we know when it has to happen. In fact, we are at two at 28 in the

Upper Delaware so we probably don't need to change anything there.

But as has been pointed out here, we're at 18 in the Hudson above the George Washington. We're at 28 below the George Washington and one fish, and we will change as we need to change. That will be done.

The notion of reintroducing the concept of a producer area, however, troubles the heck out of me. It's a big deal, a very big deal. There's a couple of things involved. Number 1, what are the boundaries of this producer area?

Where does it begin and where does it end? I'm going to tell you that the Hudson River producer area does not end, and we will not accept a definition of it that ends where Amendment 5, 4, 3, 2, whatever, had it ending. History tells us that's too small an area.

We are seeing a substantial expansion of the Hudson River nursery area, much less producer area, out on to Long Island. It needs to include Long Island Sound. It needs to include possibly into Rhode Island and certainly along the south shore of Long Island to coastal New Jersey.

Now this is where things get real sloppy and why the decision of the board not to have producer areas elsewhere was a wise decision, anywhere, frankly, was a wise decision.

Now, the other area that gets kind of sloppy is that if we assume that we're going to have large areas where the size limits, whether they're commercial, recreational or both, are less than 28 inches, I really wonder how that affects the decisions that we made based on assessment of the effective different management regimes on the mortality rate and the yield of the fishery.

I'm very concerned that a substantial backtracking from holding the standard at 28, outside of the Chesapeake and Albemarle separately managed exceptions, will affect the outcome that we walked away from our last board meeting with in terms of fishing mortality rate and yield.

I think it will increase it substantially and that's a matter that we all need to be concerned about. I would much prefer to go along the lines of my suggestion which limits the solution to the problem that was brought before the board, and that problem relates to the historic commercial shad bycatch of striped bass in Delaware Bay. I really think we need to stay inside that sideboard.

CHAIRMAN FLAGG: Thank you, Gordon. Other comments? Tom.

MR. FOTE: Over the years as this board has increased the Delaware commercial catch in the Delaware Bay, New Jersey and Pennsylvania over the years had voted against that increase, and the board overruled us numerous times on this. I have been part of those votes over the years.

If we're going to allow one size limit for a commercial fishery and one size, we basically have changed the rules of the game in the producing area. I mean, if we're basically going to now have all producing areas at 28 inches, we should have all producing areas at 28 inches and not just Hudson River and the Delaware River.

This is basically putting a different spin on what was going on under five amendments. I guess I wasn't part of the original because I wasn't on the commission for a period of about a year, right before this Amendment 6 went out, and basically did not realize it.

I guess I didn't get through all the fine print in the document. I know this was not discussed in New Jersey. It was not discussed in the public hearings we had basically in Delaware Bay on both sides. It is of extreme concern.

If you're going to basically handle one problem, then you basically need to handle both problems. Otherwise, this will further divide the community and further cause a lot of problems out there.

I mean, you have a choice here that is to basically put back the Delaware and Hudson River as a producing area or basically say we're going to take out Chesapeake Bay and Albemarle Sound as a 20-inch size limit because you're just making exceptions now.

If we made those exceptions because they were producing areas, then we should be making those exceptions on the other producing areas. If you're not going to do it, then you're basically being arbitrary and you're also just being discriminatory.

CHAIRMAN FLAGG: Thank you, Tom. Roy.

MR. MILLER: Mr. Chairman, I've listened to the comments of Tom Fote and Gordon Colvin. Without intending to engender a lengthy discussion

about producer area and coastal area and that kind of thing, perhaps I see two mechanisms -- one suggested by Gordon -- that we can deal with this problem.

The one would be, as A. C. suggested, that it simply be a consensus of the board that Delaware Bay wasn't intended to become 28 inches for commercial purposes.

The other way to handle it would be -- and I could offer a motion, if that is the desire of the chair and the board, to the effect that no coastal state would be required to reduce their present commercial size limit as a result of the action of Mr. Jensen's motion at the previous meeting. Mr. Chairman, which do you think would be the best way to proceed in this case?

CHAIRMAN FLAGG: I'm not sure at this time, Roy. Perhaps we could have a little more discussion to get some feeling from some of the other board members about your suggestion. Does anybody have any comments relative to Roy's suggestion of the two options? Yes, Pat Augustine.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman. It sounds like Roy is headed in the right direction so, Roy, why don't you put a motion on the table so we could specifically zero in on how to address the issue.

It sounds like your two choices, after listening to Mr. Fote and Mr. Colvin, it appears you can go either way. And, quite frankly, I think the conservation equivalency that Mr. Colvin suggested might be the appropriate approach.

On the other hand, when you said that if we just said that this motion will allow the Delaware to do exactly as they were doing before, that might be the clearest and simplest way to do it. So, why not make a motion?

CHAIRMAN FLAGG: Dave Borden.

MR. DAVID V.D. BORDEN: I was going to suggest something along the lines of what Pat just suggested. I think Roy should put a motion on the table reflective of his first option, and my suggestion to him would be to constrain that solely to the state of Delaware.

CHAIRMAN FLAGG: Other comments? Gil.

MR. POPE: Thank you. I still have one quick question for Roy, if it's okay, as to how much

of your commercial fishery is done outside the Bay?

CHAIRMAN FLAGG: Roy.

MR. MILLER: Yes, I meant to answer Gil's question. There are a few thousand pounds at present that are caught in the Atlantic Ocean. As you know, Gil, we've severely constrained our coastal; that is, our Atlantic Ocean commercial shad fishery, to be in compliance with the Shad Plan where we've reduced effort 40 percent this year and in 2005 it will go away.

Therefore, the effort that had previously been directed at shad is shifting and will shift into Delaware Bay. And, along with that, there will be a reduction in the effort toward striped bass in the ocean as well.

So for the sake of a few thousand pounds, Delaware has always lumped it. We've never separated out Bay from Ocean because most of the harvest occurred in the Bay. For purposes of compliance with this, if it's 28 inches in the ocean, so be it.

We can live with that. They can't use shad gear in two years, anyway, in the ocean. They'll have to use larger mesh size to target striped bass if we go to 28 inches in the ocean. That's not a big problem.

It's Delaware Bay that's a big problem for me because that's where the shad fishery is, and they would have to entirely change their gear. The wording that's up on the board is satisfactory to me.

Now Dave Borden's suggestion was more specific. I don't know if his state or other states would potentially benefit from that motion or whether it should be Delaware specific.

CHAIRMAN FLAGG: Other comments? Yes, Bruce.

MR. FREEMAN: Thank you, Mr. Chairman. This issue is going to create a major problem to the different constituents in New Jersey and New York. My understanding of the votes that were made did not change the size limit in the producing areas, as this document indicates.

Our position is diametrically opposed to what New York indicated. The issue was not discussed at the public hearing, certainly in our state. It doesn't mean that it couldn't be raised by the board but, quite frankly, the interpretation of the motion was such that it would retain the status quo and the status quo

would maintain the definition of the existing producing areas and coastal areas.

I understand the arguments that Delaware uses relative to their bycatch in the shad fishery; nevertheless, this motion essentially would pose no penalty on the commercial fishermen in Delaware where this motion would allow them to fish at a 20-inch size, and yet the recreational fishermen are going to be restrained to a 28-inch size as presently indicates in the document. There needs to be a way to solve this problem but this motion does not do it.

CHAIRMAN FLAGG: Tom Fote.

MR. FOTE: Just to follow up what Bruce was saying, Pennsylvania and New Jersey have regulations that we implemented because we are producing areas. Those regulations were put in place on the Delaware.

As a matter of fact, we were four inches, we stayed at four inches higher than was necessary under the producing area scenario. This basically now penalizes these two states because we don't have a commercial fishery.

We both have a recreational fishery in the Delaware and it discriminates against both of those because we now say you have to raise the size limit by four inches in both of those producing areas.

Now, I have no problem if you want to raise everybody's size limit and not be discriminatory. But as long as you're being discriminatory on one side or the other, then this sends out the wrong impression out to the public.

I mean, it just doesn't make any sense. This is not based on a slot limit at New York or a smaller fish that New York has by taking a conservation equivalency. This was basically based on the fact that we were allowed to harvest 20 inches in that producing area and these increases over the years have been done that way.

I mean, if you want to leave it both -- all commercial fisheries and all recreational go to 28 inches in a producing area, then that's being fair.

And the same thing if you want to say all 28 inches has to be in the Delaware River, you're being fair. But to do one sector -- when you basically penalize two states for the benefit of one, that's exactly what you're going to do.

CHAIRMAN FLAGG: I have Anne Lange and then Gordon.

MS. ANNE LANGE: Well, I have a question about the motion. If the intent is to allow Delaware to continue to fish 20-inch fish, shouldn't it be required to increase as opposed to reduce the size limit?

CHAIRMAN FLAGG: Roy.

MS. LANGE: That no state should be required to.

MR. MILLER: If I may, Mr. Chairman, I would perfect that motion thusly. I would add "no coastal state would be required to reduce their present commercial size limit for purposes of compliance with Amendment 6." I'm sorry, yes, it is increase, absolutely.

CHAIRMAN FLAGG: Thank you, Roy. Gordon.

MR. COLVIN: Has that motion been seconded, Mr. Chairman?

CHAIRMAN FLAGG: No, it has not. I'm looking for a second. A. C.?

MR. CARPENTER: Second.

CHAIRMAN FLAGG: Second to the motion by A. C.

MR. COLVIN: I have a substitute motion, Mr. Chairman.

CHAIRMAN FLAGG: Okay.

MR. COLVIN: My motion would read it is the sense of the board that Delaware may retain a 20-inch commercial size limit in the Delaware Bay shad gillnet bycatch fishery, only, without a conservation equivalency penalty.

MR. BORDEN: Second.

CHAIRMAN FLAGG: A second from Dave Borden.

MR. COLVIN: If I may, Mr. Chairman.

CHAIRMAN FLAGG: Yes.

MR. COLVIN: I do have that written down,

if that's helpful. As I indicated earlier, I really personally prefer a solution that is crafted to the problem and doesn't expand beyond the problem that presently exists. I said that before, I said why before and I won't repeat it.

I just wanted to clear one thing up. I'm not sure what happened in all cases. I want to assure the board that in New York there was a public hearing, an Amendment 6 public hearing in the Hudson Valley, and the notion that the outcomes of the management plan might well result in substantial increases to the minimum length, up to 28 inches, were clearly part of the record of that hearing. It was discussed. I'm not sure what happened elsewhere, but I want to assure the board that in New York that issue was vetted.

CHAIRMAN FLAGG: Thank you, Gordon. Roy, did you have any further comment?

MR. MILLER: The substitute motion, although it's not up there in its entirety just yet, sounded acceptable to me.

CHAIRMAN FLAGG: Yes, Dick.

MR. DICK SNYDER: For reasons that Tom Fote mentioned and also the fact -- I agree with having some latitude for Delaware to take advantage of the bycatch, but I think for perception, at least for Pennsylvania anglers, right now we do not have a commercial fishery in Pennsylvania waters.

The time of the year when the larger stripers are in the river, we have a closed season because that's the spawning season and that's kind of apple pie right now. So, there is a perception out there among many of our anglers that we in Pennsylvania are ultra conservative when it comes to striped bass.

So in that sense, I would vote against this motion, at least for the spirit of giving our anglers the idea that all things are on the table, but I applaud the idea of the shad bycatch. I'd like to see that reduced, but in all fairness to our anglers I would have to vote against this motion.

CHAIRMAN FLAGG: Thank you, Dick. Other comments from the board? Yes, Gil.

MR. POPE: Thank you very much. Just one real quick thing. Roy, if at all possible in the future -- and I know hopefully it won't be too much trouble, but it would be nice if we knew exactly how many fish came from the Bay and from the coast as well. Even if it's a few thousand pounds, I would

appreciate knowing it. Thank you very much.

CHAIRMAN FLAGG: Thank you, Gil. Other comments from the board? I see no hands. We have a substitute motion and I'll read that into the record:

**It is the sense of the board that Delaware may retain a 20-inch commercial size limit in the Delaware Bay shad gillnet bycatch fishery only without a conservation equivalency penalty.**

That was a motion by Gordon Colvin; second by Dave Borden. Any further discussion? Yes, Bruce.

MR. FREEMAN: As indicated, we cannot support this motion, but I would like to bring to the board's attention the same issue that exists in Delaware as a bycatch in the shad fishery exists in the Delaware River relative to the recreational fishery in that there is a large and has historically been a large fishery for freshwater species.

As the striped bass resource has increased, we're finding more and more catch of striped bass, which are often caught and released, particularly with a 28-inch minimum size. And we are finding that almost in the freshwater during the summer period most all those fish die.

We have taken the position of reducing the size limit in order to allow those fish to be retained, very similar to what Delaware is trying to do to allow small striped bass to be retained that are taken in the gillnet fishery.

Bear in mind the data from Delaware indicates if those nets are tended, if they're drifting gillnets, mortality of striped bass is very low. If those nets are stationery, fixed, either anchored or staked, then the mortality is very high and justifies this action.

But bear in mind depending on how the fishery is controlled you can avoid this problem by having the nets become non-stationery and be tended.

What we're doing is in this instance voting for a position to accommodate Delaware where other actions can be taken to avoid this problem, and we're discriminating against other anglers. We have great difficulty with this motion because of those reasons.

CHAIRMAN FLAGG: Thank you, Bruce. Other comments? Yes, Tom Fote.

MR. FOTE: I'll make it short. This is

discriminating against two states. I mean, basically when Delaware originally got the 20-inch size limit, it was done under a conservation equivalency because it was 28 inches at that time in the Delaware Bay.

Over the years we've increased that fishery dramatically to where I think Delaware's historical catch was like 150,000 pounds, and now it's up over 300,000 or something like that.

MR. MILLER: No, 193.

MR. FOTE: Under 193. So it's above what it was during the base years. We have basically been very conservative. As I said, we could have gone under Amendment 5 and under Amendment 4 to 20 inches.

We basically stayed at 28 inches for a long period of time and then finally went to 24 inches. I'm going to now have to go back to the anglers that are basically fishing -- one of the reasons we did that was because a lot of the complaints we got out of the Delaware River was the fact that Pennsylvania allows for the sale of out-of-state fish, even though the native anglers are not allowed to sell the fish or native-caught striped bass.

So what the people were doing was releasing the fish up in the Philadelphia area or up in the New Jersey area. They were going down the river and being netted and being shipped back to the Philly fish market, because that's allowed to happen under the present Pennsylvania laws.

This basically was very, very objectionable to the recreational sector because we weren't allowing them to harvest the 24 to 28. As I said, you know, you're affecting -- you've done this historically on the Delaware Bay.

You basically have gone against the other two states wishes in reducing this, just the opposite of what you've done in the Chesapeake Bay.

When the Chesapeake Bay makes this type of decision, they make it unilaterally. They basically have set up state-by-state quotas and they basically decide how they manage their fisheries.

What this board has repeatedly done in the Delaware Bay is basically sided against two of the states and gone with one of the states over the years. And this is another example of that. I would try to make another amendment on this or a substitute motion, but

I know it would fail and I'm not going to waste the board's time. I just want to make this clear and put it on the record.

CHAIRMAN FLAGG: Thank you, Tom. I think we've had a lot of discussion about this. I'd like to take a few moments and have states caucus and we'll take a vote on this.

(Whereupon, a caucus was held.)

CHAIRMAN FLAGG: Has everybody had enough time to caucus? Okay, you have before you the substitute motion.

All those in favor signify by raising your right hand and keep them up so we can count; those opposed; five in opposition; abstentions -- yes, Bruce.

MR. FREEMAN: Mr. Chairman, I'd like to have this as a roll call vote.

CHAIRMAN FLAGG: Okay, we've been asked to take a roll call vote. Megan, would you call out the states.

MS. GAMBLE: Maine.

MAINE: Oppose.

MS. GAMBLE: New Hampshire.

NEW HAMPSHIRE: Oppose.

MS. GAMBLE: Massachusetts.

MASSACHUSETTS: In favor.

MS. GAMBLE: Rhode Island.

RHODE ISLAND: In favor.

MS. GAMBLE: Connecticut.

CONNECTICUT: Opposed.

MS. GAMBLE: New York.

NEW YORK: Yes.

MS. GAMBLE: New Jersey.

NEW JERSEY: No.

MS. GAMBLE: Delaware.

DELAWARE: Yes.

MS. GAMBLE: Pennsylvania.

PENNSYLVANIA: No.

MS. GAMBLE: Maryland.

MARYLAND: Yes.

MS. GAMBLE: District of Columbia, not present. PRFC.

POTOMAC RIVER FISHERIES COMMISSION: Yes.

MS. GAMBLE: Virginia.

VIRGINIA: Yes.

MS. GAMBLE: North Carolina.

NORTH CAROLINA: Yes.

MS. GAMBLE: U. S. Fish and Wildlife.

U. S. FISH AND WILDLIFE SERVICE: Yes.

MS. GAMBLE: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Yes.

MS. GAMBLE: Five opposed.

CHAIRMAN FLAGG: Okay, I didn't ask if there were any null votes. Are there any null votes? No abstentions. All right, the motion carries on a ten-to-five vote. That takes care of the substitute motion.

The substitute motion now becomes the main motion. And so now we're voting on the main motion, which is the substitute motion. I don't think we need to caucus again.

MR. FREEMAN: Roll call, Mr. Chairman.

CHAIRMAN FLAGG: Roll call vote; Megan will call the roll.

MS. GAMBLE: Maine.

MAINE: Opposed.

MS. GAMBLE: New Hampshire.

NEW HAMPSHIRE: Opposed

MS. GAMBLE: Massachusetts.

MASSACHUSETTS: In favor.

MS. GAMBLE: Rhode Island.

RHODE ISLAND: Yes, in favor.

MS. GAMBLE: Connecticut.

CONNECTICUT: Opposed.

MS. GAMBLE: New York.

NEW YORK: Yes.

MS. GAMBLE: New Jersey.

NEW JERSEY: No.

MS. GAMBLE: Delaware.

DELAWARE: Yes.

MS. GAMBLE: Pennsylvania.

PENNSYLVANIA: No.

MS. GAMBLE: Maryland.

MARYLAND: Yes.

MS. GAMBLE: D.C. is absent. Potomac River Fisheries Commission.

POTOMAC RIVER FISHERIES COMMISSION: Yes.

MS. GAMBLE: Virginia.

VIRGINIA: Yes.

MS. GAMBLE: North Carolina.

NORTH CAROLINA: Yes.

MS. GAMBLE: U. S. Fish and Wildlife.

U. S. FISH AND WILDLIFE SERVICE: Yes.

MS. GAMBLE: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Yes.

CHAIRMAN FLAGG: The motion carries on a ten-to-five vote. Yes, Tom.

MR. FOTE: Well, since we approved the Delaware commercial fishery staying at 20 inches, I would like to make a motion now that basically that Pennsylvania and New Jersey's recreational fishery in the Delaware Bay, the producing area, stays at 20 inches.

MR. GENE KRAY: Mr. Chairman, I second that motion.

CHAIRMAN FLAGG: Okay, we have a motion by Tom Fote. Who seconded the motion?

MR. KRAY: Gene Kray for Fred Rice.

CHAIRMAN FLAGG: Thank you, Gene. We'll get the motion on the board here in a minute.

MR. PRESTON PATE, JR.: Point of order, Mr. Chairman.

CHAIRMAN FLAGG: Yes.

MR. PATE: The earlier discussion we had and the first motion that we voted on was intended to clarify a discussion that took place at the last board meeting, and I question whether or not this has not gone beyond the intent of the board in amending Amendment 6 and whether this has been disclosed adequately enough to the public to make a decision today.

I make that statement not in support or opposition for the motion. I just don't want us to get so far afield from what our purpose is today that we never complete that purpose.

CHAIRMAN FLAGG: Thank you, Pres, you make a very good point. I am a little concerned about us going too far afield here and, as Pres mentioned, the issue relative to the Delaware Bay commercial fishery was one where a clarification was required, and I believe we are treading on completely new ground now by going back and revisiting other issues that have been dealt with in the past.

So, I guess maybe I'll ask for some advice from Vince or the staff as to how we might proceed here. I'm inclined to rule the motion out of order, but I want to get some sense of -- I've been advised that actually this would be an action to rescind a previous decision or bring this item back up again, and it would require a two-thirds vote of the board to revisit this particular issue. Yes, Tom Fote.

MR. FOTE: This issue is no different than Delaware's issue. I mean, if you basically brought one up, it's the same issue and it was interesting that it was not ruled out of order then or wasn't told that we needed a two-thirds vote to even bring up the issue.

It's the same issue. It's where you basically have the size limit, whether it's 28 inches or 20 inches, in the Delaware Bay. You're exempting one fishery and not taking care of the other fishery. I can't see how you can basically say one is out of order or one needs a two-thirds vote and the other one doesn't.

CHAIRMAN FLAGG: Bill Adler.

MR. WILLIAM A. ADLER: Thank you. Tom, this particular motion, it doesn't say anything about a "bay." Does that mean the ocean?

MR. FOTE: I said the producing area in the Delaware Bay.

CHAIRMAN FLAGG: Roy.

MR. MILLER: Mr. Chairman, this motion is interesting in that Delaware also shares Delaware Bay with New Jersey and shares Delaware River with Pennsylvania, and it makes no mention of Delaware.

I'm not sure of the purpose of this. I tend to favor your first synopsis that the motion is out of order. I think it represents a drastic change over the intent of Amendment 6.

If we're going to proceed down this road, though, I would urge the board that if you're going to have one size limit for two Delaware Basin states, allow all Delaware Basin states to have the same size limit.

As you recall, Mr. Chairman, from your history with the board and the technical committee, the assignment was given to the Basin states to work through the Delaware River Co-Op to attempt to come up with a uniform minimum size limit for recreational fisheries, which we have tried to do over the years.

The literal interpretation to this motion would destroy that unanimity in terms of size limits by having one size limit for Pennsylvania and New Jersey and another recreational size limit for Delaware, so I don't think that was our intent. Thank you.

MR. FOTE: To that point.

CHAIRMAN FLAGG: Yes, Tom.

MR. FOTE: I just didn't think Delaware was interested, but I have no problem amending the motion to put Delaware -- if the second doesn't mind, I have no problem putting Delaware on there. The seconder says fine.

MR. KRAY: Yes, the seconder would approve that change.

CHAIRMAN FLAGG: Okay, Megan. I have a clarification and then I'll get right to you, Gil.

MS. GAMBLE: I just wanted to respond to Tom Fote's question about how this differs with the way that we handled Delaware's 28 inches in the commercial fishery.

Staff made an inference that Delaware would go up to 28 inches in the commercial fishery based on discussions out of that last meeting. Apparently that inference was incorrect and so the board corrected that today.

The difference with the recreational fishery being at 28 inches, the reason it's different is because the board made a specific action and motion to approve 28 inches in a recreational fishery so, therefore, you're changing a specific motion that was made at the last meeting.

And then just one other point I wanted to make is that staff was given explicit direction -- and that is in the minutes from the last meeting -- that producer areas were to be eliminated from the document. We will no longer be using the term "producer area."

CHAIRMAN FLAGG: Thank you, Megan. Gil.

MR. POPE: Yes, I just have one quick question. The last motion that we passed, Roy, would that change any of what is going on now? Would there be any change in either regulation or action in what your fishermen are doing? That would be my first question.

MR. MILLER: I think that's a fair question, Gil. I should remind very one that the present size limits in the state of New Jersey and Delaware within in Delaware Bay for striped bass, it's a slot limit, one fish between 24 and 28 inches and one fish over 28 inches.

That slot limit has been in effect since I believe '99. This would be the third season for it, in any event. Pennsylvania, you're still at two and 28 or did you drop down? Pennsylvania is also at the same slot, Gil.

MR. POPE: Okay, and the other thing, I would just have to agree with Pres on this one, that I think this is something that has just gone a little bit beyond a clarification into going into new ground here. Thank you.

CHAIRMAN FLAGG: Thank you, Gil. Gordon.

MR. COLVIN: If we're going to proceed any farther with our discussion of this motion, then I'm going to need to know what the producing areas of Delaware Bay are, meets and bounds. Frankly, I think those words should be dropped, as Megan's remarks indicated, and replaced with a description of the area affected.

The term "producer areas" is out of Amendment 6. It's gone; it's history. Rather, let it rest in peace. If it comes back, we've got a lot of work to do and we're going to be here real late tonight.

CHAIRMAN FLAGG: Tom.

MR. FOTE: Well, since we took out the wording "producing area" for the Chesapeake Bay and basically the Albemarle Sound, but left the same designation areas, the same lines that have been drawn in historically which are the lines -- was it Cape Penelopen to Cape May Point was what was in the old producing area.

That is the line I am talking about, the same line as we had done -- I guess what you assume now, you allow Chesapeake Bay doing and North Carolina, so it would be the same line there.

CHAIRMAN FLAGG: Bill Adler.

MR. ALDER: Tom, if you looked on 4.2, under recreational management program, and the wording there, which you just inferred to here as the

Chesapeake Bay and Albemarle Sound, how does this affect that section in the document? It's Roman numeral IV of the Executive Summary, I guess it is.

It says "Bag Limits, 4.2.1", and the wording there, as you say, just says "except Chesapeake Bay and Albemarle Sound, Roanoke River." If those areas are included right in that wording, doesn't that solve the problem?

MR. FOTE: I'm a little confused but, Bill, I'll restate what I just did. Basically what you had under Amendment 5 or all the others, which basically was lines that define producing areas, what we did with the Roanoke River and the Albemarle Sound is we basically said, you know, we're going to change the designation but we're going to leave those same boundaries.

I would assume that the same boundaries are for the Chesapeake Bay that was under Amendment 5 and under Amendment 4. People think this is in regards to the slot limit.

The slot limit of 24 to 28 is a slot limit that basically Pennsylvania and Delaware have in place, and New Jersey right now, were done under conservation equivalency in New Jersey basically in regards to saving the larger fish.

This does not affect our slot limit, as I see it, because that's basically our regulation we'll keep in place. What I see this affecting is the future if we ever wanted to go to 20 inches. I mean, that's what it is.

And it's a theoretical because we don't want to go to 20 inches. But, I'm basically going to have to go back to my fishermen and say that you can no longer do it. I mean, again, the slot limit was put in under a conservation equivalency under the addendum, which is a different story.

What I'm talking about historically is changing the designation of an area and not allowing for a 20-inch size limit, because we're not going there. I mean, nobody in Pennsylvania, nobody in New Jersey, nobody in Delaware that I have ever talked to right now wants to go recreationally to a 20 inch.

CHAIRMAN FLAGG: Before we continue the debate, I feel that the motion is out of order; and unless we have a motion to reconsider in which we get a two-thirds vote, then we're wasting our time discussing this. I think we need to -- if anybody wants to offer a motion to reconsider the board's action of December 19<sup>th</sup> relative to this issue. Dave

Borden.

MR. BORDEN: I'm not going to make that motion, Mr. Chairman, because I totally agree with the comment that Pres Pate made before. I really think that we're stretching the bounds of this discussion and going back and essentially recasting a deliberation that was already completed. I thought Megan made some excellent points.

If the two states involved or the three states involved care for the board to reconsider this issue, I think the appropriate way to do it is to ask them to get together and put together some type of document that we can review at our next meeting.

Then if we decide at that point that it warrants attention, we will do an addendum to address it. I move to table.

CHAIRMAN FLAGG: Okay, we have a motion to table. Yes, we have a second by Pat Augustine. I don't think we need the motion to table because I've ruled the previous motion out of order, anyway. It's null and void as far as I'm concerned and I think we can move on from this point. I think we can get back to Megan and her presentation.

MS. GAMBLE: The next section that I'll address from the Executive Summary is the allocation of the coastal commercial quota.

And as was decided during the December meeting, the coastal commercial quota will be raised to 100 percent of the average coastal commercial landings during the base period, which is 1972 to 1979. I just wanted to point out to the board that the derivation of these quotas are described in detail in Appendix 3 towards the end of the document, and the landings data in those tables comes from Table 4.4.1 in the source document to Amendment 4.

I did, however, have to use a different situation for the landings in New York, Delaware, Maryland, Virginia and North Carolina. Those do not come from the table in the source document. As we've already discussed, the board decided to hold Delaware's coastal commercial quota at the 2002 level.

And then for New York, Maryland, Virginia and North Carolina, the table in the source document included commercial landings from some of the inland rivers, so the 2002 quota for these states was increased by 43 percent to bring it back up to 100 percent of the 1972 to 1979 average commercial

landings.

And then the only other part I wanted to point out about these commercial quotas is that they are allocated on a calendar year basis; and in the event that a jurisdiction exceeds its allocation, the amount in excess of its annual quota will be deducted from the following year's quota. Are there any questions?

CHAIRMAN FLAGG: Questions of Megan? Yes, Paul Diodati.

MR. PAUL DIODATI: Can you just repeat, Megan, how you derived those figures, again, for the other states? I wasn't aware that there was an issue with the table.

MS. GAMBLE: Well, if you look at Appendix 3, you will see that for New York, Delaware, Maryland, Virginia and North Carolina the landings are very high, and they include the commercial landings from areas other than the coastal commercial fishery, so I used the quota allocated during the 2002 calendar year and increased that by 43 percent.

CHAIRMAN FLAGG: Roy.

MR. MILLER: Megan, since you referenced it, I was looking through Table 11 in that particular appendix last night, and I noticed what appeared to be an error in the Virginia column. Would you have a look at that and double check it? That's Table 11 on Page 60 and that is part of Appendix 3.

MS. GAMBLE: You're right, those numbers don't quite add up, do they.

MR. MILLER: No.

MS. GAMBLE: I'll make that change but it actually doesn't affect the allocation given to Virginia.

CHAIRMAN FLAGG: Gordon.

MR. COLVIN: Yes, Megan, I need you to explore with me a little bit this adjustment that you made in Appendix 3 for states that had some inland landings, looking at Tables 11 and 12. What I'm looking at here is that Table 11 represents for New York an average of just a little over a million pounds for the baseline period.

And there's two different things going on here. One

is that, as you indicated, those figures do include landings from the Hudson River as well as the coast. The Hudson River commercial fishery was closed from 1976 on, so presumably the years '72, '73, '74, and '75 have some Hudson River landings. I can tell you they were low.

And if you simply backed out the documented Hudson River landings in those periods, we'd get a clearer separation. One of the reasons you might want to do that is that we end up with something entirely different.

If we go down to Table 12, you've done a 43 percent increase on the 2002 quota, which is consistent with the motion that we passed, recognize that the 2002 quota in New York -- and I guess only New York from among these states -- is a reflection of a smaller quota that begins with a conservation equivalency reduction based on our 24-inch low-end slot.

If we choose to go to 28 inches, which we might, we wouldn't want to lose the opportunity to no longer pay that penalty, so I guess I'm sort of wondering if we just tabled 843 and 922 and said that's it without any kind of an asterisk or a footnote that indicates that that's based on a conservation equivalency reduced 2002 quota, then, you know, we could have our hands tied for no good reason.

So I would think that the preference would be to either add that kind of a footnote that makes it clear that at 28 inches it would be higher than 843, or to actually go back to the original data and back out the Hudson River landings, which we could do, would be messier.

I'd just as soon do the former if that's easier. You know, it's a matter of record. Every year, when we submit our proposal, it's laid out what the pre-penalty and the post-penalty quota is, so it's in the record. It's on the record.

CHAIRMAN FLAGG: Can we make that footnote?

MR. COLVIN: I don't want to offer a motion unless it's --

CHAIRMAN FLAGG: No, I think we can -  
-

MR. COLVIN: If we can just maybe make that footnote.

CHAIRMAN FLAGG: I'll direct staff to do

that, Gordon. That's a good point because this will be history and people will forget what happens.

MR. COLVIN: Well, yes, I appreciate that, Mr. Chairman. The fact is that we are thinking about moving our size limit up to 28 inches. It's an option. And if we do that, then we would certainly wouldn't want to be limited.

CHAIRMAN FLAGG: Thank you. Yes, Eric.

MR. SCHWAAB: Thank you, Mr. Chairman. I believe that Maryland's coastal commercial fishery would be in a similar situation. I don't have the numbers in front of me, but my recollection would be that we took a similar penalty to remain at the 24-inch minimum size; and under this amendment, we would be going back to 28, so I would like the same consideration.

CHAIRMAN FLAGG: Okay, we'll have staff look into that. Gil.

MR. POPE: My question, then, Eric, so the 91,000 pounds or 92,000 did reflect a 20 percent penalty?

MR. SCHWAAB: I don't know what the percentage was and I don't have the numbers in front of me. I just would want to have the opportunity to go back and look at that.

MR. POPE: Okay, because I know that both New York and Rhode Island for a while reflected about a 20 percent penalty because we chose to fish at below 28. Thank you.

CHAIRMAN FLAGG: Thank you, Gil. In just a moment we will have staff continue the presentation.

MS. GAMBLE: The next couple of subsections in the section referred to as the "commercial management program" deal with the Chesapeake Bay and the Albemarle Sound. Both of these areas will implement management measures that will prevent exceeding a target fishing mortality rate of 0.27.

And, again, during the December board meeting, the board decided that Delaware will maintain its commercial quota at the level allocated during the 2002 calendar year, and that amount was 193,447 pounds.

**DRAFT AMENDMENT 6: OPTIONS TABLED  
FROM DECEMBER 19<sup>th</sup>, 2002**

The next section brings us to the recommendation to the Secretary. In December the board began discussions on the recommendation to the Secretary of Commerce for the harvest of striped bass in the EEZ.

I just wanted to refresh your memory on those motions that were made and hopefully move forward today. First the motion was made to open the Territorial Sea portion of the EEZ off of Massachusetts, Rhode Island and New York, but this motion failed.

Subsequently, a motion was made to open the entire EEZ to the harvest of striped bass. This motion failed for a lack of majority. And at the end of this lengthy discussion, the recommendation to open the entire Territorial Sea to the harvest of striped bass was tabled until the February meeting so that brings us to today.

CHAIRMAN FLAGG: Yes, I think this would be an appropriate time to have some discussion about the EEZ issue. Any comments from board members? Yes, Paul Diodati.

MR. DIODATI: I believe you're expecting a motion or a perfected motion, and I'm willing to do that.

CHAIRMAN FLAGG: Okay, fine, Paul, if you could give us that at this point.

**MR. DIODATI: The motion is that the board forward a request to the Secretary of Commerce for a provisional opening of the EEZ for striped bass fishing. The requested opening would extend seaward to the 12-mile Territorial Sea line or contiguous zone and span the length of the Atlantic Coast.**

**Possession of striped bass below the minimum size of 28 inches in the EEZ open area will be prohibited. Fishery impacts on the resource will be evaluated by the technical committee annually so that the policy board could make appropriate EEZ management recommendations to the Secretary of Commerce at the end of each FMP planning horizon.**

CHAIRMAN FLAGG: That's the motion, Paul? Do I have a second? Okay, second by Jerry Carvahlo. Thank you, Jerry. Do you have that

written down, Paul? Okay, we have discussion. I have Tom Fote and Pres Pate.

MR. FOTE: EEZ opening in New Jersey has been always an interesting subject. You realize we had probably the most amount of people ever show up at public hearings. I mean, Bill Hogarth conducted one of those public hearings.

There was a thousand people in the room opposed to the opening of the EEZ. We understand the problems because we have problems in our own state at this point. That was a few years ago. The problem still exists is law enforcement in there.

I mean, right now what's going on with the Coast Guard, what's going on, we have no enforcement in a lot of areas that we should have. I remember seeing on the CNN a little ticker tape going by and talking about the priorities of the Coast Guard.

It's easier basically to restrict at this present time -- if we're going to have management to basically make it easier by keeping the EEZ closed.

Having said that, the only way I could even think about supporting this motion, as we've talked about it over the years, if the states would have the jurisdiction of controlling those 12 miles, which I don't think the Department of Commerce is ever going to give us, unlike the Gulf states where they do control a certain amount because they were basically deeded under the King of Spain I think way back when.

So at this present time I can't support the motion because I think the law enforcement problems would be a nightmare right now. It also doesn't stop -- if the state could control the 12 miles, it basically would control how you fish within that state, whether there is netting, whether there is non-netting, and things like that.

This motion doesn't make that clear to me, whether who would control how the regulations would be set up. And because of those conditions, I can't support this motion.

CHAIRMAN FLAGG: Before I get to you, Pres, since Tom had brought up the law enforcement issue, I know Kurt Blanchard is here and, Kurt, I know there was a report by the Law Enforcement Committee relative to this issue. Perhaps you could enlighten us as to what that report reflects.

MR. KURT BLANCHARD: Thank you,

Mr. Chair. This issue was brought before the Law Enforcement Committee back in October of 2001. And some of the issues that Tom has brought up we discussed. There are two main points.

One was opening the EEZ out to 12 miles and having the states take over jurisdiction of that and enforcement of that area. Through our discussions, a consensus was gained that that's near impossible for law enforcement to accommodate.

There are jurisdictional issues. There was constitutional issues in different states whether that would even be allowed. And it was a manpower and resource issue.

The second area that we looked at was whether the regulations in the EEZ were completely removed and, therefore, falling back into state possession limits dockside and within state waters.

That we recognize as being problematic in some resource issues as far as manpower and equipment issues, but it could be enforced within state jurisdictions.

As far as enforcement federally in the EEZ, I hesitate to comment on that other than what Tom mentioned as far as the Coast Guard being tasked with their obvious duties right now and National Marine Fisheries Service having limitations out into that area.

So, with those comments, I'll entertain any questions you might have of the committee but that was the general report provided to the Executive Director at National Marine Fisheries Services request through the Law Enforcement Committee.

CHAIRMAN FLAGG: Thank you, Kurt. Pres Pate.

MR. PATE: Thank you, Mr. Chairman. At the last board meeting, I made the motion to recommend that the Secretary open the EEZ out to its full extent, somewhat selfishly, I'll admit, to try and solve a serious problem that we have in North Carolina with our ocean-based trawl fishery for finfish during the period when the stripers are at such high concentrations off of our coast.

That problem was worse this year, and it has certainly been brought to everyone's attention with the nice letters that everyone has received about the experience of several recreational fishermen that had visited out coast.

Our fishery was intended to be a bycatch allocation in the winter time to those trawlers that were targeting fluke, weakfish and croaker beyond the 3-mile limit and in some instances beyond the 12-mile limit.

Since possession of striped bass is not allowed in the EEZ, what happens is that those fishermen that are out targeting other species feel compelled, and rightfully so, to take advantage of the allocation of our meager quota to them by coming in the state waters and targeting striped bass on their way back to port from the other trips.

That causes a concentration of effort of different types into a very small area. You have the trawlers and the recreational boats, and this year the striped bass tagging crews all duking it up in the same space for the same resource and the conflicts have become very obvious.

So the opening of the EEZ to any extent will help us solve that problem by getting some of that effort away from the three-mile jurisdiction. Unfortunately, it will not solve completely the other problem which is the discard of striped bass from the same trawl fishery in the closed areas.

The boats are encountering these fish while they're off our coast fishing for fluke and the other species. They cannot possess them. They throw them back. There is discard mortality that everyone knows.

And then they come in into the open area and harvest what they are allowed to harvest. So that was the fundamental reason that we supported the opening of the EEZ as strongly as we have. I support the motion that Paul made.

Half a glass is better than an empty glass, and it will go to some extent a solution to our problem. However, I think it has less likelihood of being approved by the Secretary of Commerce. The problem is going to be the idea of opening the EEZ is very controversial.

The Secretary of Commerce, during the public hearing process and Hogarth during the public hearing process, is going to receive an enormous amount of opposition for reasons that we've heard already to any opening of the EEZ.

A partial opening will be compounded by the enforcement problems that are attendant with it that are not perhaps as great as a complete opening would be.

I don't fully understand the enforcement concerns since most of the enforcement is going to be dockside enforcement, anyway. At least it probably will be in our state.

So whereas I support the motion, I think it's weaker than putting forth one for complete opening, and I've thought about a process of bringing that idea back to the board. Procedurally I'm handicapped because I don't know the intricacies of Robert's Rules to breath life into that motion that died because it died at the last meeting.

But, during the course of comments from the board on this motion, I would be interested in hearing sentiment about a complete opening to see if there is any way that we could possibly get back to reconsideration of that idea. Thank you.

CHAIRMAN FLAGG: Thank you, Pres. Gordon.

MR. COLVIN: Thank you. I've, like many of the board members, been thinking about this for a long time. I've listened to a lot of discussion, discussion at public hearings, discussion of the public comment record, input directly to the board and discussion around the table.

I have to admit that I'm getting baffled and I just don't understand the enforcement argument, and I need some help with it. As I understand it, the current federal regulation prohibits possession of any striped bass by any vessel in the EEZ, period.

And presumably the federal government, in adopting that regulation, has made a commitment to enforce it at sea -- and it can only be enforced at sea -- by its enforcement assets which consist of 100 percent of the United States Coast Guard, nothing else that I know of, unless we're going to have the Navy start doing this, but NMFS is land-based.

So right now there is a regulation in place that prohibits possession of striped bass that the Coast Guard presumably enforces to the best of its ability. It's not limited in its applicability to federal permit holders like lots of other federal regulations are.

It's any vessel. No person may possess whether they're in a 12-foot dingy or a George's Bank dragger. And what has been proposed is to replace that federal regulation with a different federal regulation that would allow possession with a size limit and perhaps catch limits as well.

So, as far as I can see, the only extra burden that's being placed on enforcement, on the enforcement system, is to call on the Coast Guard, who has a responsibility now, when they find striped bass on a vessel, to measure them and count them.

A little bit of extra work, not much, because they're not that hard to do, as far as I can see, unless I'm missing something. Plus, there is the kind of underlying assurance that those fish, when they come back to land, are subject to state enforcement as well.

So there is a backstop there, and the same size limit is going to apply. So I've spent a lot of time thinking about this; and unless I'm missing something and being real stupid, I do not understand the concern about enforceability and enforcement that has occupied much of this discussion. I'd sure be willing to be educated. I just can't get it.

CHAIRMAN FLAGG: Thank you, Gordon. I'm going to ask Kurt to respond to that.

MR. BLANCHARD: Maybe I wasn't that clear on this. The questions that were posed to us, Gordon, were -- one was in fact that opening out to 12 miles with the states taking on the responsibilities of the enforcement, and we obviously don't have the manpower or the resources to do that.

The second phase of it was under Magnuson-Stevens our understanding is if the federal prohibition was lifted, then state jurisdiction would prevail in our waters and in the fisheries -- and maybe Anne can comment on that and clarify it if I'm wrong. That was our understanding.

With the second phase of it, if it were to be opened, we recognize there would probably be an increase in effort from law enforcement, in the enforcement of that, again, dockside and in state waters and state jurisdictions.

That can be accomplished. I don't believe I said that it couldn't be accomplished. It would be problematic but we can accomplish that.

The primary issue from law enforcement and our concern from law enforcement was going out to 12 miles, jurisdictional issues, constitutional issues and boundary issues. I hope that maybe clarifies a little something here.

CHAIRMAN FLAGG: Yes, Gordon.

MR. COLVIN: Don't get me wrong, I fully

understand the concerns that the states have about assuming a responsibility for enforcement in a piece of the ocean that they don't cover now, is not staffed or equipped to cover now and which there are legal issues. That's not my point at all.

My point is that there is a federal regulation that applies to that area now that is enforced by the appropriate federal agency and why couldn't that federal agency continue to enforce a simple size limit for fish in possession in the same area.

That is not really coming from our law enforcement input. That's coming from the larger body of comment, including comments made already this morning in this discussion by board members.

CHAIRMAN FLAGG: Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. Pres, in other words, your argument was that if the EEZ wasn't open, you would have discard in the EEZ by the fishermen that are fishing out there, and then you have them coming in and fishing close to shore to get the striped bass until their quota is taken.

So they're taking them in close with the other fishermen and they're discarding, because they can't help it, they're discarding just outside. Is that what you just said?

MR. PATE: That is correct.

MR. ADLER: Okay, so you're wasting some fish outside and then they're getting into the inside. Now if they were able to fish outside under the EEZ rule, that would go towards the quota, too, right?

MR. PATE: That's correct.

MR. ADLER: All right. Thank you.

CHAIRMAN FLAGG: I'm going to go to Anne and then back to Doug. Anne.

MS. LANGE: I'm not sure exactly where we're heading. I think related to opening the EEZ in its entirety, basically state landing laws would apply so I would expect that there would be a minimum size beyond the three miles that will be enforced in federal waters.

Some specific measures would have to be -- coastwide measures would have to be implemented, but as far as enforcement goes, what that would mean

was any striped bass that is landed in the state, in any state, would have to be landed in accordance with that state's law.

So I think if the entire EEZ was opened, enforcement would be simplified in that no matter where you landed it, if you're undersized for the state you're landing in, you're out of compliance.

If you're beyond 12 miles -- a 12-mile line would make things a little more difficult because it would be in fact a problem whether or not you were inside or outside the 12 miles. But if the entire EEZ was opened, then it wouldn't matter where you caught it. The same regulations from shore to 200 miles would be the same.

CHAIRMAN FLAGG: Doug Grout.

MR. DOUG GROUT: The concern I have with this is what effect this would have on the stock. Admittedly, if you look at things from one standpoint, it doesn't make any difference. The effort would just be displaced to another -- the inshore effort would just be displaced so essentially your catch would be the same.

But my concern, from what I've heard and what I've experienced around our state, is that there seems to be a much larger amount of large striped bass, bigger striped bass out there so by opening up the EEZ, you may be opening up what is now a refuge for larger striped bass.

Now, I'm not opposed to this at this point as long as there would be some kind of effective monitoring of what the effect -- if we went ahead with this, what the effect would be on the stock.

And that maybe something that -- I don't know if, Paul, you can make a suggestion on how we might do some additional monitoring, or maybe Kim, as a technical committee representative here, might have some ideas on how we could effectively monitor the effect of this change.

CHAIRMAN FLAGG: Thank you, Doug, Paul, to that point.

MR. DIODATI: Well, I hope that it's true, that there are a lot of larger fish out there and a lot of them; because if that's true, then our current estimates of stock size have been way underestimated and there are more striped bass than we think we have.

So that would be a good thing. And this kind of

fishery would tell us that, given that we're relying on VPA's right now. So, this catch isn't represented in the current VPA. So, if anything, the stock size would go up and our fishing mortality rates would go down if what you say is true.

Likewise, we don't really conduct specific monitoring programs. The programs that we use to estimate fishing performance and stock condition are all based around the VPA. So this new catch, if there is a new catch, would be I think recognized in future years in the VPA results. I don't know if we have to do anything significantly different.

A state like yours already fishes out to 12 miles because of the Outer Shoals. A state like Maine already fishes out to 12 miles because of all the islands off of the state of Maine. So a lot of this isn't going to change along the coast.

There are only a couple of areas along the coast where this is going to change. Commercial fisheries are limited by quotas which are, for the most part, fully harvested in coastal fisheries, so that's not going to have any change at all.

And so we're talking about recreational fishing, really. And at one or two fish per day, I personally would be quite surprised if we see any difference because of this.

It would have to be pretty much of a larger shift in small recreational boats rushing out from a half mile from shore where they fish now to somewhere else, and I just don't see that happening.

CHAIRMAN FLAGG: I have Anne and then Ritchie and Dave Borden, Tom.

MS. LANGE: Well, I think part of the issue is that for over the years, since the EEZ has been closed, there has been great speculation that there are larger fish out there, that that's where all the large fish are.

But in point of fact, because there has been no fishery out there, we don't know. The fish are thrown over as discard and associated discard mortality, whether it's by recreational or commercial fishermen.

If those individuals were allowed to land that catch, it would be accounted for. Number 1, we could get the information, the data we need to find out exactly if there are in fact a larger proportion of large fish out there. We would also get more accurate records of what actually is being caught.

Right now, as Pres has described, off North Carolina -- and I know it happens coastwide -- if commercial fishermen catch any striped bass beyond three miles, unless they're very certain they're not going to get caught, they throw them overboard. We have no record of exactly how much that is.

The same thing with recreational fisheries, we hear reports that there's a lot of recreational catch and landings that occur beyond 12 miles. Not just in Massachusetts, but other states have acknowledged that they know of a lot of catch that is occurring beyond three miles in the recreational sectors.

Again, either those fish are attributed to the inshore when they shouldn't be or they're dead discards or at least a portion of those die. If the EEZ were opened, we are managing based on not only targets but thresholds in both F and in spawning biomass.

We have implemented, as a board, the necessary measures to determine what the status of the stock is and what the impact of the fisheries are.

I believe that if we were able to open the EEZ, we would have a much better handle on exactly the status of the stock over the period of one or two years, monitoring, evaluating, allowing the technical committee and stock assessment subcommittees to conduct the assessments on a full set of data, not data with a lot of holes because of discards and unreported catch, that we would have a better idea of the status of the stock and we could make modifications to the regulations based on that.

If we exceed the targets or the thresholds, we have measures in place or measures within the plan in place where we could reduce harvest either in the commercial or recreational in order to stay within the F.

But if we don't have a way of measuring and determining what the data are, what the catches are, there's no way of knowing what's happening.

The other issue that Pres brought up, and I think Paul as well, is the concentration of effort inside three miles. If all legal fishing is occurring inside three miles, you've got impacts of conflicting gears, the commercial guys working on top of the recreational sector.

If the EEZ were opened, we'd have an opportunity to spread that effort out and keep track of the entire catch and the entire discard.

CHAIRMAN FLAGG: Thank you, Anne. Ritchie White.

MR. G. RITCHIE WHITE: Thank you, Mr. Chairman. The problem I still have with this is the states that don't allow commercial fishing could be subjected to commercial fishing between three and twelve miles.

I think that's unfair to a state that has made the decision on that type of allocation and won't have control over that. So, I'm going to have to continue to oppose this.

CHAIRMAN FLAGG: Thank you, Ritchie. Dave Borden.

MR. BORDEN: Yes, thank you, Mr. Chairman. There have been a lot of good points that have been made today, and I'm not going to repeat those in the interest of time. I'm also not going to repeat what I've said before at previous meetings on this.

I view this issue very simply as a conservation issue. I don't think there's a state that's represented around this table that doesn't have commercial fishermen who have an inadvertent catch of striped bass in federal waters and are currently now required to throw those dead fish over the side.

If in fact we were to change the regulations, either to follow Paul's suggestion or a slightly modified Option 3, I view it solely as an issue of biology. I think we will enhance striped bass conservation, and the reason for that is very simple.

It makes no sense to require fishermen to throw fish away dead. The other point that I would make here is that in this day and age the amount of enforcement resources that we have are precious. I think everybody recognizes that.

And having the United States Coast Guard, which I hold in high regard, dedicating time to enforcing this regulation in the EEZ I think is a total waste of their time, to be totally candid with you.

I was absolutely shocked at the last New England Council meeting when I looked at the NMFS Blue Report and they had a citation in there where some hapless soul, probably on Nantucket Shoals, got cited for having a striped bass out in the EEZ.

As to the enforcement issue, I think we can address it very clearly by passing a motion -- and I won't put this up on the board, but I will put out the idea --

passing a motion to adopt Option 3 which would open all the EEZ, which I think would speak to the points that Anne raised before, but include in that a minimum size of, say, 28 inches as has been discussed.

And I think we ought to be very clear that there would be an explicit understanding that any state would have the right to adopt more restrictive regulations for fishermen that are licensed in their state or have registered vessels in their state.

If we did that, it would remove the burden of enforcement from the United States Coast Guard. It would place it as a possession limit on the states. States like New Jersey, sitting to my right, that do not have commercial fisheries still would not have a commercial fishery.

They would have the right, under that type of rule, to basically prohibit a commercial fishermen from landing in the state of New Jersey.

Pres Pate I think made a number of very compelling points on the discard issue. And I think, personally, that if I could get Paul to consider modifying his motion more to the nature of what I characterized, I think it will enhance the prospect of getting it adopted by the National Marine Fisheries Service. Thank you.

CHAIRMAN FLAGG: Thank you, Dave. Tom Fote and Bill Adler.

MR. FOTE: A couple of points. I consider it as a conservation measurement by keeping the EEZ closed; my first point. The fact is that a lot of times when there is not fish inshore, especially in New Jersey, there are fish on the lumps and areas, and it would basically raise the level of catch that basically happens.

Yes, some boats go out and they get caught in the EEZ but a majority of the fishermen do not travel out to the EEZ because they don't want the risk of getting caught in the EEZ, basically illegally fishing.

You know, you have the exception, but it would basically open a whole new area. We know a lot of times that the fish, because people are trolling for other things out there and releasing them, that basically at around four-five miles, you can find when the mackerel are out there, there are the biggest striped bass under the mackerel.

They don't come inshore. They're further out,

whether it's 12 miles or whether it's 10 miles. So, basically, it would open up a whole new area for recreational fishing and probably increase the catch in New Jersey recreationally.

Again, Dave tried to say that it would now allow for the commercial netting in New Jersey if we did this because we have no netting. The problem arises if you don't control your state waters -- right now we can control our state waters.

We don't allow within three miles, basically, netting of striped bass. And if you go outside of three miles, you can't do it because the EEZ is closed. So it protects the Delaware River stock from being netted in the EEZ.

It protects the Hudson River as they basically winter out offshore. There are certain areas in New Jersey that do that. If we open this up, it would basically open up those lumps to be netted and landed in another state.

And it would basically affect the stocks of the Hudson River and the Delaware, in our estimation. And so that's one of the other concerns we have here.

Yes, it doesn't increase the quota but we have found that people now start targeting bigger fish; and if there is a bigger cow sitting offshore, they will basically go out and target that.

Those have been my concerns all along. I don't consider this --I consider it just the opposite. I'm looking at -- and I'm looking at my state in particular. It would increase our catch recreationally. Right or wrong it would do that.

I mean, it wouldn't be your conservation measure but it would actually increase the harvest. And Tony Bogan's back there shaking his head up and down because he knows the party and charter boats would love to be able to go out to the EEZ, and they could do a lot more damage because a lot of those times those fish are sitting offshore.

So I'll leave it at that because the party and charter boats, when basically a big party boat looks out there, you can see them. It's very easy for an enforcement agent to know that he's that far offshore. And the calls go right in real fast. And they're aware of losing their permits and everything else. So I'll leave it at that.

CHAIRMAN FLAGG: Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. What concerns me is this idea that the bigger fish may be out there. We don't know. But, the bigger fish supposedly are a prized fish, for whatever reason, and yet the discards -- what concerns me here is that if the discard that's taking place in the EEZ is big fish, then we're sort of like wasting things here.

And that concerns me. And also the idea that the incident that was brought to our attention in a letter down in Carolina of that would basically -- it sounds like it's going to continue if the EEZ isn't opened and everybody was upset that that incident had happened.

And it seems like it would continue. So, I'm concerned about the waste here when trying to keep this fish healthy and everything, and yet I just hate to see fish wasted. Thank you.

CHAIRMAN FLAGG: Thank you, Bill. Gene Kray, you've been very patient.

MR. KRAY: Yes, Mr. Chairman. I just want to go back to the meeting on the 19<sup>th</sup>. When this subject was first broached, wasn't the -- and I believe, Pat, it may have been you that said that the technical committee and the advisory panel both unanimously voted against opening of the EEZ?

CHAIRMAN FLAGG: Pat, do you want to respond to that?

MR. KELIHER: The advisory panel has in the past, up until this past year, was always unanimously opposed to the opening of the EEZ. There are three or four members on the panel now who do now support the opening of the EEZ, but the vast or the majority opinion still rules the day of opposition.

MR. KRAY: Thank you. That's all I had, Mr. Chairman.

CHAIRMAN FLAGG: Thank you, Gene. Jaime Geiger.

DR. JAIME GEIGER: Thank you, Mr. Chairman. Several years ago this board recommended to the Secretary of Commerce that we close the EEZ, and it was based upon arguments for conservation of the species.

I think today it boils down to, again, is this an issue that affects the conservation of the species. I've heard concerns about law enforcement. I've heard concerns about burdens upon the states.

But I think the primary reason and the primary thing that we need to consider is are we impacting or hindering the conservation of this species. Based upon the information I have seen and I have heard, I sense that that is not the case.

We have a strong control rule in place. We have improved monitoring, evaluation and assessment procedures. Certainly we have much more knowledge of the biology of the species and its requirements.

I think, Mr. Chairman, it's time to seriously consider not a "hybrid", but I think the question is clear, either open the EEZ or keep it closed, not a hybrid in between. I think I've heard good arguments that now is the time to consider opening the EEZ. Thank you very much.

CHAIRMAN FLAGG: Thank you, Jaime. Paul, you had your hand up earlier.

MR. DIODATI: Pass.

CHAIRMAN FLAGG: Finally getting to you.

MR. DIODATI: I'll pass; and before we move this forward, I would suggest a five-minute recess.

CHAIRMAN FLAGG: Okay. I have Lance Stewart.

DR. LANCE STEWART: Just a point of observation. In Southern New England, it's really apparent that many of the fishing target areas are presently within the EEZ, and the fact that the fish are probably expanded stocks, different behavior is occurring.

The fish are extremely healthy. As Anne pointed out, we need to know what that changed biology is. Southern New England regions that are now highly targeted by the recreational fishery, primarily the charter boat industries, are producing a large portion.

So you have defacto, not enforcement, of a major production area that exists right now. So it would just seem to me, you know, another additive point of opening the EEZ is that we learn the biology, we look at these healthy stocks, we look at, you know, the spawning stock biomass in the EEZ. So I'm in favor.

CHAIRMAN FLAGG: Thank you, Lance.

Other comments? Yes, Ernie.

MR. ERNEST E. BECKWITH, JR.: Thank you, Mr. Chairman. What we heard at our public hearings in Connecticut was status quo. That's what virtually all of the people that came and spoke at our meetings wanted.

And I just have the feeling that we are in Amendment 6, at least in the direction that we're going in, moving away from status quo. The board took an action at the last meeting to increase the coastal commercial quota by 43 percent. That's step one.

Now we're talking about opening up the EEZ. That could be step two. There are other states, two or three or four states, that currently are only fishing at one fish. I don't know what the future holds for them.

If they move to two fish, well, that's perhaps step three. The best that I can determine, from the information that we've been presented on the status of the stock, is that the stock has been flat. And the stock is flat, but yet we're moving towards more and more harvest.

And the final point that I wanted to make is one of the goals in Amendment 6 was to increase the number of age 10-plus fish, the more larger, older fish is what people wanted. And it is my understanding that the larger, older fish are off in federal waters.

And if we open that up, again, we're going to hit the fish that we're trying to protect, and that was a goal of the plan. So I just don't feel comfortable at all with the way that we're going here. And on the issue of the EEZ, I'd have to vote against that.

CHAIRMAN FLAGG: Thank you, Ernie. Other comments? Roy.

MR. MILLER: Mr. Chairman, my only concern with opening the EEZ would be in regard to the recreational fishery. Since the commercial fisheries operate under quotas, I'm not concerned whether the fish are caught inshore or offshore.

But since the recreational fishery is unconstrained other than for a 28-inch size limit, I would be concerned if opening the EEZ has the potential for increasing appreciably recreational harvest of striped bass. And if so, then we may find ourselves faced with exceeding the fishing mortality rate target and then all states would suffer the consequences. Thank

you.

CHAIRMAN FLAGG: Thank you, Roy. Gil.

MR. POPE: Just a quick question about the technical committee. Did they ever express any kind of opinion on this? I don't recall them doing that.

CHAIRMAN FLAGG: I'm going to see if Kim can shed any light on that issue.

MS. KIM McKOWN: To be honest I don't remember. I'm the vice chair of the Striped Bass Technical Committee, and I don't remember if we have taken a stand on the EEZ issue. I don't know if Rob remembers. Rob O'Reilly was the previous chair of the committee.

MR. ROB O'REILLY: This issue circulated through the technical committee on about three occasions. The first two, there was unanimous support against it. On the third time, Paul Diodati at the time, had asked the technical committee what was the basis of the grounds for voting against this issue, and at that time the technical committee said we need a plan.

In other words, we need a plan to show the impacts to the stock, and that's the way it was left with the technical committee, to have some type of a plan.

CHAIRMAN FLAGG: Doug Grout.

MR. GROUT: Can we have a plan written into this motion, that if we are to vote for this motion, that we would direct the technical committee to have a plan to effectively monitor the effects of this action?

CHAIRMAN FLAGG: Paul.

MR. DIODATI: I think the plan is Amendment 6. There's several mechanisms in Amendment 6 that will trigger a reaction by this board. I don't see an open area or a closed area as being exempt from any of those actions.

CHAIRMAN FLAGG: Yes, Anne, to that point.

MS. LANGE: I agree. And this also addresses the status quo issue. You can describe "status quo" in many ways, the same number of fish, the same size fish or the same target fishing mortalities and thresholds.

I understand that there has been a lot of discussion about maintaining status quo, but in fact we have thresholds and targets for fishing mortality and spawning stock biomass that are part of Amendment 6, and including the measures that need to be taken to monitor the impacts to the fishery, whether it be the increase in commercial harvest or a potential opening of the EEZ.

Amendment 6 covers that. There are triggers, there are actions, and there are things the board will need to do if there is a determined impact.

CHAIRMAN FLAGG: Thank you, Anne. I have Tom Fote.

MR. FOTE: I guess I also look at this as a reallocation of the resource, and let me explain what I'm talking about. If we basically allow for a larger recreational harvest, you are basically going to put more restrictions because we're probably maybe coming close to F.

We do that, we start raising size limits, and who will get affected the most when we raise size limits? Since I can't call them "producing areas" any more since we put them out of the plan, but the people that fish the back bays in the Delaware River, the Hudson River, and when they see smaller fish.

So, basically what we'll wind up doing is the guy that has the big boat that can go further offshore will basically be able to harvest the big fish and we will raise the size limit on the small. I mean, that's an area I can see happening in a few years.

I mean, I've watched these things go on over the years and that's exactly what happens to some of them. We reallocate to go further offshore, so you basically affect the shore-based anglers the most because we're going to have to take -- if that increase in mortality comes, the only choice we ever look at is raising the size limit.

It's the guys that fish on the Cape Cod Canal that basically -- I was up there a number of years ago and they were all fishing for herring instead of striped bass, that were breaking all over because they says we can't get a keeper fish.

I think that was when you were about a 32-inch size limit. We had the annual meeting there. And that's my concern. We're reallocating again. And we do that with all -- we've done that with scup.

We've done that with a whole bunch of species, with sea bass, tautog, where the people that fish inside the bays and inside the estuaries and from the shore are basically affected the most. I could see this reallocation happening.

CHAIRMAN FLAGG: Thank you, Tom. I have two more people that want to comment and then we're going to take a five-minute break. I have Dave Borden and Bruce Freeman.

MR. BORDEN: Yes, Mr. Chairman, you might want to take my question after the break. My question is, I think we need a very clear statement from you or the staff on what the options are today.

I know we have the three options in the document, but there has been some discussion by some parties that we need majority votes on some or two-thirds votes on others, and I need a clearer understand of what the rules are. I would ask that you do that after we take the break.

CHAIRMAN FLAGG: Thank you. Bruce.

MR. FREEMAN: Thank you, Mr. Chairman. The information that we've been provided over a period of years is that the further one goes offshore, the larger the fish tend to be. It's not to indicate that small fish don't occur offshore or large fish don't occur inshore, but one of the major driving forces for this motion is to allow fishing to occur further offshore where more larger, particularly trophy-sized fish, tend to reside.

And as one of the objectives of the plan, as was mentioned previously, is to monitor -- well, let me just read it: "Establish a fishing mortality target that will result in a net increase in the abundance of age 15 and older striped bass in the population."

My concern, if this motion passes, is how that's going to affect this objective of the plan. There seems not to be any action taken to make a determination whether in fact there will be an increase in mortality of these large fish in absence of a mortality target that we've yet to establish.

CHAIRMAN FLAGG: Thank you, Bruce. I'd like to take a five-minute break. And, Vito, you're the first one on when we get back. Five minutes then we'll reconvene.

(Whereupon, a recess was taken.)

CHAIRMAN FLAGG: We've gone a little

beyond our time, and let's get started again, please. Just before we broke, Vito had his hand up. Vito, did you have some comments you wanted to make?

MR. VITO CALOMO: Thank you, Mr. Chairman. My name is Vito Calomo and I represent State Representative Verga. I'm his proxy. Fisheries management never ceases to amaze me. When people talk about "conservation", I wonder if it's just a word.

You have a healthy stock at this time, anyhow. People seem to forget that every stock has its cycle, and right now we're in an upward cycle. There may be more fish than we know about. We have controls. We have restrictions. We have quotas.

We have every kind of safeguard that I've ever seen on a single species, yet we're scared to open things up. We're scared to let ourselves find out that maybe there is a lot more fish than we believe. We seem to hoard what we have. And, remember, there are cycles in fish.

It's not just going to be overfishing that may devastate a fishery. It's a cycle. We have an opportunity, a great opportunity to take the word "conservation" and use it in its proper form. We can eliminate or at least reduce great discards that we know are happening.

We are managers and that's our job. Our job is to protect our species and not have discards. We need to reduce discards because, to me, that's not only the sin of man, it's the sin of ourselves.

For recreational people this may be an opportunity, during the time that people are being laid off, to gain some employment, to gain some economic benefit, so I just shake my head when they say, well, one boat can go out here and the other guy can't go there.

Give people the opportunity to make money. So what? If we didn't have a healthy stock, I'd never talk this way. We talk about a law enforcement issue. Law enforcement is going to do the same job they can.

They're restricted as it is because they've got bigger fish to fry than just striped bass. I think it's called "homeland security," "port security," our nation's security. They're still going to do the job, whether they're checking weakfish to the southern or groundfish to the northern.

They're not going to change their mode. They're going to do what they can with the limited number

that they can have and will have. Common sense in this case should prevail. Common sense tells me we're not trying to hurt the species. We're trying to gain information. And, again, we're going to reduce discards greatly.

The information that we will get will probably enhance our fisheries management plans. I really beg you all to support this in the name of conservation and in the name of common sense because for some reason -- and I haven't figured it out yet -- why we seem to lack common sense. Thank you, Mr. Chairman.

CHAIRMAN FLAGG: Thank you, Vito. Yes, Tom Fote.

MR. FOTE: I can understand Preston talking with going out in North Carolina because there is a bycatch in the net fishery. Unless I'm missing something, Massachusetts doesn't have a net fishery.

The only commercial fishery it has for striped bass is hook and line, so I'm really trying to see what's the conservation of a hook-and-line fishery. I mean, we were talking about that in weakfish. Basically it's a bycatch fishery because we're going to be talking about a hook and line.

So I'm really trying to see how that's a conservation in Massachusetts or are you going to allow netters now to bring in fish that are netted in the EEZ to be landed in the state waters, because then I could understand it if it's going to be a conservation.

Maybe that question needs to be cleared up in my mind because presently Massachusetts -- if I understand it right; I might be wrong -- has no netting allowed of striped bass so it's really strictly a hook-and-line fishery.

CHAIRMAN FLAGG: Thank you, Tom. Paul.

MR. DIODATI: Just to respond to that point, Massachusetts does not allow the netting for striped bass nor does it allow the possession of striped bass aboard a vessel that has nets on board or longlines.

We don't plan on changing that. That's been our rule since 1945. I think what Vito was referring to was exactly the points made earlier to North Carolina and not Massachusetts.

CHAIRMAN FLAGG: Thank you, Paul.

Other comments? Vito.

MR. CALOMO: Paul answered the question and I'm glad he did before I did, but I'm not here for fisheries managing only for the state of Massachusetts. If you all are, you've got real problems being managers.

I'm looking at the species throughout the range, and I heard Preston Pate talking today. I said, he's killing them out there. You're discarding them, come back in and killing them again to bring them in legally.

Something's wrong with that picture, friends. I don't come from Preston Pate's area. I come from Massachusetts. And from, let's say, a "recreational" point of view, if you have a size limit, instead of killing 49 fish under size, you can go outside, catch the one that you need, for me that's conservation.

You're not going to kill 49; you're going to kill the one or maybe you're going to kill two, but that's the conservation I've seen behind that. And that's my comments, Mr. Chairman, and I appreciate the opportunity. Thank you, Mr. Chairman.

CHAIRMAN FLAGG: Thank you, Vito. Yes.

MR. CHRIS LUDFORD: Good morning. My name is Chris Ludford I'm a proxy for Catherine Davenport from Virginia. I don't know where to start on this other than to say that I do agree with a lot of the triggers, the monitoring we have, especially for the commercial sector.

I think the system of quotas in place can probably be monitored and at the expansion toward the 12 mile or even further -- you know, in reference to the commercial could still be tracked, although, as a whole, I think to open the EEZ is a problem because of the expanded recreational fishery.

I think that one month of the year that Carolina does have a potential bycatch problem, we're looking at one month -- I don't know what the pounds are -- you know, maybe two into February.

But I'd hate to see you throw the baby out with the bath water and open up an area that is -- I can assure you the recreational catch is not going to slightly increase but expeditiously the effort, the mortality.

You know, to sit here and assume that the recreational fishermen -- and I run charter boats, work with charter boats that move outside three miles, they're going to catch only big fish, keep them

and come in and be done is just unbelievable.

There are smaller fish out there. There's 24-, 28-inch fish, you know, 22-inch fish in the winter in the ocean off the Mid-Atlantic that are mixed together. And the backlash from this, also, you know, I can't support this.

CHAIRMAN FLAGG: Thank you, Chris. Dave Borden.

MR. BORDEN: Thank you, Mr. Chairman. I'd like just to follow up on the point that Vito and Tom made, and just so everyone is clear, in the state of Rhode Island we have exactly the same situation that North Carolina has.

Our trawlers or our gillnetters fish in the federal waters and they basically have to throw those fish away that they catch. Our rules are different than the state of Massachusetts, but in our case, if we were to open the EEZ, what would take place is we would put those fishermen under the same rules that bind all the rest of our fishermen where they would be limited to a bag limit of two or three fish per person, so it's not going to be an unrestricted fishery. And what we would be doing is converting fish.

What I'd like to do, Mr. Chairman, is offer a substitute motion here and it kind of follows on some of the suggestions that have come up today. I think it may offer hope to move us out of this morass.

**I would offer the following substitute. Move that the board forward or request to the Secretary of Commerce to allow the harvest of striped bass in the EEZ with a minimum size of 28 inches and a provision that states are allowed to adopt more restrictive regulation for fishermen and vessels licensed in their state.**

**On an annual basis, the fishery impact on the resource will be evaluated by the technical committee and reported to the management board so that it may make appropriate EEZ management recommendations to the Secretary of Commerce at the end of each FMP planning horizon.**

CHAIRMAN FLAGG: Thank you, David. Do we have a second?

MR. PATE: Second.

CHAIRMAN FLAGG: Second by Pres Pate, so we have a substitute motion on the board.

Discussion? Yes, Jaime.

DR. GEIGER: Clarification, Mr. Chairman. Am I assuming that the "each FMP planning horizon" will now be three years?

CHAIRMAN FLAGG: David.

MR. BORDEN: Whatever we adopt in this amendment. I mean, to address that further, my intent here is that I recognize there is a lot of apprehension about doing this around the table, and I probably share some of that apprehension in terms of doing that, a certain amount of unknown when you change something like this.

But it's my full expectation, if you go back to the comments that Jaime made and that Anne made and others have made, you basically have caps on the commercial fishery. We've got a whole series of items that are built into this program that backstop the removals out of this fishery.

And if something changes, I would hope that we would come back here sooner rather than later and address it right up front. If there is something that we don't anticipate that takes place, then I think we should be right up front and say we'll come back and address that.

CHAIRMAN FLAGG: Thank you, David. Bruce.

MR. FREEMAN: Thank you, Mr. Chairman. Two concerns that come to mind on this whole issue. We've heard much about the bycatch issue, and this argument is no different than the ones we hear in every fishery that we deal with.

But my question would be, we have existing commercial quotas for each of the states that have commercial fisheries. It appears to me that in almost every instance, if not every instance, that commercial quota is reached.

If in fact we allow fishing in an area which is now not open, that is the EEZ, it appears to me that a bycatch mortality will continue to exist. Either we catch the fish inside of three or we catch them outside of three, but since we reach the quota, there will be additional fish taken and this bycatch problem or this incidental mortality issue will continue.

By essentially changing this at this point, it doesn't appear to me to reduce incidental mortality. It will continue to occur, whether we have what we have or

whether we open the EEZ. So, I'm very much concerned about the bycatch, as many people here are.

I just don't see at this point, since we're taking our commercial quotas by the various states, how allowing an increased catch in federal waters is going to solve the problem. It doesn't appear that it will, at least to me.

The other issue that greatly concerns me goes back to one of the objectives of the plan, which there is concern over mortality of the large fish, and this is one of the major driving forces for even looking at Amendment 6.

It was indicated four years ago, five years ago, that in many people's minds the number of large fish was very high, and we were seeing high mortalities, and that was one of the reasons that drove us into looking at Amendment 6.

The provision is that we will particularly set a level for mortality on fish age 15 and over. I really don't see -- other than the overall fishing mortality, I don't see anything directed towards those larger fish.

If in fact this motion passes and if in fact we see an increased mortality on these large fish, and there needs to be actions taken, those actions will be taken throughout the resource. And those actions will be taken to restrict the catch not only people fishing in the EEZ but also fishing in state waters.

So it appears to me that there is danger at this point of fishing in the EEZ. If that occurs, and as we've heard today, a sudden change in fishing practices, and we find out after we monitor the fish, or we won't know for two years what those impacts will be, but if we find they're severe then we're obligated to restrict the catch.

And it seems, based on our history, it will be a restriction of all fishermen, not just fishermen fishing the EEZ. And, therefore, I think much of that impact will fall on shore fishermen that may be unfairly penalized for an action taken by some other fishermen.

It very much concerns me. It seems a more rational approach is to ask the technical committee to determine what best they can appraise the fishing mortality on age 15 and larger, and then come up with some strategy if we believe the EEZ needs to be liberalized, a strategy for fishing. But just to cast this open at this time I think is a mistake.

CHAIRMAN FLAGG: Thank you, Bruce. I have Anne Lange.

MS. LANGE: Well, related to your first comment, my understanding from Pres, and David said the same issue was held in Rhode Island, that fishermen are fishing and taking large numbers of striped bass beyond three miles. Because they're not allowed to take them, they throw them away dead. That concerns me.

They then move inshore where they're allowed to catch the fish and put in additional effort to take fish that they are allowed to keep. So there is a difference. There is additional mortality that is occurring because of the discards that they're not allowed to keep outside the EEZ.

Your second point, my concern is related to it, also, to the concentration of effort right now inside three miles. The stock is disbursed at least beyond 12 miles, somewhere into the EEZ. To focus all of the effort on a certain portion of the stock, we don't know the impact of that.

And unless we have the fishery open where we can measure the impact on the larger fish, we don't know that we would be focusing on larger fish in the EEZ. We don't have the data yet.

CHAIRMAN FLAGG: Thank you, Anne. Ritchie White.

MR. FREEMAN: Mr. Chairman.

CHAIRMAN FLAGG: Oh, I'm sorry, to that point, Bruce?

MR. FREEMAN: Yes. The stocks of striped bass are such that almost any type of gear fished in federal waters will catch striped bass. I'm not convinced that with our existing commercial quotas that you're going to take -- that you could far exceed the commercial quotas in just the incidental fishery.

And there exists a directed commercial fishery. There historically has. I'm not convinced that by not allowing the bycatch to be landed, you are going to decrease mortality.

So far as the second point, Anne, and it greatly concerns us in all our fisheries, as the fish are more available, as the catches rise, we're going to entice more people to participate in the fishery.

One of our great problems in the summer flounder fishery is just that. As the resource increases, the possibility of catching the fish increases. We're attracting large numbers of fishermen.

We're seeing our recreational trips increase. That will happen in striped bass. And what we don't have control over, as opposed to the commercial fishery where we often have limited entry or quotas, is on the recreational side. There's no control over participation or trip limits.

And as the resource becomes more available, we're going to attract more people. The catch is going to go up considerably. We're not going to control it, and that's where my concern lies.

CHAIRMAN FLAGG: Thank you, Bruce. Ritchie White.

MR. WHITE: Since the major part of this motion did not prevail at the last meeting, will this need a two-thirds majority vote?

CHAIRMAN FLAGG: Actually, the last meeting, as you recall, we did discuss the EEZ issues. We had those three options that were listed. The option relative to the EEZ didn't pass. It was by a vote of five-to-five, so it failed to pass.

We then had another motion which was made by Massachusetts that we table, so my sense is that we're still in the discussion of EEZ options. I think that in fairness that all three of those options -- where we hadn't come to any specific resolution -- that they're all still in play at this time.

MR. WHITE: So you don't think it was just tabled for the one that didn't get voted on?

CHAIRMAN FLAGG: No, I think it was tabled -- the issue was tabled. But that was a particular motion that was made that was tabled, but I think in effect what we did is we in effect tabled the whole discussion about the EEZ pending this meeting. That's my feeling, Ritchie. Pres Pate.

MR. PATE: Thank you, Mr. Chairman. Just a couple of comments to address Bruce's points. I've never envisioned the opening of the EEZ as a total solution to the bycatch problem.

It is a quota-based fishery; and as long as the quota is caught up, any harvest or encounters that occur after that are going to be considered bycatch and a certain

amount of that is going to be dead discards.

But at least we will be able to convert what quota we do have or those discards. We will be able to convert those discards up to the limits of the quota that we do have, so I think there will be some real conservation savings there. I wish we could eliminate bycatch and discards completely from the fishery but we aren't able to do that.

Secondly, the arguments made in opposition to this can be made in perpetuity, regardless of how big this stock gets. And it always amazes me how timid we are and how much we fail to give ourselves credit for being able to continue the good job that we've done in effectively managing this species.

As Vito said in his comments earlier, we've got some of the best enforcement, the best monitoring of this fishery of any that there is in the United States, to the point that I'm sure we will be able to detect any change in the mortality, any change in the trends of this stock very quickly, certainly quickly enough for us to make some management decisions to reverse those trends or correct any overfishing that might be occurring.

And to say that we don't have that ability or to not do what is right by conservation because of the perception that we can't correct any problems that that decision will make, I think is selling ourselves short.

And on his point of the stimulation of the recreational fishery, that is happening now. It is absolutely phenomenal what is happening in North Carolina with the recreational fishery. The growth of that fishery around Oregon Inlet is something that I've never seen before in my life, and I've been fishing Dare County since I was 12 years old, and probably has grown by 50 percent just in one year.

I don't see any end to that as long as the stocks are there, and we've got all of that concentrated in one small area, and that's three miles from our coast. We know the fish are offshore. We know the recreational anglers are out there now.

We know some of the commercial boats are out there now. And they're out there because that's where the fish are and because they want to catch them. We're not affording them the opportunity to expand their efforts and avoid the conflict that is occurring because they are all bunched up in one small place.

CHAIRMAN FLAGG: Thank you, Pres. Gordon Colvin.

MR. COLVIN: Thank you, Mr. Chairman. I want to speak in support of the motion. I want to talk a little bit about why at the end of the day I favor this approach.

I was one of the board members who has been here long enough to have been part of the decision and decisions that occurred more than once in the past to recommend the initial closure and keeping the EEZ closed, as the board has done in the past.

I recall the nature of the back-and-forth communication with the National Marine Fisheries Service over time as that went on. I would note that one of the arguments that was made against making that recommendation early on was that won't you find it difficult, having gone down this path, to reverse course at some point in the future if it becomes appropriate as a matter of policy to consider reopening it.

And, of course, that's exactly where we are. And, like many who hung around with this issue long enough, it has caused us, it certainly has caused me to wonder whether the right decision was made in the first place those many years ago. I think it was. But I think it, nonetheless, is time to reverse it. In all of the discussion that has gone on on this, and there has been an awful lot -- and I have paid close attention to it as I indicated earlier -- I have heard two points and only two points that appear to have merit in my mind.

One point was made earlier today by Ritchie White when he pointed out that a state which as a matter of policy does not allow commercial fishing may find itself confronted with an active commercial fishery near its shore but outside its jurisdiction.

And I understand how a state might be concerned about that, if that was a policy they could have some user conflicts and other problems. At the same time the bottom line is the underlying law is what it is.

States have authority out to three miles, and that's it. Beyond three miles it's common property that we all share. And so while I understand the argument, I can't be influenced to oppose the motion based on it.

The second thing I'm hearing is that -- and I believe this is entirely a recreational fishery's issue. I believe the commercial quotas close the door on this argument, as Roy Miller implied earlier -- that there may be some increase in exploitation of striped bass by a recreational fishery that is enabled to go where they cannot go now and catch and keep fish.

In other words, what we're saying is, as I see it, that we fear that opening what is simply, essentially a closed area is going to increase exploitation of the resource beyond what our current control rule would allow.

Well, it either will or it won't. And a closed area is a management tool, just as a size limit is a management tool, a creel limit and a season closure, among other things.

Amendment 6 is about allowing people to use a resource which now, by our own definitions, appears to have recovered to a condition that is consistent with our management targets.

And if we find in the course of time that our target or our threshold fishing mortality and biomass are not met, to impose appropriate controls at that time to assure that they are, and closed areas could again be part of that.

And they don't, by the way, have to be just inshore or offshore closed areas. We could draw a closed area line north of, say, the Massachusetts state line, to pick on the board chairman for a minute.

It's interesting to me and somewhat ironic that conservation organizations that have bitterly opposed, as a matter of policy, the closing of areas of the ocean to fishing find this to be an acceptable management tool by default now.

I don't understand that. One would think that we would approach this from a philosophy that says let people fish where the resource is; and if we need to control fishing, we will act appropriately consistent with Amendment 6 to do so.

And I'm not convinced that the sudden increase in fishing mortality, from allowing access to the EEZ, will cause us to go swimming way past our threshold and even our target.

But if it does, and if we're wrong, just as the decision to enable New York and Massachusetts to go to two fish, which is probably going to kill a lot more striped bass than can ever be killed in the EEZ, I might add, then we'll all have to reevaluate those decisions together. Bruce is right about that.

We'll all have to figure out the best way to do it overall, whether it's a size limit increase, which I think is probably the least likely thing, or the imposition of season closures or reducing our catch

limits to perhaps one striped bass a day or some combination of things, including consideration of area closures.

All those tools are available to us -- Anne Lange made that point very well -- if we find we're in trouble with our targets and our thresholds.

So given that viewpoint of it, Mr. Chairman, I would argue that the board would be best advised to pass this motion and let's see what the Secretary will do. Thank you.

CHAIRMAN FLAGG: Thank you, Gordon. Ernie.

MR. BECKWITH: Thank you, Mr. Chairman. I would like to call the question.

CHAIRMAN FLAGG: Okay. Dave Borden.

MR. BORDEN: Roll Call.

CHAIRMAN FLAGG: Yes, okay. Why don't we take a minute to caucus and then we will have a roll call vote.

(Whereupon, a caucus was held.)

CHAIRMAN FLAGG: Okay, are we all set?

MR. FOTE: Are you going to call for public comment before the vote?

CHAIRMAN FLAGG: Okay, I guess we're all set. But before we vote, I'd like to ask if any, if there is any public comment from the audience. Is there anybody that wants -- yes, Dick.

MR. BRAME: I'm Dick Brame with CCA, and our committee and CCA as a whole from the Gulf all the way around with red drum and striped bass has been opposed to opening the EEZ as long as I've been involved with them for a number of issues, a number of reasons.

But I think with this particular issue, the reason that the public comment was so loud and overwhelming on this one issue -- and I think will continue to be opposed to it -- is the way they view the board's liberalization, if you would, the whole package.

You've gone with the most liberal target, which is essentially similar to Amendment 5. We felt it

should have been lowered. Perhaps there wouldn't be the angst that there is now had the board adopted a lower target in order to open the EEZ.

But, like Ernie Beckwith said, in total, when you look at all that the board is doing, this is another unknown where you perhaps will open the fishery. We have concerns about the states that have decided to make game fish status of their fish -- this is a public resource -- in their states.

But, more than just having a commercial fishery outside of three miles, it is not clear that you can prevent the sale of illegally caught fish. I know they don't have a quota in these states but if somebody were to challenge it, we're not sure where that would go.

We also know that in order to open the EEZ, the Secretary has to find that there are no adverse impacts by this action. I'm not sure he can do that. So in total, we listen to our public and they are loud and clear on this one issue. They want to see the EEZ closed. Thank you.

CHAIRMAN FLAGG: Thank you, Dick. Any other comments from the public? Yes.

MR. TONY BOGAN: Thank you, Mr. Chairman. I'm Tony Bogan. I represent United Boatmen of New York and New Jersey. We're a party and charter boat industry organization.

This has been a really tough one for me because I am basically opposed to the EEZ in general as far as the way that three-mile line is used in different fisheries.

It's used as a justification to do one thing in fluke. It's used as a justification to not do the same thing in sea bass. It's a closed area outside that imaginary three-mile line in striped bass. I have a lot of problems with it.

And, of course, the party-charter boat industry would love nothing more than to be able to catch striped bass inside and outside the three-mile line.

The only thing I would say -- I've been thinking about this the whole time you guys have been discussing all this -- is there's a number of things that have been done, as has already been pointed out. In my mind -- and I'm not restricted to having to be on the record and be a commission member -- I don't think it's going to increase mortality; I know it's going to increase mortality.

That's, again, my own personal opinion but I can say that. There has already been a number of things that have been done. And, again, we would like nothing more than to see the EEZ open. I just don't know that tomorrow is the time to do it, considering the other things that have been done, states that will now be going up to two fish, and will more than likely be doing it.

That's going to increase landings. It's not "possibly" going to increase them, it is going to increase them. The fact that the striped bass fishery is an ever-increasing fishery as far as participation on the recreation side -- and not to diminish the importance of the commercial fishery in the states that have it, but it is primarily a recreational fishery.

The overwhelming majority of these fish come from guys fishing with hook and line that aren't selling the fish, so that has to be looked at as how much of an impact it's going to have on the fishery as a whole.

And there is a heck of a lot more impact that comes from the sector that catches the majority, if they start catching more, than the sector that catches a minority, be it in bycatch or increasing their quotas.

Another thing, too, is I guess we've become gun shy over the years after having been slapped so many times in so many circumstances that it's not always a bad thing. It's a good thing that there is a conservation mindedness that has been put into the industry, if that's what you want to call it, where we've even said, well, maybe we shouldn't jump that far just yet. We'll take a few small steps instead of taking a big step.

And what I'm hearing some of the people say, Mr. Colvin and some others, is, well, you know, hey, if there's a problem, then we'll take care of it. Well, that's like saying, well, I'll light the match and if something starts burning, then I guess I'll have to go to put it out.

I don't know that that's a wise management decision either, but it's a decision that you folks have to make. The one thing I would say is that as far as New Jersey is concerned, which is where I live and where my family owns and operates a number of party boats, it will increase the mortality.

There is not an "if"; there's not a "when"; there's not a "possible." It's a foregone conclusion because you want to talk about bycatch. Well, the hook-and-release mortality rate in striped bass, generally speaking, in the ocean, is relatively low, even in the

summer months.

But since the summer months and the warm months are only a very short time of the year, we know that as the salinity content changes and the temperatures change, the colder times of the year the mortality rate is very, very low, and that's the bulk of the year.

So we don't have that kind of hook-and-release mortality problem on a scale that the commercial fishery does, but what we do have is blue fishermen. Now they're going to be able to keep those striped bass that they're catching outside of three miles.

Flukers, now they're going to be able to keep those striped bass that they're catching outside of three miles. Bottom fishermen, now they're going to be able to keep those striped bass that they're fishing outside of three miles.

Weakfishermen -- and I could go on and on and on and on and on because you can catch the weakfish anywhere -- the striped bass, excuse me. You can catch them anywhere. You can catch them two, three, five ten, eight, twelve miles.

You don't have to be on a wreck. You don't have to be on a lump, per se. You can be following bait like you can with bluefish. I would love to see the EEZ opened, but I would love to see it something -- in my personal opinion and speaking for the people I represent at this point -- to see the next step, be it an addendum to Amendment 6 or the next amendment or when the next FMP review comes up in three years.

I don't want to really wait as long as three years but I just think we've done so much right now, prudence is warranted. That's pretty much it. I didn't want to talk too long. I hesitated coming up because the party boat guys are, great, we can catch the fish there.

And I want to let my emotions show because we'd all be psyched about it. At the same token, we're looking at all of the other things. And saying that, well, okay, we're going to do it and if it really does make the mortality increase, we'll have to go back and revisit it.

Now we're back to the same thing we've had with every other fishery. You get a little bit more and, boom, you get slammed tomorrow. Finally getting fluke and, boom, you're going to talk about pay backs. Talk about scup. You're finally getting that and, boom, you're talking about discards in the small net fishery, and all of a sudden we might have to cut

back if that's not addressed.

So, instead of taking two steps forward and three steps back, we'd like to just take one step at a time. And I think a delay in the EEZ opening, with an eventual opening, is what our goal is would probably be more warranted. Thank you very much for your time.

CHAIRMAN FLAGG: Thank you. Yes.

MR. RICHARD NOVOTNY: Mr. Chairman, members of the board, my name is Rich Novotny. I'm with the Maryland Saltwater Sports Fishermen Association, and I attended the last meeting of this ASMFC committee.

And at that meeting, as you all know, you committed to a status quo. Opening up the EEZ will definitely increase the poundage and the harvest of striped bass along the East Coast. We can't be an ostrich about this and put our heads in the sand and say, gee, whiz, I don't think it's really going to happen.

Just like the speaker just before me, it's going to happen. There is definitely going to be more mortality. There is definitely going to be more fish taken and harvested. Right now, as far as I know the commercial and the coastal states are almost at their quota right now.

This will definitely increase the quota and put us probably to overfishing, and I'm very concerned about that. So, I think you ought to really think twice. Conservation, I heard a lot of things about conservation.

Bycatch, you know, should we have conservation for the bycatch? Maybe we might want to look at reducing gear type if bycatch is really a problem in the commercial fishery. You don't have the bycatch problem in the recreational fishery or the hook-and-line fishery commercially.

So, once again, I hope you look at all aspects of this and really think about what this really means to the striped bass population along the coast. You all have done a terrific job, a fantastic job of bringing this fishery back.

Once again, we ought to take it one step at a time. I think we ought to develop a plan for opening up the EEZ, and I think that should be done by the technical committee and then bring it back within another year or so. Thank you very much.

CHAIRMAN FLAGG: Thanks for your comments. Are there others in the audience? Yes, Ed.

MR. ED O'BRIEN: I'm a little bit afraid about opening it up relative to what --

CHAIRMAN FLAGG: Ed, could you give your name, please.

MR. O'BRIEN: Ed O'Brien, Maryland charter boat. I've got concern about it opening up. I have to admit that my main motive here is selfish because I'm afraid if we do find out that there is more fish being caught out there or more big fish are caught, bear in mind a year ago we were all concerned about the big fish, so I'm concerned about that.

And that's selfish because it could end up coming back and affecting us in the Bay. But I have another observation, without making any more redundant testimony, that at the last meeting there was another motion made that was tabled.

That motion would severely impact us in the Bay when you're talking about anything that connotes raising our size limit to 18 inches.

Yet those who have also been for increasing the commercial quotas, and have driven that, are also the same people who are out front in driving this issue to fish the EEZ and, therefore, increase the opportunity on the coast. And, again, selfishly that doesn't help us at all in the Bay.

So I just wanted to make that observation. I hope those people consider this when this other subject comes up, which I know it eventually will. Thank you.

CHAIRMAN FLAGG: Thank you, Ed. Other public comments? Seeing none, I want to move right along. I know, Pat, you just wanted a brief comment, and also Pat Keliher, and then we'll call for the vote.

MR. AUGUSTINE: Thank you, Mr. Chairman. We've heard both pro and con in favor of this. I do agree with what Gordon had said earlier. I want to restate what I said at our previous meeting on the 19<sup>th</sup>, that we have treated the EEZ, 3 to 200 miles, as a major MPA.

And if that's any indication as to where we're going to go with conservation, I think we're headed for no

fishing, and next there will be no boats in that area.

And the final comment is it will take probably, my guess is, two years for the federal government to move this whole process through. Maybe somebody could correct me on that.

I'm sure there is going to be ample time in this next year or so to come back and if you want to revisit, revisit, but it seems we've beat this thing to death; and after Pat's comment, I'd like to call the question.

CHAIRMAN FLAGG: Okay, Pat is going to pass. Okay, we're going to have a roll call vote. Everybody has had a chance to caucus earlier.

MS. GAMBLE: Maine.

MAINE: No.

MS. GAMBLE: New Hampshire.

NEW HAMPSHIRE: Null vote.

MS. GAMBLE: Massachusetts.

MASSACHUSETTS: Yes.

MS. GAMBLE: Rhode Island.

RHODE ISLAND: Yes.

MS. GAMBLE: Connecticut.

CONNECTICUT: No.

MS. GAMBLE: New York.

NEW YORK: Yes.

MS. GAMBLE: New Jersey.

NEW JERSEY: No.

MS. GAMBLE: Delaware.

DELAWARE: No.

MS. GAMBLE: Pennsylvania.

PENNSYLVANIA: No.

MS. GAMBLE: Maryland.

MARYLAND: Null, n-u-l-l.

MS. GAMBLE: Thank you. The District of Columbia is not present. Potomac River Fisheries Commission.

POTOMAC RIVER FISHERIES COMMISSION: Abstain.

MS. GAMBLE: Virginia.

VIRGINIA: Null.

MS. GAMBLE: North Carolina.

NORTH CAROLINA: Yes.

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

U. S. FISH AND WILDLIFE SERVICE: Yes.

MS. GAMBLE: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Yes.

CHAIRMAN FLAGG: Okay, the vote is six for; five against; three null and one abstention, so the motion carries and it becomes the main motion. We have to vote on the main motion. Bruce.

MR. FREEMAN: Mr. Chairman, I just quickly tallied it and I get a different tally than you do. I get it six, five, one, three. You had six, four, one, three. Six approved --

CHAIRMAN FLAGG: Six, five, one, three.

MR. FREEMAN: Okay, all right.

CHAIRMAN FLAGG: Okay, this was a substitute motion which now becomes the main motion. Yes, Bruce.

MR. FREEMAN: I should bring this up now because I'm sure it will occur. It seems to me the two services voted on this issue. What concerns me is that an affirmative vote by the service would indicate they're in favor of this to go forward to their agency.

And our experience with the council on issues such as this, that when the agency has to deal with an issue they essentially abstain on the vote. I just want everybody to be aware of it because I'm sure this is

going to be raised.

CHAIRMAN FLAGG: Anne.

MS. LANGE: Yes, Bruce, that is correct. In the past that has been the general philosophy. If a motion will result in a recommendation to the Secretary I, myself, have passed in the past or abstained in the past.

Speaking with our agency director, as has been raised by the states at the council level, that with the regional administrators abstaining from votes, they have no indication as to where the agency falls on an issue.

The agency director has been requested to request that both at the commission level and at the council level that the NMFS representatives vote.

We don't make the decisions. My vote does not necessarily mean that National Marine Fisheries Service or the Secretary of Commerce will open the EEZ. But in my opinion, this is something that we should be voting positively for.

MR. FREEMAN: Mr. Chairman, just a point of order. The legal advice we have received from NOAA counsel in the past, dealing with counsel issues, has been contrary to that. And the way this will be perceived, rightfully or wrongfully, is that an agency vote on this at this level puts the agency in a position of either favoring or not favoring, and I would have to disagree, the fact that your vote here does carry the agency. Whether you intend it or not, it will be a vote of the agency.

CHAIRMAN FLAGG: Anne.

MR. FREEMAN: I don't want to argue the point. I mean, they can vote the way they want, but I just want this to be clear on the record.

MS. LANGE: The issue is that, as I think Pat raised, it's going to take a year or two before this gets through. There is going to be analyses that are going to have to be done; the technical committee, the stock assessment committee, economic analyses, a whole range of analyses that will need to be done before any rule is promulgated, proposed rule level, EISs and the whole range of analyses that are required for a regulation to be implemented.

This does not imply that the Secretary of Commerce is going to open the EEZ. What happens is the recommendation would come and an evaluation

would follow.

MR. FREEMAN: Mr. Chairman, just a point. I agree, but your vote indicates that the Secretary is in favor of this. That's my only point.

CHAIRMAN FLAGG: Thank you, Bruce. Jaime and then Dave Borden.

DR. GEIGER: Mr. Chairman, thank you. Fish and Wildlife Service voted positive with this to do just what we said the motion said, submit a request to the Secretary of Commerce to allow the harvest.

That is going to be a very studied and formal process by which all of us will be involved for a significant degree for I foresee a significant amount of time, as it should be, as it should be.

The process will be allowed to move forward. I think that is going to allow each and every one of us to have the appropriate input in a variety of different forums. I think that's the way it needs to be done.

I respectfully disagree with my colleague from New Jersey. I think we have a right on this board to move the process forward, to move the needle, so to speak. Thank you.

CHAIRMAN FLAGG: Dave Borden.

MR. BORDEN: Yes, thank you, Mr. Chairman. Just a quick comment. It always astounds me in this process how I can disagree with a close friend of mine sitting on my right. (Laughter) And I mean that with all due respect to Bruce.

I have been a long-standing critic of the National Marine Fisheries Service at council meetings dating back to I think 1978 for their refusal to vote. So I'm not going to sit here and tolerate this type of comment and berating of the service. (Laughter) I applaud your effort.

CHAIRMAN FLAGG: Okay, thank you. What's our next agenda item? Oh, the main motion; we're back on the main motion. Tom Fote.

MR. FOTE: Just now we're on the main motion. We're going to vote. And since Pat had a few more comments, one of the things that concerns me on New York and New Jersey and in Delaware is even if New Jersey did not have a striped bass game fish law in place, we could not sell fish from areas right outside New York Harbor because of PCB

contamination. And that's three miles off. I think New York still keeps closing in the state waters that same part of the fishery. If other states -- and the way we do this is by landing laws, boats coming in. If you basically open up the EEZ, how do you deal with the PCB problem that we have closed areas for?

I mean, it's something to look at. You know, I went over and asked law enforcement how would you deal with it. We have the same problem at the Delaware Bay, also.

We have areas that even if the striped bass game fish came off, we couldn't sell the fish because it exceeds the two parts and we just put out another 5-page or a 20-page -- or actually the whole report is 98 pages, but the release is 4 pages -- on PCBs in bluefish and striped bass in New Jersey.

We take this issue very seriously. So, I mean, now you have a commercial fishery out there. We always felt that some states didn't do the same testing as New Jersey, because bluefish we know migrate up and down the coast and still have PCBs in them. But how would that -- how would you enforce those closures in the EEZ? It's something to look at and it concerns me.

CHAIRMAN FLAGG: Thanks, Tom. We're back to the main motion. The substitute motion now is the main motion. Do you want a roll call vote on this also? I don't think we need to caucus again. Let's have a roll call vote on the main motion.

MS. GAMBLE: Maine.

MAINE: Opposed.

MS. GAMBLE: New Hampshire.

NEW HAMPSHIRE: Null vote, please.

MS. GAMBLE: Massachusetts.

MASSACHUSETTS: Yes.

MS. GAMBLE: Rhode Island.

RHODE ISLAND: Yes.

MS. GAMBLE: Connecticut.

CONNECTICUT: No.

MS. GAMBLE: New York.

NEW YORK: Yes.

MS. GAMBLE: New Jersey.

NEW JERSEY: No.

MS. GAMBLE: Delaware.

DELAWARE: No.

MS. GAMBLE: Pennsylvania.

PENNSYLVANIA: No.

MS. GAMBLE: Maryland.

MARYLAND: Null.

MS. GAMBLE: D.C. is absent. Potomac River Fisheries Commission.

POTOMAC RIVER FISHERIES COMMISSION: Abstain.

MS. GAMBLE: Virginia.

VIRGINIA: Null.

MS. GAMBLE: North Carolina.

NORTH CAROLINA: Yes.

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

U. S. FISH AND WILDLIFE SERVICE: Yes.

MS. GAMBLE: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Yes.

CHAIRMAN FLAGG: Okay, the motion passes on a six-to-five vote with three null votes and one abstention. Dick.

MR. BRAME: Just a suggestion. If you're going to go forward with this, which you are, you may want to have some language about whether or not this board would like to see observers on those boats, increased observer coverage.

It would be nice to know, other than trust the people who are doing the high grading, to tell you that they're not high grading. It would be better, I believe, to have people on the boats, and I think a vote from this board to tell the Secretary we would like to see resources to put observers on these commercial boats would help. Thank you.

CHAIRMAN FLAGG: Thank you, Dick. Gil.

MR. POPE: Dick, on that point, would it just be commercial boats or would it be any boats that are fishing in the EEZ, including charter boats and private boats?

MR. BRAME: If the technical committee wanted it on those, I would assume it would be the same thing. I hadn't thought of that before but it would be up to them. I would like to see some rationale for coverage to determine what is going on.

CHAIRMAN FLAGG: Okay, we have some other items of business here, too. I'm going to get back to Megan to complete her presentation. She has a couple of more things to present to us.

MS. GAMBLE: The next two slides list the regulatory requirements that would need to be included in the state implementation proposals for Amendment 6.

The first are bag limits that are listed in Section 4.2.1. The second is size limits for the commercial and recreational fishery. The third is a commercial fishery management program that caps harvest at the level identified in Section 4.3.2 or in Table 4.

The fourth is North Carolina and Chesapeake Bay jurisdictions would implement measures that would prevent the harvest from exceeding a fishing mortality target of 0.27. And then, finally, the jurisdictions identified in Appendix 2 are required to conduct fishery-dependent and fishery-independent monitoring programs listed for each jurisdiction.

CHAIRMAN FLAGG: Ritchie.

MR. WHITE: With the passage of this, will this require states to reapply to the technical committee to see if their plans meet the two-fish, 28 inch?

CHAIRMAN FLAGG: Yes, we talked a little bit. I talked with staff a little bit earlier about that. I think, yes, we would need to do that.

Anybody that plans to, even if they plan to maintain status quo regulations, they should submit those for technical committee review to reaffirm that, in fact, they do meet the requirements of Amendment 6. Yes, Roy.

MR. MILLER: Mr. Chairman, with some trepidation, I'd like to hit an issue head on, and the reason I want to proceed in this fashion is that we're in the administrative procedures process, as we speak, concerning our recreational size and creel limits for striped bass.

I need some guidance from the board as to their intent. Very specifically, as it has already come up today, it has been alluded to the fact that New Jersey and Pennsylvania and Delaware presently have a slot limit of one fish, 24 to 28 inches and one fish over 28 inches for Delaware Bay and Delaware River. Does the board view that as conservationally equivalent to two at 28 inches?

CHAIRMAN FLAGG: My sense, Roy, is that those states should submit those proposals. If they propose to keep them the way they are, they should submit those based on whatever the implementation schedule is for technical committee review. There will be a review of those proposals to in fact see if they do meet the requirements of Amendment 6. Does that answer your question?

MR. MILLER: It delays the answer to my question. It doesn't give me any guidance today. I was hoping to get some guidance today, but maybe that's not possible.

CHAIRMAN FLAGG: Gil Pope and then Gordon.

MR. POPE: Thank you. I was always under the impression that at one fish, 28 and one fish below 28, there was some kind of conservation equivalency already in place, that it had been submitted to the technical committee by each state and by each area showing that there was either some kind of reduction in season or there was some kind of conservation measurement in place to allow for anything less than two fish at 28 inches on the recreational fishery.

I just assumed that was already done somewhere. That would be my answer to you. But my question is, on Number 4, target F of 0.27, what year classes does that entail, three to eight or –

CHAIRMAN FLAGG: I think we had this

discussion, and my recollection -- you can correct me if I'm wrong, Bob Beal -- that was based on fully recruited fish. I think that was the standard that we were going to use, fish that were fully recruited.

MR. POPE: And that would remain in place, and that would stay that way, right?

CHAIRMAN FLAGG: Yes, because it could vary. Gordon.

MR. COLVIN: Thank you. Following up on Gil's comment, I believe that unfortunately some of those analyses that were done on size limits below 28 inches were related directly to that unfortunate addendum that allowed us to increase exploitation on smaller fish and decrease exploitation on older fish; the one that we did that we turned out subsequently we shouldn't have done.

And so it may not be directly related to an absolute conservation equivalency to two at 28, Gil. I think the point is we don't know, Roy.

We would need to see that technical analysis, through this, put forward by the states through the technical committee for revalidation before I would certainly be comfortable offering you advice today. I think you wouldn't want the advice I'd have to offer you right now without that.

CHAIRMAN FLAGG: Well, I guess maybe the other issue is if in fact states that currently have regulations in effect, if they continue to be in effect until such time as the technical committee does its review and so forth, I would suspect that nobody would have a problem with that. Gordon.

MR. COLVIN: I think more to the point, Mr. Chairman, if I recall -- and Megan can perhaps straighten me out if I'm wrong -- I believe it was consistent with the action we took at our last meeting in deferring an implementation schedule until now, until later on at today's meeting, that it was understood that necessary changes to accommodate the two at 28 would be accommodated down the road in a reasonable timeframe for states to put those regulations in effect, perhaps not even this year.

That's my sense of the discussion that took place, so I don't think that New York and the Hudson River or the Delaware Bay states are necessarily looking at a very short deadline to get this done.

CHAIRMAN FLAGG: Okay, we're going to move on and Megan is going to talk a little bit

about the implementation schedule.

MS. GAMBLE: During our last board meeting, staff got the direction to query the state directors as to how long their regulatory process is. I received a response from a few states but not everyone, so I have put this on the table for the board to take a look at and discuss.

The first date, May 1, 2003, would be the deadline for submitting state implementation proposals. September 1<sup>st</sup> would be the deadline for the states to go back and actually implement the board-approved state implementation proposals.

So what would happen is states would submit their proposals May 1<sup>st</sup>. Our next board meeting is towards the end of June. And then the states would implement September 1<sup>st</sup>.

What I have included in the wording of Amendment 6 is that states could, as part of their implementation proposal, propose an alternative implementation date, providing some sort of justification, and that would be pending the approval by the management board.

I just skipped over the May 15, 2003. May 15<sup>th</sup> will continue to be the annual state compliance report due date. The first bullet on the screen is the one I just mentioned about an alternative implementation date.

And then the second point I wanted to make, the board decided at our last meeting that the increased coastal commercial quota may be landed now provided the state has at least a 28-inch minimum size limit and does not exceed the quota allocated to that state.

CHAIRMAN FLAGG: Roy.

MR. MILLER: For purposes of meeting these proposed deadlines, I don't think my state is unique in that we put out our fishing guides at a given point in the calendar year, and we're loath to change regulations midstream.

If an implementation deadline of September 1 is adhered to by all the coastal states and we have to go to two and 28 from our present slot limit, that would result in a mid-stream adjustment, so to speak.

That's problematic from an enforcement standpoint, particularly for non-residents. My state receives an awful lot of non-resident fishing pressure. I guess if implementation is September the first, then we would have to change, conceivably have to change our

recreational fishing regulations during the fall fishery.

What I'm suggesting is that's an enforcement problem. It's also a logistic and regulatory problem. I would much prefer to implement at the start of the year so when we publish our guidelines, they can be up to date. Thank you.

CHAIRMAN FLAGG: Thank you, Roy. I think a lot of us have the same problem because the September 1 implementation for us would be right in the middle of the fishing season. We don't like to change regulations in the middle of the season, and I suspect other states are in the same situation.

I would note, however, that the implementation schedule does provide that a state may submit an alternative implementation date that the board could determine would be appropriate based on that state's particular circumstances.

So I think there is some room there to change that, unless the board's desire is to take January 1 as an implementation date. I mean, that certainly would work well for us. Yes, Tom.

MR. FOTE: I would so move. I mean, we're not going to be sure -- I've got to go through with the state legislators to basically change regulations in New Jersey since it's done by state law. The agency doesn't have control.

There is no way that anything is going to happen before some time in 2004 if we have to change regulations, so I would move that the implementation be 2004 for the recreational.

CHAIRMAN FLAGG: I don't know if we need a motion. Anybody object to changing the implementation date to January 1? If not, I would direct the staff to do so. Bill.

MR. ADLER: Am I to understand that this does not affect a state that can put these things into motion earlier than that? Is that correct, that's still allowed to be done?

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: I think a majority of our plans state that as soon as the board has approved a state's implementation proposal, that they can go forward and operate under those new regulations.

MR. ADLER: All right, I just wanted to

make sure. Okay, so we can do it earlier than next January?

CHAIRMAN FLAGG: I think what we're looking at is an implementation date not later than January 1 next year. Yes, A.C.

MR. CARPENTER: Well, if we're going to have a January 1<sup>st</sup> implementation, and I totally agree with that, submitting a plan May 1<sup>st</sup> for January is I think a little far in advance. I'd like to see us move that back to probably September 1<sup>st</sup>. Then the commission can act on it at its annual meeting and we could --

MS. GAMBLE: I'm sorry, I'm shaking my head only because our commission meeting weeks are towards the end of June, towards the end of August and then in mid-December. So if the board is reviewing implementation proposals in December, that doesn't provide the state very much time to go ahead and change the regs after.

CHAIRMAN FLAGG: And bear in mind that we also have to have the technical committee review these, and they will have to have time in between the time that the proposals are submitted and the board meets again to take their recommendations. Yes, A. C.

MR. CARPENTER: A follow up. Are you saying, then, that we will act on this at the September meeting?

MS. GAMBLE: Well, the way I had laid it out, if the proposals are submitted by May 1<sup>st</sup> then the next board meeting is in June. So the board would take action in June.

CHAIRMAN FLAGG: Ernie.

MR. BECKWITH: Thank you, Mr. Chairman. Given the schedule of the meeting weeks, I have a question. The state of Connecticut wants to go back to two fish at 28. We currently have a slot limit; and according to the plan, we have to have approval from the board before we change our regs.

We would like to change our regs and put them in place for this fishing season. I would like it in place for April 1<sup>st</sup>. Can I just write a letter to the board? Do I need to get official approval from the board to go back to two at 28?

CHAIRMAN FLAGG: Bob.

MR. BEAL: The plan does state, as Ernie said, that any changes to any management program has to be approved by the board. You know, if the board today wanted to include as part of the implementation and compliance schedule a provision that said if a state is implementing two fish at 28 inches for their coastal fishery, they're allowed to do that, you know, via a letter to the chairman of the board.

Obviously, there is no technical review necessary for implementing the standard that is in the plan. So, you know, if the board wants to do that, they can include that as part of the implementation approval process.

CHAIRMAN FLAGG: Are there any objections from board members to that process? Seeing none, then I think we can proceed. We will be taking up another proposal, too, before we're done today that relates to New Hampshire. Okay, any other comments on it? I think we're still with -- are we still with a May 1 submission date for the plans? Gordon.

MR. COLVIN: I think looking at May 1 and the January '04 is workable. I want to introduce the thought that the commission generally, in my view, needs to start giving some very systematic thought to the timing and the frequency of regulatory changes that states are being required to impose across all the fisheries that are under management.

In most of our states, our freshwater regulations are changed once a year, sometimes once every other year, no more frequently than that except in the case of an emergency, and then in most cases those are true emergencies.

And as Roy pointed out, those regulatory processes and changes are carefully timed and scripted to fit into the cycle of the license season and the production of the fishing guides. Most of our freshwater counterparts are absolutely dumbfounded at what we try to do.

And in some cases they're our bosses and are pointing out to us that we are operating at a pace that cannot be maintained in terms of the frequency of rulemaking. January 1 is a good date to work with, generally, and I think striped bass going to January 1 is something that will fit in.

And I'm looking, I guess, at Bob and Vince and just indicating this is a plea. It's not the first time this plea has been heard at any one of our boards, and I

can remember a very strong message from Bob McDowell a couple of years ago.

We go through rulemaking. It takes us a dead minimum of six months in New York. Some states can do things a little quicker. Some states it takes longer. Some states, as Tom pointed out, still have a legislative process involved. In some cases they have to enact legislation. In some cases they have to review and approve regulation.

I don't think our current way of doing business is sufficiently sensitive to those problems. We need to get ourselves, I think, reorganized and see if there isn't some way humanly possible to get us working along the water fowl or the freshwater fishery's model of a single set of comprehensive regs a year, whether it's January 1 or some other date, but we really need to do that. Thanks.

CHAIRMAN FLAGG: Thanks, Gordon. Tom.

MR. FOTE: Just to follow up what Gordon says, I mean, we have March 6<sup>th</sup> and we're going to be still deciding the regulations on tautog, sea bass, scup, summer flounder and weakfish in New Jersey.

Now, luckily most of those species in New Jersey can be done on a rule-making procedure and not legislation so we probably will be able to get them in place before the season starts on most of those species.

But it puts the staff at the state, which basically, as most of you state directors know, have been reduced because of budget cuts and you've got less people doing more work, and it just compounds the craziness that goes on. And the same thing when the attorneys have to review this. We have to be very sensitive to what Gordon is saying. Thank you.

CHAIRMAN FLAGG: Thank you, Tom. Gordon.

MR. COLVIN: One other point. Kim just pointed out something to me that I do recall coming up from time to time, and that's the timing of the receipt of the MRFSS catch estimates as it relates to the state's annual report submission dates to ASMFC. I think we're talking about mid-May as the report deadline. It frankly makes no sense to submit those reports until we have MRFSS estimates, because what happens is if we go in without them, then we end up having to back track when they come in, anyway, and there is some duplication and repetition

that we ought not to be doing.

What I would suggest -- I don't know if this has to be written into the plan as a hard deadline or not -- is that the deadline be constructed so that it's mid-May or, you know, a period of two weeks or so after MRFSS, and for that matter commercial catch estimates become available, whichever is later.

And then we can sequence our meetings and our meeting planning that's based on that. I don't think any of us needs to be submitting annual reports without MRFSS estimates in them.

#### **DRAFT AMENDMENT 6: APPROVAL**

CHAIRMAN FLAGG: Thanks, Gordon. One of the things we need to do, before we get too far afield here, **we need to have a motion to approve the Amendment 6 as modified today. Yes, Pres.**

**MR. PATE: So moved, Mr. Chairman.**

CHAIRMAN FLAGG: And do we have a second? Second from Vito Calomo. A.C.

MR. CARPENTER: Before you got to that issue, I had one other issue with this that I think we need to bring to the board's attention. I had spoken with Megan at the break. There are a number of places in here where the F is listed as 0.27 for the Bay, and that is an adjusted F based on the fact that we are fishing at 18 inches, not at 20 inches.

That fact is not as clear in this document as it needs to be for future reference, so we just want to make sure that the staff can get that corrected.

CHAIRMAN FLAGG: Thank you, A.C. Yes, Gil.

MR. POPE: A.C., does that mean that 18 inches is considered fully recruited?

MR. CARPENTER: It means that we are traditionally paid a penalty to fish below the 20-inch size limit at the 18 inch. The minutes from the last meeting are very clear with regard to how that calculation was done, and there is a bit of confusion with the wording in this document that needs to be corrected.

CHAIRMAN FLAGG: Yes, Bruce. We have a motion on the floor.

MR. FREEMAN: I have two areas of

comment. One deals with definitions. Earlier today we talked about the motion that was put forth by Tom ruled out of order as to the definition of where Delaware Bay ends and begins.

And that brought to mind the -- I have not been able to find a definition of what constitutes "Chesapeake Bay". And, secondly, what constitutes "Albemarle Sound" and "Roanoke River." What designates Albemarle Sound from Pamlico Sound, for example?

And then my second issue deals with Section 4.6.2, and that is entitled "management program equivalency." The issue here is that in our other plans in the commission, for example, summer flounder, we have what we call "conservation equivalency."

That was carried through on Amendment 5, but now it has been dropped and we call it "program equivalency." I'm just curious, was there some reason of dropping the "conservation"? And then if so, is there an intent here to make this different than what we have in our other plans concerning conservation equivalency?

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: No, it's not intended to be anything like that.

MR. FREEMAN: Okay, so it's just --

CHAIRMAN FLAGG: A little different wording, but it's the same thing.

MR. FREEMAN: And the reason I say that is because this issue was carried through from the commission to the Mid-Atlantic Council, and in fact they put an amendment in place that allowed them to have conservation equivalency in the summer flounder plan.

And so that term carries some significance simply the way it has been used. But, as indicated, there was no intent of changing that, just the wording is different. Well, then that essentially being the case might, it would seem to me it would be useful, extremely useful in order to avoid problems in the future of having definitions of what is the boundary of Chesapeake Bay.

Is it what was in Amendment 5? And then the issue of Albemarle Sound and Roanoke River, that's a new definition or at least a new designation or a different designation. There needs to be some specific

indicator what those bounds are.

CHAIRMAN FLAGG: Thanks, Bruce. Our staff has noted your concern and will work on that. Okay, we're back to the motion again. Yes, Jaime.

DR. GEIGER: Thank you, Mr. Chairman. One thing I noted in Amendment 6 is, again, in 2.2 we have a very well-defined goal. And at the end of that goal it mentions also to provide for the restoration and maintenance of essential habitat.

Yet I note that in 2.3 objectives, we have no objectives relating to the importance or necessity of habitat protection and restoration. I would just urge the staff perhaps to consider putting an objective in there about the importance or what this body intends to do about habitat restoration and protection. Thank you very much.

CHAIRMAN FLAGG: Well, I think we certainly note that, and it's something we need to continue to work on. It might be something that is big enough to warrant an addendum down the road for the plan because it's a very big item. Other questions, comments? Yes, Bill Adler.

MR. ADLER: May I move the question?

CHAIRMAN FLAGG: Okay, Tom Fote.

MR. FOTE: Because of the way my public hearings went in my state and the way the public basically spoke about status quo, about no increase, even though this would basically benefit New Jersey and our program, because it would basically mean an increase in our commercial fishery quota, the overwhelming opinions and stated facts at our hearings is we don't want the increase; we want to be conservative.

Also, as I spoke earlier today, I was not clear of the implications of what went on under this plan with the producer area, and that was never made clear at the public hearings in New Jersey. I will have to vote against Amendment 6.

CHAIRMAN FLAGG: Thank you, Tom. I think we're ready to take a vote on this issue. Would you take a few seconds to caucus?

(Whereupon, a caucus was held.)

CHAIRMAN FLAGG: Are you all set? Has everybody had an opportunity to caucus? We'll have a roll call vote; and as your state is called,

please respond.

MS. GAMBLE: Maine.

MAINE: Opposed.

MS. GAMBLE: New Hampshire.

NEW HAMPSHIRE: Yes.

MS. GAMBLE: Massachusetts.

MASSACHUSETTS: Yes.

MS. GAMBLE: Rhode Island.

RHODE ISLAND: Yes.

MS. GAMBLE: Connecticut.

CONNECTICUT: Yes.

MS. GAMBLE: New York.

NEW YORK: Yes.

MS. GAMBLE: New Jersey.

NEW JERSEY: No.

MS. GAMBLE: Delaware.

DELAWARE: Yes.

MS. GAMBLE: Pennsylvania.

PENNSYLVANIA: Yes.

MS. GAMBLE: Maryland.

MARYLAND: Yes.

MS. GAMBLE: District of Columbia is absent. Potomac River Fisheries Commission.

POTOMAC RIVER FISHERIES COMMISSION: Yes.

MS. GAMBLE: Virginia.

VIRGINIA: Yes.

MS. GAMBLE: North Carolina.

NORTH CAROLINA: Yes.

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

U. S. FISH AND WILDLIFE SERVICE: Yes.

MS. GAMBLE: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Yes.

CHAIRMAN FLAGG: The motion passes on a vote of 13 to 2.

### **IMPLEMENTATION DELAYS/PENALTIES**

CHAIRMAN LEWIS FLAGG: The next item on the agenda is implementation delays and penalties. Bob.

MR. BEAL: All right, thank you. This is a relatively quick agenda item for this management board, I think, but I thought that earlier, about two hours ago.

What this is, at the November meeting the policy board approved some changes to the ISFMP charter, and one of those changes was for each management board to evaluate the management program for that species and report back to the policy board whether delays in implementation were or may affect achieving the goals of that fishery management program.

In other words, if a state implements something a little bit later than the other states, are the delays or is the ability to achieve the goals in the management program compromised in some way?

And all we need right now is kind of a yes or no. Should the Striped Bass Management Board consider an addendum to develop some penalties for late implementation of this management program?

Megan and I have talked about it at the staff level, and on the scale of things, striped bass doesn't seem to be in as great a need as some of the other species for an addendum to deal with implementation delays at this point.

I think our recommendation as staff is to not consider this a high priority to get back to the policy board and request development of an addendum to deal with delays in implementation. Maybe some of that reluctance to do an addendum is just seeing how long this amendment took, I don't know.

CHAIRMAN FLAGG: Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Why can't we go back, as opposed to doing it fishery management plan by fishery management plan, and make a board decision, a policy decision that it would apply to all fisheries? Then we could be consistent, rather than looking at it on a species-by-species basis. Would that be more appropriate, I would think? Too difficult?

MR. BEAL: I think the charge from the policy board was for each species management board to look at that individual management program and determine if an addendum or some other document should be put together to establish penalties or some sort of other management measure to deal with delays in implementation.

CHAIRMAN FLAGG: Gordon.

MR. COLVIN: Thank you. As you know this has been something of a pet project of mine. And, the need to address the problems that arise from delayed implementation is something I consider to be a very high priority and something that by and large the commission has not addressed.

In this instance, I actually agree with Bob's recommendation. I think this is not the best fishery management program to start out addressing the problem of delayed implementation for lots of reasons, not the least of which is we're in the middle of rolling out a new amendment.

I also agree with Bob's assessment that of the fisheries in which delayed implementation is a problem, striped bass is not prominent as compared to other things like fluke, scup and sea bass, for instance, where it is a bigger issue, any of the quota-managed fisheries.

I would agree. I would propose or suggest that the board accept staff's advice and defer action on delayed implementation until we've got some experience under our belt with some of the other higher-priority species.

CHAIRMAN FLAGG: Do any of the board members disagree with Gordon's point on that and staff's recommendation? Seeing no disagreement, I think we have a consensus.

### **MASSACHUSETTS PROPOSAL**

CHAIRMAN LEWIS FLAGG: The next item on the agenda is the Massachusetts proposal that was tabled last November. Paul, would you like to make some comments relative to that?

MR. DIODATI: Yes, possibly we can dispose of this one relatively quickly, although I'm here until Thursday. This is the one that dealt with the 2002 fishing year. We had put a proposal to the board mid-year of that fishing year, requesting an increase in our commercial quota from 800,000 to 1 million pounds.

We're still accounting for our landings. If we went over our 2002 value of 802, provided that we're under the one million, as long as I don't have to pay back any overage, I would be willing to just drop this particular issue. Otherwise, we're going to have to continue and deal with this.

CHAIRMAN FLAGG: Comments from the board? Gordon?

MR. COLVIN: Just how big a blank check are you looking for, Paul?

MR. DIODATI: Well, I think our proposal was for a million pounds, and we provided a justification for the million pounds. You know, obviously given some of the actions of the board over the past couple of months, I suspect that I was in line in requesting that increase. So as long as we're under that one million pounds, I'm willing to call it a wash.

MR. COLVIN: The difficulty I have, Mr. Chairman, is I was probably going to vote no for this proposal if it came to the board, and I never had that option so that's the other side of the coin. I frankly don't want to buy this pig in a poke at this point. I'd rather see the numbers completely laid out, fully vetted, with technical committee review and debate.

CHAIRMAN FLAGG: Tom Fote.

MR. FOTE: Yes, I mean, this goes against the plan. The plan was in place. You're supposed to do paybacks the following year. We didn't approve going to the million pounds. We can approve it for next year.

MR. DIODATI: It's not that you didn't approve it. You refused to act on my proposal. It was tabled.

MR. FOTE: Yes, but you aren't going to get the extra poundage anyway, because if you would

have, we wouldn't have refused to act on the motion. I mean, this is going to be semantics but we were not increasing any commercial quota. We weren't transferring it.

And if you went over -- I mean, that's like saying if New Jersey wanted to go over on its program because we anticipated putting in something that you refused to do, and then we didn't have to pay it back, we would have to pay it back and so would New York and so would any of the coastal commercial states.

And you're going to get an increase here. Next year you might not be able to take full advantage of that increase but you will the following year. I could not support this, especially in light of what's going on right now. I mean, that's totally absurd.

CHAIRMAN FLAGG: Paul.

MR. DIODATI: Then I suggest that we take the proposal out, review the technical committee's comments on it because I imagine they've had time to do that.

That was one of the issues at the December meeting when this thing got discussed, that the technical committee didn't review it because they weren't clear about the policy implication, whether it was allowed or not in Amendment 5. We determined that it was certainly allowed, and now it's time to hear their report and act on my proposal.

CHAIRMAN FLAGG: Okay, I think we need to have a discussion of the Massachusetts proposal and a motion to either accept or reject that proposal. It is off the table. I mean, it was tabled until this meeting.

And, therefore, as far as I'm concerned, it's off the table and open for discussion. I think we do need to address it. Paul, I know back at our last meeting, at the November meeting or maybe it was December -- my memory doesn't serve me very well right now, but I know you had proposed just to deal with the commercial component of it. That's my understanding. We're not talking about the recreational component of that proposal?

MR. DIODATI: Correct.

CHAIRMAN FLAGG: Yes. And it was basically to allow for a 200,000 pound additional quota on top of the 802,000 pound quota that would be essentially taken from uncaught recreational fish. Is my recollection correct?

MR. DIOODATI: It provided a rationale that included that, but we also provided a rationale that indicated that we operate with the larger size limit of 34 inches, not 28 inches, and we provided a justification for that, that would allow us an increased quota because of that larger size limit.

CHAIRMAN FLAGG: Okay, comments from the board? We don't have a motion at this point to either accept or reject the Mass proposal so unless we have a motion before us -- yes, Gil.

MR. POPE: Paul, did you go ahead and harvest it, in other words, or did you stick around, what was it, 805,000?

MR. DIODATI: Our quota was 802,000 for last year, and I think we harvested around 900,000, something on that order. I don't have -- we haven't done our report yet.

MR. POPE: I don't know. If I had any advice at all, which I normally try not to give too much advice here, but I would say deduct it and then add it back later, if it gets approved. I would deduct it because it's like taking it ahead of time, in my mind.

Whether it's justified or not remains to be seen. I may agree with it totally but putting the cart before the horse and allowing it to be harvested, I don't know. I don't think I could have gone along with that. Thank you.

CHAIRMAN FLAGG: Gordon.

MR. COLVIN: Just to muddy the water a little bit, it's something to think about as you go forward with this. In 2002 New York reduced its commercial quota to reflect an overage that occurred of our 2001 quota.

In both those years we had a one-fish recreational limit. So if we're going to start retroactively paying back based on not having the most liberal recreational regulations, you might get a follow-up proposal from New York.

CHAIRMAN FLAGG: Tom.

MR. FOTE: Under that funny amendment that we shouldn't have passed a long time ago on older fish, quite a few states tried to do that, and they were turned down royally, told that we couldn't transfer, we couldn't do this and we couldn't do that

on there. If you want a motion, I'll make the motion to reject Massachusetts proposal, and we'll just put it flat out there.

CHAIRMAN FLAGG: Is there a second? Paul.

MR. DIODATI: Actually there is a motion that was made and seconded and then tabled and now it's off the table. So the board's action here would be to vote on that motion, and that's what I'm asking you to do.

CHAIRMAN FLAGG: You're correct, Paul, that's correct. Do we have the motion?

MR. DIODATI: I'm not going to withdraw it. You have to act on it.

CHAIRMAN FLAGG: Yes, you're correct. We'll see if we can find that.

MR. DIODATI: Excuse me, Mr. Chairman.

CHAIRMAN FLAGG: Yes.

MR. DIODATI: I'd like the technical report before the board votes on that.

MS. GAMBLE: Paul, the technical committee has not revisited the Massachusetts proposal since the last time the board discussed this issue.

CHAIRMAN FLAGG: I might add that we also had an advisory panel report, and I'm going to pass that to Pat. We'll have that a little later on to refresh people's memory about what those various groups did recommend. Do we have a copy of the original motion? Oh, we're working on trying to find that.

**Okay, the motion that was made and tabled in November was a motion that the board accept the commercial component of the Massachusetts proposal to changes its management program.**

And that was for the 2002 fishing year, right, Paul? For the 2002 fishing year. The motion was by Paul Diodati with a second by Jerry Carvalho. Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman, point of information. How long will it take the technical committee to review this?

MS. GAMBLE: The issue that Paul is referring to, in the technical committee's comments it says they couldn't address whether or not this aspect of the Massachusetts proposal was in compliance with Amendment 5 with the information that was provided.

So then what happened was it was referred to the plan review team, and the plan review team issued a memo that was distributed for that board meeting. Do you remember --

MR. AUGUSTINE: What was the final outcome?

MS. GAMBLE: So the issue was already addressed, Paul. If there was something else, I'm not clear what --

MR. DIODATI: What did the memo say?

MR. BEAL: The plan review team memo stated that the coastal commercial quotas were not frozen in Amendment 5 or through any of the subsequent addenda, and that was really the sticking point that the technical committee had.

They were concerned that there was a policy document that prevented any changes to coastal commercial quotas. The plan review team went back, reviewed the documents, and the commercial quotas are not frozen.

MR. DIODATI: So therefore my proposal was consistent with Amendment 5, and the technical committee should have reviewed it to find out if we're conservationally equivalent. That's really the issue here.

CHAIRMAN FLAGG: Yes, Kim.

MS. McKOWN: Just one other comment. The technical committee really needed some guidance on whether or not you could transfer recreational allocation to the commercial fishery since commercial fisheries are run under quotas but the recreational fishery has no quota, and it's just run under a coastwide size limit and bag limit. We really needed some advice from the board on that.

CHAIRMAN FLAGG: I think that's a very good point in that how do you demonstrate that in fact there was a concurrent reduction in the recreational harvest to compensate for any increased commercial allocation when your recreational fishery is uncapped? Paul.

MR. DIODATI: Well, we provided an analysis that indicated what our recreational catch would have been if we were at two inches. That's what the committee should have reviewed but decided to spend their time looking at policy issues.

Nevertheless, we also provided a justification based on our 34 inch versus a 28 inch. There is a difference in the mortality rate that is applied and the reference points. You would see that. We provided a justification for that as well. So apparently it wasn't reviewed, so I don't know how the board plans to act on something that wasn't reviewed.

CHAIRMAN FLAGG: Are there other comments? Pat Augustine.

MR. AUGUSTINE: Well, if they haven't done it and they haven't advised the board one way or the other, I don't know how we can take action on it other than table this again until such time with date certain that the technical committee could come forward with a recommendation to it.

CHAIRMAN FLAGG: Thanks, Pat. Kim.

MS. McKOWN: Just one comment, is the justification for the 34 inch size limit in the commercial fishery versus 28 inches? It was in the cover letter that Paul Diodati sent to you, Lew, and it wasn't actually in the proposal, so the technical committee did not actually view that and utilize it as something to address.

CHAIRMAN FLAGG: Yes, Tom Fote.

MR. FOTE: In my mind and a lot of other people's minds, if you harvest the same amount of fish at 34 inches than you harvest at 28 inches, you're taking breeders and you're taking other fish and we don't consider that a conservation equivalency.

I don't know any plan that we have that says that if you take a larger fish you get more fish. I mean, basically when you start out in order to come into compliance, you have to take a larger fish just to restrict your catch.

It doesn't go the opposite way because you're killing the same amount of pounds, and those fish are basically producing more so maybe it has an adverse affect, since we were worried about the large fish and that's what the plan was basically designed for.

I've sat on this board, well, off and on for about 13,

14 years, since 1990. This question has come up numerous times. The board has always acted that you can't do it, you can't transfer recreational to commercial or commercial to recreational.

We've done those votes. I mean, Gil, we can remember going through this argument. It just not has been allowed all through the process. I don't think we need a technical committee recommendation to basically do that. I'm ready to vote no right now.

CHAIRMAN FLAGG: Gil.

MR. POPE: Did I just hear you can't transfer commercial to recreational? I thought I did. Oh, well, thank you.

MR. FOTE: You can't transfer quota from the recreational to the commercial. You can create a program out of a commercial fishery, that's a quota-based.

CHAIRMAN FLAGG: I'd like to ask Pat Keliher to just briefly review the advisory panel's recommendation relative to this proposal.

MR. KELIHER: Thank you, Lew. On November 13<sup>th</sup> we had 15 members of the AP participate in a conference call. At the time of the conference call, Massachusetts still had the recreational fishing component of this on the table.

And because of that, the AP focused on that component which was taking a -- when they were talking about a second fish at 40 inches, transferring that savings at going to 40 back over to the commercial sector.

So at this time I'm not sure what I can say about those comments because the rec proposal is off the table. I can tell you, though, that there was a lot of concern about the commercial increase at the time, and the AP's ultimate recommendation was to ask that the motion be tabled until after Amendment 6 has been approved. I guess here we are and you took our recommendation on this particular issue, so we appreciate the support.

CHAIRMAN FLAGG: Yes, A.C.

MR. CARPENTER: Can I ask the representative from Massachusetts, did the hundred or so thousand pounds overage that you haven't fully calculated, did that come as a result of actual change in a regulation or a requirement on the commercial

fishery during the course of 2002 that did not receive prior approval by the board?

MR. DIODATI: No, it didn't occur because of any changes at all. We didn't change our regulations for the past three years. We just had the shortest season on record. It was a 21-day season with very large daily catch rates that were difficult to control.

So we had an overage. We anticipated that, that it was extremely good fishing and one of the reasons why we generated the proposal back in August of last year when our fishery was still ongoing.

CHAIRMAN FLAGG: Yes, Pat Keliher.

MR. KELIHER: I just want to clarify the AP's recommendation. The reason that they were asking for this to be tabled is because the preponderance of the members of the AP believe that not only Massachusetts but the coastal commercial increase would happen under Amendment 6, therefore making this whole discussion null and void.

CHAIRMAN FLAGG: Other comments from board members? Have we pretty well exhausted it? We do have a motion on the floor. I'd like to ask members to caucus for a few seconds and we'll take a vote.

(Whereupon, a caucus was held.)

CHAIRMAN FLAGG: Okay, everybody had a chance to caucus. Okay, you have the motion on the board to approve Massachusetts' proposal. All those in favor, signify by raising your right hand; one; those opposed; ten opposed; null votes; abstentions; two abstentions. The motion fails.

CHAIRMAN LEWIS FLAGG: Our next item on the agenda -- are we skipping the stock assessment at this point or are we going to go with that? Okay, we will listen to Terry. He's going to give a presentation on the 36 SAW striped bass update. Terry, how long are you going to be?

MR. SMITH: Ten minutes, depending on questions.

CHAIRMAN FLAGG: Yes, Ritchie.

MR. WHITE: Mr. Chairman, do we have more than 25 minutes left or will we be restricted to two o'clock?

## **NEW HAMPSHIRE PROPOSAL**

CHAIRMAN FLAGG: I think we're going to try to finish up on time. I know there is a New Hampshire proposal, which I intend to get to before we leave here. Terry, will it take you a few minutes to get set up? I think we might be able to do this New Hampshire proposal hopefully within a minute or two.

I don't know if others have received a copy of New Hampshire's -- I'd like to do that if we can. New Hampshire has a proposal to change its regulations to a one-fish per day creel limit with a 28-inch -- that's what they have now -- one fish per day at 28 inches.

They wish to go to two fish per day with a 28-inch minimum size with only one of the two fish allowed to be over 40 inches. So, essentially it would be more conservative than the plan requires with two at 28.

The technical committee has not reviewed this proposal, but I might note that Massachusetts' recreational proposal, which was reviewed by the technical committee, called for one fish at 28 and one fish at 40 inches or greater.

I believe the technical committee did report that was acceptable and more conservative than the two at 28 scenario. So I think in effect we have had a technical committee review.

**Could I have a motion to accept the New Hampshire proposal? Doug Grout.**

**MR. GROUT: So moved.**

CHAIRMAN FLAGG: And a second by Tom Fote. Discussion?

MR. AUGUSTINE: Call the question.

CHAIRMAN FLAGG: No discussion and we have a comment to call the question. All those in favor, signify by raising your right hand; those opposed; null votes; abstentions. Okay, the motion carries. Thank you. Okay, I think we're all set, then.

MR. SMITH: We're having a little computer problem so we're going to switch.

## **STOCK ASSESSMENT SUBCOMMITTEE MEMBERSHIP**

CHAIRMAN FLAGG: Okay, we're going to take up the stock assessment subcommittee, then,

and this is the membership. Megan. We're going to have something put on the board here in just a second.

MS. GAMBLE: Yes, I think you're getting a copy of this list being passed around in a second and also it will be up on the board in a second. The stock assessment subcommittee for striped bass was reviewed and changed in order to comply with the newly approved technical guidance documents that were approved last November.

So, as you can see from the list on the board, we had 14 members in our current stock assessment subcommittee, which was much greater than that which is now recommended under the technical committee guidance documents.

The technical committee guidance documents recommend six members, so the membership has been revised to include individuals that are most actively involved with conducting the stock assessment.

And this revised membership has been reviewed by the technical committee so they are aware of it, but I wanted to also run it by the board to be sure that they were aware of these changes, too.

CHAIRMAN FLAGG: Are there any objections from the board to the revised list for the stock assessment subcommittee? Anybody want any additions on that list? Seeing no comments, I feel we have a consensus that this will be the revised stock assessment subcommittee.

## **ADVISORY PANEL NOMINATIONS**

CHAIRMAN LEWIS FLAGG: Can we do advisory panel? We're going to do the advisory panel nominations. We have one or two to deal with and Tina will get us that information.

MS. TINA BERGER: I believe you should have a handout that Mike is going to be passing around on the AP nomination. We have one AP nomination, Peter Whelan, a recreational fisherman from New Hampshire. He replaces Bill Hubbard on the advisory panel. You will have the updated advisory panel list and the AP nomination form in a second. Thank you.

CHAIRMAN FLAGG: Can I have a motion to approve?

MR. AUGUSTINE: So moved, Mr.

Chairman.

**CHAIRMAN FLAGG:** Yes, we have a motion and a second from Bill. Motion from Pat Augustine and second from Bill Adler to approve this advisory panel nomination.

I don't know if we need to have a vote. Is there a consensus from the body? Does anybody disagree with having this nominee to serve on the Striped Bass Advisory Panel? Seeing none, I think we'll take that as a consensus from the board. Gil.

MR. POPE: So how many will there be, one or two?

CHAIRMAN FLAGG: I think there's just the one, isn't it?

MR. POPE: Just going to be one?

CHAIRMAN FLAGG: Peter Whelan from New Hampshire. He's the new one, one additional.

#### **DISCUSSION ON A COASTWIDE UNIFORM MINIMUM SIZE**

CHAIRMAN LEWIS FLAGG: While we're waiting here, we do have one other small item of business, and that is there was a tabled motion I believe by Jerry Carvalho that related to including in the next addendum a provision for having a uniform or essentially it was a uniform minimum size throughout the range I believe. Jerry, you can correct me, please.

MR. GERALD CARVALHO: Yes, Mr. Chairman, the motion was to establish a uniform minimum size -- I mean, size standard. Right now we use two different standards to determine our basis of our minimum size.

It's 20 inches in the Bay states and it's 28 in the coastal states, and we can alter what our actual possession limits are based on those size standards. And what we need to do is establish a uniform size standard.

CHAIRMAN FLAGG: And this was tabled at the last meeting so basically if we have a motion to take this off the table --

MR. CARVALHO: Yes, Mr. Chairman.

CHAIRMAN FLAGG: Okay, and we have a second from Tom Fote. Any discussion? Yes,

Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thank you, Mr. Chairman. I know there was quite a bit of discussion about this issue during the last meeting. From a staff standpoint, I'd certainly suggest that the board consider we've taken a significant action here with Amendment 6. We've put a lot of resources into it.

And while I think that this proposal has merit, I would suggest that it may be worth considering moving forward with Amendment 6, see what happens, see what the results are from Amendment 6, and at a later date bring this issue forward rather than get us started on yet another striped bass plan amendment or addendum. Thank you, Mr. Chairman.

CHAIRMAN FLAGG: I guess maybe I have to get a clarification from Jerry. I was under the impression that this was to take place subsequent to Amendment 6, and that when we dealt with an addendum in the future related to Amendment 6, that this would be one of the items addressed. Now maybe I'm wrong. Gil.

MR. POPE: Thank you very much. I had brought up at a number of meetings that it was on Page 33 of the Public Information Document, that it was included, and it was to be talked about and there was at least supposed to be some discussion.

It's one of the most difficult of the things that we have been trying to just get at or talk about, the changes from then and now, the political realities that were then, the political realities that are now, all the different things involved with that.

Now, it is late; it's almost quarter of two. This issue is something that has been around for 15 years or more. It's highly contentious. It's going to take a long time, but it really does need to be talked about, and it was included in Amendment 6 as a discussion item.

There was never an action item to be done with that. But prior to any of our options, there was always stated, like on 33, whatever happens depends on the size standard chosen. Now, "single-size standard," again, does not mean "single-size limit."

It just means that we chose, because of for whatever reasons then, to make it 18 in the Bay jurisdictions and 34 on the coast, and that was in 1990. And then in 1995 the gap lessened a little bit. It was some 14

or 16 inches.

Now it's down to 8 inches of a difference. But it is still based on biology. The decisions were political in nature because of traditional fisheries and people saying that there were no small fish in the Bay.

Well, unfortunately, we have an F-driven system as well that allows people to allocate to harvest based on Fs and Fs that are generated in the Bay done by tagging and so on that we can't do on the coast.

So there were a lot of things that happened since 1990 and since 1995 that may be different, that need to be discussed, that people would just rather not discuss, but there are other people that really would like to discuss it.

And it was in the amendment, but if I read correctly, it has been put over to an addendum item now, in the minutes, if I read the minutes correctly. So, I would still like to keep it alive. I would not like to kill it. I know a lot of people would like to kill it, but I think it's something that needs to be discussed more and at great length. Thank you.

CHAIRMAN FLAGG: Tom.

MR. FOTE: After what truly happened in Amendment 6, where you basically did away with producing areas but allowed an exemption for just for two areas, this no longer is a producing area situation.

This is where some jurisdictions are allowed to harvest smaller fish and some jurisdictions are not. The biology factor is no longer there since you basically eliminated the Delaware Bay and the Hudson River, so now it is more a priority that we address this problem. It basically affects what we can harvest on the coast and other producing areas.

I mean, you basically now are telling me where the Delaware Canal, where fish go back and forth between the Chesapeake Bay, once they go back and forth inside of inland waters is now a difference.

Well, this is really going to grate a lot of people. And we've been talking about this with Gil for probably about 12-15 years. And we've basically had it -- under Amendment 5 there was a big push to go 24/24.

And, I mean, the public hearings actually supported that move. The board decided not to do that at the last minute, but that was the way it was supported. I mean, this issue is now going to become more

important than ever since you have done away with producing areas. There is no jurisdiction.

Once you basically have taken out the Delaware River and the Hudson River as producing areas, not going to have any differences there, how can you justify doing the same thing in the Chesapeake Bay? That has really hurt, and that's being truly unequitable.

CHAIRMAN FLAGG: I guess I still need a little bit of a clarification. My understanding is that this will happen post-Amendment 6 approval with respect to - - we're not talking about trying to incorporate this issue into Amendment 6 that has been finalized for approval at this point in time, but that there is a desire on the part of certain members to make sure that when the next addendum comes along, that this is one of the items that is considered relative to striped bass management?

MR. POPE: Yes. However, it was in Amendment 6, but it got chosen to be as part of something else and it was never an action item. So I want to make sure, and if I have to put in another motion to make sure that it becomes an item, an addendum item to Amendment 6, after we pass this Amendment 6, that we start right on it immediately.

CHAIRMAN FLAGG: Okay, we do have that in motion. Is there anybody else that wants to comment on that? Yes, Pat.

MR. AUGUSTINE: Yes, Mr. Chairman, it sounds very clear to me that it has been taken out, but it is considered as an addendum item. I think there is a foregone conclusion that that will come up at the first time we have an addendum to Amendment 6. At least that's the way I understand it, it would be the first addendum or one of the first ones.

CHAIRMAN FLAGG: Dave Borden.

MR. BORDEN: Yes, thank you, Mr. Chairman. I think the point that Gil and Jerry are making is this is going to be a fairly contentious issue because of the allocation issues that are vetted in it.

And as a result of that, it's going to take a lot of deliberations in order to strike some kind of compromise. So to me, what we need to do is simply commit the next time we have a board meeting, this should be a discussion of this issue on the board and essentially start those deliberations.

And then at the point where we decide to move

forward with another addendum, we will have initiated the process and had discussions and so forth. We have to start that process. And it hasn't been -- although it was discussed in the public hearing document, it has not been resolved.

CHAIRMAN FLAGG: Thank you, David. Is there objection to what David has proposed? Ritchie.

MR. WHITE: Should we assign this to the technical committee to come back with this to show the implication of different size?

CHAIRMAN FLAGG: It will be. It will be when we get to that point. Eric.

MR. SCHWAAB: Obviously, this is a difficult issue and we've just finished a first attempt to address some of the conservation and allocation concerns that this relates to without taking action.

I guess my question is, I'm not really clear, based upon what David just said, what the time table would be and what exactly the plan of the board would be.

I mean, I agree that obviously there is going to need to be a considerable amount of technical input that goes into this. We have a technical team that is now going to be looking at implementation plans under this new amendment for the foreseeable future.

I'm not really clear of the time table that is being considered right now or the process might be; so, before I consent to that process, I need, I guess, a little more clarification.

CHAIRMAN FLAGG: Thank you, Eric. Tom.

MR. FOTE: The technical committee already did this, before we went out to the public hearings. They've already gone to and shown what the allocations will be. I mean, it doesn't really have to go back to the technical committee.

It's for us to basically make a decision whether we're going to do this or not. I mean, Kim, am I wrong? Has the technical committee gone through that to do Amendment 6, so we already have that information.

So, really, this should be a board discussion at the next board meeting, whether we want to go for an addendum to accomplish this. We don't need a technical discussion; we need to work out the details of how it is accomplished or if it is going to be

accomplished.

CHAIRMAN FLAGG: Well, I would remind everyone that we don't have a lot of funds allocated to the Striped Bass Board for any work in the near future, so I suspect it's going to be some time. Eric and then Dave Borden.

MR. SCHWAAB: I guess if there were an agenda item on an upcoming board meeting that was going to speak specifically to process and time table to begin to address this, I would be comfortable with that.

But if it were anything at this point beyond process and time table where we were going to debate substance, I'm not comfortable with allocating time of the board to address that at least until we have gotten into implementation of Amendment 6.

CHAIRMAN FLAGG: Thank you. David.

MR. BORDEN: Thank you, Mr. Chairman. That would be totally acceptable to me to basically schedule it for, I would say, a fairly lengthy period of time at the next board meeting. I agree with what Tom Fote said in terms of the analysis on this.

But there is an aspect of this that hasn't been touched on by the technical committee. When we originally - - and I was not even on the commission when this was originally adopted, but I was involved in reviewing some of the documents at that time.

And when the commission originally adopted this dual size standard, it was based in large part of biological reasons and justification.

I think the technical committee has not gone back and reflected on what those reasons were and whether or not those reasons are still valid. I think that would be a useful exercise. What they've done is they've analyzed the impacts of different sizes on the different jurisdictions.

But that really begs the fundamental question, is there still a biological reason to have a dual size standard; and if there is, what is it? And somebody should lay that out on a piece of paper and present it to the board for just a discussion item.

And then I think what Eric is talking about is totally appropriate. Then the board has to look at that, look at whether or not there is a continuing need for a dual size standard, and then basically decide what the timeframe and process is for addressing this.

CHAIRMAN FLAGG: Yes, Gil.

MR. POPE: The other thing I want to make sure of before I leave the table is that this item can be changed under an addendum because under Amendment 5 I was told that it probably has to be changed as an amendment, that's why we needed Amendment 6, one of the main reasons why was to get this going.

Now, if Amendment 6 is passed and this is not passed with it, will this item be eligible for an addendum process or will it have to go through a whole other full amendment process, which probably won't happen for ten years?

CHAIRMAN FLAGG: Staff is checking that right now. Yes, Tom.

MR. FOTE: Really, I'm sitting here astounded because we just did that with two producing areas. We decided that they didn't need any biological reason. The board just acted upon that with the Hudson River and the Delaware Bay.

And then you basically decided to exempt the commercial fishery in the Delaware Bay of the same fact, and now you say you don't have enough information to make the decision. Well, I mean, where is the difference between one producing area over the other?

Then biologically, if it all holds, then we shouldn't have done that in Amendment 6. Otherwise, you should have at least treated everybody fair and equitable across the board, and you didn't do that.

You already made a decision that the Hudson River and the Delaware Bay producing areas didn't need a dual size limit. They needed to come up to 28 inches. Now, I don't know what biological reasons you gave for it, but you decided that when you passed this amendment about ten minutes ago.

And yet you're saying now we have to make a whole different deliberation because of the Chesapeake Bay. Well, I mean, again, you're being very unequitable between one area and another area when it's the same biological thing in those same areas.

CHAIRMAN FLAGG: Thank you, Tom. Megan, in respect to whether or not this is an addenda item.

MS. GAMBLE: Just to get back to Gil and

his question, it is covered. It can be covered under an addendum.

CHAIRMAN FLAGG: Okay, are people comfortable with working with respect to Eric's suggestion, that we talk about process and timeframe in conjunction with this issue, and that we include it as an agenda item early on for the Striped Bass Board to consider?

Understanding that obviously we don't have resources to do a lot of work on striped bass from this point on so it may be some time before we get to this, but it certainly can be a priority item for discussion. Yes, David.

MR. BORDEN: That's fine with me, but I just reiterate what I said before, that I think one of the key ingredients here is for the staff at least to go back and mine the existing records and simply come forward to the board and say this was the reason, there was a biological reason that we did what we did, and they should lay that out.

And if it means nothing more than copying minutes of appropriate proceedings and discussion papers and then circulating those, I would just venture a guess that three-quarters or more of the people at the table weren't here for that original discussion, myself included. I think we would all benefit from that.

CHAIRMAN FLAGG: Yes, staff has indicated they can do that, and we will do that. Anything further? Yes, Tom.

MR. FOTE: And when we pull out that information, I would like to find out why the Delaware Bay and the Hudson River are considered different than the Chesapeake Bay for the same biological reasons. I would like that pulled out because you're going to need it eventually because some things will happen on this one.

CHAIRMAN FLAGG: Thank you. I want to get to Terry. He has been waiting patiently here and I think we're already to go. Yes, Vince.

EXECUTIVE DIRECTOR O'SHEA: Yes, Mr. Chairman, I really have -- you know, you had a motion to take off the table the tabled motion, which, frankly, you all didn't vote on. And based on the discussion and the debate, presumably the intent would have been to take it off the table and to engage in debate on it, which you've done. That's still going to leave a motion that's out there. I think it would be helpful to define what happens to that motion.

CHAIRMAN FLAGG: Okay, Tom.

**MR. FOTE: I'll make a motion to table this to the next Striped Bass Board meeting.**

CHAIRMAN FLAGG: Okay, a second? Yes, Bill Adler seconds. Motion to table until the next Striped Bass meeting. All those in favor, signify by raising your right hand; those opposed. The motion carries.

### **36<sup>th</sup> SAW: UPDATE FROM NEFSC**

CHAIRMAN LEWIS FLAGG: Okay, now I think we can move on to Terry. Thank you, Terry, for being patient.

MR. SMITH: Thank you, Mr. Chairman, and I apologize for the delay. My computer is not speaking the same graphics lingo as your projector, and so we're going to be subjected to a low-resolution presentation. We'll do the best we can.

I work for the Fisheries Service at the Northeast Fisheries Science Center in Woods Hole. I am chairman of the Northeast Stock Assessment Workshop, and I have come to you today on behalf of that process.

That process is a partnership among the New England, Mid-Atlantic Councils, and the Commission whereby a set of stocks prepared for assessment, assessments are reviewed in a stock assessment review committee meeting, or SARC, and then reports on the results of the SARC are presented to the councils and, today, the commission.

I understand in your briefing book you got a copy of the draft advisory report on stock status. There are I think six topics in there, and we're going to talk about striped bass, hopefully, fairly quickly.

The stock assessment review committee is a peer-review panel of management and assessment experts that reviews and accepts or rejects assessments. They produce this advisory report on stock status that I just spoke of.

The 36<sup>th</sup> SARC met in Woods Hole in December. It was chaired by Andy Paine from the United Kingdom and had a number of other panelists, a total of twelve panelists; four from the Center, two from the commission — we had Laura Lee and Paul Piavis on the panel -- and other panelists, I guess, in total six of the panelists from outside the region.

We looked at yellowtail flounder, primarily stock structure and given some decisions on stock structure, newly defined Southern New England/Mid-Atlantic stock of yellowtail and a redefined stock of Cape Cod/Gulf of Maine yellowtail flounder.

We looked at two winter flounder assessments; and if I get done with this presentation, I believe we'll be taking those up momentarily. We looked at a northern shrimp assessment, and then we looked at striped bass.

But this is not a review of an assessment, not management advice. The SARC alternatively was asked to review the assessment methodology that's used for striped bass and to respond to six specific terms of reference: to characterize a catch, including landings and discards; to answer some questions related to the VPA model configuration, which has been mentioned several times this morning; to provide or review estimates of fishing mortality rate from tagging data; to discuss the averaging of those estimates from the tagging programs; to review discard estimation and the use of tag return rates in determining discards; and to provide a comparison of VPA-derived and tag-based fishing mortality rates.

What I'm going to do is go through each of those in a little bit of detail. All of this information, again, is in this yellow covered advisory report, the final section. I believe it begins on Page 49.

The first term of reference was to provide a sort of catch and status information. That's in the report. I won't go through that.

The second term of reference was to review the VPA-based stock assessment, provide guidance on determining the best, most appropriate model configuration.

There are a number of sub-topics: age structure; review of the selection of fully recruited ages; answer the question whether using age five as a fully recruited fish is appropriate; examine assignment of a plus group; and age mis-specification.

I think you know a fair amount about this. Some of this is technical, but just to get to the age mis-specification part, there are two methods of determining age, scales and otoliths. Apparently, there is imprecision in determining the age of the older fish using scales.

There has been some determination by the technical

committee to try to go more to otolith aging and to provide some comparison table, which would provide a way to compute one age from the other age base.

This is a calibration matrix which can convert back and forth between scale and otolith ages. I won't get into the details of this, but there are four or five different items involved here. The SARC suggested that after those particular items are dealt with, that the entire VPA should be rerun after this new age structure is agreed upon.

There are issues associated with what is called the "partial recruitment" or PR vector. That has to do with what portion of an age fish is recruited to the fishery. There are two families of models in formal stock assessments. One is called "flat top." The other is called "dome shaped."

A flat-topped partial recruitment pattern means that the fish are selectively recruited as they reach age of capture, size of capture, up to a partial recruitment value of one. They are fully selected.

And no matter how old the fish get, they are still fully selected. So, the older fish would have a PR value of one as well. That's called a "flat-top" PR. That's what is used in the VPA model currently.

The alternative model is called "dome shaped", and that's where older fish, for whatever reason, may be less selective than fish of an intermediate age.

There were a lot of signals in the data that the SARC looked at that support a dome-shaped partial recruitment vector, including information on the catches at age four, five, and six fish, information presented independently from tagging data which indicated a lower mortality on some of the older ages, and then the general notion of striped bass migration patterns, which was discussed this morning, that larger fish tend to move offshore and there may be less fishing activity.

The summary there is the SARC suggested that the model be rerun with a dome-shaped partial recruitment approach. There were questions related to the VPA and what are called "tuning" indices.

A VPA briefly is a virtual population assessment or a cohort model which attempts to restructure or determine the structure of the population over time by looking at a catch at age matrix, by looking at the catch for each aged fish. That's landings, discards, total mortality.

In order for the model to work well, it is a statistical model, then auxiliary information is used to help in model fitting. These are called "tuning" indices, and invariably they represent some kind of survey indices.

As I'm sure you know, the striped bass VPA has 15 separate surveys that are used as tuning indices and some 50 or 60 indices for various ages that are used. They are all put into the model, and the SARC's suggestion was that some objective discrimination up front was necessary.

There could be some testing to evaluate performance of the various indices, and statistical weights could be assigned, and a model that is more parsimonious, that uses less indices, might perform better.

There was an item related to fishing mortality rates from the tagging data. Tagging data, as you know, uses a technique, a statistical fitting technique called "maximum likelihood estimation" to determine F for four mixed coastal stocks.

There are some 13 families of models that are put into one large maximum likelihood model. Of those 13 models, I believe three use an assumption of constant survival. The SARC thought that assumption was not reasonable, given documented changes in fishing effort, and suggested that the constant survival tagging families be removed from the suite of tagging models that were being considered simultaneously; and also considered deleting models, again, that did not have significant weight in the analysis.

They discussed the validity of averaging stock-specific estimates from several separate tagging programs. The SARC noted that the tagging programs for different coastal stocks occur at different times of the year; that the estimates from Massachusetts are low; may reflect movement of fish into the EEZ; and that the differences among the tagging programs make averaging problematic.

I don't believe the SARC came down to a bottom line, but indicated that there is some difficulty in just whole scale averaging of all the estimates.

A fifth term of reference was to review the discard estimation methodology that uses tag returns. The SARC thought that the methodology was appropriate but suggested that some estimates of imprecision should be offered in the future. There are a couple of different ways to do that in the report listed, depending on the method used to do discard

estimation.

Also, the SARC noted that the estimates of mortality are specific to various gear types, and there ought to be some additional studies to reassess what those mortalities are by gear.

The last term of reference was to provide a comparison of tag and VPA-derived F estimates. Again, the SARC saw two different assessments, a VPA-based assessment and a tag-based assessment. As you know, they produce slightly different measures of F.

The SARC compared the F from the VPA, ages five through ten, which I believe is the number you've been talking about today, with an average tag F. They both show increasing F rates over time.

And, by the way, these figures, the trends in time are depicted in a consensus summary report, a thicker report, which I think you got in the mail in the last several days or maybe handed out before you got here. We're not going to have time to review those graphs today but you can see what we're talking about.

The VPA estimates were slightly higher than the tag estimates, but the two estimates were not statistically significantly different. In terms of a straight comparison, North Carolina offshore tagging data or tagging F was most similar in trends and value to the VPA estimates.

The SARC suggested that tag and VPA-based assessments be combined into a single assessment, and they suggested that the tag estimates of F themselves could be used in some way in the model.

And that's all I have, Mr. Chairman. Again, it was a very technical review, not for managers, for the technical team, the Striped Bass Technical Team that had some questions about how to best do the VPA, how to best do the tagging and how to blend the two. That's all I have. I'd be happy to answer questions if we have any.

CHAIRMAN FLAGG: Thank you, Terry. Questions of Terry. Kim.

MS. McKOWN: I just had a comment that the technical committee hasn't at this point decided what is the best structure to use for aging, and that there is going to be an aging workshop mid-March. We are concerned about the aging of the older fish but there will be a full analysis on that.

MR. SMITH: To that point, Mr. Chairman, I believe there is a workshop scheduled next month; is that right?

CHAIRMAN FLAGG: Yes. Bob.

MR. BEAL: Yes, this isn't really a question for Terry. It's kind of a scheduling issue. Obviously, the Striped Bass Board went over. Terry has to leave at three o'clock, so I think what I'm going to ask him to do and all you folks to suffer through on your empty stomachs is sitting through Terry's presentation on winter flounder which will take, I don't know, 15-20 minutes, half an hour, and then we'll break for lunch, and then come back and do the substance of the discussions on the PID for winter flounder and then the Bluefish Board.

I have a feeling -- you know, the Bluefish Board meeting may be relatively quick so we may get done the overall day's work pretty close to when we scheduled to. We have to accommodate Terry's schedule since he came down to give us these presentations.

CHAIRMAN FLAGG: Thank you, Bob. Other questions of Terry? Yes, Gil.

MR. POPE: Thank you, Mr. Chairman. I was just curious, in the beginning of your presentation, you talked about "fully recruited." When you talked about that, currently we're using three year olds, four -- and you had mentioned whether five year old was even -- could you just elaborate a little bit on what your definition of "fully recruited" really means.

MR. SMITH: "Fully recruited" means that the age class is 100 percent vulnerable to the fishery. The evidence presented to the SARC indicated that the general age of fully recruitment may be higher than what is assumed in the model. I can go into details but that was the general conclusion from the panel.

MR. POPE: Was there any discussion about migration rates and how they've changed over time?

MR. SMITH: Not that I recall; not at that particular meeting.

CHAIRMAN FLAGG: Eric.

MR. SCHWAAB: Terry, was there any discussion of natural mortality or trends? I note in

particular this difference between the VPA-based F and the tag-based F, and I wondered if you could comment on that.

MR. SMITH: I don't recall a discussion about natural mortality M. Did we discuss that? No.

CHAIRMAN FLAGG: Other questions of Terry? Okay, thank you, Terry. And, as Bob mentioned, we're going to go right into winter flounder, but I would like to take this opportunity to thank the staff of the ASMFC and the technical committee and PDT for all the hard work that has been gone into Amendment 6. God, I thought we'd

never get there, but happily we are.

And so I'd like to commend those folks for their very hard work, and I think we're all grateful to you for the work that you've done and the product you've produced for us. So at this time the Striped Bass Board meeting is adjourned and Terry will go right into the winter flounder presentation.

(Whereupon, the meeting adjourned at 2:15 o'clock p.m., February 24, 2003.)

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