

**PROCEEDINGS OF THE
ATLANTIC STATES MARINE FISHERIES COMMISSION
ISFMP POLICY BOARD**

**Crown Plaza Old Town
Alexandria, Virginia
May 6 & 7, 2009**

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INDEX OF MOTIONS

1. **Approval of Agenda by Consent** (Page 1).
2. **Approval of Proceedings of February 4, 2009 by Consent** (Page 1).
3. **Move that the Executive Director send a letter to Dr. Jane Lubchenco, Undersecretary of Commerce for Oceans and Atmosphere, requesting that the following ASMFC-managed species be begin equal consideration with federally managed species in the development and implementation of at-sea fishery observer programs: American shad, alewife, blueback herring, striped bass, weakfish, Atlantic and shortnose sturgeon, American lobster and northern shrimp** (Page 25). Motion by David Simpson; second by Tom Fote. Motion carried (Page 25).
4. **Adjournment by Consent** (Page 27).

ATTENDANCE

Board Members

George Lapointe, ME (AA)	Bernard Pankowski, DE, proxy for Sen. Venables (LA)
Pat White, ME (GA)	William Goldsborough, MD (GA)
Douglas Grout (AA)	Tom O'Connell, MD (AA)
Rep. Dennis Abbott, NH (LA)	Jack Travelstead, VA, proxy for S. Bowman (AA)
Ritchie White, NH (GA)	Catherine Davenport, VA (GA)
Paul Diodati, MA (AA)	Louis Daniel, NC (AA)
William Adler, MA (GA)	Willard Cole, NC (GA)
Mark Gibson, RI (AA)	Mike Johnson, NC, proxy for Rep. Wainwright (LA)
David Simpson, CT (AA)	John Frampton, SC (AA)
Lance Stewart, CT (GA)	Robert Boyles, Jr., SC (LA)
James Gilmore, NY (AA)	Spud Woodward, GA (AA)
Pat Augustine, NY (GA)	Jessica McCawley, FL (AA)
Brian Culhane, NY, proxy for Sen. Johnson (LA)	Bill Orndorf, FL (GA)
Tom McCloy, NJ, proxy for D. Chanda (AA)	Steve Meyers, NMFS
Tom Fote, NJ (GA)	A.C. Carpenter, PRFC
Gilbert Ewing, NJ, proxy for Asm. Fisher (LA)	Wilson Laney, USFWS
Leroy Young, PA, proxy for D. Austen (AA)	Jed Brown, DC
Roy Miller, DE, proxy for P. Emory (AA)	

(AA = Administrative Appointee; GA = Governor Appointee; LA = Legislative Appointee)

Ex-Officio Members

Staff

Vince O'Shea
Bob Beal

Toni Kerns

Guests

The ISFMP Policy Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, Wednesday afternoon, May 6, 2009, and was called to order at 3:40 o'clock p.m. by Chairman George D. Lapointe.

CHAIRMAN GEORGE D. LAPOINTE: Roy Miller, can you come up here, please. Roy got an Award of Excellence last night for his long-standing service to the commission. A couple of years ago we started the tradition of awarding a pin to people who have served the commission for a long time.

I am going to read this and then give to him. It says, "This commemorative pin was designed to honor individual contributions to the success of the Atlantic States Marine Fisheries Commission. The design is based on the Compass Rose, an ancient figure that displays the orientation of the cardinal directions. Like the points of the compass, you have helped guide the commission in setting its priorities and achieving its goals." I am honored to give this to Roy at the occasion of his last commission meeting. (Applause)

MR. ROY MILLER: I promise to be brief. Thank you very much for this totally unexpected award. It is very thoughtful and very nice and so typical of members of the commission. I am truly humbled to be associated with you. I just wanted to say very quickly that one of my staff sent around an announcement of a retirement party for me on June 28th.

Apparently she sent it to whomever she had ready access to in terms of e-mail. Anyone who would like to come to lovely, historic Lewes, Delaware, on June 28th, in the afternoon, and come to my retirement party, I would welcome any of you. With that, I thank you again. I will point out you may not have seen the last of me. There is that outside chance that I will return to the commission in another capacity and maybe you will hear more about that in the future. Thank you very much. (Applause)

CHAIRMAN LAPOINTE: Next, Ritch White wanted a minute.

MR. G. RITCHIE WHITE: Mr. Chairman, John Nelson's wife Sue asked me to thank the Atlantic States family for the outpouring of support and sympathy expressed through personal visits, calls, flowers, cards, notes and letters. They have been a great source of comfort to the family during this difficult time. Thank you.

CHAIRMAN LAPOINTE: Thank you, Ritch. The last personal thing is we have a new staff member, Katie Drew. Katie, can you stand up. For those folks who have met her, she is our new stock assessment person. (Applause) We have a new administrative commissioner, Jessica McCawley from Florida. Welcome. (Applause)

APPROVAL OF AGENDA

We will now go the agenda as it is printed in our briefing document. Do we have any changes to the agenda? I have one that Lou Daniel asked that we insert a striped bass issue, the EEZ Issue, after Agenda Item 6, which I'm going to do. I asked Lou why this is here and not at the Striped Bass Board, and that is because the Policy Board has dealt with this issue in the past. Are there other items of other business? Pat, did you have one?

MR. PATTEN D. WHITE: Just briefly, thank you, Mr. Chairman. They sent over some extra copies of the "The Changing Oceans; Changing Worlds" from the Joint Ocean Commission Initiative that was sent to the Administration. There are some extra copies on the back table if anybody wants one.

CHAIRMAN LAPOINTE: Thank you. Other additions to the agenda or no?

MR. DAVID SIMPSON: You've had to prompt me twice in the last five minutes. Thank you, Mr. Chair. I had a motion that I wanted to put in front of the –

CHAIRMAN LAPOINTE: Can I put that under other business and just add it for now?

MR. SIMPSON: Yes. Okay, it's in essence to send a letter to Pat Kurkul as Regional Administrator asking for consideration of bycatch monitoring for ASMFC species.

CHAIRMAN LAPOINTE: Thank you, David. Other items of other business that we need added or considered? Seeing none, is there opposition to approving the agenda as amended? Seeing none, it is approved.

APPROVAL OF PROCEEDINGS

We have the Proceedings from February that was on our briefing document. Are there any changes to those minutes? Seeing none, is there opposition to their approval? They are considered approved.

PUBLIC COMMENT

The next topic on our agenda is public comment. Are there any members of the public who want to comment on important issues that aren't on the agenda? I see no members of the public; people can make comment on other issues as they come along. Our next agenda topic is an update on non-native oyster activities. Bob.

UPDATE ON NON-NATIVE OYSTER ACTIVITIES

MR. ROBERT E. BEAL: I think I have given updates to the Policy Board on the non-native oyster activity within the Chesapeake Bay Region for the last two or three years, quite a while. I think that project has finally come to some closure. The Army Corps of Engineers, working with the Commonwealth of Virginia and the State of Maryland, have come to a decision on the environmental impact statement for oyster restoration within the Chesapeake Bay.

Those groups decided to stick with the native oyster restoration rather than introduce non-native oysters in the Chesapeake Bay at this time. The goal of this is to restore the ecological function of native oysters as well as a revitalization of the oyster industry.

There is a press release from the Maryland Department of Natural Resources and a similar release came out of Virginia Marine Resources Commission that was included in your briefing book. It appears this project has come to some resolution. I don't know the folks from Maryland, Virginia or the Potomac River Fisheries Commission would like to comment in any greater detail.

MR. JACK TRAVELSTEAD: Just to thank the board for their patience for the last five years on this subject. I know you have listened to countless reports from Bob for many years on this. As Bob said, we have come to a resolution to stick with the native oyster. I think this board's expressions on that subject no doubt played a role in that decision, as well as the letters that the individual states sent to the Corps on that issue. So I thank you.

DISCUSSION OF BOARD PERFORMANCE REVIEW FORMAT

CHAIRMAN LAPOINTE: Thanks, Jack. Other comments? Seeing none, the next agenda topic,

Agenda Topic 5 is a discussion of board performance review format. I am going to lead that conversation. I hope it generates a good amount of conversation. When we approved, last year, our new strategic plan, one of the things we committed to was an annual review of management boards' activities as they affect stock rebuilding.

This paper talks about options for the kind of information needed by the Policy Board in judging the effectiveness of our management programs. Two questions for board consideration; does the Policy Board validate the commitment to conduct annual reviews – and I hope the answer to that is yes – and then if we do what kind of reports will allow the Policy Board to complete the review?

The rationale for the Policy Board Review, the four bullets listed is that the Policy Board has the responsibility to ensure that individual species' boards are taking actions consistent with the commission's mission and vision as put forward in the Strategic Plan. The Policy Board is responsible for the allocation of limited resources on all of our parts, staff, travel, commission time, technical staff time, et cetera, to ensure that priority needs are being addressed.

The Policy Board is likely the body that receives the criticism from the general public if there is a lack of progress on stock rebuilding. When the commission alone can't make satisfactory rebuilding progress, the policy board has the ability to engage other agencies to work toward the mission and vision as stated in our Strategic Plan.

Robert and I talked to staff about options for presenting the status to the policy board, and there are four options listed there. The first option would be to present a summary of stock status and performance based on the most recent assessment information, either a benchmark or an update. The downside of this would be assessment information would be dated and may not reflect the impacts of the most recent management actions or harvest patterns in a fishery.

Option 2 would be to present a proxy to stock performance, and the example listed is the Tautog Management Board implemented Addendum V to reduce exploitation by 25.6 percent and the most recent year's landings were reduced by 28 percent. This enables an evaluation of the effectiveness of the regulations for the individual plans.

Option 3 would be to present summary of the most recent management activities associated with each species. The example here is following the 2006 stock assessment, the American Eel Management Board met eight times, developed a draft addendum to improve silver eel escapement, held 14 public hearings, and decided to postpone action until the next assessment is complete.

Option 4, the last option, is to present a summary of each management board's actions relative to the science advice provided by the technical committee or the assessment peer review. So, today I want to initiate discussion on this and look at the options and get direction from the board so the review can occur at our summer meeting in order to be considered for the next year's Action Plan. When I first started talking to staff about this, I was looking at different plans and judging how I thought we had done on them.

We struggle with every plan. We think things are simple until we get into board meetings and four-hour meetings become six-hour meetings; and the things we think are easy aren't. Stock rebuilding is tough. Stock success like striped bass is tough. If you look at individual species and the sections and boards associated with them, we all have different ideas about how we're doing, whether we're doing well or whether we aren't.

I actually started putting a bunch of our species and putting arrows up or down and then realized that was a lightning rod for hammering the chair and probably not getting good conversation. A lot of our species operate differently. Northern Shrimp, for example, we will get criticized when the landings go down, but we know that is going to happen and we plan for it.

So to call that plan a failure is inappropriate to me, and so I think that if we look at how we do, there are a lot of examples of things we're doing well and sometimes there are examples of things we aren't doing well. The idea is to compile that and kind of do a health of our fishery management program annually, again with an eye on the ball for the goals in the Strategic Plan. With that, I am going to quit speaking and try to see what other folks think. Bill Adler.

MR. WILLIAM A. ADLER: Mr. Chairman, the last bullet there, what is the example of that last bullet, when the commission alone cannot make satisfactory rebuilding – what is the other agencies? Could you elaborate a little on what that means?

CHAIRMAN LAPOINTE: Vince, please.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Well, there is the federal plan and the Mid-Atlantic Council, for example, or the New England Fishery Management Council, the Highly Migratory Species, the National Marine Fisheries Service and the Secretary Plan.

CHAIRMAN LAPOINTE: Good question, Bill. Other comments or questions? Pat August and then Willard Cole. Hold on one second, Pat, Vince just wants to jump for a second.

EXECUTIVE DIRECTOR O'SHEA: And a specific example would be winter flounder when we had a whole big discussion about the impacts of the federal fishery on the stock.

MR. PATRICK AUGUSTINE: I think the options are good, but I think they have to be treated separately and differently for each species of fish. Now, using Option 3 for the example you used, if that were in fact true and I was just a public person, I would say, well, you know, you went ahead and had 26 meetings and you did the following.

You've met eight times and finally decided to postpone the management; what is that all about? Why didn't someone come in earlier than that and cut it off and see what the problem was. So, what we're trying to do there is to look at a summary of recent management activities associated with specific species. That example would be a tough one.

I would suggest that we – maybe we're doing it and I don't know it – look at the assessment dates that have been established by the Northeast Regional Office and what we have ourselves. When we are looking toward developing an amendment, not an addendum but primarily an amendment, that is going to make some sweeping changes – case in point, striped bass – we're ahead of the curve.

We want to take an action and yet we're close enough to an assessment. I'm wondering when we look at setting up some the action plans for each the various species, look more closely at when the next assessment of that specie is liable to occur; and in the discussion at that next board meeting for that specie of fish yourself or the technical committee or someone say we are going to have an assessment on that stock within the next nine months.

Therefore, any critical changes we are considering now inform the PDT this is what we would like to see

in the development of that action; however, remember we're going to have an assessment in nine months or so and therefore we will not go forward and take critical action. I'm not sure we're doing that, but that's one of the things that we might want to consider if we're not. But the options I think are clear; it's a good approach.

CHAIRMAN LAPOINTE: Just speaking for myself, I hope we don't pick Option 3 because I don't like how it is presented either. I don't think the idea is to have different options. It is that the policy board will look across all the plans and look at how our management program is going.

This is for us as a body that looks over the fishery management program to judge how we're doing, to make sure that we're doing the right thing, to make sure that we're challenging ourselves. And for those times when it is evident that we're taking too much time – and we're all prone to that sometimes – it is to tighten up how do business, I think. Bill Cole.

MR. WILLARD COLE: Mr. Chairman, the art of evaluation is very difficult as I'm sure you've struggled with as you've mentioned. Option 3 doesn't help us with where I think you're trying to go and let me restate that; that is effective stock rebuilding, how is the board doing? Three is busy work. It's just an identification of the busy work.

The Option 2 approach certainly has a little more appeal immediately because if the target in 2015 is a certain number, then that is what the board is being measure against, how close is it going to be in 2015? So I think if we take that kind of an approach with each board, that's sort of like sometimes when we get all bogged down and all these debates, it is to know what the target for the board is. I want to flash it right up there on the screen where we can all remember what it is, because a lot of the things we get in do-loops about don't have flip to do with getting to that target.

DR. LOUIS DANIEL: I think I brought this issue up in 1997. The North Carolina Stock Status Report – and for those of you that haven't seen it, is on our website – it is the metric that we use to track our progress in developing and implementing fishery management plans and the concomitant successes or failures that we're having.

I have always thought that it would be a great tool for the commission to look into using. It is easily updatable. It is very usable. It provides you with a table of stock status; and when you go through there,

you will see over the years the various progresses that have been made. Our goal has been to try to have everything recovering or viable by a time certain and move everything out of the unknown category.

So if you'll look at that, you can actually click on an individual fish and see a one-page summary of landings, plan progress, plan performance, all that type of information. I think something like that, if we could agree to the categories, would be an extremely useful tool that addresses this issue.

MR. DOUGLAS GROUT: In looking at this document I like a couple of the options here, but I also would like to recognize that we do annual FMP reviews that has some of this information already in it, and I would use that as part of the guidance in evaluating how a board has worked on this.

But, obviously, Option 4 may be combined with a little bit of Option 3 outlining activities that we've done and then actions that the boards have taken would be the most appropriate thing. The other items I think are already available either on the commission website with that two-page summary of where the status of our stock is or via the FMP reviews.

MR. PAUL DIODATI: I was going to point out, as Doug just did, that the annual plan reviews do exist, so I guess I need to know how this review would either dovetail with that or be different than that. In addition to the plan review the commission does an annual report which also in some ways provides stock status for each of the fisheries that we're working on. This year's report in particular was an excellent job and new format that highlights all the good work of the commission. So, I guess I need to know how this dovetails with those two products or how they differ.

CHAIRMAN LAPOINTE: Well, I think that's reason for the conversation. Again, we committed to doing a performance evaluation on how we're doing with the fisheries management program. If there are things from those documents that we can use as part of the review, I think that's a good idea.

I mean sometimes we do better than others, and we have all been there. There have been times when George Lapointe makes the Lobster Board Meeting a half an hour longer than everybody else thinks it should be, and we have all been in that situation. Again, it is to gather the information so that we can judge how we're doing, so when people say, well, what is the commission doing, we can tell them.

So if there are parts of other documents that can help us, that's good. I think we do need – I hope a part of this is that we're introspective and for those parts of the commission process that run roughly, and there are those parts, that we somehow reflect that so that we can use it to do better in the future. I think that is an incumbent part of this review.

I don't know exactly how to do it at this point. Maybe it is a combination of three and four. I don't know that at this point, but I think that is important. I also think – and others may differ – if I look at how we react to stock advice, sometimes we do it well and sometimes we don't. The winter flounder advice, the management actions aren't easy but the stock advice has been pretty clear. They're hard to react to. Then we get other species and if I think back on my two decades plus at the commission, there have times when bluefish just disappeared and what could we do about it? Not much. And weakfish may be in a similar circumstance, and I don't want to get into a weakfish debate. This is just my advice. I've got a regulation in Maine that says no weakfish north of Cape Cod. I don't want to get anywhere close to them.

But, you know, to say that there are sometimes when maybe we should not beat ourselves when we've done everything we can; we shouldn't beat ourselves up too much about those kinds of things. But then in other times when the advice is clear, we probably take more time than we should, and my sense is that should be reflected in there as well and I don't how to do it.

I think the important thing is the perfect may be the enemy of the good in this case. We need to come up with a format to try and do a review this year; and if there parts of that we find are clunky and don't work well, that doesn't mean we're wedded to that specific format forever. We can change.

MR. A.C. CARPENTER: Maybe what we're trying to do with the options that have been presented is try to distill this down to something that's simpler than it truly is. If you can have one option that's going to work for every board, then we'd only need one board. We have species' boards because each one is unique and each one has its own set of problems, so trying to get a grading system that is going to go across all of the boards is going to be difficult.

It is going to take all four of these options depending on which particular board you're trying to evaluate, so I don't you want to lock yourself into just one these or a combination of two. I think you've got to

have the flexibility to look at all of these and possibly take information that is in the annual report or that is in the FMP reviews that are done and try to glean something from that.

I do agree the goal is to restore the fisheries by 2015, and I think each management plan has its own particular goal and its own particular target, and that is what you have to evaluate against is the target or the goal in each unique plan and then figure out a way to measure against that particular goal and target.

CHAIRMAN LAPOINTE: Thank you. Other views? This is George speaking as the Maine commissioner. I think we do need to pick one format and make it work for different plans. Obviously, the answers won't be the same, but if we try to use four different evaluation criteria on 20 different plans I think it will be incredibly confusing. That is just my own view. Wilson Laney and then Dennis Abbott.

DR. WILSON LANEY: Well, I like what A.C. said about looking at the targets in each plan and measuring progress towards that because it tends to be more quantitative to the extent that we can do that. It strikes me, George, that what we're talking about here is sort of similar to what the Albemarle-Pamlico National Estuary Program is doing right now, struggling with what suite of indicators and metrics to use to come up with evaluating their progress toward restoring the health of that estuary.

In that case we have got six different issue groups looking at suites of metrics ranging from 35 for a living aquatic resource, which I'm chairing, to over a hundred for some of the other issue groups, so it is a complicated thing. I guess I tend to agree on that point with A.C. as well in that what you may need to wind up with is, agree, a standardized format, but it may need to have elements of all these four options and maybe some additional ones that we think of as well.

REPRESENTATIVE DENNIS ABBOTT: As we are always trying to achieve our targets in each of the management plans, I think we have to realize that oftentimes the targets are changing and oftentimes we see that we have inabilities to try to hit that target. For instance, today in the Coastal Sharks, as an example, we had a plan that we intended to have implemented four months ago, but upon closer examination and seeing the difficulties encountered by the states in adopting rules, regulations and whatever, it is unachievable.

I think that as we yearly look at our progress and successes, I think it is probably important that we show the impediments or the problems that we encountered so that we have maybe some track history of staff problems, manpower problems, legislative problems or whatever they can be because despite everyone's best efforts we find it impossible to get closer to our targets for reasons that we can't foresee, but we should be aware of even post.

CHAIRMAN LAPOINTE: And in response I think that's one of the reasons for the evaluation. One is how we measure ourselves compared to the goal of rebuilding stocks by 2015 and importantly meeting mortality targets or biomass targets along the way.

Then I think it is also important, again in kind of this introspective way, if in the Dogfish Plan we set a goal that we can't meet and we do it in other plans, is to have that information in time so that in fact it teaches us to be more realistic in the future. I think that is a valuable part of this. It is not all about the stock targets; it's about how we operate as a full commission and as individual board members as well. That is meant to be, you know, again, introspective and self-critical but in a positive way.

MR. GROUT: Can I make a suggestion that maybe we try and develop something like that that would combine – a report card that would combine information on our reference points where our fishing mortality and biomass targets would also include from the previous year the board action items that they've taken up with a brief review of what was accomplished and any difficulties that came forward in those. We could just get that information from our meeting summaries and use that as the basis for our report card.

CHAIRMAN LAPOINTE: That would be, I think, a combination of three and four. Does that make sense to people? I see some heads shaking yes; I see other heads that look like they're still in their seventh inning stretch. Again, with the recognition that this is the first time we will ever have done this, we will work with staff to prepare something along those lines for consideration at our August meeting; and recognizing that it will be the first shot, we will have to improve it as we go along. Does that make sense? A.C.

MR. CARPENTER: And I would encourage you to look at the North Carolina Website. They may have worked a lot of this out for us from what I heard.

CHAIRMAN LAPOINTE: That's a good recommendation and other folks may have done this as well, and we should look at how they've done evaluations, maybe in a good way and maybe not in such a good way, so we can take the good and avoid the bad. Other comments on this conversation? Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, we have a number of different metrics now that we have. There is the annual report, the FMP reviews, and I think maybe the key issue here is that through the strategic planning process – some folks had said – we had this self-introspection with the web-based survey and said we ought to be doing more things more frequently than every five years so that we can make course corrections.

I think the goal here would here would be – a lot of these are tough policy decisions, why these boards doing it, so the first step is to make everybody aware of where you are and then deal with the tough policy issue. What I think we want to make sure doesn't happen is have people say, well, we didn't know that things were as bad as they were because I don't sit on this board or I haven't looked at it holistically. So to me the argument is that measures we're using now might not be painting the picture that the policy folks need, and this is an attempt to paint a better picture for you.

CHAIRMAN LAPOINTE: Thank you, Vince. Other comments before we go on to the next agenda topic? I want to thank people for their comments because that was very useful and we will work with staff and have a draft at the next meeting. The next agenda topic, Agenda Topic 6, is a discussion of state delegation participation during meetings.

DISCUSSION OF STATE DELEGATION PARTICIPATION DURING MEETINGS

There is a white paper that was handed out; do folks have a copy? The background in this is that there have been discussions at the policy board and at management board meetings regarding the number of representatives seated at the table and participating in board deliberations. The white paper explores options for future participation so that in fact we come up with some standards and they're known and we can follow them.

Obviously, the rules and regulations and the Charter for each state having three commissioners and their proxies can be assigned by commissioners. Beyond

this, at this point there is no written guidance and this is an attempt to get that. The question for the policy board for consideration is what are the rules for commissioners and proxies sitting at the table and what are the rules for participation if more than three representatives from a state are at the table.

The scenarios are that sometimes we have a proxy for an administrative commissioner serving as the chair of a management board and the administrative commissioner sits at the table. This is what I did at a past meeting and raised this issue. The second scenario is that a commissioner sits with their proxy resulting in four members from a state.

Then the other issue we have had is commissioners speaking as a member of the public, and I have done this as well, and it is the commission's practice that any commissioner, if not seated with the delegation, retains the right to speak as a member of the public. Guidance could be established on whether commissioners get special privilege to speak outside the public comment agenda items or whether the commissioner should speak prior to other members of the public.

Under Scenario Number 1, which was where we have a proxy for an administrative commissioner serving as the chair and then the commissioner sits at the table, we have got a couple of options that are suggested. One is that the commissioner may sit with the state's delegation and the commissioner may consult and advise with their fellow state commissioners but not speak. And as noted here, staff has said that many commissioners have indicated they prefer this option during previous discussions.

Option 2 is that the commissioner would sit with the state's delegation and the commissioner may fully participate in board deliberations. Under Scenario 2, which is when the commissioner sits with their proxy resulting in four members from the state, a couple of options is that the commissioners and their proxies may sit at the table during board deliberations and may consult and advise with their fellow commissioners, but only one representative, the commissioner or the proxy, shall engage in the board deliberations.

The second is that the commissioners and their proxies may sit at the table and they both may engage in the board deliberations. Those are the options that have been presented to us, and I open it up for conversation. Jack Travelstead.

MR. TRAVELSTEAD: Mr. Chairman, I see a long list of solutions here, but quite frankly I don't understand what the problem is. Maybe somebody could help me with that. I have a great problem with telling a commission member appointed by that state's governor that they can't speak. I don't care where they are in the room, they should be entitled to speak on any and every issue if they so desire, whether they're seated at the table or not or whether their proxy is in the room or not. Again, what is the problem that we're trying to solve?

CHAIRMAN LAPOINTE: I will use the example – was it herring at the last meeting or winter flounder where; it was herring – Terry was chairing the meeting and I sat at the table, and I did raise my hand and engaged in the conversation. I think the concern is that practice gives that state an unfair advantage over other states that don't have four people there. I think that is the concern that was raised, and so what we want is for discussion and an agreement on how we move forward. Dennis Abbott.

REPRESENTATIVE ABBOTT: I know that oftentimes I see things probably more black and white than some of you do, but to start this discussion the first thing I did is I went to a dictionary and I read the definition of proxy. The definitions that I found said that it would be a person authorized to act for another; an agent to act for another; the authority to act for another; the written authorization to act in place of another.

It is a person who is designated by another to represent that individual at a meeting or before a public body. I view that as when we sit down at a management board meeting, that the commissioner, using an example, we will say, of Mr. Lapointe, that he didn't let Mr. Stockwell act in his stead. My view is the same with the Commonwealth of Massachusetts who oftentimes uses people who I think have more expertise in an area.

Mr. Diodati steps aside and lets Dr. Pierce act on spiny dogfish and we know that Dr. Pierce is the noted authority on spiny dogfish, so therefore he should be at the table. I think that when you do that, you are abandoning your place at the table. And to Jack Travelstead's comment about having the ability to be able to speak, I think we saw this week a couple of classic examples of how things should be done.

Dr. Daniel had some comments to make on striped bass, and he correctly went to the public microphone and made the comments necessary to advance the position of the state of North Carolina. Just this

morning we saw Paul Diodati, during the shad and river herring, step aside so that he could participate in the discussion.

I think that the Atlantic States Marine Fisheries Commission is made up of three commissioners from each state, and I think those are the people that should be there and not surely two. If I was chairing a management board meeting, should I, as a legislator, be authorized to bring a proxy so that I could pay more attention to what is going on?

I think that for most of the commissioners, they have been able to work through managing the meeting and also ensuring that their position is advanced during the course of the management board. I think that is the way things should continue; that when a state chooses to have a proxy, then that proxy is the person to be sitting at the table, and the other people should be sitting in the back of the room as oftentimes we have looked to the back of the room and see some of the administrative commissioners standing by ready at any point to go to the public microphone and make whatever points they feel necessary. That is my position regarding the use of proxies.

MR. JOHN E. FRAMPTON: Mr. Chairman, I'm just curious as to whether Vince has had any discussion with legal counsel on this. Although we're not I guess really a federal entity, there are still a lot of guidelines that we would fall under. I would suggest that if we have not had some legal counsel on this, we obtain that before we make a decision here.

CHAIRMAN LAPOINTE: Any response? We haven't had that. A.C., you had your hand up?

MR. CARPENTER: I am in somewhat of a unique position here. I don't have a dog in this fight because I am here by myself everytime. What I see going on here now is a consequence of a very good decision that I opposed years ago, which was to increase the participation at this table from just the administrative commissioner to include the governor's appointee and the legislative member.

If you search back in the record I opposed that as long as we were discussing it, but it has worked very well. I will admit I was wrong. I think that by trying to stifle the differences of opinions that are brought forward by each one of the different commissioners and/or their proxies in some kind of fashion, I think the pendulum has begun to swing too far in the other direction.

I think Dennis Abbott hit the nail on the head with we need a center road here, and I think the commissioners need to recognize that it is three seats at the table. If there are four of you, one of you has got to sit back from the table. I am a little bit like Jack. I think it is a solution looking for a problem, and I don't it has been a problem.

MR. TRAVELSTEAD: Well, I think everybody – maybe I shouldn't be saying anything about this because I am a proxy and have been so 28 years, but I just think this very silly. In 28 years I have never been offended by a proxy and a commissioner sitting at this table and both participating in the discussion. I think we benefit from the discussion. I think you also have to recognize that there is a wide range of experience and expertise amongst the people sitting around the table.

We have commissioners that are virtually brand new and we have proxies that are brand new. We all know you don't learn this process by coming to a couple of meetings. It took me twenty-seven and a half years to figure this place out. So, I just think there is a benefit of having both the commissioner and proxy sitting at the table at time; and if they just use some common sense and try not to hog the microphone or something, I think it works out fine.

MR. P. WHITE: I absolutely agree with Jack Travelstead. I think just the very scenario that you brought up, Mr. Chairman, of Terry sitting at the table, the chairman is supposed to basically be running a meeting. In that instance I see no problem with you sitting – and I will use us as the example – of you sitting at the table and bringing the information that you have to the meeting.

We're supposed to use the best available science, whether that means knowledge or whatever one brings to the table. We only get one vote. As I understand it, if I remember right when we started this, if you have a proxy for one species, that proxy isn't even supposed to vote if they come to the meeting for one species' meeting.

If they are a proxy for the whole meeting for the week, they can. In the case of people switching around, they're not even supposed to vote. I also have a problem with the indignity of somebody having to go to the public mike from the back to speak when they are indeed a commissioner. The only reason for that would be if I have a conflict of interest and I can't adequately represent the state and I have a personal dog in the fight, then I should go to the public mike and use that; but if I'm acting as a

commissioner I should have the right to sit at the table and speak. I think we are an accident looking somewhere to happen. Thank you.

MR. COLE: Mr. Chairman, I guess I've been here about as long as Jack has, and I have never seen a problem. We have been through far more complicated and divisive debates and arguments over striped bass and a couple of other creatures we need not mention today that just frankly there was not a problem.

I agree with my good friend, John Frampton from South Carolina. I think there are processes and procedures and rules as regards each of the three members from each state that sit around this table that have to be honored. I do not see the problem. I will leave it right there.

MR. THOMAS FOTE: I haven't been around 28 years but it is about 20 and actually coming for about 24 years. I remember sitting at a meeting with three commissioners sitting in the room and they wouldn't be recognized by the board. Like 24 years ago, Al Goetz was one of those, and they were sitting back there and it was not the process.

And after 20 years off and on as a commissioner here, one of the things I have been proud of is some of us governors' appointees and legislators over the years, working with some of the state directors, opened up the process over A.C.'s objections many times. This is what it is all about. It might get a little cumbersome.

I always enjoyed those days that Bill Pruitt would show up and sit next to Jack. I knew it was an important issue for Virginia, and he would sit there and we all respect that because it was nice to see Bill coming to these meetings. I always would like to see those state directors, if Dave Chandler would come up here to sit at the table with Tom. I have no problem with this. You know, a commissioner, if he's sitting in the audience and wants to come up to the table to basically say something, that's fine. That's what you get appointed for.

I mean I just filled out 22 pages the other day on my financial disclosures. They can find out every stock I own. It is up on a webpage some place. That is what my ethics cost, to learn that my ethics for a non-paying job requires seven weeks of my time a year. We do it because we're dedicated and because we care.

MR. JAMES GILMORE: Well, I will try to put my comments in as one of the newer kids on the block and maybe a different perspective. Not too long ago in New York – and it has probably happened in all states and it's one of things that frustrates me the most out of state government or any government is that someone left the state on a trip, and essentially it was a trip he shouldn't have gone on, so instead of that employee being corrected we all have to get out-of-state travel authorizations now, so 4,000 people have to get out-of-state travel authorizations because one person didn't get it.

And it sounds like we might be going down the road here, and my suggestion would be – and I don't see this as a problem either. I think that if maybe there was an issue that some of the commissioners have, maybe the way to deal with that is to the folks that they think are annoying them or whatever and deal with that directly; and if it doesn't fix the problem, then maybe we need to do something. I don't really see a need for implementing a policy or something or a change or whatever because we're just becoming more like the worse part of government if we start doing that. Thank you.

MR. ROBERT H. BOYLES, JR.: Mr. Chairman, I certainly respect the views of those who have been here a lot longer than I have been, and I'm going to go out on a limb offer an alternative point of view just for the board's consideration. I agree with the statements that I'm not sure that there is anything wrong with our process that needs to be fixed.

The concern I have is the world around us that is changing. The expectations of this commission are changing. Legal standards, are we going to have national standards thrust upon, should ACFCMA be reauthorized, I think that coupled with the fact that we have talked about enhancing the transparency of our process and making it more accessible to the public I just think beg us to have this very kind of conversation and discussion.

I just think we need to be very, very mindful of how our actions are perceived. As John Frampton's former boss used to say, you know, perception is reality, and in the litigious society that we live in now I think we need to be mindful of how we represent ourselves. Whether that's two people at the table or four people or six people, I just think it's something that we need to be mindful of. I respect the opinions of those who have said there is really not a problem. I tend to agree with it, but I think the world around us is changing and we need to pay attention to it. Thank you.

MR. MARK GIBSON: I agree with Dennis Abbott, but Rhode Island doesn't have enough people to cause any trouble, anyway.

MR. MILLER: Mr. Chairman, coming from a state that frequently uses species-specific proxies to represent the fisheries administrative head of an agency, when that happens, when someone sits in for me, typically my practice has been either to move to the back of the room or if one of our three chairs is unoccupied, which is very often case, then I might sit here but basically confine any conversations to the person and not to the group as a whole.

In other words, I might whisper some advice but no more than that. That's been my personal practice, and I think it has worked out fairly well. My perception of where this has become an issue has been at the technical committee level, and I am thinking specifically of the Horseshoe Crab Technical Committee where challenges have arisen as to who has a seat at the table and who may speak and who may not speak and that kind of thing. So I agree with Robert that I do think a little guidance on this issue would be appropriate. Thank you.

DR. DANIEL: I've kind of tried to handle myself the same way Roy has. The other day when there was an issue that I just felt like there was some clarification necessary I did go to the public microphone and make those comments. My difficulty here is that I've got some young staff that I would like to have serving on the boards that have never done it before to provide them with the opportunity so that if they go to another state or something happens to me they can be here and do it.

But I do feel uncomfortable sometimes just having them be solely in charge. There may be circumstances – and I try to avoid this, but there may be circumstances where I really feel compelled to come and speak to the board. I don't think we need more people talking around the table, but I'd certainly like to at least be able to sit up here with my delegation if we're discussing issues that we need to be conferring on and don't think that should be considered bad judgment.

CHAIRMAN LAPOINTE: Thank you, Lou. I guess a couple of suggestions after the conservation – first, we haven't discussed commissioners as speaking members of the public, and there are a couple of things outlined here about letting commissions speak prior to other members of the public or given a special privilege. I don't think that is a message that we want to send.

Frankly, we probably get some special privilege anyway because when I'm waving my arm in the back of the room, they probably pay attention, or any of us. So, on the first issue, when commissioners speak as members of the public, I think they should raise their hand, they should be recognized and they should speak to the matter at hand. I think that is a pretty easy one for me.

And because of the diversity of views, my other thought would be that we go with Option 1, and that would be allowing people to sit at the table for the reasons that Lou mentioned. I know Jack Travelstead, when both Bill Pruitt has been here and Steve Bowman has been here, that they have sat at the table.

It would be allowing other people to sit at the table, but just having the other person – and in my case if I was at the table talking to Pat White and to Dennis Damon, it would be not to engage like I did. It would be to be a consultant to the other two members. It strikes me that's a reasonable compromise to move forward, some decent guidelines, and that would allow us to try. And, again, much like the conversation before, if this doesn't work we should revisit it. Dennis.

REPRESENTATIVE ABBOTT: Mr. Chairman, this has surely been a good discussion. I liked what Roy Miller said, and I think part of why it should be done way is when you do designate somebody you shouldn't be sitting over their shoulder and talking over them. You know, it shows a bit of maybe you don't really trust them, but at times maybe you do have to say something.

But, again, just trying to be the devil's advocate that I like to be sometimes, let's look at it moving further down the road and Tom Fote decides that he's got a particular issue of interest to New Jersey and he has got somebody that he wants to have here as a proxy. So now Tom Fote gets somebody on the travel list and he brings them down to our management board meeting and sits them at the table and then Tom Fote is sitting beside him.

And before you know it, we have got a table that is going out the door as an expansion of where we are. But backing up, I have been here not as long as everyone but I've been here longer than most. I don't think there is much more than a handful of people that have been here longer than me. One of my biggest initial disappointments was arriving here over 12 years ago, going to Norfolk, Virginia, as a legislator and finding out that I was a member of a

commission but I really didn't have a place at any table.

To hear that A.C. Carpenter say that I or others should not have had a place at the table, I can read the Compact and it didn't take me long to figure that I was a commissioner equal and should equal in status as to all the commissioners, which led Tom Fote and I and others to lead the parade, which I think was the most beneficial thing that occurred.

I think that we're all the better for it, but, again, there were people that did not favor that, but, again, it was the right thing to do. And now I see as many governors' appointees chairing committees and management boards as administrative commissioners, and, again, I think we're all better for it. I think the administrative commissioners are better for it because it allow them to do their job without having the burden of chairing so many management boards.

I do go along with what you said, George, that probably that is the best thing to do. I don't think this has been as big of a problem as anybody might make it out to be, but I think the clear understanding should be that when someone is sitting at the table, that they should do their best to just sit at the table.

MR. FOTE: Yes, for five years I was a proxy for Senator Lou Bessano at the time, and Lou on a rare occasion would be able to come. It wasn't a session day or something like that. Usually I would back off and sit behind because he would ask me questions because he was not familiar with some of the process, but I never said a word when the senator was here. I was always sitting in the back behind him, but he wanted me close in case he had a question to ask. I imagine that would be same way with Senator Owen Johnson when he used to show up for the meeting also. I mean I've had both hats and it is an interesting – but, again, I always walked away from the table and made sure I was sitting in the back like Roy did when he was a proxy.

CHAIRMAN LAPOINTE: Any other conversation; any comments? Vince.

EXECUTIVE DIRECTOR O'SHEA: Well, two quick things; one is there is really two different situations. One case we have the commissioner who normally might not attend and doesn't have a lot of experience. I am thinking, for example, a member of the legislature. Those rare occasions when they show up I think it is good that they're at the table, but from their perspective they don't want to say a word

without their full-time person right next to him. I think we need to be aware of that reality.

I think the second is, from my perspective, the incident that prompted this situation the staff was called on to provide an answer; and while I'm always happy to give answers, I think the better solution would be that you don't count on the staff in the heat of the battle to rule a commission out of order. That would be a concern that I would have.

CHAIRMAN LAPOINTE: And a fair enough concern. Unless I hear other discussion, we will move forward with Option 1 under both scenarios. I think the conversation has been good. I think it gives us some bounds. I think it help to put some standards in place so that if people ask we will have them.

I want to thank everybody for the discussion because it was productive and good. I will not lead the next discussion. This is the other agenda item I said I would slip in here, and it is Lou wants to talk about the EEZ.

DR. DANIEL: I appreciate this opportunity. What has gone around the table is the response from Jane Lubchenco to Mac Currin, who is the chairman of my Marine Fisheries Commission. We had submitted a request to have them consider taking the measures necessary in order to get the EEZ opened to striped bass.

I know this is a controversial issue. It is one that this commission has support of opening the EEX in the past. As you will recall we never really had much discussion on the Game Fish Bill. We kind of let it lay. What has happened in North Carolina and maybe some other states as well is that these fish are just not coming to the beach like they used to, and so we're in a situation where the striped bass are four to six miles offshore most of the time now.

We have got a 480,480 pound quota, and this year we may have taken 150,000 pounds. I mean the fish are in sight, but they're over that three-mile line, and so our folks aren't able to go out there and catch them. Likewise our recreational and charter fleet is unable to go out there and catch them, so what they're doing is they're moving to Virginia.

A lot of them are going to Virginia and operating out of Lynn Haven and Virginia Beach, which based on a recent study that was just published by Dr. Dumas down at the University of North Carolina – Wilmington, he did an economic impact study of the North Carolina For-Hire Ocean Striped Bass Fishery,

and it is about a \$13.5 million industry that is starting to wane because those fish aren't coming close to the beach for us to catch them.

The reason I bring this up at this time is because it seems to me that we need to try to work out a way to give us the opportunity to catch our reasonable and valid quota share. We're having a real scrape doing it without EEZ open. Now, I understand that there is some discussion about there is an executive order for game fish, but I think that we could work out something through this commission to provide some opportunity in the EEZ.

New Jersey, New York, somebody else, they may not like that. They may to keep their EEZ closed, but that would be okay, I think. I mean there has got to be flexibility like we had in weakfish when North Carolina had the EEZ closed out to 200 miles. Then we recommended that to the Secretary, they came back because a couple of folks fussed, and they limited it only to the 60-fathom contour.

So any boat that comes into North Carolina south of Hatteras can fish from the 60-fathom contour out to 200 miles, but North Carolina flagged vessels can't. So there are some adjustments that can be made in the EEZ; so that if we have a 480,480 pound quota that we've been shown that we can manage and monitor responsibly and not go over, and certainly take off the following year if we do, why does it matter if we catch them two miles off the beach or four miles off the beach? It shouldn't matter.

And this idea that there are bigger fish offshore than there are inshore, that is not borne out by the data. I think there are just as many – you know, those fish move in and offshore. I would really like some help with this. I don't know how many folks would support doing it, but I think this is the appropriate place for us to discuss this.

It is not going away, at least not from my commission's perspective; especially if we keep leaving a million dollars worth of striped bass on the table every year, it is just not sitting well. So if folks have some ideas, if they have some suggestions on how we might move forward, I'd certainly love to see another letter.

I certainly think Obama would be interested in overturning any non-scientific-based executive order from President Bush. I mean here we sit with a recovered stock, not overfished, not overfishing, and because of some arbitrary line we're unable to catch our quota. Thank you for the opportunity to bring

this forward and I sure would love to hear some response from the board.

CHAIRMAN LAPOINTE: I have Pat Augustine; are there other members who want to speak at this point?

MR. AUGUSTINE: The one point in this letter, to go down to the last paragraph, she specifically states the executive order calls on the Secretary of Commerce to revise current regulations, as appropriate, to include a prohibition on the sale of Atlantic striped bass and red drum caught within the EEZ of the Atlantic and Gulf of Mexico.

So, it would seem to me that might be the one line that you would want to address. We're not talking about charterboat/partyboat folks going out into the EEZ to catch these fish to sell them. It may be her opening to help us write that letter was when she suggested that you bring the issue to ASMFC for consideration. I think we should look around that particular sentence and move forward and highlight the fact that executive order was to specifically address no sale of striped bass and red drum caught in the EEZ. That is the only out that I see here.

MR. DIODATI: Well, first, this is the first time I'm seeing the NOAA Administrator's response to North Carolina so it is not yet clear to me what is being said in this letter, especially the last few paragraphs, particularly the part about suggesting that North Carolina make this issue known to ASMFC and address it through the Interstate Fishery Management Plan, which almost suggests that would be the process to reopen the EEZ, and I think we know that's not the process, but that's what it suggests.

It is also not clear to me, notwithstanding the current administration overturning the executive order that is in place, if the EEZ would reopen under some sort of game fish status; is that your understanding?

DR. DANIEL: Well, Steve has clarified some things to me from the language in the executive order that says that those rules in the EEZ have to be consistent with the state. If a state has game fish status for red drum or striped bass and would like that promulgated in the EEZ, that is an approach that can be taken.

My question is likewise would the board support – you know, if you wanted to move forward with game fish in the EEZ, could we move forward with allowing them if it is consistent with our state rules? It seems like there is a – if it is all right, Mr. Chairman, Steve Meyers than address that point better than I can.

MR. STEVE MEYERS: Back in 2005 or 2006 we looked at opening the EEZ and we were within the framework of doing something in a process. However, this executive order pretty much ties our hands with the status quo. We in NOAA take executive orders very seriously because NOAA was established with an executive order. There is no statute so we tend to take it very carefully.

Even the Emancipation Proclamation signed by Lincoln was an executive order, so these things do have weight. I guess the paragraph at the end of the first page here more or less summarizes again what the executive order tells us what we have to do, but let me clarify a couple of things here.

This is from the executive order itself, and let me quote this under Section 2, implementation: "Encourage, as appropriate, management under federal, state, territorial, tribal and local laws that supports the policy of conserving striped bass and red drum, including state designation as game fish where the state determines appropriate under applicable law."

Now, also within former President Bush's remarks on the day he signed this, he said, first of all, that this executive order is going to bring the Department of Commerce and Interior together to prohibit the sale of striped bass and red drum caught in federal waters. It also encourages the period review of the status of striped bass and red drum populations, which we are already doing.

The third thing, and I quote here: "And finally the executive order encourages states to take a look at their own management of fish stocks. We believe in cooperative conservation. That means cooperation at the federal, state and local levels. We believe in the collaborative approach.

"The federal government ought to work with all the stakeholders to achieve common consensus, and I respect the states' role in the management of the natural resources under their care, so I am directing federal agencies to work with state officials to find innovative ways to help conserve striped bass and red drum.

"One such way is to use the state designation of game fish where appropriate. I hope that state officials take a serious look at game fish designation. It is an effective tool to protect endangered and dwindling species. It prohibits commercial sales which removes the incentive to catch the fish for anything other than recreational purposes.

"State designation of game fish has helped the recovery of species such as trout and large-mouthed bass and tarpon and snook. People need to take a look at this tool to make sure that the fisheries are robust. Strong fisheries mean local sales; local sales mean better local economy."

Now, when we took a look at this in house, we concluded, looking at the existing prohibition on sale or possession of striped bass in the EEZ, "NMFS has determined that the current prohibitions on the possession of striped bass and red drum caught in the EEZ, in concert with the prohibition on sale of fish taken in violation of statutes administered by NOAA, constitute fulfillment of the requirements of EO 13449."

So, Mr. Chairman, the EEZ remains closed under our legal interpretation based on EO 13449 and it's an executive order which means that we have little discretion and you have to go to the White House essentially for discussions to get this thing resolved if that is your choice to do so. Thank you.

CHAIRMAN LAPOINTE: Well, I have not been invited to the White House yet, so I'm not there yet. Other views? It strikes me that with people just seeing the letter, now is not the time to make a decision. It also strikes me that given it is a striped bass issue, it should be sent back to the Striped Bass Board for recommendations to come back to this board. Does that make sense? Louis.

DR. DANIEL: That was my hope. I am going to pursue this and I will bring it back to the board at the next board meeting unless we can get your concurrence on a solution.

CHAIRMAN LAPOINTE: I will say – this is the commissioner in Maine speaking. I don't need a proxy to sit at the table for me to say this – we had in Maine a \$40 million charterboat industry that is about a \$10 million industry now. It relied on striped bass. Under our current management scenario, I think the same case happens in New Hampshire where we are managing – you know, striped bass isn't overfishing and it is not overfished, but if you're at the end of the range you're toast right now.

If we discuss special circumstances I want to engage in that discussion, myself or my proxy, depending on who is sitting at the table, because there are other issues of equity in other states that come to play at the same time. Wilson Laney.

DR. LANEY: Yes, Mr. Chairman, at least it is the last word from me on it. I'm no lawyer so I'm not going to render any opinion about the executive order. I know Steve has an army of lawyers behind him when he speaks. But I will say that one of the things that I'm doing for the commission is a 22-year summary report of the Cooperative Winter Tagging Cruise Data.

One question that we haven't ever answered because we haven't done the analysis is, you know, is there any statistical difference between the size of the fish that we catch from the EEZ versus the size of the fish that we catch in state waters. I have a suspicion as to what the answer to that question is going to be, but I'll refrain from making any comment until we do the analysis. We will provide that information to you later this year based on our sampling.

MR. GROUT: Having been born in Illinois, I'll see if I can bring the President with us to the next meeting.

CHAIRMAN LAPOINTE: Thanks very much. Our next agenda topic is appropriately Wilson Laney this time.

HABITAT COMMITTEE REPORT

DR. LANEY: Mr. Chairman, I have the report from the Habitat Committee. The Habitat Committee did meet last month in Baltimore. The first item that I'll bring to your attention is the Atlantic Coast Diadromous Fish Habitat Document has been completed. The second printing should be in progress.

The commission staff came to me seeking additional funding to print that second 250 copies, and I did have some Atlantic Coastal Fisheries Cooperative Management Act funding available, so my office is paying for those copies with the exception of a small amount which will be paid for by the commission.

All commissioners, hopefully, have a copy of that report. If you don't or if you desire additional copies, please contact Jessie Thomas-Blate, who is our habitat coordinator. Any questions about the Diadromous Report. For those of you who want to get it quickly, if you don't have it, it is on line but the hard copy comes with a compact disk that has all of the habitat maps and spawning maps and that sort of information on it.

Second, the Habitat Program Effectiveness Review was done and you all have a summary of that review. Thank very much for those of you who participated in that survey; 15 of you did so. We found from that survey that commissioner awareness of the Habitat Source Document that the Habitat Program has produced is relatively low and the referral rate to other is very low. In general, the commissioners seem to more aware of artificial reef documents than have the Habitat Source Document.

Jessie would like for me to ask for a show of hands for who of you on the board was not aware of the Diadromous Source Document just mentioned prior to this week. We've talked about it a lot this week, but how many commissioners were not aware of the Diadromous Source Document before this week?

I am gratified to see only one of our newest commissioners is indicating that he wasn't aware of it, and that is entirely appropriate. Thank you for that. I am glad to see we're getting the word out there and that people are aware of it. In contrast to some of the previous habitat program documents, the commissioners are very aware of the Habitat Hotline. Most of them find the habitat program updates to the board, like this one, very useful.

It was difficult to get a good idea of the impressions of both the Policy Board and Habitat Committee members due to the lack of participation on the part of the Habitat Committee members more so than the survey. The next survey that we plan will occur in 2012, and it will inform the next ASMFC Strategic Plan, and the survey will be streamlined to encourage more participation. It was rather lengthy this go-round. If you have any ideas on how habitat information should be presented to the board to be the most useful, please let us know.

CHAIRMAN LAPOINTE: In thinking of the survey and the habitat source documents, it would be useful, I think, for you guys to survey our technical staff. When I get a big hunk of habitat documents, do you know what I do? I send it to Pat Keliher. It's my style to dig into those things, so I think it would be useful to see the Gail Wippelhauser's and the Pat Keliher's of the world, in Maine's case, and whether they're using it, and I bet you would get a better response.

DR. LANEY: Thank you, Mr. Chairman, we will definitely take that under advisement. I think we may have had some discussion to that effect at our meeting. I know we talked about the fact that the real target audience for a lot of the habitat program documents are habitat managers out there and not

necessarily even in the agencies sitting around this table but in other agencies that do have habitat regulatory authority. I know we talked about that.

One of the things that we did discuss – and Jessie is going to talk to appropriate staff about this – is the fact that on most websites nowadays you can track how many people download documents from your site, so that would be another useful tool for us to be able to use with regard to all the documents which are available electronically now.

The Habitat Committee did meet in Baltimore, as I said, on April 22nd and 23rd. Vin Maldoski from Massachusetts was elected as the vice-chair. We had a number of presentations; specifically, The Nature Conservancy Northwest Atlantic Marine Ecoregional Assessment by our member, Jay Odell.

Let me just say that I hope that some of you will get an opportunity to see that presentation at a future meeting, perhaps. The Nature Conservancy, in doing that assessment and working very closely with councils and lots of NGOs, has secured the National Marine Fisheries Service Northeast Fishery Science Center Trawl Survey Data Base and is doing some remarkable things with it, so I hope you all will get to see that information in the future.

I gave a presentation on the Service's Strategic Habitat Conservation Process, and I have information on that. If any of you would like a hard copy of the National Ecological Assessment Team Report that we produced, I'll be happy to provide it to you; just see me later.

Karen Chytalo gave a very good presentation on New York State Sea Level Rise Task Force and Seagrass Task Force and their plans. I would be remiss if I didn't stop for a moment here and express appreciation to Karen for her service as the chair of the Habitat Committee for the last year and a half or so. We really appreciated her service and thank you, Jim, and please express our appreciation to Karen.

Finally, we had a presentation from Margot Stiles of Oceana about Hungry Oceans, what happens when the prey is gone, another very interesting presentation that focused on prey species. Again, that is one that we might want to try and arrange for this venue in the future. We discussed revisions to the 2007 Habitat Program Strategic Plan to sync with the new ASMFC Strategic Plan. That will be provided for Policy Board review in the August meeting.

We discussed progress on a couple of other source documents on which we have been working, one being on Living Shorelines and another being on Alternative Energy. We had discussions on other topics of interest, including the Economic Stimulus Package and how we might possibly secure some advantage from that.

We had discussions on standard recommendations for Large Coastal Alteration Projects. We had ideas for local government case studies on habitat conservation, and you should begin to see some of these coming up in future issues of Habitat Hotlines. Chairman Jeff Tinsman of the Artificial Reefs Committee updated us on all the artificial reefs activities.

We will meet next the week of July 6-10, for one day during that week. As I speak staff is handing out a copy of a new NMFS Report, which I believe Tom Bigford was one of the lead authors on, entitled "Estuarine Fish and Shellfish Species in U.S. Commercial and Recreational Fisheries: Economic Value as an Incentive to Protect and Restore Estuarine Habitat".

I think this will be a very useful report for most of you. It gets towards the topic of Ecosystem Services. That is a buzz word that a lot of us are hearing these days. I think Tom and his co-authors have done a great job in beginning that discussion about how these ecosystem resources should be valued.

Next to the last item, we discussed the Fish Passage Working Group. I think most of you are aware of the formation of that group since you all approved the nominations. We will have the first Webex Conference Call of that group in May to discuss the 2009 Action Plan Items. Lastly, and this is the only item that will require board action, we have a letter which we provided to you in the briefing book to MARAD and the Navy.

A similar letter has already been approved and sent to MARAD and the Navy by the Gulf States Marine Fisheries Commission. The letter was crafted by the Joint Artificial Reefs Subcommittees. It has been reviewed by the Habitat Committee and is being forwarded to you for review.

The letter basically asks these two agencies to maintain their active Ships-to Reefs Programs, provide for equitable distribution of ships to the states, and maintain all titles until the ship is on the ocean bottom. That concludes my report, Mr. Chairman. I believe that letter is available to all the

commissioners and we would appreciate your action on that. Thank you.

CHAIRMAN LAPOINTE: Thank you, Wilson. Before we get to the letter, ocean wind; have you guys been addressing the Ocean Wind Issue? I sit on an Ocean Energy Task Force, I am going there Friday. The issue of development of ocean wind; I know it is a Rhode Island Issue, Delaware, New Jersey is involved. I am just wondering what the Habitat Committee has done.

DR. LANEY: We have had some discussions on that. We had a presentation from the Ocean Wind Folks, I believe, did we not, Jessie, so we're up to speed on the issue. We haven't, to this point, prepared any particular comments on it or anything. Dr. Daniel may wish to address the fact – I know North Carolina has been very active with regard to wind energy development.

They have created a state commission on which one of my colleagues at UNC-Chapel Hill, Dr. Pete Peterson, is leading. My understanding of what Pete has been tasked to do – and Mike can chime in here if he is aware of the details more so than me. Louis can chime in, too, but basically what that commission has been asked to do is to take a look at the distribution of fish and wildlife resources throughout, I think, all of the state, Louis, or maybe just the coastal plain, and look for potential conflicts between fish and wildlife resources and the location of wind energy facilities.

One of the things that I've done in regard to that particular issue is to put Pete in touch with Jay Odell of The Nature Conservancy. He has developed all this great information about fish resources off of the coast from Cape Hatteras up to the Canadian Border. But if there is a specific charge that the board would like to give the Habitat Committee with regard to wind energy, we would be happy to entertain that.

MR. WILLIAM A. ADLER: Mr. Chairman, I would to at least put on the record with regard to the wind energy the electromagnetic energy fields where there is some information from Norway on some activity of windmills over there that stopped the salmon runs. Then when they shut them off, the salmon came back.

It might be useful for the Habitat Committee to look for that type of information at least so that if and when the calls come in on does this do anything – not killing anything, but does this do anything to divert

the species' operations on the bottom, whether they move back and forth or not. It might be helpful.

There was an article in the newspaper – I think it was probably a month ago, maybe two – where the article was that the cows in the fields were moving in certain directions rather than going underneath the high tension wires. Now, you don't know how much, but it might be something worth looking up information on because as wind energy gets to be more and more, and out there in the ocean; does it affect – maybe not, but it would be good to know.

CHAIRMAN LAPOINTE: If folks are interested, I would offer to work with Jessie and Wilson to come up with some questions to pose to the Habitat Committee with regard to wind energy, because it is not just about habitat protection. I'll tell you my governor is interested in energy, and we're a state that is 80 percent dependent on oil. I am interested in wind energy. It has got to be a balance, and so that would be suggestion. Jessie.

MS. JESSIE THOMAS-BLATE: Just to let the Policy Board know, as part of the Alternative Energy Source Document that the Habitat Committee is working on that we hope to complete by the end of this year, wind energy is included in that document in addition to tidal energy, some of the other new kinetic energies. That document should address impacts, particular construction impacts of these different types of alternative energy, including the electromagnetic effects on whatever species we can find information on.

MR. MILLER: Mr. Chairman, if I may diverge just briefly to something that Wilson talked about that is not related to wind, I just wanted to alert people – and I'm sure Wilson knows this, probably, through Jeff Tinsman and other members who are conversant in artificial reefs issues – that there is a bit of storm cloud gathering on the horizon with regard to continued use of our Wallop-Breaux Federal Aid Money to either build or enhance artificial reefs that are located beyond protected state waters; in other words, in the EEZ outside of the three-mile limit.

There is the feeling that unless the state can somehow zone and regulate sport versus commercial fishing on artificial reef sites such that commercial fishing does not interfere with the intended purpose of constructing artificial sites to benefit sportfishing, since we're talking about the use of sportfishing license dollars, then that state might be in jeopardy of losing funding for future reef construction where such guarantees cannot be made.

I would hope that the Habitat Committee is at least discussing this as a possible topic to be dealt with. We have had some discussions with some of the board members in this room, and we have had previous discussions on this. We have not applied for SMZ status to the Mid-Atlantic Council, but it has been a topic that has been out there for a couple of years and it may be building is my perception. Thank you.

DR. LANEY: Mr. Chairman, to Roy's point we did discuss that. Jeff brought that issue up for the Habitat Committee and briefed us on it in Baltimore. We did discuss the possibility of designation of Special Management Zones, and I that has already been done. Again, I'll look to my South Atlantic Council member brethren. That has already been done by the South Atlantic Council for artificial reefs in their jurisdiction, so it is a tool that is available to the other states.

CHAIRMAN LAPOINTE: Paul, was your comment to Wallop-Breaux and artificial reefs or something else? Can I let Robert respond to that?

MR. BOYLES: Mr. Chairman, to clarify Wilson's statement, he is correct. The SMZ status in the South Atlantic is really gear-specific. It is not a complete prohibition necessarily, but it does tie into what kinds of gears are authorized to be used around there, but it is a nice tool. It has been used to good effect in our neck of the woods.

MR. DIODATI: Just as a point of information, the Commonwealth of Massachusetts has been going through an ocean management process over the past year, and it is about to wind up with an ocean plan probably next month. All of the information relative to the habitat work that we have done, the fisheries' work, citing things like alternative energy projects and that sort of thing is available to be looked at at a website called massoceanspartnership.org. There is even webcasts there that are very useful of all the stakeholders' meetings. The recent one was held this morning in Boston and that is available. Just a point of information.

CHAIRMAN LAPOINTE: Thanks, Paul. Other comments on wind? Jim Gilmore.

MR. GILMORE: Just a quick thing beyond the wind; I mean as a general energy policy we've got this thing I'm sure a lot of people are aware of off of New York and New Jersey where I think it's a 130-acre island for LNG, so we have got other things in this whole emerging energy issue. I am assuming

Wilson is aware of that and it has been something that we have got to look at.

CHAIRMAN LAPOINTE: Thank you, Jim. The MARAD Letter, people have it before them. It is consistent with the Gulf and the South Atlantic, I think, or the Gulf, rather, and it asks – I just read through it because Maine doesn't do artificial reefs – just that as they go forward they are consistent with the policy set forward in this letter. Is that a fair statement? Is there any opposition to the letter being sent? Seeing none, we will have it signed. Thank you, Wilson Vince, are you opposed to signing the letter?

EXECUTIVE DIRECTOR O'SHEA: Only if it is with the understanding that we can take a run through this for editorial stuff and clean it up. This is the first I have seen it. For example, it asks the Secretary of Transportation, if he has any questions, to please contact Jessie Thomas. Things like that I think we want to straighten up.

CHAIRMAN LAPOINTE: That's fine with me. Other Habitat Committee items? Seeing none, we will move to the next agenda topic, and that is Alexis Gutierrez is going to give a presentation on the 2010 Atlantic Trawl Rule. Ms. Gutierrez, welcome.

PRESENTATION ON THE 2010 ATLANTIC TRAWL RULE

MS. ALEXIS GUTIERREZ: Thank you, Mr. Chairman. Good afternoon and thank you for allowing me to speak to you. My name is Alexis Gutierrez, as the chairman said, and I'm from the National Marine Fisheries Service. I'm in the Office of Protected Resources and I work with Sea Turtle Conservation Issues.

I know it is a late hour so I am going to try to quickly brief you on the Atlantic Strategies Work to promulgate an Atlantic Trawl Rule. The brief overview of this talk will be just to give kind of the origins of the strategy. Many of you have probably heard many different presentations for the last couple of years on the strategy is doing so I'll just review that.

I'll speak to our Advance Notice of Proposed Rulemaking that we published in 2007. I will also speak to our Notice of Intent that we will publish this Friday, and then I will speak to future actions. The context for this, of course, is sea turtle protection. As many of you are well aware, in the United States

there are six species listed on the Federal Endangered Species Act; three as endangered; three as threatened.

We have many different regulations on the books right now, either under Magnuson-Stevens or the Endangered Species Act to Protect Sea Turtles in Federal Fisheries. They range from gill net restrictions in Pamlico Sound to turtle excluder devices in shrimp trawls and flounder fisheries south of North Carolina.

We also have on the west coast in the Swordfish Fishery a hundred percent observer coverage, a requirement of circle hooks, caps on turtle takes. Then more recently we have put in place an observer rule which will put observers on state and federal fisheries to have a better sense of sea turtle interactions. The first identification for those fisheries will begin this year.

We also have in the Federal Scallop Fishery a chain mat requirement. I will go quickly through the others. Many of you are familiar with the Atlantic Pelagic Longline Vessels, which are required to use large circle hooks and finfish bait as well as have safe handling and release techniques employed.

With that said, this ties us into where we are with sea turtle conservation. When we did our five-year reviews on the six listed species in 2007, the reviews came back with no change for listings, and we were recommended that we look at the global listings and see if we could designate distinct population segments, which would essentially say instead of listing loggerheads or leatherbacks, for instance, as globally endangered, it would give us information to look at more population-specific parameters and say maybe in the Atlantic leatherbacks might be threatened and in the Pacific they might be endangered.

So we're currently taking a process to look at each of the species and seeing whether or not the population-segment policy applies. In addition to that work, we have also been petitioned to designate critical habitat for leatherbacks in the west coast of the United States. This will be the first time we will be taking such a new technique in terms of putting critical habitat in the open ocean and designating the primary constituent elements.

We've also been petitioned to up-list North Atlantic loggerheads and North Pacific loggerheads, in part as you can see from the graph here, because of the declines in the Florida nesting populations. So with all that said, we thought that we needed to look at

things a little bit differently than we have been traditionally looking at them.

So in about 2001 Dr. Hogarth promulgated the Atlantic Strategy. The Atlantic Strategy is different in that instead of regulating fishery by fishery we're hoping to regulate across fisheries and regulate by gear types. We're also hoping instead of just to tackle the federal fisheries, that we can tackle state and federal by doing it through the Endangered Species Act.

We have some key elements here. We have been characterizing state and federal fisheries for several years. Many of you may have commented on some of those characterizations as they were put in the Federal Register. We have evaluated and prioritized gear types. We've compiled a GIS data base to understand fishing effort, sea turtle distribution, bycatch, stranding information and oceanographic conditions.

We've been developing and testing gear modifications that can be rolled out. We've also been enhancing bycatch monitoring and pulling this all together to have better solutions to reduce sea turtle bycatch. As we said, this would be a series of regulations under the Endangered Species Act because what we're essentially trying to do is to reduce this take of sea turtles.

I will ask you to recall that take under the Endangered Species Act it is not necessarily mortality, but it is also harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect. As many of you will also recall under Section IX of the Endangered Species Act it is unlawful for people to take an endangered species in the United States territorial waters or on the high seas.

This prohibition is referring to both intentional as well as incidental, such as bycatch take. So through the strategy what we are trying to do is to bring these fisheries into compliance with the Endangered Species Act, and we have a few mechanisms for doing that. One is through a Section 7 Consultation Process, which many of you are probably familiar with. Whenever we have to issue a federal permit or have to have any type of federal annexes with an action, we have to be able to say that action won't likely jeopardize the continued existence of an endangered species.

In order to do that, we have to go through a consultation and be able to issue an incidental-take statement. That statement will have to specify the

level of take that is authorized. We will also specify reasonable and prudent measures to minimize the take, and we will set forth terms and conditions.

There are other provisions under the Endangered Species Act which would allow us to exempt take. One would be Section 10, which some of the states are probably with and have Section 10 permits; or the other would be a 4D Protective Regulation. So with that said, what we've been trying to do for the last several years is to prioritize the gear types that we would begin working in and begin to promulgate regulations.

This is the list of gear types that we have been focusing on. The order is not necessarily the exact order that we will work in, but it is what we're thinking about right now. We have trawls, gill nets, traps and pots, hook and line and that would include longlining. We're starting with trawl fisheries in part because of our bycatch estimates.

As many of you are probably familiar with, the Murray Estimate that was released in 2006 found that the annual bycatch of loggerheads in the Mid-Atlantic Bottom Otter Trawl was about 616 animals. We also did another bycatch estimate for the Mid-Atlantic Scallop Trawl Fishery and found on an annual basis there is about 134 loggerhead sea turtles that are caught.

So, we began to work on the trawl rule, looking at it in phases. As many of you are familiar, trawl fisheries cover a number of different species and we can't necessarily rule out one rulemaking to cover all of these right away in part because we don't have the bycatch reduction technology ready to do.

So what we have done is broken these fisheries into phases in terms of our ability to roll in bycatch reduction technology. We are open to suggestions from the states, from the public, from constituents in terms of the order of these fisheries and the technology that can be used. We are going to start focusing on Phase 1, and we are going to be promulgating regulations under Phase 1 this year and into next year.

The fisheries covered there, as you can see, are summer flounder, Atlantic sea scallop, whelk, calico scallop, and the fly net fisheries for croaker and weakfish. Many of you are probably aware that we were intending to do this as we put out an advance notice of proposed rulemaking on February 15, 2007. We received 165 comments after 90 days of public

comment. At that time we also identified these potential fisheries.

So this Friday a Notice of Intent will be published in the Federal Register. This Notice of Intent will state that we will be preparing an environmental impact statement for the Phase 1 Trawl Fisheries and that we will be conducting public scoping meetings. The alternatives for this rule will include temporal and spatial application of the rule, the status quo, closed areas and requirements for turtle excluder devices. And as I said, the fisheries under consideration are listed here.

We're seeking public comment on the fisheries, the definitions of the fisheries and the alternatives to be considered. We will have five different scoping meetings; the first one starting next Friday at the NOAA Silver Spring Finance Center. We hope that you and your constituents will be able to attend. If you aren't able to make any of these five meetings, of course, e-mail, FAX or phone all work.

I will pass out a handout stating the times and the places of these scoping meetings and my contact information. We are always willing to talk with you. I know this is going to be an interesting process and you will want input to this a lot. With that said, we are anticipating that in early 2010 we will have a proposed rule and a Draft EIS out on the street and that we will have a final rule towards the end of 2010, and that will just be for Phase 1.

So beyond that, in the long range, in the next two to five years we will have additional rulemaking coming down for other gear types like gill nets as well. So with that said, thank you again for your time; and if there are questions or concerns, I am happy to take them. I don't know how the chair wants to run this.

CHAIRMAN LAPOINTE: Thank you, Alexis. I will start with Bill Adler.

MR. ADLER: I would just like you to carry this message back to the Protected Resources Division. The fishermen are pretty sick of this whole ESA thing and they want to know how they can get listed under the ESA as an endangered species. Thank you.

DR. LANEY: Ms. Gutierrez, can you tell me if the rule will cover research trawling, and I am specifically interested from the perspective of the fact that this commission supports a number of different trawling programs, mostly surveys, the SEAMAP Program, the NEAMAP Program and also the Cooperative Winter Tagging Cruise. Then the

Striped Bass Tagging Cruise efforts in the New Jersey and Delaware, Roy, I believe are also conducted by trawl. Would experimental programs or research programs like that be addressed?

MS. GUTIERREZ: Thank you; that's a great question. We haven't attempted to deal with research programs at this time. We are specifically focusing on commercial fisheries at this time, but I can take your question back and we can discuss that further.

MR. THOMAS O'CONNELL: Just two questions; the first question was could you just go back to that list of species affected; I didn't get to copy all that down. All right, and then secondly was the time correct on your slide for Silver Spring being 10:00 a.m. to noon?

MS. GUTIERREZ: Yes.

MR. O'CONNELL: Is that designed for just state agency people to come or the public?

MS. GUTIERREZ: It can be for anybody. We have other meetings that will be in the evening in other locations so that they can attend at that point as well. If there is a desire to have an additional scoping meeting in this area in the evening, we are happy to accommodate that as well.

MR. O'CONNELL: All right, thank you. I noticed that may not be the best time for some of the watermen within the state of Maryland.

MS. GUTIERREZ: Thank you. I am happy to talk with you afterwards and see if we need to put forward some additional scoping meetings.

DR. LANEY: More a comment; I didn't mention that the Cooperative Winter Tagging Program does have an exemption from the Southeast Region Protected Resources Program, and we have compiled records on our protected species' interactions during the course of the 22-year time series, and we have a very low rate of encounter and a very high rate of survival for those protected species that we have encountered. Melissa might speak to whether SEAMAP has done that. I don't know, NEAMAP is so new, I'm sure that probably could provide a complete record as well.

CHAIRMAN LAPOINTE: Other questions or comments? Thank you very much. Can you make your presentation available to staff and they can e-mail it to us? I think that would be helpful. We've

got 15 minutes left; we'll Melissa Paine and MSC Report.

MANAGEMENT AND SCIENCE COMMITTEE REPORT

MS. MELISSA PAINE: I'm providing this MSC Report on behalf of Harley Speir, the Chair of MSC, who was unable to be here. I will keep it very brief as we don't have too much time. The MSC held a conference call on April 29th. The first item that they discussed was hearing a report on an effort to create a critical research needs list for ASMFC species.

A subcommittee of the MSC has been working on this effort. What they have done is to identify one to three top research needs for each species, and that is taken from the recently updated prioritized research needs list that was updated last year in 2008. They received input on this from technical committee representatives as well as a bit more information on how those needs might be carried out.

The next step is for the subcommittee to further rank these needs to highlight the most pressing needs for the commission across species such as in terms of the greatest improvement to stock assessments, the most data poor or those needs that might cover several species' needs. The kinds of things are kind of the ultimate goal of this effort.

Another thing they discussed was developing an aging manual to cover all commission-managed species. The goal is to produce a manual with standardized aging methods for each species so that there is consistency in aging coastwide. Staff is working on compiling that information. To help that effort a Fishing Aging Subcommittee was formed of MSC.

Another effort that they discussed was from the Fishing Gear Technology Workgroup. I believe this report was included on the CD and there are copies in the back if you're interested. That workgroup produced a report which investigated gear work in ten fisheries which they highlighted to have substantial bycatch.

They looked at gear work undertaken in those fisheries. MSC has supported this group continuing those efforts in evaluating the next ten fisheries that they identified as important. Also, that report will go out to the technical committees for their review for those species. MSC was also briefed on future ASMFC discussions regarding ecological reference

points, and that was just sort of an informational item just so that they know that might come up in menhaden.

A subcommittee was formed to assist in the selection of a Horseshoe Crab Review Panel, and finally MSC heard updates from several committees. The one I wanted to draw your attention was in the NEAMAP update there are going to be some demonstration tows of the NEAMAP Survey; so if anybody is interested in participating a couple of demonstration tows will be run early next week out of Point Judith, Rhode Island, as well as Montauk, New York.

If anybody is interested, feel free to contact me or go on the NEAMAP Website and you'll find information to contact Jim Gartland or Chris Bonzek who are the VIMS researchers who are running that survey. I would advise you to do that as soon as you are able if you are interested. That's my report.

CHAIRMAN LAPOINTE: Thanks, Melissa. Any questions for Melissa on the MSC Report? Seeing none, thanks very much. Bob, do we have time to do Number 10?

REVIEW OF NEXT STEPS FOR ECOSYSTEM-BASED FISHERY MANAGEMENT BY ASMFC

MR. BEAL: I think so. The commission has discussed ecosystem-based fishery management in a number of different venues and at a number of different times and through some committees, through the Policy Board. The commission hasn't, to date, developed a position or a plan to address ecosystem-based fishery management.

One of the new ideas and one of the new conditions that is out there is obviously Jane Lubchenco has come on board as the NOAA Director. Obviously, she has a strong interest in ecosystem-based management, and I think one of the things we'll probably see in the near future is increased awareness and activity associated with ecosystem management at the National Marine Fisheries Service and throughout NOAA.

We have talked to Mike Fogarty who is at the Northeast Fishery Science Center, and he is one of the folks at the National Marine Fisheries Service that is taking the lead on some of the ecosystem work that is going on for the National Marine Fisheries Service. Mike has agreed to come down and talk to

the Policy Board in August if that is something the Policy Board is interested in and update the Policy Board on ecosystem-based fishery management and just start the initiation of a discussion on where the commission wants to go with respect to ecosystem-based fishery management.

The idea here is just to introduce the notion that the profile of ecosystem-based management is probably going to be raised at the federal level over the next few years, and the commission may want to consider a course of action to determine what the commission wants to do with respect to ecosystem-based management in the future.

MR. SIMPSON: I guess I would be interested if he could address that issue in light of requirements under ACL and AM requirements, whether we aren't dead at Step 1 in addressing ecosystem management if we're constrained by the current guidelines on ACLs and AMs.

CHAIRMAN LAPOINTE: Why don't we just ask him when he comes. Does it make sense for people for him to come? Good. If we do ecosystem-based management, the ACL will be one fish. Other questions for Bob or comments? Wilson and then Tom.

DR. LANEY: Just to comment, Mr. Chairman, that I serve on the South Atlantic Council's Ecosystem-Based Committee; so to the extent that would be of benefit to advise the commission of what the council is doing, there are a number of us around the table that are involved in the South Atlantic Council activities, so we could provide that information to staff.

MR. FOTE: Bruce Freeman has contacted Vince O'Shea. Some of the groups working together in New Jersey under PMAFS, which we call Partnerships for Mid-Atlantic Fisheries Science, has basically gotten congressional support to do summer flounder research, and we have asked the Atlantic States Marine Fisheries Commission to be part of the science group to look at what we need to do on summer flounder.

I mean it's sorely needed funding and money and hopefully we will get some answers out of this and look at the long term. You know, this is a difficult way to get research money by getting earmarks and we need to look for another solution to get this over the years.

CHAIRMAN LAPOINTE: Thanks, Tom, for that offer. Leroy.

MR. LEROY YOUNG: Since we're talking about ecosystem modeling, I just wanted to bring up a point there was an excellent article in Fisheries most recent issue, "Counterintuitive Response to the Fish Populations to Management Actions".

There are a number of case studies in that article that show how modeling was done, predictions as to what changes would occur to populations when certain actions were taken and how the results were the opposite of what was expected. One of the reasons is the ecosystems effects were not being into account. I would encourage you to read that. It is very enlightening and I found it very interesting. I think it would be helpful to everyone here to take a look at that.

DR. LANEY: Mr. Chairman, Leroy made an excellent suggestion and some of us are AFS members, and I think we can obtain that electronically and provide it to staff for distribution to the commissioners. One other thing occurs to me, too. I mentioned earlier that at the Habitat Committee Meeting we had an excellent presentation by Jay Odell on The Nature Conservancy's Northwest Atlantic Marine Ecoregional Assessment, and that takes a big step in the direction of ecosystem management. Once again, I think that might be a very useful presentation to have at some point.

CHAIRMAN LAPOINTE: We have to approve stock assessment schedule for this coming year? All right, we're going to try to do the Assessment Science Committee Report in a short amount of time.

ASSESSMENT SCIENCE COMMITTEE REPORT

MS. PAINE: I am going to provide the Assessment Science Committee Report right now. Staff is passing out a brief handout that is just the update on what ASC discussed during their conference call on April 20th. On the back of that handout is the stock assessment schedule as you have seen before.

The first item that ASC did was to review that stock assessment schedule for 2010. Some of the changes that are on that schedule since the last time you saw it are that American Eel is set to take place in the spring of 2011 as a commission external review. Black Sea Bass, Scup and Winter Flounder are in consideration for SARC 2011. The Spiny Dogfish Track is

scheduled right now for December of 2009. I guess at this point we could ask for approval unless there are questions.

CHAIRMAN LAPOINTE: Are there questions for Melissa on the schedule? Seeing none, is there any opposition to its approval? It is done; thank you. We are adjourning for the day. We have time on the agenda tomorrow, 10:45 to 11:15, to finish up the Policy Board Agenda Topics; that being the Law Enforcement Committee Report, Atlantic Coast Fish Habitat Partnership Update and David Simpson's item of other business.

(Whereupon, the meeting was recessed at 5:40 o'clock p.m. May 6, 2009.)

THURSDAY MORNING SESSION

MAY 7, 2009

The ISFMP Policy Board of the Atlantic States Marine Fisheries Commission reconvened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, Thursday morning, May 7, 2009, and was called to order at 10:45 o'clock a.m. by Chairman George D. Lapointe.

CHAIRMAN LAPOINTE: Good morning, my name is George Lapointe. I am the chair of the commission. We are going to reconvene the Policy Board. We have the Law Enforcement Committee Report, an update on the Atlantic Coastal Fish Habitat Partnership, and one item of other business that David Simpson has. We will get started with the Law Enforcement Committee Report, Mike Howard.

LAW ENFORCEMENT COMMITTEE REPORT

MR. MIKE HOWARD: On Tuesday the Law Enforcement Committee met from 12:00 noon to 5:00 p.m. We struggled a little bit to get the items on the agenda in, but we did cover several important issues that have been moving forward within our committee. I want to thank Bob Hogan of NOAA General Counsel's Office, Chip Lynch, Bob Ross and Vince O'Shea for stopping by.

It is so important when members of the greater ASMFC family stop by and show their support or offer their advice and their wisdom. Summary settlements, which are always a concern working interagency between federal agencies and states, were discussed. Some of the delegation of issuing federal citations has occurred in several of the states and we hope that will expand in future years. It simplifies the process for the public, for the state officers and the federal system.

Magnuson authority was discussed. As some of may know, there was an issue in the Atlantic Herring Fishery where there are state closures and also the Shrimp Fishery state closures and federal waters that are required to be monitored by state officers. The authority was discussed and we're going to have a fuller discussion of that at our next meeting. The Sportfish Registry is a continuing concern in those states that do not have current fishing licenses as they anticipate it will require extra manpower to enforce and a change in the way they do their business to routinely check for this permit at some point down the road.

We had a presentation on SAFIS. SAFIS is part of the ACCSP Program. It has been used successfully by officers as a very straightforward and instant way to check on landings. It was used in support of the striped bass case you've heard so much about and is being used by states and officers throughout the coast to verify catch reports. It is an excellent, excellent tool to verify catches.

VMS, which started with the reauthorization under Magnuson – four years ago we worked hard to get language in that allowed states access to that confidential data. Our ultimate goal was to get mobile data terminals on the vessels so we could get real-time access. We have had one unit installed in Maine, and that has worked extremely well.

Some states frustrated that the program has not moved forward faster. I understand that they are changing the system which governs that, and we will be waiting for a meeting after next week. Our goal is to have ready access at any point necessary on any state vessel of the vessel monitoring system. Are there any questions from the board?

CHAIRMAN LAPOINTE: Questions for Mike about the Enforcement Committee Report? Paul Diodati.

MR. DIODATI: Mike, about the last part of your report, the VMS; is the VMS legally only available

for law enforcement institutions or is it available for real-time access for fisheries managers as well?

MR HOWARD: I believe the wording in Magnuson allows this for fisheries management, law enforcement and general fisheries' issues of states. Someone can correct me if I'm wrong.

MR. DIODATI: Well, that's my understanding as well, but I'm actually having some difficulty accessing that for management purposes. It seems like in order to gain access you have to go through the federal enforcement divisions, and they look for a signoff from state enforcement entities, not fisheries management entities, and I'm concerned about that because I see this as one of the most valuable upcoming tools to help us understand where fisheries are operating and when at real time that we should be really taking advantage of, and I can't seem to do that.

MR. HOWARD: Mr. Diodati, your point is exactly on target, and those frustrations came out very heatedly at our meeting. I can't speak for the feds, but I can assure you that every state I know, when they get these terminals – I think one state is already doing it; sharing it with their fisheries managers dockside, and there should be no reason that you couldn't sign an MOU, which will be required, be trained on the system for the security and information release and have that. I will pass on your concerns before the meeting, which is in five days, to discuss this issue.

CHAIRMAN LAPOINTE: And, Paul, after this meeting in five days, because I think most people would concur, I can follow up with Vince and raise the issue beyond law enforcement, you know, to the NOAA folks just to keep some heat on the issue.

MR. DIODATI: Well, in that regard, if I may, Mr. Chairman, perhaps it might be helpful, because I'm at the point of letter writing, I suppose, and it might be more effective and certainly easier if perhaps the commission took that role and wrote on behalf of all the states and coordinated the access and whatever is needed. I think at least fisheries management institutions have MOUs for confidentiality and sharing statistics.

ACCSP is all about that and we're all partners in that. I'm not sure what level of agreement we need to go above and beyond that, but it seems like everytime I ask about this, that is what I get back is more issues about confidentiality and law enforcement. I don't have a good feel for it so I would appreciate it if the

commission could write a letter to Dr. Lubchenco since there is not a new AA yet for NOAA Fisheries, or whoever you think it should be. Thank you.

MR. MARK GIBSON: Just to follow a little on Paul's line of questioning, Mike, are there any states that are operating state VMS systems; that is, they require VMS units on state-permitted vessels and their enforcement or management agencies have the capability to receive that information?

MR. HOWARD: No, this is for federally licensed vessels under VMS. I think it is four categories right now. I'm not real sure about that; I think it is four categories of federally licensed vessels. Technology is certainly available; legislation is not.

DR. LANEY: Mike, was there any discussion of the status of the Joint Enforcement Agreement between North Carolina and the National Marine Fisheries Service? I know at least year there was some optimism that it might be forthcoming, and I just wondered what the current status was.

MR. HOWARD: There was a brief discussion of total encouragement by everyone there that North Carolina legislators would move in the direction that would authorize them to hold this office. As you know, there is a technicality in the law that prohibits officers of North Carolina from holding a dual office, and that MOU JEA requires deputization as a federal officer. The political aspects of that are deep, and I wouldn't want to comment any further. We as a committee and this commission fully supports them, and it would be a great asset to North Carolina.

CHAIRMAN LAPOINTE: Thank you; other questions for Mike? Seeing none, thanks very much, and you thought you weren't getting any questions. Our next agenda topic is an update on the Atlantic Coastal Fish Habitat Partnership. Pat, welcome.

ATLANTIC COASTAL FISH HABITAT PARTNERSHIP UPDATE

MR. PATRICK CAMPFIELD: This is a quick update on the ACFHP Partnership. The steering committee for ACFHP met in April. The committee decided the partnership will apply for formal recognition from the National Fish Habitat Partnership Board. We will apply for that recognition in August. If approved, the Partnership will be eligible to apply for National Partnership funds for on-the-ground habitat projects in 2010.

There are a handful of application requirements to get that national recognition. First is to have a strong and diverse partnership, which we have basically carried out through the formation and signing of the MOU with 30 partners. It also needs to have a geographic focus, which is the Atlantic Coastal Fish Habitat, in our case.

Another element is the Strategic Plan for ACFHP, which has been drafted, and we anticipate completing that Strategic Plan this summer. The fourth criterion is to develop capabilities for scientific assessments of habitat projects. There are a couple of mechanisms or activities that ACFHP is developing towards that end of scientific assessments. The first is finishing a coast-wide habitat assessment in cooperation with a contractor at the National Ocean Service in Silver Spring.

The assessment provides information on habitat status, threats and policy action and a search engine that will be available to managers online. It will also basically determine which habitats are being assessed for their restoration projects underway and then also identify gaps along the Atlantic coast.

The second element is the Partnership is also finishing a Species Habitat Relationship Matrix. The matrix considers habitat type importance by life stage for over a hundred species on the Atlantic coast, and it is designed, again, to determine the most important habitats for all species coastwide.

The results of the assessment and the matrix will guide and verify the development of ACFHP goals, objectives and strategic actions to support fish habitat conservation and restoration projects. So we're applying for that national recognition this summer and hope to achieve that by the end of the year.

The second major activity to report on is that we're searching for future funding for ACFHP. The original grant expires at the end of this year, and so we have started the process to apply for support for the next two-year cycle with the Multi-State Conservation Grant Program. That process includes submitting a Letter of Intent, which we have done in the last couple of weeks, and then we will find out in late June whether we have been invited to submit a full application.

That application will take place in July, if we're invited, and then the Multi-State Conservation Grant Program will announce awards by early December in terms of whose grants have been funded for the next two years. This is critical, of course, because

ACFHP Coordinator Emily Greene is doing a great job to date, and we want to finish the initial setup of ACFHP and then really get into the implementation and operations in the next two years and to start looking at habitat projects on the ground. That concludes my report on ACFHP.

CHAIRMAN LAPOINTE: Thanks, Pat; any questions or comments? I have one question. The Habitat Matrix sounds a lot like the Essential Fisheries Habitat; is it? I mean identification of habitat is critical to fish at their different life stages.

MR. CAMPFIELD: Yes, it is very much the same. They look at everything from egg larval, juvenile, pre-adult, adult states, and I think about two dozen habitat sites, so it is fairly comprehensive.

MR. MILLER: Pat, will that Habitat Matrix extend to waters outside the territorial seas of the states? I'm thinking specifically of wind projects in the offing in my geographic area.

MR. CAMPFIELD: I would have to check on that for you. I know it certainly includes state waters, but I would have to get back to you on that in terms of if it is beyond three miles. They certainly look at some habitat types that are shared within and beyond three miles, but I would have to get back to you that.

DR. LANEY: I can address somewhat both of those questions, George, that the Species Habitat Matrix is not exactly the same as Essential Fish Habitat. The EFH process varies from council to council and you know how that works. This was more a tool designed to give the Partnership some idea of what the priority habitats should be.

They came up with their own classification system, and it is basically just a big matrix that has the species across the top, the life stages as a second tier under that, and then their habitats down the left side. Basically, the experts who were asked to review each of these species – which, by the way, are split up into four regions. There is New England, Mid-Atlantic, South Atlantic and South Florida.

The experts then rated each of those cells basically low, medium, high, very high, so it is a more qualitative kind of tool and it will guide ACFHP proposal selections in the future. To Roy's question, the way the Partnership envisions that projects would be selected, Roy, and/or species addressed – if you viewed their whole area as extending from the white water to the edge of the Continental Shelf, they envision that most of the projects that they ultimately

would work on would kind of lie in the middle of that.

You know, if you draw a normal curve with the two tails, one being at the edge of the Continental Shelf and the other one being in the mountains, then the peak would be kind of in the middle in the coastal area, really more the estuarine and nearshore, which is the area of ASMFC jurisdiction because that was the area that wasn't covered by any of the existing national fish habitat partnerships.

That is the short version. If you want details, I think Jake Kritzer, Pat, is one of the co-chairs of the Species Habitat Workgroup, which is part of the Science and Data Workgroup. The only reason I know this much about it is because they asked for an independent review of their initial rating of all the habitats and they held a workshop in Raleigh, and I was one of the participants in that workshop.

CHAIRMAN LAPOINTE: Thank you, Wilson. Other questions or comments? Thanks very much, Pat. Our next agenda topic is Other Business and we have one item that Mr. Simpson will lead us on.

OTHER BUSINESS

MR. SIMPSON: Mr. Chairman, I have a motion that Toni efficiently has already typed up for me that was inspired by some of the discussions we have had in river herring and the need for better quality information from at-sea monitoring of fisheries outside our jurisdiction; namely, the Atlantic Herring Fishery. It points out a shortcoming of the amendments of standardized bycatch reduction methodology, amendments that the councils have put together and passed, but it doesn't consider ASMFC-managed species.

While I think we get a lot of the information on bycatch that we need, it isn't a priority in the calculation or direction of sea-sampling effort in that program. I will read the motion to you. **It is move that the Executive Director send a letter to Dr. Jane Lubchenco, Undersecretary of Commerce for Oceans and Atmosphere, requesting that the following ASMFC-managed species be begin equal consideration with federally managed species in the development and implementation of at-sea fishery observer programs: American shad, alewife, blueback herring, striped bass, weakfish, Atlantic and shortnose sturgeon, American lobster and northern shrimp.** If I can get a second, I'll a little followup on the rationale.

CHAIRMAN LAPOINTE: Second by Tom Fote; thank you.

MR. SIMPSON: Okay, for the record the rationale is that these ASMFC species spend a significant portion of their life cycle in federal waters, are taken in federal waters' fisheries, and the quantification of bycatch is essential for stock assessments and ASMFC management of these species under ACFCMA.

CHAIRMAN LAPOINTE: Discussion on the motion? Bill Adler.

MR. ADLER: Mr. Chairman, if I may ask, okay, in other words, they're not given equal consideration now; is that the gist of this?

CHAIRMAN LAPOINTE: That is absolutely true. Any other discussion? Roy Miller.

MR. MILLER: Mr. Chairman, if I may ask David a question; I have obviously nothing to criticize, but only to ask if there are some other species maybe that could have been added to the list. Is your species' list do you feel is sufficiently inclusive, David? Possibly Atlantic croaker or something like that might be an addition.

MR. SIMPSON: That's exactly the kind of feedback I was hoping to get. I tried to go through as much as I could the list of commission-managed species; and where I could gather the information, the extent to which they were found in federal waters or would be taken by federally permitted vessels.

I don't perfect knowledge of some of the species in the more southern mid-Atlantic areas. I did look at some of the NMFS Cruise Reports, looking for distributions of some of those species out into ocean waters. It could benefit from expansion. You know, croaker and spot came to mind. I had question marks for those. Spanish mackerel is a species we manage; I don't know if that should be added.

The others are jointly managed so they get covered, but I did leave out spot, red drum, Atlantic croaker, Spanish mackerel. Certainly, if you think those species should be added, that certainly would be considered a friendly amendment.

CHAIRMAN LAPOINTE: Could we just give staff leave to check the list and populate that list so that in fact we don't take too much time and we don't miss things. Does that make sense?

EXECUTIVE DIRECTOR O'SHEA: One of the things maybe we need to think about here; some of these species that are being mentioned, we don't even really – I mean we sort of have a plan, but in a lot of cases it is sort of a data collection plan. We have no active fishery management measures in place for these plans. I don't know if that then dilutes the importance of some of these other ones that we have clear management plans for and we have a need right now to deploy this information right into an active management plan. That would be one thought.

CHAIRMAN LAPOINTE: My sense on that – and that's a good question – would be to raise the issue broadly about commission-managed plans and then you could get into the question. It is the same thing the feds have to do about prioritization because they're not all going to be the highest priority, and so those kinds of conversations could play into that prioritization.

MR. FOTE: I was just thinking of red drum, too, because we do have a definite plan for red drum. This is a federal plan on that so I think red drum should be added to this.

MR. COLE: If the staff will add the appropriate species when they check the FMPs, I think it would be the appropriate course of action.

DR. LANEY: I was just going to note, Mr. Chairman, that the shortnose sturgeon is a federally listed species, so some people might argue that it already gets greater than equal consideration. I don't know whether you want to keep that one on the list or not, Dave. I guess technically if it is at the point when it recovers, then ASMFC would be the entity that would prepare a fishery management plan for it.

Right now it is under a recovery plan administered by the National Marine Fisheries Service, and it is the subject of a current status review on which team I serve, and we're wrapping up that draft status review. It is probably going to be submitted to NMFS for their consideration later this year.

MR. SIMPSON: Yes, sure, I didn't have time, unfortunately, to check the list of species that isn't within the SPRM now; so if it is redundant, that's fine; but certainly if it is not, we will want to know if that has a significant place in the recovery of the species, if bycatch is in fact an issue.

DR. LANEY: To that point, Mr. Chairman, it is definitely an issue with Atlantic sturgeon. It is an

issue with shortnose as well, but the bycatch there is mostly confined to In-River American Shad Fisheries or other gill net fisheries that are prosecuted within state waters.

ADJOURN

CHAIRMAN LAPOINTE: Other questions or comments? Is there any opposition to the motion? **Seeing none, the motion passes.** Thank you, David. That is the last agenda topic for the Policy Board, and so we will start the Business Session.

(Whereupon, the meeting was adjourned at 11:10 o'clock a.m., May 7, 2009.)