

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

**Crowne Plaza Hotel
Old Town, Alexandria, Virginia
February 3 and 4, 2010**

Approved May 6, 2010

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INDEX OF MOTIONS

1. **Approval of Agenda** by Consent (Page 1).
2. **Approval of Proceedings of November 2009** by Consent (Page 1).
3. **Move that the commission draft a letter supporting the ASMFC Plan for Atlantic Sturgeon and opposing an ESA listing at this time** (Page 3). Motion by Louis Daniel; second by Pat Augustine. Motion carried (Page 7).
4. **Move to approve the Living Shorelines Habitat Source Document as presented by Dr. Laney** (Page 12). Motion by Pat Augustine; second by Rep. Abbott. Motion carried (Page 18).
5. **Move to convene a data workshop for black drum** (Page 14). Motion by Louis Daniel; second by Jack Travelstead. Motion carried Page 15).
6. **Move that the ISFMP Policy Board recommend to the Full Commission that the state of New Jersey be found out of compliance for not fully and effectively implementing and enforcing the Interstate Fishery Management Plan for Atlantic Coastal Sharks. New Jersey has not implemented the regulations of the Interstate FMP for Atlantic Coastal Sharks. The implementation of those regulations is necessary to achieve the conservation goals and objectives of the FMP to rebuild depleted shark species and ensure sustainable harvest of others. In order to come back into compliance, the state of New Jersey must implement all measures contained in the Interstate FMP for Coastal Sharks** (Page 24). Board Motion by Louis Daniel; no second. Motion carried (Page 24).
7. **Move that a letter be sent to the National Marine Fisheries Service and the U.S. Coast Guard regarding penalty fines and/or suspension and/or forfeiture of a captain's license/permits for fishing for striped bass in the EEZ** (Page 26). Motion by Jack Travelstead; second by Tom O'Connell. Motion carried (Page 28).
8. **Move that ASMFC send a letter expressing support of Senate Bill 1816, the Chesapeake Bay Clean Water Act, contingent upon removal of the five-year study of menhaden** (Page 32). Motion by Bill Goldsborough; second by Gene Kray. Motion tabled (Page 33).
9. **Move to take the tabled motion off the table** (Page 34). Motion by George Lapoint; second by Pat Augustine. Motion carried on (Page 34).
10. MOTION AMENDED ON PAGE 39: **Move that the ASMFC send a letter of conceptual support of Senate Bill 1816, the Chesapeake Bay Clean Water Act, consistent with the language read into the record by Mr. Ballou.** Motion by Bill Goldsborough; second by Gene Kray. Motion carried (Page 39).
11. **Move to reconsider the letter regarding EAS listing of Atlantic sturgeon. Motion to send a letter highlighting the commission plan provisions and member states numerous significant efforts to restore, conserve and manage our stressed Atlantic sturgeon stock. Commission members believe that our recent management measures, including harvest moratorium, monitoring and research are having positive results and will continue to do so without ESA action at this time** (Page 40). Motion by Bill Cole; second by A.C. Carpenter. Motion carried (Page 41).

ATTENDANCE

Board Members

George Lapointe, ME (Chair) (AA)	Eugene Kray, PA, proxy for Rep. Schroder (LA)
Terry Stockwell, ME, Administrative proxy	Loren Lustig, PA (GA)
Pat White, ME (GA)	Craig Shirey, DE, proxy for P. Emory (AA)
Douglas Grout (AA)	Roy Miller, DE (GA)
Rep. Dennis Abbott, NH (LA)	William Goldsborough, MD (GA)
Ritchie White, NH (GA)	Tom O'Connell, MD (AA)
Paul Diodati, MA (AA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
William Adler, MA (GA)	Jack Travelstead, VA, proxy for S. Bowman (AA)
Ben Mertens, MA, proxy for Rep. Peake (LA)	Ernest Bowden, VA, proxy for Del. Lewis (LA)
Bob Ballou, RI (AA)	Louis Daniel, NC (AA)
David Simpson, CT (AA)	William Cole, NC (GA)
Lance Stewart, CT (GA)	Malcolm Rhodes, SC (GA)
James Gilmore, NY (AA)	Robert Boyles, Jr., SC (LA)
Pat Augustine, NY (GA)	John Duren, GA (GA)
Brian Culhane, NY, proxy for Sen. Johnson (LA)	Bill Orndorf, FL (GA)
Gil Ewing, NJ, proxy for Asm. Albano (LA)	Jessica McCawley, FL (AA)
Tom McCloy, NJ, proxy for D. Chanda (AA)	Bob Ross, NMFS
Tom Fote, NJ (GA)	A.C. Carpenter, PRFC
Leroy Young, PA, proxy for D. Austen (AA)	

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

Ex-Officio Members

Staff

Vince O'Shea	Toni Kerns
Bob Beal	Pat Campfield

Guests

Patrick Geer, GA DNR	Kevin Adams, Naknek, AK
David Perkins, NMFS	Bob Ross, NMFS
Chis Moore, NOAA	Bob Sadler, NMFS
Matt Cieri, ME DMR	Wilson Laney, US FWS
Bruce Schactler, Kodiak, AK	Arnold Leo, E. Hampton, NY
Julie Decker, Natl Seafood Marketing Coalition, Wrangell, AK	Raymond Kamf, Chatham, MS

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, February 3, 2010, and was called to order at 3:23 o'clock p.m. by Chairman Robert H. Boyles, Jr.

CALL TO ORDER

CHAIRMAN ROBERT H. BOYLES, JR.: Good afternoon. My name is Robert Boyles, and I would like to call to order the ISFMP Policy Board.

APPROVAL OF AGENDA

The first couple of items on the agenda is to approve the agenda. We do have a couple of items that we have had requested to be added. Bob, can you just can over those really quickly.

MR. ROBERT E. BEAL: A numbers of these were rolled over from the Striped Bass Board earlier this week. The first is a discussion on a paper analyzing the MRFSS Program and facilitating a review of that paper. The second is letters to the National Marine Fisheries Service and/or the Coast Guard dealing with striped bass penalties for fishing in the EEZ.

The third issue that came out of the Striped Bass Board was the Chesapeake Bay Clean Water Act and a discussion on commission support of that. The next issue and not from the Striped Bass Board was a CITES listing for bluefin tuna and a discussion on that issue. The final item under other business was a discussion on research for ASMFC species and the National Marine Fisheries Service and U.S. Fish and Wildlife Service support for those surveys.

CHAIRMAN BOYLES: Okay, we have those additions to the agenda. Are there any other items to be added to the agenda? Louis.

DR. LOUIS DANIEL: Did I miss it or did you bring up the non-compliance issue? I was going to try to do it today because I'm not going to be here tomorrow.

CHAIRMAN BOYLES: Yes, we will add that. I'm sorry, Louis, I didn't recognize the compliance issue on coastal sharks. Any other additions to the agenda? Seeing none, is there objection to adopting that agenda as amended. I'm sorry, Jim Gilmore did have something as well. Jim had a dredging issue, a Corps of Engineers issue he would like to add to the agenda as well.

So with those additions, any objections to that agenda? Seeing none, that agenda will stand adopted as amended.

APPROVAL OF PROCEEDINGS

CHAIRMAN ROBERT H. BOYLES, JR.: Next we need to approve the proceedings from our November 2009 meeting. The proceedings were mailed out on the Briefing CD. Any objections to those minutes? Seeing none, the minutes will stand approved.

PUBLIC COMMENT

CHAIRMAN ROBERT H. BOYLES, JR.: Next is time on the agenda for public comment for items that are not on the agenda. This is the time for folks who wish to address the ISFMP Policy Board may do so at this time. Is there anyone in the audience who would like to make public comment? All right, seeing none, we will move on to Item Number 4, Atlantic Sturgeon ESA Listing Petition. Bob Beal.

DISCUSSION OF ATLANTIC STURGEON ESA LISTING PETITION

MR. BEAL: I am putting up a quick presentation here just to give a little background on this issue. It is a pretty straightforward issue. October 6th of last year the NRDC submitted a petition to the National Marine Fisheries Service to list Atlantic sturgeon as endangered under the Endangered Species Act.

The petition also included an alternative if the entire species wasn't listed as endangered. Consideration is requested for listing five distinct population segments as threatened and three as endangered. On January 6th of this year the National Marine Fisheries Service published their 90-day finding in the Federal Register.

The 90-day finding determined that there is enough information included in the petition to move forward with a full evaluation of whether Atlantic sturgeon should or should not be listed under the Endangered Species Act. The National Marine Fisheries Service is in the middle of a public comment period right now. I think the public comment closes on Friday of this week.

The National Marine Fisheries Service is seeking comment on distribution, habitat, density, threats and the management of Atlantic sturgeon and how those may possibly influence a listing under the Endangered Species Act. In the past, when the commission has been presented with similar petitions

for Atlantic sturgeon and the Endangered Species Act, the commission has not supported ESA listing.

We've cited that we've had a moratorium since 1998. The states are seeing a number of positive signs in response. The fish appear to be responding to the moratorium and an increased abundance seems to be showing up in a number of areas up and down the coast. I think a number of individual states may have already commented or they have letters in the pipeline that will be submitted to the National Marine Fisheries Service in the next couple of days.

I think the question before the policy board is should the commission as the body that manages Atlantic sturgeon comment or provide comment to the National Marine Fisheries Service on this petition. That is my quick presentation of where we are.

CHAIRMAN BOYLES: Questions for Bob? Dave.

MR. DAVID SIMPSON: Do you happen to have the Federal Register Notice number just to make sure that our staffs have had the chance to comment?

MR. BEAL: I do; I can e-mail it around to everyone.

MR. GEORGE LAPOINTE: If we comment as a commission – and I would hope we do – we have to make sure first that our states have a consistent view about what that position might be. I was actually just looking at my staff's comments. I have been in the paper saying I'm opposing listing just because of the burden it adds to our state. They have countered that it could bring additional funding into the state, but that sounds more like blood money than it does a good reason to support listing.

I said in the paper that we fell back on the ASMFC Plan that was closing – the habitat I think and the range is pretty similar to shortnose sturgeon, so I don't know how much we'd gain in terms of habitat designation. I'm curious what the other states are thinking as well.

DR. DANIEL: We've looked at this issue pretty closely in North Carolina. We've had moratorium since 1991 and have had independent gill net survey data and observer program information for that time series. What we're seeing is an increase in the catch per unit effort in our independent gill net surveys. We have been able to mark some pretty good year classes that have come through in North Carolina.

We have also seen an increase in the size distribution of the fish both inshore and offshore. I know that

there is some information from the winter tagging cruise where they're seeing more and more sturgeon being tagged during that cruise. I really didn't feel comfortable recommending not listing, but what I drafted and sent in were comments that said that the moratorium appears to be working and we should continue with the ASMFC Plan, that we should continue our monitoring efforts in hope to reconfirming these positive trends over the next five years. When it is the appropriate time, I would move that the commission send a letter stating the same thing.

MR. THOMAS O'CONNELL: We sent in a letter in earlier this week and the state of Maryland just raised a lot of issues in our letter that ultimately a listing could inhibit our ability to continue our 15-year tagging program from we're getting a lot of good information and noting that shortnose sturgeon has been listed as a threatened species in 1967 and we virtually know nothing about shortnose sturgeon in the Chesapeake Bay. If the sturgeon were listed as threatened, hopefully it would still allow some of our monitoring programs to continue and recognizing that if it was listed as endangered we would probably no longer get any information from sturgeon in the Chesapeake Bay.

MR. WILLIAM A. ADLER: I think we should be very careful about putting anything into that ESA. We've gone through this with the whales, and it is a nightmare. Nobody wants to get whales. I'm sure everybody is fine with throwing sturgeon over if they get them. The point is that, well, you might catch a sturgeon, so whoever you are, you're off the ocean. It is not taking of sturgeon; it is what it will do to everything else.

MR. CRAIG SHIREY: Maybe we're an outlier here. Delaware is under some pressure and we're considering sending a letter to support the ESA designation. We're also considering requesting, now that we have some information that shows that there is a Delaware River stock and it is a very low reproducing stock, having that pulled from the – we were grouped with the Hudson River prior to this in their DPS.

We've got a little bit of soul-searching I guess to do before Friday on whether or not we want to send this letter, but we think we're in a population level of maybe a hundred adults, very low levels. And our juvenile indices; other than the fact that we did get some young-of-the-year this year, remains very, very low.

MR. LAPOINTE: In response to Bill's comments, we have the Atlantic salmon listed in Maine, and we as a management agency still get to do things with Atlantic salmon. We get to tag, we get to move them around, but it is a burdensome process. I suspect our federal partners would say much the same, but we have learned to make that work, so I think we could do that with sturgeon as well.

We've got some states saying maybe yes and some states maybe saying no. We might not be able to take a position, but we could certainly write a letter as a commission stating the concerns that we've heard, perhaps mentioning the concentration on specific DPSs as they were doing because some – well, they have already acknowledged some need more protection than others – and then just raising folks' concern.

I would be happy to provide the draft comments our state has had to staff. We could comment talking about the strength of our plan, we could talk about our concerns about permitting, et cetera, without having to potentially get in a vote where there are winners and losers on the part of our states and it would allow them to take their own positions.

CHAIRMAN BOYLES: I thought I heard Louis Daniel about to make a motion to that effect. Louis, did I understand that?

DR. DANIEL: You did. **I would move that the commission draft a letter supporting the ASMFC Plan for Atlantic Sturgeon and opposing an ESA listing at this time.**

CHAIRMAN BOYLES: Motion by Dr. Daniel; is there a second. Pat Augustine seconds. Discussion. Leroy.

MR. LEROY YOUNG: I guess I'm perplexed by this. If one of our states – and we may very well go on record in support of listing, where does that put us as a state?

CHAIRMAN BOYLES: My sense is if we can't get a consensus motion here, we will come to a vote and the states' position would be reflected in that vote. Any other discussion? George.

MR. LAPOINTE: I would like to ask the maker of the motion – I was proposing something slightly different, and that is that we do write a letter and we talk about the strengths of our plan, that we talk about our concerns about listing, and then the things that need to be considered; and, again, in deference to the

states are going to take positions supporting, we wouldn't get into the commission position being different than the states. We raise the same concerns, but, again, it doesn't put us at odds and having states going home being cockeyed compared to the commission position. Mr. Chairman, could we ask Louis?

DR. DANIEL: It just seems like to me that we've got a plan. We've all bitten the bullet. We've had a moratorium since '98 and North Carolina has since '91. We're seeing positive trends. For those of you that are thinking about endorsing this, you really need to think long and hard about what the impacts are going to be. That is not a reason not to object to listing, but we're talking about an increasing abundance of animals.

You're going to be seeing more and more of these things and you're going to be interacting more and more with them. The time for listing was ten years ago or twenty years ago. I would like to vote up or down my motion and hope you all support it; and if you don't, then I'll go the next route.

MR. G. RITCHIE WHITE: When we started this discussion, was there a slide talking about our present position? Was there something up on the screen that showed that the commission has taken a position at this point, that this would be change, or am I incorrect?

MR. BEAL: Previously the commission had taken a position not to support listing, going back and citing that the commission has had a moratorium in place for a number of years and the states are seeing positive signs.

MR. R. WHITE: So our existing position; this would reinforce our existing position.

REPRESENTATIVE DENNIS ABBOTT: I would like to support Dr. Daniel's motion. I think that if we do a roll call vote, if the states that do have objections, that would be noted. Again, we do make our decisions principally on majority vote, so I think that would apply here.

DR. EUGENE KRAY: Could someone give us information as to what is the downside for listing this as an endangered species?

MR. LAPOINTE: I can give you my impression, Gene. It could come along with critical habitat designation, and that could impact the things that occur within the state. Permitting can become

much more cumbersome in those areas. I think people are concerned about bycatch of sturgeon in other fisheries. I certainly know that is a concern for the groundfish fishery, and so it could impact those fisheries.

For those of us who have dealt with bycatch issues or take issues in other fisheries, that can become a very cumbersome process. Certainly, to the states it seems like it is a pretty heavy hand in proportion to the problem as it is presented. When you have a listing, in some cases – certainly, with whales – every animal counts.

In salmon, again, we've got more animals than with whales, and so that is less cumbersome, but it is a burdensome process. It is burdensome on the agencies and it is burdensome on the municipalities and businesses within Maine. Again, I'm just speaking from my experience here. The upside, which my staff will identify, is that through Section 6 funding you can get more funding for working on those species than you can for non-listed species. I am sure there are other issues, but those are the ones that immediately come to mind.

MR. THOMAS FOTE: It is nice to be getting more money to work on issues, but you have got to have personnel to work on those issues, and that is the problem because with the hiring freezes that we have in our state, and I imagine other states, too, that we can't hire the personnel to basically do that extra work even if we have the money to do that, so you would contract the work out and everything else.

I think with all the constraints and all the pressure we have to do the job that our people in the division are doing, I can't see any extra burden at this time that requires more paperwork, more time and more effort needlessly since we already have a moratorium on it. That's why I'm supporting what Louis has put forward.

MR. PAUL DIODATI: I would like to speak in support of the motion, and I agree with George's checklist of reasons why. I think one of the concerns here is that we may not have a unanimous support for the letter, but what the motion doesn't describe is what the letter says. I will just offer this as a suggestion.

If there is not unanimous support but a vast majority of commissioners support this motion, then the letter could easily say that the majority of our membership or the vast majority of our membership opposes this listing proposal at this time; as compared to our

membership opposes this listing. I think there are ways to handle it.

CHAIRMAN BOYLES: Good suggestion, Paul. Other comments? Louis.

DR. DANIEL: I just want to also get on the record as a issue with listing, Gene, Section 10 permits, and you would have to close fisheries down and in some instances by injunction and develop a plan for monitoring fisheries that could have interactions with these endangered species. We're in the process of doing this right now in North Carolina.

Just for a small portion of the Pamlico Sound, I'm having to cobble together \$200,000 every year to provide observers to make sure we don't exceed a cap on our allowed levels of sea turtles. Every state would get an allowable allotment of sturgeon. If they interact with fisheries, you would have to monitor. It is an extraordinarily expense situation.

Unless you're absolutely certain that this is a critical, critical need and that this stock is in imminent risk of extinction, then it really behooves you to really think long and hard before you list something that is as ubiquitous as Atlantic sturgeon.

MR. YOUNG: Well, one of the difficulties I am having here is it is a state-listed species in Pennsylvania, so it is difficult for us to not support this action. It is not this motion but the listing.

MR. O'CONNELL: I think just to follow what Paul was saying, I'm having a little trouble with opposing it at this time. I think what is important at this time is to make it clear of the implications of a listing of threatened or more of an impact of listing it as endangered to our ability to continue implementing our Sturgeon Plan along the Atlantic coast.

MR. SHIREY: Sturgeon are a state-listed species in Delaware and New Jersey as well, I believe; so like what was said, how do you on the one hand supported a state listing and then on the other say you don't consider it should be federally listed?

MR. A.C. CARPENTER: Wasn't in one of the first slides there, there was the option of considering sub-populations, and I don't know how that would work, but is that something that the Delaware states could – we could work that in here? I don't know how that sub-population would impact the rest of us with the interaction items, because there is no way to tells us – you know, once you're at sea there is no way of telling where the thing came from.

MR. LAPOINTE: The difference between state listing and federal listing is a no-brainer for me. The state listing says we're concerned about the population and we think we can do some things to pay attention to those threats to the populations and that we are concerned about the burden provided that comes along with a federal listing. It is pretty much as easy as that for me.

MR. PATRICK AUGUSTINE: The question was whether it would be an Appendix 1 or Appendix 2 listing. Again, I agree with what George said. Let's compare that to horseshoe crabs. Some states have a moratorium and in others they do not. Maybe it is a little more simplistic example.

I think we should go, one, decide first of all whether we're going to do it as a letter from the commission supporting and stating that we do have a plan to protect and help that fish come back to a level of sustainable populations. Once we make that decision, then I think the next would be whether states want to go on record collectively to say that, yes, we would support a listing or, no, we would not support a listing. It seems like we have at least two decisions to make, and maybe vote this up or down so we can move on to the next decision. Thank you, Mr. Chairman.

MR. THOMAS McCLOY: I can't really say whether sturgeon is listed in New Jersey or not because I'm not sure; but if it is listed the ramifications of that listing are apparently a lot less significant than they would from the federal standpoint. We have no fisheries right now that I'm aware of that is impacted by a sturgeon listing in Delaware Bay or Delaware or New Jersey. That is something to keep in mind, I think.

CHAIRMAN BOYLES: Wilson, you can come up and give us some of your wisdom.

DR. WILSON LANEY: Mr. Chairman, I don't know about wisdom, but I've got some information I will share with the board. I served on the Atlantic Sturgeon Status Review Team in 1998 and also the 2006 team and also presently serving on the Shortnose Sturgeon Status Review Team.

A couple of points; one is it is true that during the last two cooperative winter tagging cruises in 2008 and 2009 we caught more Atlantic sturgeon during those two cruises than we had almost in the previous twenty years of the cruise. Now, was that a reflection of increasing numbers or was it a reflection of the

fact that we figured out how to fish for them. I think probably the answer is a combination of both.

We haven't done the catch-per-unit effort calculations yet so I can't tell you for sure how it compares in terms of CPUE with prior years. We did find a sturgeon hotspot off of North Carolina, and we did fish it heavily and we caught a whole whale of a lot more sturgeon. The other thing that we did was in collaboration with Delaware State University and Dr. Duane Fox and his grad student, Matt Brease, who also a Fish and Wildlife Service former employee, we put out 13 acoustic transmitters in Atlantic sturgeon last year.

Twelve of those fish have already been detected multiple times in different receive arrays up and down the coast from the Hudson and I think as far south as Cape Lookout; the point here being that the more we do those kinds of studies the more we learn about these animals and where they're coming from and where they're wintering and what they're doing during their spawning run. The second point is relative to shortnose sturgeon in the Chesapeake Bay; just a reminder the Fish and Wildlife Service did do a Sturgeon Reward Program in Chesapeake Bay. That was a joint collaborative effort of our Virginia Fishery Resources Office and our Maryland Fishery Resources Office.

That program was highly successful. We paid commercial fishermen to call in reports of live sturgeon captures, and we did document shortnose sturgeon in the Chesapeake Bay and subsequently have documented gravid female shortnose sturgeon in the Potomac River. The jury is kind of still out, but there is apparently some relic population there. It may be those fish are coming through from the Delaware, we don't know.

With regard to the proposed motion, personally I would be more comfortable I think with what Mr. Lapointe had proposed, which is something that leaves a little bit more flexibility in the commission's position. One thing I will suggest for you all to consider as a possible model is the Gulf sturgeon. The Gulf sturgeon is a listed species.

It is kind of unique in my experience in that it was listed jointly by both the Fish and Wildlife Service and the National Marine Fisheries Service, but the plan for it is not just a recovery plan. It is a joint recovery and management plan, and it was prepared by NMFS, the Fish and Wildlife Service, the Gulf States Marine Fisheries Commission and the Gulf of Mexico Fishery Management Council.

If you're looking for an opportunity to improve these survey results on federal/state cooperation, that might be one possible option that you could pursue. With regard to Section 10, Louis is right, it is a burdensome kind of thing. When you have a species that is listed and you're catching it as bycatch, as we are with Atlantic sturgeon in lots of different fisheries along the east coast, yes, if you list it, it is going to be an issue.

It already is an issue as identified by your own Atlantic Sturgeon Technical Committee. Just as a reminder, they produced a report in 2007 on the extent of Atlantic sturgeon bycatch in fisheries along the east coast, and it is a concern. I think the question there is, as Louis pointed out, you have some indices – and a parenthetical comment here is that for those states that do have data like that that can be informative to the National Marine Fisheries Service; the status report, the current one that they're reviewing was completed in 2007, so I note it has been three years since that report was completed and there may be additional data out there that don't have they would find very useful in making this decision.

I would encourage all of you, like Dr. Daniel, if you have got that data, to send it in. The question is, yes, there are some indications that the stock is recovering – the question that the technical committee tried to address is, is that level of bycatch hindering the possible recovery of the stock. I don't remember what their ultimate conclusion was in that report.

I would have to go back and remind myself, but that is something I think the board may wish to take a look at. The last point is that the status review team, the present status review team did do a risk analysis with regard to the probability of extinction of Atlantic sturgeon. Even with the ASMFC plan in place, given the present level of bycatch and other risk factors such as the fact that in the Delaware and in the James River we have a lot of ship strikes occurring, and these are strikes that are taking place with very large, in some cases, gravid female sturgeon on the spawning run.

So as Craig point out, when you're down to a very low population size, effective spawning population size or perhaps a hundred individuals in the Delaware, and you lose two, three, four or five big females a year, that is another factor that you have to plug into that extinction risk analysis. All of that sort of thing entered into the status review team's recommendation to list as threatened.

CHAIRMAN BOYLES: Thank you, Wilson. We have a motion. Would we like a roll call vote? Yes, a roll call. Do we need to caucus? One minute to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN BOYLES: Mr. Beal, will you call the roll.

MR. BEAL: Maine.

MAINE: Yes.

MR. BEAL: New Hampshire.

NEW HAMPSHIRE: Yes.

MR. BEAL: Massachusetts.

MASSACHUSETTS: Yes.

MR. BEAL: Rhode Island.

RHODE ISLAND: Abstain.

MR. BEAL: Connecticut.

CONNECTICUT: Abstain.

MR. BEAL: New York.

NEW YORK: Yes.

MR. BEAL: New Jersey.

NEW JERSEY: Yes.

MR. BEAL: Pennsylvania.

PENNSYLVANIA: No.

MR. BEAL: Delaware.

DELAWARE: No.

MR. BEAL: Maryland.

MARYLAND: Yes.

MR. BEAL: The District of Columbia is not present. Potomac River Fisheries Commission.

POTOMAC RIVER FISHERIES COMMISSION: Yes.

MR. BEAL: Virginia.

VIRGINIA: Yes.

MR. BEAL: North Carolina.

NORTH CAROLINA: Yes.

MR. BEAL: South Carolina.

SOUTH CAROLINA: Yes.

MR. BEAL: Georgia.

GEORGIA: Yes.

MR. BEAL: Florida.

FLORIDA: Yes.

MR. BEAL: U.S. Fish and Wildlife Service.

U.S. FISH AND WILDLIFE SERVICE: Abstain.

MR. BEAL: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE:
Abstain.

CHAIRMAN BOYLES: **The motion carries; 12 yes; 2 no and four abstentions.** Thank you, good discussion. Mr. Ward, are you ready for the CESS Report?

COMMITTEE ON ECONOMICS AND SOCIAL SCIENCES REPORT

DR. JOHN WARD: I'm John Ward; I'm from the National Marine Fisheries Service. The last time I was here it was to talk about the CESS recommendations for putting together a couple of reports at different levels that would answer the question of what is the value of striped bass and how has the management history helped to improve it.

As you may recall, we came up with two levels of funding. The first was to look at updating a past study that had been conducted by Jim Kirkley and others. That was going to cost between 60 and \$130,000. The second higher cost proposal was to look at a more comprehensive cumulative multidisciplinary plan, which would have cost between 300 and \$900,000.

As a result of that discussion I was asked to look at some alternative low-cost projects that might meet the same need to a lesser degree. In talking with the

staff from Atlantic States, four options presented themselves. The first one was to attempt to put together a dedicated multidisciplinary, scientific team that would do analyses that dealt with the issue of economics' evaluation and social cultural issues in much the same manner that the biologists put together stock assessment advice to the commission.

By doing this as a team you would be able to deal with economies of scale. You wouldn't have to have large independent data collection programs that repeated information that was already being collected. You wouldn't have to worry about putting disparate surveys together and analyzing the data together.

It generally turns out that if you do one of these large economic studies, you end up with 15 or 20 variables that you find out to be very important; and if you just include those 15 or 20 variables and your existing survey collection programs that the biologists are using, you end up coming up with a lot of information that saves a lot of time of money when it comes to answering these questions.

The second option dealt with just using a market supply-and-demand analysis. Although this says it is a zero cost, it still involves somebody's time and effort, just as the previous example did, but by zero cost I mean to the commission and not to the National Marine Fisheries Service or to the states.

The idea here would be that you just do a market assessment, focusing on the commercial sector, and you try to come up with a simple assessment of the conditions in the marketplace; and from that you can generate estimates of consumer surplus, which is one measure of net benefits and value of the fishery resource. Then you can also develop a supply analysis that will tell you the producer surplus, which is the second measure of net benefits. The two together will give you the total value of the striped fishery.

Just to show you that it is possible to do this, I went out and downloaded data off the internet. This is information you can get from the NMFS Website. Here it goes back to 1950. You can get at the state and species level. Obviously, striped bass exists. You have different types of gear that you can collect information from, and you also get metric tons, pounds and value from which you can get a price per pound over time.

Although this ends in 2007 for Virginia, I'm sure 2009 data is now available; or if it is not, it will be

shortly. From this you can develop a demand for striped bass. The bold line there indicates that the resulting estimated coefficient has a negative sign, which is what economic theory generally predicts for demand functions. It is highly significant.

From this we can estimate those measures of net benefits from consumer surplus. We can do the same thing for the supply function. The line in bold, again, indicates the quantity of supply, the price, and show if it is positively related; and also highly significant. This gives us the ability to look at producer surplus, which is the other half of the net benefit equation.

This approach also does one other thing for us that we can use. If we combine it back with economic theory – and I'm sure you have all seen this many times, but the backward-bending curve in that quadrant one on the upper right is the standard model that is derived when we look at surplus production models. The point here that is important is that each point of that supply curve has a link to stock size and pass that through the sustainable yield curve down in quadrant four and then quadrant three has the population equilibrium curve, so you have a unique value for a stock for each point on that curve.

Each point on that curve can be looked at in terms of a percent change over time. You can look at the percent change in quantity for a 1 percent change in price, and we call this the elasticity of supply. This percentage change is directly related to stock size. We know it is an indicator. If we were to do something like cause a shift from that gray line to the red line, this might be the result of a regulation that improved habitat, for example.

We increase the sustainable yield curve and we cause a shift in the supply curve, so it goes down into the right, so now there is more fish out there and it is now less costly to catch them. Because of that, we have a change in the elasticity of supply at a point where supply is equal to demand. Because we have that relationship for supply that we estimated earlier, we can estimate the annual elasticity, which is represented by the A, and at that zero point that is where you have maximum sustainable yield.

Any place that it is negative on that upper portion of the curve, you're beyond maximum sustainable yield. You have a negative percent change, harvest declines as price increases. On the lower portion of that curve you have a positive relationship with supply and you have a healthy stock that has not gone beyond the sustainable yield yet.

By plotting those points, and you see the zero line, you can tell whether you're above or below maximum sustainable yield due to all these different effects that might affect the fishery. You do notice that for some years you were beyond maximum sustainable yield, you were in an overfished or overfishing condition, but that pretty much ended by 1979.

If you were to look at a moving average of the supply elasticity, which are represented by the asterisks in that picture, you will see that as you move out from 1950 towards 2010 it is declining, but it doesn't really exceed maximum sustainable yield. Basically, since you guys have been around you have been doing an excellent job of maintaining the fishery and the fish stock according to this index.

Even though on a particular year you might go below or beyond maximum sustainable yield, on a long-term average for the program that is in place at the moment the expectation is that it will continue to be at or to the left of maximum sustainable yield in the fishery. However, we do have some problems with this approach.

In a perfect world – and by perfect I mean the perfectly competitive market model of economics – any influence that would occur in the fishery would be translated into shifts in that supply curve and would be reflected in the percent change that is estimated for a point. However, in the world we actually work in there are constraints, there are market failures and other externalities that exist; and the question becomes due to these imperfections in our market model, do we have a situation where changes at one point in a fishery are actually reflected in this commercial-based estimate of supply?

The one factor that is really missing that prevents us from answering question is what is the value of the recreational sector? Can we go out and can we measure the values in that market in a framework that lends itself to the management questions that you ask? That leads us to Option 3, and that is to a survey of the recreational valuation work not to find out if the methodologies are correct but to find out if the methodologies that exist at the moment lend themselves to the kind of decisions that you have to make. That was estimated at about \$50,000.

Now, these things don't necessarily have to stand alone. You can take the multidisciplinary team of option one, you could do the market supply-and-demand analysis of option two, and you could combine it with the recreational valuation review of

option three, or you could just one and two or one and three. You don't necessarily have to just choose one option over the other.

This brings us to option four. If we really want to look at it all patched together, some of the work that I've been doing with Howard Townsend and the Maryland Department of Natural Resources, we have been trying to look at an ecosystem simulation model, and we have been applying it to different fisheries around the country.

If we were to take that type of approach and bring together experts who are familiar with your fisheries and try to parameterize that model and go through a series of iterations until people felt comfortable with the results that were coming out of it, we could take this Delphi approach and use that as a way of valuing the model, but this would have costs in terms of travel and per diem expenses.

Again, if you were take all these four options and move them together, you would essentially have the first-level analysis for about \$62,500 that we talked about the first time that I was here. These kinds of approaches have been before. They're not unfamiliar to people. That graphic I showed you of the fishery that had a title of "Bycatch Model" on it, that came out of an assessment that we did of bycatch reduction devices in the Gulf of Mexico Shrimp Fishery.

I have taken that same model and looked at it in terms of hindcasting the effectiveness of management regulations and also using it to propose what the impacts or effects would be of future proposed management regulations. The one thing that came out of that for the shrimp fishery was that most of the problems in the shrimp fishery now are caused by things beyond the control of government regulators who deal with the fishery, the councils and the National Marine Fisheries Service.

Global trade policy, unrestricted imports and exports, fuel prices are the things that are really driving them, and that is really beyond the control of people who are in the industry now. These kinds of models can bring out the factors that are important, that you do have control over and the things that you have to live with that you have no control over and have to be dealt with at some other system.

Basically, you're looking at these four options, the multidisciplinary scientific team, doing the market and supply-and-demand analysis that we're working on back in my office at the moment, the recreational valuation review which perhaps is a rather important

project in terms of looking at the overall value of this resource, and then a comprehensive ecosystem simulation model that brings all the information together and provides additional data that you wouldn't normally be able to get a hold of. If there are any questions, I'll be happy to answer them.

CHAIRMAN BOYLES: John, thank you for that presentation. Dr. Kray.

DR. KRAY: In the recreational valuation review, I would hope that you would take into account what is happening in the economics of hotels, bait and tackle shops which were not – and I'm just talking about where I fish in Cape May. During the moratorium those things shut down right after Labor Day because there weren't just enough to fish for. Now because of the striped bass, they are staying open until December, some even into January, early January, so that has to have an impact on the economic evaluation of the recreational fishery in striped bass.

DR. WARD: I agree. Fortunately, a lot of work has been done on economic impact multipliers in this area, and those would be applied to the valuation estimates that came out of this type of approach. Hopefully, as we go through the economic valuation review, whoever gets hired to do that, a methodology will be proposed that will allow the valuation estimates to be linked to the multiplier effects, but it will take a very carefully worded statement of work to make sure that kind of work can be done.

MR. DIODATI: We haven't agreed to do any of this work yet, so I think this is just a report back. My question would be in order to get this type of work done for these projected costs, who would actually conduct the work, who are we talking about? Is it a contractor; how would that get done?

DR. WARD: Well, for option one you would have to go to the state and federal agencies that you normally deal with for your population dynamic assessment work and convince them to dedicate some additional people, economists and other social scientists, to address the problems that you're dealing with.

The market supply-and-demand analysis is actually part of a project that Chris Moore has assigned to me and has to be done by the end of the year. Some of the results you saw today are from an early statistical analysis based on that as a proof-of-concept approach. The recreational valuation review would cost you money. In talking to people to do this kind of review and recommend a methodological approach would run you about \$50,000.

I believe that is about a tenth of your discretionary funds. I think it is an extremely important review to do, and I think the outcome of it would be that there is existing data and studies out there through MRFSS and through the MRIP Program that would lend itself to this kind of analysis.

The reason I think it is so important and why those terms “allocation strategies” are there is because it would allow you to look at the change in benefits and impacts by shifting different allocations between commercial and recreational sectors and different state scenarios. It would give you the opportunity to identify your goals and objectives.

For example, if it is employment, well, what steps would you have to take to maximum that employment; whether it is in the hotel industry or in the commercial fisheries? What steps would you have to take to maximize economic impacts if it is expenditures for hotels, motels, bait and tackle shops, headboat, party/charterboats or commercial fisheries, et cetera? Option four, the ecosystem simulation model of \$12,500 would cost you money out of your budget, but it would be mostly in per diem and travel expenses to bring together the relevant experts to work on parameterizing this model and making sure that it was producing results that were believable and useful.

MR. FOTE: I’m just trying to picture how you basically are getting the information to do a statistical economic review of the striped bass fishery using MRFSS when we know of the flaws that we have with MRFSS. Southwick has done some of these studies on the recreational value of striped bass. Again, the information you use is so flawed.

I mean we really don’t have detailed statistics. Since New Jersey a long time ago when Dr. Brown retired and didn’t hire a replacement, there is nobody in New Jersey collecting that type of information, so you’re really doing your search on data that is so questionable that we question it all the time. How accurate is the study?

Now, Southwick did it on a particular area, where there was a state or two, and again they mined data that we called suspect. I mean, until we get better data – and that is one of the disappointing things – I had talked to Vince earlier today – they tripled the budget on doing catch shares in NMFS’ proposed budget and yet when it comes to doing marine recreational statistics we’re still up where we are in the dark ages as far as money goes.

I didn’t see a tripling of that money and yet you’re basing the catch shares on the data that is supposed to be good data. Well, this is the same coin. If we’re going to do this we have to have the proper data to mine to basically get that information, and we don’t have that data. That is the problem with bringing forth any of these economic studies.

I was talking about fishery management plans and somebody pointed out the fact that in every fishery management plan we start off with the commercial statistics in that plan because we have a grasp on the dollars and cents; and when we come down to the recreational side, there is no data available, so that is the best data available, so we can do that because we don’t have the science. That has been the standard excuse in almost every fishery management plan.

So, yes, I applaud, we need the information, but until we get a good data base to get that information, if we get MRIP kicked in and maybe spend it – instead spending \$33 million on catch shares, we spend some of that money – on the Catch Share Program, we start spending it on marine recreational statistics and start looking at what we’re basically doing, we don’t have a data base to mine in my estimation.

DR. WARD: Well, I don’t disagree with the problems that you bring forward. They have existed for a long time. NMFS I know is trying to make adjustments to that program. The intent of option three here is to do a review of the valuation and survey results with respect to the fishery management decisions you have to make.

The end result of that may be that there is nothing there of use to you, and that we have spent a lot of money on things that are interesting but don’t lend themselves to answering fishery management questions, especially for striped bass. In that case the outcome of that survey would be suggesting a methodology that would be workable in this management environment.

I believe that methodology should be the starting place for any new data collection protocol. Without a methodology that lends itself to answer questions that you ask, the data itself is always going to be suspect and questionable. I’m hoping and I believe that by mining the data and doing it in a transparent fashion, such a methodology can be developed and applied. I really stress that this kind of valuation review be done an independent, unbiased, objective scientist or a group of scientists who can look at this data without any vested interest and come back with a

straightforward strategy of how best to deal with the problems you face.

MR. DOUGLAS GROUT: The recreational valuation review, as I understand the way it was written, you just wouldn't apply the striped bass, it would be something that would be multispecies and could be used for many species within the commission; is that correct?

DR. WARD: I think the valuation review would be most useful if it took a multispecies approach because there may be methodologies that have been applied elsewhere that would apply here and solve some of the problems that have been pointed out. I think that should be a multispecies approach.

I also think that it would be most useful for answering the kinds of questions that you have to deal with, to look across the species that are under your management purview and allow you to address all of them rather than just focus on one species and then have to repeat this over and over again for the others.

CHAIRMAN BOYLES: Any other questions? We have got a report from CES and we have got four options; do we want to move forward, question one? If so, under what option, question two? What is the board's pleasure? And if we've got very little money with which to do it; what is the board's pleasure? Doug.

MR. GROUT: Well, I sort of took this as we have the report; now I would like to see where this fits within our budget at this particular time. It may be something we may or may not be able to move forward with this year but might be something we could move forward with as we plan for next year.

MR. BEAL: Obviously, it can be considered as one of the priorities for next year that will lead into next year's action planning and budgeting. Depending on what the budget looks like and what other issues come up in the next 11 months, the commission obviously could weave one of these into next year's action plan. It is up to the folks and what the rest of this year brings, I suppose.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: I know all of these money issues that have come up so far this week and that continue to come up, embedded in them is the commission's willingness to accept assistance or funding from other than traditional sources, so I think that may be tied into this, that there is another group or another

organization that would be willing to help with that, whether or not the commission is interested in accepting that type of assistance.

MR. CARPENTER: I think we all recognize the importance of this kind of information, but I think my take-home message from the report today was that if we're going to spend it we ought to do it on a multispecies group rather than a single species. It sounded to me like you could get a bigger bang for your buck, whatever that buck is that you're going to be spending.

CHAIRMAN BOYLES: I think that's where we are; I think we could look to roll this into next year as we consider an action plan for year. Is that what I'm sensing? Tom.

MR. FOTE: I think it should be part of the new program, MRIP, and how we look at collecting data and basically guide the parameters, so we can start mining that data in an efficient manner and basically get at the data. My concern right now is we're going to spend the money and we'll maybe get a framework, but until we get the information that we can actually trust and respect, we're going to spend a money a lot doing something that is not going to be able to be useful information, because there would be so many questions on whether on it is and so many people ripping it apart.

I feel confident that we could basically do a survey where people will say, yes, we have the information. I mean, if we tell people that we're basing it on MRFSS, right away all we have to do is mention that, and there is no credibility there. Before we start spending money, we need to be able to trust in what we can mine to get that information. That is the way I look at it. I've been calling for this information for thirty years so I'm really supporting it, but I don't waste our money until we're ready to do it.

CHAIRMAN BOYLES: I think we've given the staff the sense of what we're looking at with rolling this into next year, understanding we're always interested in MRIP improvements as well, Tom. George.

MR. LAPOINTE: Just following up on Vince's last question about outside funding, I haven't met too many dollars that I don't like if there are not strings attached to them. I think we should look at that and if there is funding available to say do the right thing and let the commission run it, that's fine. That's hard money to find, but if it comes with strings or from a group that is going to be perceived as really biased up

front somehow, we just need to be cautious about that.

CHAIRMAN BOYLES: Right, agreed, I think staff has heard that loud and clear. Okay, we've got a way forward. Dr. Ward, thank you for the presentation, by the way. Thank you for the work; stand by. Okay, the next item on the agenda is Dr. Laney, Habitat Committee Report.

HABITAT COMMITTEE REPORT

DR. LANEY: The Habitat Committee is coming before you to ask for your approval of the final draft of the Living Shorelines Document. That document is on your Briefing CD. For those who haven't had a chance to look at it, it is another in the habitat management series of documents that the commission has produced.

It has within it a brief overview of traditional erosion control measures such as bulkheads, jetties and beach nourishment. It also briefly reviews the different types of living shoreline options such as salt marsh and mangrove. It has case studies in there of living shorelines regulations and restoration programs in Maryland, which I think is one of the leading states in that regard.

It has recommendations on establishing living shorelines, a bibliography of living shorelines literature, a glossary of living shorelines related terms and suggestions for erosion control projects. If anybody has any questions, I'll be happy to attempt to answer them, but what we're seeking from you is approval for that document to go final. Then I have one other brief item, Mr. Chairman.

CHAIRMAN BOYLES: Okay, we would need a motion. Pat, are you prepared for a motion?

MR. AUGUSTINE: I am, Mr. Chairman. I read the document. It is excellent work and the group is to be commended for having put this document together. Mr. Chairman, **I move approval of the Living Shorelines Habitat Source Document as presented by Dr. Laney.**

CHAIRMAN BOYLES: There is a motion by Mr. Augustine; Representative Abbott seconds. Any discussion? Seeing none, is there any opposition to the motion? **Seeing none, that motion carries.** Wilson, thank you and the Habitat Committee for that great work.

DR. LANEY: You're welcome, Mr. Chairman. I would be remiss I did not point out to the policy board that this is Habitat Coordinator Jessie Thomas' last meeting with us. She is going to be leaving us to go to American Rivers. I just wanted to express my personal and professional appreciation to her for the tremendous job she has done.

I credit her with harassing me to the extent that I did finally finish the striped bass chapter in the Diadromous Source Document. If it wasn't for her constant harassment and encouragement, it wouldn't have gotten done. Also, she has tremendous editorial skills. The fact that this living shorelines document is complete is due largely to her persistence and her skill in editorial matters. I just really want to say my thanks to her and appreciation for her service here at the commission. (Applause)

CHAIRMAN BOYLES: Wilson, thank you for that. Jessie, again thank you and we salute you for your great work and wish you well. Bill Goldsborough, did you have something?

MR. WILLIAM GOLDSBOROUGH: I just wanted to second that notion given that I've spent a fair amount of time on the Habitat Committee and concluded ten years as chairman a couple of years ago. Thankfully, we have terms now. The last year or so of that experience was Jessie's first year as coordinator.

I think we all know from what we've seen of the committee's work in the last couple of years that it has really come into its own. Now one might conclude that maybe when they got a new chairman that was bound to happen, but I will tell you all that the single most important motivator or reason for that happening was Jessie Thomas as staff. She just did a wonderful job in making that committee as productive as it possibly could be. Thank you.

CHAIRMAN BOYLES: Thanks, Bill. Next we will go straight to Pat Campfield to talk to us about black drum data sources.

DISCUSSION ON BLACK DRUM ASSESSMENT DATA SOURCES

MR. PATRICK A. CAMPFIELD: I'm going to give a quick overview of a request that follows from a policy board meeting at the annual meeting. The board had tasked staff with exploring black drum data availability towards possible development of a stock assessment and possible coast-wide fishery management plan.

This stems from concerns that have been raised because the status of the coast-wide stock is unknown and the black drum population may be vulnerable to both recruitment and gross overfishing largely because the existing fishery target young fish but also very large older spawners.

The commission staff was tasked with contacting state biologists and identifying available fishery-dependent and independent data sources for black drum along the coast. This will be a quick summary of data available from New Jersey through Florida. It's a quick overview for those of you aren't terribly familiar with black drum life history.

The range extends from nearshore Western Atlantic, from the Gulf of Maine to Florida, into the Gulf of Mexico and as far south as Argentina. Atlantic coast black drum have an age-specific migration northward and inshore in the spring and southward and offshore in the fall. They're bottom feeders. They're largest member of the sciaenid family; and similar to red drum, live up to over 60 years of age and can reach over 120 pounds.

Their maturity varies geographically, but in general black drum females mature at four to six years and males mature a little earlier, three to four years. In terms of fishery-dependent data, this is a look at the percentage of recreational harvest along the coast, relying on the MRFSS data set. The Florida and North Carolina fisheries comprise the majority of black drum harvest; in combination about 75 percent of the total recreational harvest with another 20 percent of recreational harvest coming from South Carolina and Georgia.

The harvest has increased along the Atlantic coast in the last decade. Within your meeting materials there are more details about state-by-state harvest, Figure 2 in that report on black drum. The quick story is that Delaware and New Jersey have experienced apparent increases with the majority of the recent coast-wide increase in harvest attributed to North Carolina. There were also increased harvests in South Carolina until recent restrictions were enacted.

The next slide goes into the proportional standard error, the uncertainty in MRFSS estimates. In general they are lower in the south and the recreational information is less reliable in the Mid-Atlantic states. Another concern with the MRFSS estimates is that the biosampling, the weight and length data for black drum in some regions is conducted – the fishing occurs in the evenings and late at night and MRFSS doesn't necessarily sample

adequately during these times of days, especially with the dockside intercept sampling, and so the MRFSS information may not be terribly representative of the black drum population.

In addition to MRFSS there are a handful of other recreational survey programs from Maryland through Georgia. On the commercial side, coast-wide landings of black drum here are reported by NMFS and averaged about 370,000 pounds early on in the time series, in the fifties and sixties. Then the commercial landings declined to an average about 200,000 pounds in the seventies and eighties.

However, since 1990 landings have slowly increased to an average about 250,000 pounds. For comparison with the recreational removals, commercial landings are within the range of the MRFSS harvest with recreational harvest between about 200 and 1.5 million pounds. In recent years the commercial landings are roughly a quarter of the recreational landings.

Since 2000 the majority of black drum harvested coastwide are landing in North Carolina and Virginia. A smaller portion of coast-wide black drum harvest is landed in New Jersey, Florida, Delaware and Maryland. New York, Rhode Island and Maine have historically reported small amounts of black drum landings. The trends in commercial landings vary by state. However, there are substantial increases in the commercial landings since 2000 in North Carolina and Delaware.

There are a handful of other, aside from the NMFS information, additional state sources of the fishery-dependent data, mostly in Maryland, Virginia, North Carolina and Florida. There are also a couple of tagging programs in Virginia and South Carolina. Moving on to availability of fishery-independent data, there are a number of state surveys that encounter black drum, but they catch mostly smaller fish.

A couple of exceptions are the New Jersey Trawl Survey in the Delaware Bay and also North Carolina's independent gill net survey. Maryland and South Carolina also have fishery-independent tagging programs that may contain some valuable information towards monitoring trends or maybe conducting a stock assessment.

Other sources include the Virginia Institute of Marine Science's Juvenile Trawl Survey and SEAMAP. Those don't look terribly promising. They catch a handful of black drum, but it is unlikely that it is

enough and sufficient number of samples to really characterize black drum on that part of the coast.

However, NEAMAP and ChesMMAP, which I think everyone is familiar with, the surveys in the Mid-Atlantic and the Chesapeake Region looks more promising, but there would need to be some further evaluation to look at the patchiness of the tows where they do encounter black drum primarily to see if large animals are caught in a handful of tows versus over a number of different tows, which would provide a better index of abundance.

These are just a couple of length frequency distributions for the NEAMAP Survey, which is the plot on the left; and the ChesMMAP Survey plot on the right. Essentially they show that most of the trawl survey catches consist of small drum, and those catches occur in the fall. If larger black drum are caught, they tend to occur in the spring surveys.

To wrap up, the potential exists to overfish the black drum stock due to pressure again on the vulnerable age classes, both the young and mature fish and the large spawners. The available data appear to be sufficient to monitor black drum harvest and possibly evaluate trends in recruitment.

However, the development of a formal stock assessment will be challenged by a few data deficiencies; first of all, the lack of information describing mature black drum. Most the data sources that I described characterize the immature portion of the population, usually fish four years or younger. A second deficiency is that the life history information, growth, maturity and natural mortality is limited in geographic scope along the coast.

And, finally, black drum are not targeted by most of these fishery-independent surveys and are rarely caught in each of the surveys. There doesn't seem to be a clear, single trawl survey or index that might be the best indicator of black drum trends in abundance. Finally, staff, after digging through the data and working with our state biologists, recommends possibly pulling together a data workshop to have not just the staff look at this but to have other state sciaenid experts and stock assessment biologists weigh in and provide their input towards evaluating the data quality and determining the feasibility of a stock assessment for black drum.

CHAIRMAN BOYLES: Pat, thank you for that. Questions for Pat? What is next? Louis, I'm looking at you; I seem to recall this was an item that was near and dear to your heart.

DR. DANIEL: It is. I know we're seeing a lot of harvest, all juvenile fish. It is an interesting fish because you really don't see those right at mature fish in many places. We see them when they're half a pound and we see them when they're fifty pounds. Up into the Chesapeake Bay recruitment is very episodic, but you do see it. The fish will come out of the Bay and I think they're intercepted once they leave the Bay at about nine months old.

They mature at four; they live to be seventy; and we're hammering them before they're even a year old. It just seems to me as important as that fish is and becoming more and more so that it would behoove us to do something on these fish. If we could just curtail some of the harvest of juveniles, I think we could see a pretty cool fishery. If we protected these fish long enough to where they could just get to two, you know, they're a four or five or six-pound fish.

It is a quality fish for both commercial and recreational. I would support and I will do anything I can to help – I've got a little background with black drum – and try to do what I can do to help and provide staff. Certainly, if the next step is a data workshop, **then I would move that we convene a data workshop for black drum.**

CHAIRMAN BOYLES: Is that a motion then I hear from you? A motion by Dr. Daniel to convene a data workshop for black drum; second by Jack Travelstead. Any discussion? George.

MR. LAPOINTE: Is this part of our annual work plan? I'm thinking about going back to our budgetary discussions.

MR. BEAL: There is a discussion of black drum and continuing to look into the feasibility of an assessment and those sorts of things, but there are no financial resources set aside in the budget this year to do it. Pat can probably comment better than I can, but there may be some steps that we can take such as conference calls and those sorts of things and web calls and e-mails to get things started, anyway.

MR. CAMPFIELD: Yes, that is the track that we would head down. We're fairly limited in terms of both staff resources and presumably state scientist resources. Everybody's time is limited these days. We could explore a potential data workshop over a conference call and try to communicate and hash this out over e-mail as well.

EXECUTIVE DIRECTOR O'SHEA: I think the resource commitment here up front, quite frankly, is a commitment of the states to make their folks available to participate on that. If there is the interest to do that, I think it is worth us trying on the cheap, without any travel, overnight stay and any of that stuff, to try to pull that group together. I think it is a question to look within to answer the question.

CHAIRMAN BOYLES: Good point, Vince. Louis, I was just contemplating, and it may be too premature to even think this, but is this something that should a data workshop suggest that, yes, we need a management plan, an commission management plan? It may be too quick to think about this, but under what management board's authority. Is this something that the South Atlantic does? Is this something maybe is more coastwide in scope? It is something that I think we just need to keep in the back of our mind.

DR. DANIEL: Well, my vision would be that it would be a stand-alone board because there is a lot of interest up into the Mid-Atlantic. It would be my suggestion to you as the chair, I certainly hope the result will be coming back – when 95 percent of the harvest is juvenile fish that they will come back and indicate that we probably need to develop a plan.

I would caution you that it is very unlikely that we would be able to do a stock assessment on these things, so it is going to be based on indexes. It is going to have to be based on landings' information. We might just have to do some precautionary management in the absence of some data when we know that we're harvesting these fish at such young ages.

I know some states already have like a 16-inch size limit. That is better than nothing, which is what we've got and what a lot of the states have. That would be my suggestion, but don't expect a stock assessment because we just don't have the age data or any – we might have length data, but I doubt it. There is such a saddle-shaped distribution in the size distribution of these animals that you've got a real missing link of about 25 year classes. Where in the world they are or where they go is anybody's guess.

MR. ROY MILLER: I think that Dr. Daniel's motion is kind of a no-regrets motion for us in this regard particularly if a data workshop can be conducted relatively cheaply, using electronic media and so on. As to whether we should proceed looking down the road and looking at the limitations of conducting a

stock assessment for this particular species, I don't think that should deter us at this point in time.

We've gone down this road before for other species knowing full well that we didn't have the data for a full stock assessment; i.e. horseshoe crabs, American eel and others, and that didn't deter us at least from making management considerations. There may be some, as Dr. Daniel pointed, some minimal moves we can make in the interim from a conservation standpoint as a proactive measure if in fact recreational effort is increasing or something of that nature that would be beneficial for this resource. Thank you.

CHAIRMAN BOYLES: Thanks, Roy. Any other comments? We've got a motion; move to convene a data workshop for black drum – motion by Dr. Daniel; second by Mr. Travelstead – with the understanding this is really, as much as anything, asking for the states' commitment to free up personnel resources to be available for such a data workshop. Is there any opposition to the motion? **Seeing none, that motion carries.** Next we will go on to Bob and discuss the Omnibus Amendment to Implement Mid-Atlantic ACLs and AMs.

DISCUSSION OF OMNIBUS AMENDMENT TO IMPLEMENT MID-ATLANTIC ACLS AND AMS

MR. BEAL: As everyone knows, the Mid-Atlantic Council and New England Council and the South Atlantic Council are all grappling with the ACLs and AMs and getting those implemented into the FMPs. The Mid-Atlantic Council is currently working on an Omnibus Amendment that is going adjust ACLs and AMs across all the species that are managed by the Mid-Atlantic Council.

A number of the plans that the Mid-Atlantic Council has, obviously, ASMFC has joint plans or a complementary plan for spiny dogfish. There are also complementary plans for herring, winter flounder and Spanish mackerel with the other councils. The question I think before the policy board is how will the commission move forward with addressing the federal action that they're obligated to take under the Magnuson Act.

Should the boards individually consider amendments or does the commission want to start one omnibus amendment across all the species that may be changed by activities at the council level? This is the schematic of the new overfishing level and allowable

biological catch, annual catch limits and targets. I think obviously everyone around the table has seen this a number of times so I won't go into the details.

These are the types of things that are going to be incorporated into the ACL and AM amendments that the councils are all grappling with. The FMAT for the Mid-Atlantic Fishery Management Council – the Fishery Management Action Team I think is what that stands for – they're developing the option for the Omnibus Amendment at the Mid-Atlantic Council.

They're also developing a risk policy that is going to be adopted by the Mid-Atlantic Council that may impact or will impact how the SSCs operate and therefore indirectly impact how the scientific advice comes to ASMFC through the joint management process. Again, the FMAT is developing ACLs and AMs for each of the species handled by the Mid-Atlantic Council.

The risk policy is going to be part of the ABC Control Rule. The Mid-Atlantic Council is going to meet next week and discuss the details of the risk policy. The risk policy is going to have a range of options from the simplistic, which is constant probability of overfishing, to some more complex functions that will have to be interpreted by the SSCs as they do their work.

In the absence of this council policy, the SSC will have to determine the level of risk on applying control rules in setting the ABC. With the Mid-Atlantic Council moving forward, the idea is that the risk level and acceptable risk level will be set by the council and applied by the SSC rather than the SSC developing or interpreting risk differently through different stock assessments.

One thing that the Mid-Atlantic Council is also working on is dividing stock assessments into different tiers, so very complex advanced stock assessments that give fairly robust information may be a Tier 1, and that will cascade down to a Tier 4, which will be a very basic, maybe index-based stock assessment or just catch rate basis or something pretty simplistic.

Those different levels of stock assessments, the more advanced they are, the better those stock assessments are to evaluate risk and describe the risk associated with the different harvest levels; and obviously the inverse of that is true in that the less advanced the stock assessment the less ability that assessment has to describe risk.

Annual catch limits are being developed relative to the stock. The level of management of uncertainty and implementation error is also going to be incorporated. The uncertainty can occur for a number of reasons, lack of sufficient information about catch and other poor reporting or some other problem with the information on the catch or the lack of management precision in many fisheries.

This has been discussed for some of the recreational fisheries and the tendency for those harvests to have a lot of variability from year to year. Annual catch limits at the Mid-Atlantic Council are being considered at the fishery level, sector level and/or sub-sector level, so there are a lot of different catch limits that can be set. It doesn't have to be across the entire fishery; it can be subdivided into portions of the fishery.

The ACL cannot exceed the ABC or the sum of all the sectors or sub-sector ACLs. The ACL may be specified annually or in multi-year process. A number of the Mid-Atlantic Council species right now have the latitude, and the ASMFC does as well, to set multi-year specifications, and this will be incorporated into the process as well.

Accountability measures are enacted when ACLs are exceeded. Accountability measures may be established on segments of the fishery rather than the entire fishery; so if an ACL is set up for just the commercial fishery, an AM may be set up for just the commercial fishery as well or even a subset of the commercial fishery.

Accountability measures are already utilized in many of the FMPs that the commission has. We have a lot of repayment provisions that if you go over a pound – if a state goes over one pound of summer flounder in a state allocation, that state has one pound less available for the next year. Two types of ACLs are being considered, proactive and reactive.

Proactive is preventing an ACL from being exceeded and reactive is obviously responding after an ACL happens. Reactive is designed to mitigate overages and/or prevent it from occurring again. Accountability measure triggers can be based on one year; in other words, comparing the landings of this year with the quota for this year or it can be compared to a number of years to smooth out annual variability. Then again the recreational fishery comes up as an example of this.

This schematic, and I won't go into great detail because it is pretty complicated, is essentially the

flow chart of how ACLs and AMs will be implemented and used at the Mid-Atlantic Council. This general flow is what summer flounder, scup and black sea bass would look like. One of the important things to recognize is that the Mid-Atlantic Council is considering recreational discards as counting against the annual catch limit for some species, and that is a pretty big difference in the way they will be doing business. The commission hasn't considered that in the past.

The Mid-Atlantic Council's timeline would be April they're going to approve the document hopefully for public comment; May and June public comment. In August the council will have a vote on this and submit the final package to the National Marine Fisheries Service for approval, with the final rule about a year from now.

The next steps, as I mentioned for the policy board, are should ASMFC initiate an Omnibus Amendment or should the individual species boards handle the ACLs and AMs and react to what the councils are doing at the species level? The third bullet on the screen is what should the ASMFC do with respect to a risk policy; should there be a comprehensive risk policy; should it be done on an individual species basis; and how does the commission want to move forward on these issues?

At the Summer Flounder, Scup and Black Sea Bass Board earlier this week essentially this agenda item was pushed off to the policy board because this was already scheduled at the policy board. If the policy board feels that the individual species boards should move forward with ACLs and AMs rather than an omnibus amendment, I think it may be appropriate for this board to ask staff to go back and draft a public information document for summer flounder, scup and black sea bass so that at the May meeting of the commission we can start down this road for summer flounder, scup and black sea bass, anyway. That is a real quick overview, Robert, and I can answer any questions if you have any.

CHAIRMAN BOYLES: Questions for Bob? George.

MR. LAPOINTE: It strikes me that given the difficulty we've had with joint plans, this issue could take a how satisfied are you with the commission's appropriate level of cooperation with federal partners from a 2.71 to 0.0 one. It strikes me that with the Mid-Atlantic Council moving on an omnibus amendment, the dilemma we're in – and it is a distasteful dilemma – is if we don't get pretty much

in lockstep with what they're doing or become more conservative, we will end up in the situation where we not only argue about our quotas and whatnot, but we'll then be arguing about our accountability measures versus them.

I think we really need to think hard about this. Although it might make us feel better to do things that are different than the council, it could put us in further conflict that would, again, be distasteful and would end up I think with our federal partners saying, well, this is what we're going to do for fishermen in federal waters, and it would create a further disconnect between the state-managed fisheries for these species and the federally managed species.

MR. SIMPSON: Thanks, George, for leading me right into my question, which is what reach does the Magnuson Act have into state waters, into non-federally permitted vessels? In other words, do ACLs and AMs apply to state-water fisheries, commercial or recreational? I know this came up a bit in discussions with groundfish and how do you manage something like winter flounder was the specific example.

The tact they were taking when I left off on that council was that the New England Council would simply subtract off the anticipated recreational harvest or state waters' harvest and allocate out what was left, if you understand where I'm going.

MR. BEAL: Well, the Magnuson Act does not obligate the commission to implement ACLs and AMs, obviously. I think the councils are going to have to account for state landings. Once they set an acceptable biological catch, if they set that at a hundred pounds and the state harvest is anticipated to be 30 pounds, they've only got 70 pounds to deal with in federal waters or left over to allocated to their fishermen.

I think we get into that potential disconnect that we talked about I think with black sea bass and scup earlier, this meeting where the federal quotas are lower than ASMFC quotas and the interplay between allocation and federal permit holders and the issues associated with that. There is no direct impact, but I think the reality is that the federal process at the council level and the National Marine Fisheries Service is going to have to react the state-level harvest.

MR. SIMPSON: So in one sense this could very much put us in the driver's seat. It very much could because they cannot impose an annual catch limit in

state waters or on state fisheries; so that if individual states or collectively through the commission we chose to maintain a certain minimum level of opportunity in state waters, we could do that and the councils couldn't do anything about it, frankly, to speak very plainly. I do wonder about summer flounder where the federal plan does allocate a share to each state or commercial quota, anyway, and whether because of that the state could be held to the federal standard of complying with the ACLs. I wonder if Chris could help us with that.

MR. CHRIS MOORE: In response to Dave's question, I haven't been directly involved in a lot of these discussions, and certainly I haven't been involved with the Mid-Atlantic Council for 3-1/2 years. I do remember similar discussions a number of years ago in terms of how federal plans could affect state-water fisheries.

Remember that if you're a federal permit holder and there is a closure in federal waters, then you can't fish, period. There is an impact right there in terms of state-water fisheries. Certainly, in terms of the discussion today – and, again, I wasn't here earlier this week for the discussion regarding summer flounder, scup and black sea bass – it is going to make it a lot easier if in fact the states, through the commission, and the federal government agree as to how these ACLs and AMs are going to work for that particular fishery, without a doubt.

We've got experience over more than ten years where we've experienced situations where the federal government and the states did not agree and it caused considerable problems that we had to work out in forums like this one. Again, hopefully that answers part of your question, Dave. If there is other follow up, certainly I can follow up.

MR. FOTE: I guess I have just an opposite – looking at what has happened in black sea bass has really brought it to the point where as a commission if we were allowed to vote on the motion to basically send it back to the SSC on black sea bass and had done it at the October meeting, we wouldn't have the specifications set on the wrong quota and we wouldn't be in the position we are right now waiting for the National Marine Fisheries Service to make up their mind whether they're move forward with the new specifications or not.

I'm very concerned over this. I look at winter flounder and you said, well, we have to take the recreational off – I remember the figures – and I might be off by a little percentage here, but the whole

inshore catch on winter flounder and the states we looked at was less than 4 percent. It was minute compared to what was going on yet we were being driven by the Mid-Atlantic when we had been in a joint plan and we could have basically shut it down as we have historically done on the inshore fishery, especially the bays and the estuaries, because of the way NMFS looks at it.

I would be very careful to give up control because when size limits are imposed in federal waters and sometimes the inshore waters – I made this comment over 30 years, that we have eliminated all the bays and estuaries from a whole bunch of species, including the Chesapeake Bay. If we have to go to the same size limit as the coast when it comes to summer flounder, they don't get any keepers; the same way in Barnegat Bay and a lot of the other bays and estuaries up along the coast; the same way with porgies and a bunch of those species.

We were talking before about not being a quasi-federal agency – well, this is a prime example. We have our system that we do. The only four plans that I know of that are really joint plans are bluefish, summer flounder, scup and sea bass. The other plans like with the New England Council, whether it is ocean herring and that, are not joint plans. We basically go our separate directions. We try to respect each other; we try to work with each other. When we basically decide that it is not in the best interest of the state waters, we do that, we fight hard to do that.

What I see with the new system is we basically have been shut out. I wonder why I attend the joint summer flounder meetings when half the time I don't even get a chance to vote as a commissioner because what happens with the council is basically they vote one way and then we don't get a vote because the motion is dead.

I have to look at this very seriously and really go – I'm not ready to basically sign on to an omnibus amendment that will mirror with the National Marine Fisheries Service. I think there is no consistency right now between one SSC and another one. I'm not the only one thinking about that.

I was just over on the Hill today and a lot of the congressional staffers are looking at the same thing I'm looking at and seeing why is one SSC giving three choices and seems to be more liberal than another SSC going in the other direction. There is no consistency around the coast. Until we start getting

this fleshed out – until they get it fleshed out, I'm not ready to sign on board to anything they're doing.

MR. DIODATI: Well, I didn't hear Bob's presentation at the end suggest that we have to sign on to doing this one way or another. What I heard was do we want to move forward with developing an amendment for either a single species amendment or an omnibus amendment to address how the commission will handle these various AMs, I guess you could call them that.

I honestly am not prepared to move forward in doing an amendment yet. I think this is something that deserves a lot of thought. I would even like to give you some written comments on how I think we should move forward. I'm wondering is there a time – does anyone feel that there is a time constraint that we have to do something in the next several months or is that an issue?

MR. BEAL: There is no statutory requirement, but the Mid-Atlantic Council is moving forward and they hope to have their plan implemented by essentially a year from now. If the commission wants to stay in lockstep with the Mid-Atlantic Council and be able to implement the same measures and react the same way to overages and those types of things, then an amendment would need to be initiated essentially at this meeting so we could do the public information document hearings, draft amendment hearings and final decision to stay on about the same timeline as the Mid-Atlantic Council. That is where the timeline comes from.

MR. AUGUSTINE: It seems as though because we have four joint plans, those are ones that I believe that the commission should be in lockstep with or work closely with or argue against what the Mid-Atlantic is doing. They're going to happen whether you like it or not; so if we want to put our heads in the sand and then have to play catch-up football next year, I guess we can do that.

AMs and ACLs are a reality; they're going to happen; and the Mid-Atlantic is going to drive those four joint plans. That's it; the end of the story. As for developing their overall omnibus plan to cover the other species, quite frankly I think it is unnecessary because they're state-fishery driven. But, remember, as long as the federal government has a responsibility for making sure that these stocks are not overfished and overfishing isn't occurring, and they have any control over any sector – in this case our commercial fishermen who have joint permits –

whatever we do here that is out of step is going to have a negative effect upon them.

I think as board members representing our states, we have got to take that into consideration as to what the economic impact would be on those folks. I guess my suggestion would be that we at least be in touch with and, work closely with the Mid-Atlantic. I know our chairman is very open to looking for help in offering assistance and I'm sure would welcome the board's representation as ACLs and AMs are being developed in the process. That might be a first step.

I agree with Paul, is it time to start the development of an amendment; I am not sure it is, but I do think a year from now we better be ready to accept whatever comes forward from the Mid-Atlantic on those four species of fish. If we don't have them, we're going to get them. Thank you.

MR. BEAL: I think this is kind of a continuum from do nothing to do a full omnibus amendment for every species that the commission works on with the council. One interim step or middle-of-the-road step may be to develop an addendum just for summer flounder, scup, black sea bass and bluefish, the strictly joint plans, and implement maybe some portions of what the Mid-Atlantic Council does.

I think if the commission is moving forward on an addendum, at the August meeting the Mid-Atlantic Council – August of this summer – the Mid-Atlantic Council is going to make their final decisions on what to forward to the National Marine Fisheries Service. I think the commission and the states should be active participants in that process in August at the joint meeting and comment and give opinions on where the Mid-Atlantic Council is going.

I think, as Pat mentioned, the Mid-Atlantic Council, Rick Robins in particular has been very open to the states coming in and participating in those meetings. It is not all or nothing here. There is a range of what the commission could do.

MR. JACK TRAVELSTEAD: I think Bob is starting to get at the question that I had, but in general I've supported the commission and the councils working in lockstep and trying to end up at the same place when we're all done. I think at this point I'm in agreement with Paul, that I'm not quite sure we're ready to go forward. I would prefer to see a little bit more out of the council as to exactly where they're going to end on this.

I guess the question that comes to my mind is do we need to amend our plans so that they contain all of the ACLs and AMs that the council puts forth? It seems to me the ACLs and AMs that the councils will ultimately develop simply result at the end of year or at the start of the fishing year a new set of specifications; and ultimately if the commission is able to agree with that set of specifications, we're in lockstep. Is it possible to be in lockstep without developing some type of omnibus amendment? I guess that's where I'm unclear.

MS. KERNS: I sit on the FMAT for the Mid-Atlantic Council's Omnibus Amendment specifically to try to make sure that the commission is informed of what is going on with the joint species and the complementary plans. There are options that the FMAT is looking into where triggers can be developed for recreational fisheries or for commercial fisheries that would then impact; and if there is more to be triggered in the middle of the year it would impact your state versus your federal fishermen. That gets into a lot of the nitty-gritty of the details, but if the council does move forward with those options, then we would be pitting federal versus state fishermen against each other.

MR. TRAVELSTEAD: Okay, so based on that it just seems to me it is strengthening the argument that we need to wait just a little bit to see how the council fleshes out their plans and then decide at that point whether we want to follow along behind or not.

MR. GROUT: First of all, I agree that the joint plans maybe have to be addressed differently than the other species. Secondly, I don't think we can do an omnibus amendment because the New England Council is doing things different than the Mid-Atlantic. The New England Council is doing it on a species-by-species basis.

As David point out, they've already addressed winter flounder. They took the state catches and recreational catches off the top. That has been done. Secondly with the council, as we deal with herring, we have already set the specifications that includes for 2010-2012 within the commission process.

Thirdly, we have just initiated an addendum which includes an accountability measure for herring. I think just by that action and the fact that the two councils are going in different directions, we need to stay out of the omnibus amendment as least for all the species. Maybe it is something that could happen to the Mid-Atlantic.

MR. LAPOINTE: A question for Bob and then I'm going to speak a little bit more. If we wait until May, we're going to get behind the curve?

MR. BEAL: Only if the commission wants to do a full amendment. If the individual boards or the commission decides that we can make small changes through the addendum process that get us pretty close to where the Mid-Atlantic Council is, for example, then we could initiate something in May. While I'm speaking, I think this is a bigger issue for the recreational fisheries than the commercial fisheries.

On the commercial side, for all the joint plans with the Mid-Atlantic Council, ASMFC already has pound-for-pound repayments as far as accountability measures go. How the Mid-Atlantic Council and in turn the National Marine Fisheries Service is going to handle any recreational overharvest, I think that is going to have a bigger impact on how the commission moves forward with recreational management in the future than on the commercial side.

MR. LAPOINTE: But from the commission's perspective and the perspective of the plans, if we have trouble in River City on the recreational side we have trouble in River City. That's a bit of cold comfort. I don't hear a lot of people clamoring to do an amendment, so I think the idea of a targeted addendum at the Summer Flounder, Scup and Black Sea Bass and the Bluefish Boards is good.

For those of us who aren't on the board but who are concerned as commission members about how that joint federal process works, I think we need to keep some cycle back into the policy board because this impacts every state and impacts our relationships with the feds. For the May meeting – and I think Paul's idea about writing down our concerns and getting them into staff is a good one because I'm kind of in the Jack Travelstead camp.

If we don't do what is in the federal plans we're going to just set up a train wreck. We've have been those train wrecks. It ticks us off; it ticks them off. We get into these escalations and it doesn't help us out, and so I think we should really think hard about what those different options will get us. If I want to wave my Maine flag and get into a fight with the feds, that is one option that we can do. It will make us feel better in the short term, but in the long term I think it is not going to help. I think we need some real soul searching about how to mess properly.

MR. CARPENTER: I think from everything I'm hearing going around the table, the omnibus amendment is not practical at this point in time. I would throw support behind the idea of specific addenda to the single-species management boards as the way to handle it at the present time.

MR. TRAVELSTEAD: I, too, would support the addendum approach targeted at the jointly managed species. I would suggest that probably at the May meeting the staff could come in and give us a fairly thorough description of what the council has in mind in the way of ACLs and AMs for those species that would get us down the track I guess as close in lockstep as we could.

MR. SIMPSON: I just wanted to make the point that we need to pay careful attention to species that we don't manage either but that the Mid-Atlantic Council does. I mean take Atlantic mackerel for an example and think ahead to catch shares, ACLs and then catch shares. What is very likely to happen is there will be very little history of recreational Atlantic mackerel harvest; therefore, nearly all of the allocation will go to various commercial sectors.

It has been a number of years since mackerel have been abundant in state waters, New Jersey and other places. You can very easily imagine the day that those fish will be back on the beach and recreational fishermen will not be able to take them because they've been allocated to commercial interests. Therefore, we need to pay attention as states to preserve opportunities for the future in all these species. We do have an opportunity to do that because ACLs do not apply to state waters fisheries.

MR. FOTE: I was agreeing with Jack. We don't have to put an addendum or an amendment to a plan to basically implement ACLs because we've got them whether we like them or not and we're stuck with them, but we might have to amend plans to reflect some of these nuances that come out in their omnibus bill and basically we can do through an addendum or an amendment to the plan.

I don't want to go near those ACLs and anything else until, first of all, consistencies between all the councils because I think it is going to be a washout, and I think there is going to be some interesting situations and probably wind up in some lawsuits over the period of time because how do you give a self-appointed body by the executive committee the power of God over a fishery without any checks or balances. That's really some of the concerns that are out there. I agree with what we're proposing here,

and I want to stay as far away as I can from an omnibus bill.

CHAIRMAN BOYLES: Any other comments? I think we have given plenty of comments to staff; anything else? I would request what Paul offered was those of you who would like to take some time to write some comments down, to share those with Bob and Toni, perhaps, over the next several weeks. I know that would be very helpful to staff as we move down this road. Okay, good conversation, good discussion. The next item on the agenda will be Bob Beal, discussion of FMP Review Content and Timing.

DISCUSSION OF FMP REVIEW CONTENT AND TIMING

MR. BEAL: I think this one will be fairly quick. At the annual meeting David Simpson brought up the notion of the FMP reviews and the contents of those documents and sometimes the lag and approval of those documents and publication on the website. I'm working off a discussion paper on "FMP Review, Content and Approval", dated January 2010. This was included in the supplemental material that was sent out to the board.

The staff went back and they put together the table is the second page of this document. It summarizes a number of issues that David suggested should be included in all of our FMP reviews and also reviewed the timing of the most recent FMP review and noted when the most recent one was approved by the management boards, just to give a summary of where we are.

As you look at that table, there is a range of what the FMP reviews do contain. There are a number of standard elements that are across all of the FMP reviews and they're included on the discussion paper, Roman Numerals I through VIII. All the FMP reviews have those sections in them, and a lot of the information that David Simpson said it would be really helpful for the commissioners is included.

Sometimes it is a little bit buried in there; it is not as transparent as it could be. As David mentioned at the annual meeting, a couple of the FMP reviews have lagged a number of years. I think tautog and sturgeon are probably the most notable, and that's because those boards haven't met for quite a while so those are somewhat dated.

Just because the FMP review wasn't approved by the board, that doesn't mean the plan review team hasn't

been reviewing compliance annually to make sure everyone is in compliance; and if there were compliance issues, that would have been brought forward. There is some lag there. I think the take-home message that staff has, anyway, and a couple of recommendations are to modify the FMP reviews to include the information that David suggested, which are FMP goals and objectives; overfishing/overfished definitions; fishing year; management and monitoring requirements; allocation; and amendment/addendum summary of past management measures.

I think all those bullets could be incorporated into the outline that exists right now. It would just explicitly say those number of things. All of those elements essentially are things that don't change from year to year; so we as staff incorporate those into the document, they stay constant unless a number amendment comes along and changes the overfishing definition or something along those lines. I think they're pretty static parts of the document.

To deal with the timing issue, we as staff are suggesting that the approval of FMPs and de minimis requests, that they can be conducted through a fax poll or some other e-mail poll, something that doesn't require the board to get together. Then we can keep those much more current and publish those on the website.

There is a note there that if there are compliance issues or de minimis requests that are on the fence and may or may not be approved by the board, then we would schedule a meeting to do that. We have done that traditionally in the past. If there is something controversial or complicated in the compliance or in the de minimis requests, we have scheduled a board meeting for consideration.

I think if we do these two things that allow the documents to be more consistent and more up to date on the website, and responding to David's request, that's what we as staff suggest would be a pretty easy out of this and have everything consistent.

CHAIRMAN BOYLES: Questions or comments for Bob? Dave.

MR. SIMPSON: No, just to say thanks. Those documents are really handy. You get those quick questions and they're a great place to go to. There were just a couple of instances, as Bob said, that it is in there, but it is really buried a little bit, so I appreciate you spending the time on it.

CHAIRMAN BOYLES: Any other questions or comments? The next item on the agenda, we are down to George Lapointe, update on the Quota Working Group Activities.

UPDATE ON THE QUOTA WORKING GROUP ACTIVITIES

MR. LAPOINTE: Staff distributed what is called a discussion draft on our working group. I had intended to get the working group together one more time before this meeting and I failed. We met by conference call on December 14th. I had drafted a discussion paper and it has been modified since.

I'm not going to spend a lot of time on it tonight, but please look through it. You will see I broke it down into – and the committee thought it was an okay breakdown – quota philosophy, quota coordination and quota mechanics. Under there, for instance – and I'm going to talk about the catch share policy for NMFS in a minute – should ASMFC develop a catch share promotion policy similar to that of the current federal administration?

The comments from our group was no, the consensus is that an ASMFC Catch Share Policy would be a significant erosion of states' rights, et cetera, et cetera. I encourage people to look through that and give us comments. We have more work to do. I'm not going to go through all the questions.

One of the things we said we should do is comment on the NOAA Catch Share Policy, which the website is referenced. The comments are on the 10th of April. Clearly, we need to get our comments in before the next meeting. I'm going to work with staff to develop a draft letter. I think the recommendation was that we use the executive committee. We will get that done sooner than later because people should look through it.

I have read through the catch share policy, and there is a lot of good stuff in there; but if you go back to the conversation we just had about coordination of state programs and federal programs, the juxtaposition of catch share programs in federal plans with states' policy is something we have got to get in there.

That is my big message is it is not in there; and if we don't get something in there about coordination with states or making sure there is a significant evaluation of catch share policies in federal plans and their impacts on the states, our discussion we just had

about coordination and trouble in River City is going to be huge. That is my own thought at this time. I will end with that. Again, I apologize that I did not get the work done to hold a second meeting. Look through this discussion draft and really look through this catch share policy so that when you see some draft comments, that we can add those substantive issues because they are there.

CHAIRMAN BOYLES: Is everybody good with that, particularly the comments being vetted through the executive committee so that they can be submitted prior to the April deadline? Vince.

EXECUTIVE DIRECTOR O'SHEA: George's last point, just to clarify and to make sure I understood it right because I think it was an important, was that the catch share policy and impacts of federal decisions having an impact on our state fisheries; was that the point?

MR. LAPOINTE: That was exactly the point; management of our fisheries, requirement from states, enforcement requirements. We've had our joint plans and we veneer on ACLs and AMs and stuff, and I hope I was clear about my concerns about that – veneer this on top, and it is going to be another incredibly difficult issue, and so we better voice it in our comments because I think it will be an incredibly important point.

CHAIRMAN BOYLES: Okay, thanks, George, and also thanks to George, Paul, Jack, Louis, Jessica, Steve Meyers and to Bob for staffing this. This is important. We are down to other business. We have several items for other business. I would like to call on Paul for your item on bluefin.

DISCUSSION OF CITES LISTING FOR BLUEFIN TUNA

MR. DIODATI: You should have a copy of a letter that was sent signed by our Massachusetts Environmental Cabinet Secretary. Again, this is about the Atlantic bluefin tuna proposal for a CITES Appendix I listing that is being deal with right now, actually. There will be a meeting. The next meeting is in March in the Mideast, a place called Qatar.

We actually will have someone from Massachusetts at that meeting. The reason we're going to have someone there is that the Association of Fish and Wildlife Agencies has representatives in the northeast, southeast and west to go to things like this. It so happens that the northeast representative of the association is a member of our Inland Division of

Fisheries and Wildlife Agency, a deputy director. His name is Jack Buckley, a former director of D.C. Fisheries and a member of this commission. Jack will be there.

He will be taking our letter which is basically asking for continued support of ICCAT management of Atlantic bluefin rather than moving very quickly to the CITES listing proposal. I'm not asking that we draft a commission letter to go along with this. Unlike sturgeon that we had a very lengthy discussion about, we do not manage bluefin tuna. We do not have a plan and we don't spend a lot of time talking about it.

However, I do know it is important to a number of member states. I recommend those who haven't already encouraged your states to send a letter similar to this, I would ask you to think about it. If you do a letter, if you e-mail to me a PDF of that letter, I'll make sure that it is carried to Qatar and it will be on the table. Thank you.

CHAIRMAN BOYLES: Thanks, Paul. Any questions for Paul? Ritchie.

MR. R. WHITE: Just to add to Paul's comments, there is a letter being prepared at this time, and I think it is generated out of Senator Snowe's office with the help of Senator Kerry and I believe Barney Frank, so it may be a joint senate/house letter, opposing the listing for the same reasons that Paul's letter cites. I think that is something that is going to transpire this week; so anybody that wants to add on, that they could contact their congressional delegation to get them to sign on to this letter.

MR. LAPOINTE: The state of Maine wrote a letter as well, and I will make sure that Paul and the commission gets a copy. I contacted somebody at NOAA about – the public comment period on the listing is closed, but the decision about what the U.S. position will be is not finished; and so when folks write a letter, clearly NOAA should be involved.

I'm going to ask the Fish and Wildlife Service representation, they do the CITES work, and there is like a management authority or management something office, and they should be copied on that letter as well.

CHAIRMAN BOYLES: Any other comments or questions for Paul? I will again just reiterate to get letters signed and make sure – it would be helpful for Paul to have copies of them so he can get it to the

delegate to Qatar. We have I think from Dr. Daniel a report from the Coastal Sharks Board.

REVIEW OF NON-COMPLIANCE FINDINGS

DR. DANIEL: We had a little issue come up in the Spiny Dogfish and Coastal Shark Board that I need to bring to the policy board's attention. **On the screen you'll see a motion, and on behalf of the Spiny Dogfish and Coastal Sharks Management Board I would like to move that the ISFMP Policy Board recommend to the Full Commission that the state of New Jersey be found out of compliance for not fully and effectively implementing and enforcing the Interstate Fishery Management Plan for Atlantic Coastal Sharks.**

New Jersey has not implemented the regulations of the Interstate FMP for Atlantic Coastal Sharks. The implementation of those regulations is necessary to achieve the conservation goals and objectives of the FMP to rebuild depleted shark species and ensure sustainable harvest of others. In order to come back into compliance, the state of New Jersey must implement all measures contained in the Interstate FMP for Coastal Sharks. On behalf of the board I so move.

CHAIRMAN BOYLES: Thank you, Dr. Daniel. That is a board motion; therefore, it does not require a second. Is there any discussion on the motion? Seeing none, all those in favor of the motion raise your right hand, please –

DR. DANIEL: Point of order, Mr. Chairman; does this require a roll call vote?

CHAIRMAN BOYLES: It does not require it, but if a member requests it we can certainly do that.

DR. DANIEL: I'm not requesting it; I just want to make sure we didn't mess up.

CHAIRMAN BOYLES: Okay, all in favor signify by raising your right hand; all opposed same sign; null votes; abstentions. **The motion carries 15 in favor, zero opposed, three abstentions.** Thank you, Louis. All right, a couple of other items. We had discussion at the Striped Bass Board regarding review of MRFSS, and I'm going to call on call on Bob Beal to present that.

DISCUSSION AT THE STRIPED BASS BOARD REGARDING REVIEW OF MRFSS

MR. BEAL: Just as a brief introduction, at the Striped Bass Management Board earlier this week, there was a discussion on the appropriate venue to review or should the ASMFC send a letter to the National Marine Fisheries Service requesting a review of some analysis that Dr. Crecco from the state of Connecticut had conducted relative to the MRFSS Program and how that program is conducted.

That board recommended that the policy board consider whether the commission should or should not send a letter to the National Marine Fisheries Service requesting a review of two documents from Dr. Crecco. The state of Connecticut has already submitted a request to the National Marine Fisheries Service to conduct a review of those documents. That is the status of where we are or the question brought forward from the Striped Bass Management Board on what should the commission request of the National Marine Fisheries Service, if anything.

MR. TRAVELSTEAD: I think it was the consensus of the Striped Bass Management Board that such a letter should be sent. Some of the debate revolved around how that review should be done. I'm not sure that the letter needs to go into that kind of detail, but I think the board is looking for a reasonably quick review of Dr. Crecco's work with the hopes of understanding of what it means for our future management of the striped bass stock. **With that in mind, I would move that such a letter be sent.**

CHAIRMAN BOYLES: All right, it is a motion. Dave Simpson.

MR. SIMPSON: I will offer the information that I have been in communication, both long phone conversations with Dr. Van Voorhees at the Marine Recreational Fisheries Statistics Group and e-mails, and he has assured me that the MRFSS Program will be providing a response to the issues that Vic that has brought up specific to striped bass, and actually it is applicable to all our species.

Between Dr. Van Voorhees and Gordon Colvin, they have assured me that they will have a response within a couple of weeks that I would be happy to share with the commission. If the commission felt comfortable that they will be getting the answer that the Striped Bass Board was seeking, I think we could do it just with that.

CHAIRMAN BOYLES: Thanks, Dave. Was that a second with your raising your hand seconding the motion?

MR. SIMPSON: No, actually I was trying to –

CHAIRMAN BOYLES: Avoid a motion?

MR. SIMPSON: – avoid having to send letter, yes.

CHAIRMAN BOYLES: Is there a second to the motion? Tom seconds. Vince.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, I'm sort of sorry that the information that David just reported came out of a conference call this morning at nine o'clock, and I strongly suspect that had the Striped Bass Board had that commitment and knowledge from the state of Connecticut at the Striped Bass Board, that they might not have thought to go in this direction.

MR. AUGUSTINE: Mr. Chairman, I agree. I think this motion is unnecessary. Mr. Simpson just told us what the result was going to be. There has been communication. It is not a conversation one on one. I think we've got to rely on Dr. Van Voorhees and Gordon Colvin to deliver the goods. Mr. Simpson said he would make that information available to the commission; so I think to have it on the record and have a motion, I would not support this.

CHAIRMAN BOYLES: Jack, were you going to withdraw that motion?

MR. TRAVELSTEAD: Well, I was just looking out for my board, Mr. Chairman. I mean this is what they wanted to do yesterday, and that is what I was trying to put forward, but I didn't have the benefit of David's information, so I'll be glad to withdraw the motion.

MR. FOTE: As long as we're going to get a report, I have no problem.

CHAIRMAN BOYLES: Chris, you were down there with your hand up.

MR. MOORE: Yes, I just wanted to emphasize what Dave said; there will be a rapid response from S&T to that paper.

CHAIRMAN BOYLES: All right, terrific. Bill Cole.

MR. BILL COLE: I find it very, very unfortunate that the board is trying to deal with this. To me this is a data management, data quality issue. It should have been referred, frankly, to the ACCSP Coordinating Council and to the Operations Committee. After many, many years of difficult work this commission set up a program to deal with these kinds of issues.

The Operations Committee, its recreational technical people, which includes the NMFS people and all the other state people, could deal and resolve this. I'm not going to make the motion today, but I think we're going to wind up – I'm almost positive we're going to wind up sending a motion to the coordinating council to do a rapid review and resolution of this issue. I'm not going to make that motion until we have the response from Dr. Colvin.

CHAIRMAN BOYLES: Terrific! I think we've gotten a commitment out the Service that we'll hear from them, and then Dave has agreed to share that with the Striped Bass Board as well as the policy board, Dave?

MR. SIMPSON: Absolutely.

CHAIRMAN BOYLES: All right, terrific! Any other comments on that issue? The next item will be questions or letters to NMFS and Coast Guard on striped bass penalties.

DISCUSSION OF LETTERS TO NMFS AND U.S. COAST GUARD ON STRIPED BASS PENALTIES

MR. BEAL: Again, at the Striped Bass Management Board earlier this week, the notion of illegal fishing in the EEZ came up and was talked about quite a bit, and there was a lot of concern at the board that this activity is going on to a fairly great degree, and the impacts to this fishery are difficult to evaluate and obviously have the potential to compromise the management objectives of that management board.

A suggestion was made that letters be sent to the National Marine Fisheries Service and a letter to the U.S. Coast Guard suggesting increased fines and penalties associated with illegal fishing in the EEZ. The Coast Guard letter in particular the discussion was that the Coast Guard should explore the option of revoking the charterboat coast guard permits, the captain's license essentially that will allow those individuals to run a charterboat operation. It's pretty stiff penalties. There was also consideration for just

a simple fine structure of illegally fishing in federal waters. The Striped Bass Board recommended sending those letters to the National Marine Fisheries Service and the Coast Guard.

CHAIRMAN BOYLES: Comments or questions for Bob. Jack.

MR TRAVELSTEAD: Has anybody talked to the Coast Guard in the last 20 minutes that I don't know about? Otherwise, I would move that those letters be sent, Mr. Chairman.

CHAIRMAN BOYLES: All right, a motion by Jack Travelstead; seconded by Tom O'Connell. Dave Simpson.

MR. SIMPSON: I'm slow, Jack, it might be the hour and it might be just that I'm slow. I guess I don't know what the penalties are. Usually if you violate a federal law, you're in deep trouble. I doubt it is a slap on the hand. You can write a letter to the Coast Guard, but I don't think it is at all related to the safety of passengers, so I don't think they're going to do anything about it. If we want to send a letter, that's fine.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, the sense I got from the Striped Bass Board on the Coast Guard letter – and I'm just trying to confirm the direction – would be on the Coast Guard aspect I think a comment was made there are ongoing operations, so the gist of the letter would be to highlight or reinforce to the Coast Guard our support for the ongoing operations of striped bass enforcement and then to raise the issue of the deterrence of the current penalty structure and to raise the issue of them considering going after the charterboat licenses under authorities that the Coast Guard has. It is sort of two points that we wanted to make. That was my recollection of what the board was looking for.

CHAIRMAN BOYLES: Jack, is that an affirmation?

MR. TRAVELSTEAD: That is perfect.

CHAIRMAN BOYLES: Tom, is that your understanding as well? Any other discussion? That motion was made by Mr. Travelstead and seconded by Mr. O'Connell. Jack, do you want to read your motion?

MR. TRAVELSTEAD: **Move that a letter be sent to the National Marine Fisheries Service and the U.S. Coast Guard regarding penalty fines for**

fishing for striped bass in the EEZ and as further modified by Captain O'Shea's remarks.

REPRESENTATIVE ABBOTT: Does the Coast Guard have the ability to impose penalties for fishing or is that not the jurisdiction of another agency?

MR. R. WHITE: I think it was about two years ago there was an EEZ striped bass fishing issue off the New Hampshire coast. The federal agent arrested a charterboat. There was a fine imposed. The charterboat appealed it. It went before an appeals judge. The appeals judge increased the fine from two hundred to a thousand dollars. There was an additional appeal process and the judge said, "If you take that additional appeal process and you lose, I'm going to take your Coast Guard license." Evidently that can happen. He didn't appeal further.

MR. DIODATI: I wasn't comfortable with how we dealt – well, not necessarily how we dealt with it; we dealt with it correctly at the Striped Bass Board. I guess I didn't agree that a letter should go to the Coast Guard. I think we're asking the Coast Guard a little bit too much. Based on the characterization of what is going on in the area, it seems like we have a situation that is a bit under control.

I'm not sure if escalating fines in this way is going to solve the problem. I think what solves the problem is taking a very close look at where these fish are and whether or not reopening the EEZ for fishing provides better information to our process and more compliance with the law. We have a better handle on mortality and what is going on. I think that is really the solution.

To try to escalate this to an outright battle between the Coast Guard and state enforcement officials who get money to enforce these laws in state waters and federal waters, I think it might be the wrong thing to do. I want to prevent this. I want this illegal catch to be accounted for; so if we have to manage the resource differently, we do that, but I just don't think asking the Coast Guard to revoke licenses is the right thing to do.

MR. FOTE: This is so flagrant. If you just look at the pictures and the comments and everything else, this is a slap in the face against management. It is not where a guy is going into the EEZ and just going over three or four miles and getting caught. These people are going 20 miles offshore. They filleting fish, they're doing all kinds of things, and they're posting their pictures of what they're doing on the internet to sell customers to come.

This is a lot more serious than a guy that goes out there and he says, well, the fish are there; as we say, there is a log of forethought that goes into this and there is a lot of promotion that is going on to bring customers in. This is part of business and when it is part of your business, then I have no problem doing it to the max.

MR. LOREN W. LUSTIG: I'm concerned about what we heard from yesterday when we heard reports that this poaching could be extremely extensive. I agree with Tom that a fine could be viewed as simply part of doing business, but I am certain that if the penalty was not monetary but rather pulling a person's captain's license, that would be extremely significant and would cause sort of a positive ripple effect to control this extensive poaching that is going on. I'm not real pleased with the idea of penalty fines, but I would be very supportive of the idea of pulling captains' licenses.

MR. AUGUSTINE: The comments that Tom just made about seeing pictures of these folks 20 miles offshore filleting and so on, that would be more graphic, needless to say, and we'd have to somehow explain that in the letter. Just to say to look at the penalties is not going to do it, and I agree with Loren. There is no question we've got to be very explicit and use examples, if we can, whether we get can a report from the Law Enforcement Committee as they had given us in the report, and submit that as part of our concern.

This is what our law enforcement people are saying, we have documentation, but I think we need a stronger case than just a piece a paper that say we think there has been a lot of poaching going on and we really need to do something about it. I agree that the penalties have to be stiff. The cost of doing business is the cost of doing business, and removing a captain's license or suspending it for 90 days is a whole different ballgame. We might want to suggest a suite of options they should look at and consider.

CHAIRMAN BOYLES: Other comments? We have a motion; any further discussion? Caucus.

(Whereupon, a caucus was held.)

CHAIRMAN BOYLES: I would like to call the vote. The motion is move that a letter be sent to the National Marine Fisheries Service and the United States Coast Guard regarding penalty fines for fishing for striped bass in Exclusive Economic Zone. Motion by Mr. Travelstead; second by Mr. O'Connell. Any other discussion? Loren.

MR. LUSTIG: We have had a caucus here with the Pennsylvania delegation and we would offer an amended motion. The addition to what you see on the screen would be after the word "fines", "and/or forfeiture of the captain's license".

CHAIRMAN BOYLES: That's a motion t amend; is there a second? Jack.

MR. TRAVELSTEAD: I would accept that as a friendly amendment. In fact, I thought Captain O'Shea's perfection or description of his understanding included forfeitures, but I would certainly not object to it.

MR. LUSTIG: That is correct, a friendly motion.

CHAIRMAN BOYLES: Okay, a friendly amendment; Tom, do you accept that? Vince.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, I've kind of held my peace on this because I think Paul Diodati raised an important policy question. The important policy question is does the board want to escalate on this issue? That question is embedded in the motion. My intent was to let you all decide whether or not you wanted to do that.

If that motion were to pass, I was then going to say that I'll interpret this to mean that you'll trust in me to write the right words to the right agency with the right jurisdiction about the right terms, including charterboat licenses and penalty schedules, depending on the National Marine Fisheries Service. That was my original plan, but that has been overcome by events here.

MR. SIMPSON: Just to comment on the amended motion, I think it is going far too far. The charterboats have a federal permit to fish in federal waters, and I would think for a fisheries' violation you would go after that and not after something completely unrelated that is issued by the Department of Transportation.

CHAIRMAN BOYLES: All right, just to be clear, we do not have an amended motion. We have a clarification on the motion as it was presented. It was accepted by the motion maker and the seconder. A.C.

MR. CARPENTER: I would like to also offer hopefully a friendly amendment; before the word "forfeiture", insert "suspension and/or forfeiture". Forfeiture of a license, you don't get a Coast Guard license without an awful lot of trouble, and it is a

five-year license. Suspensions may be a more effective tool. I don't think there is any federal fishing permit required for a captain who is illegally fishing in the EEZ for striped bass. He doesn't have to have any federal permit.

CHAIRMAN BOYLES: That is offered as a clarification; is that correct? Jack, is that your understanding.

MR. TRAVELSTEAD: Mr. Chairman, I had forgotten how much fun it was to be Chair of the Striped Bass Management Board. It is all coming back to me now. That's fine with me.

CHAIRMAN BOYLES: All right, we called the question about five minutes ago. Paul.

MR. DIODATI: I guess we seem to be focusing on the for-hire component of the fishery, but I'm assuming that there is a lot of just private boat anglers that are out there, recreational anglers that aren't licensed, that don't have federal permits. What is it we do with them; are we going to shoot them or what is their penalty?

CHAIRMAN BOYLES: I think the increased fines are in there. Pat.

MR. AUGUSTINE: Just a point of clarification; Vince suggested that he would put together the details of a letter. We've trusted him explicitly and implicitly on doing this sort of thing for seven years now. I think we're beating an issue to death with trying to split hairs and figuring how what the hell we're going to do.

The farther we go along this discussion the hungrier I'm getting Mr. Chairman. I would suggest we just curtail this, table it, destroy it, go back to the original point that Vince made and be done with it. I would table this motion forever and put another motion on the table that we empower Vince to put together formal letters that will represent our thoughts around this table relative to action that should taken against people who are fishing illegally and catching striped bass and retaining them in the EEZ. Thank you, Mr. Chairman.

CHAIRMAN BOYLES: That's a move to table this motion?

MR. AUGUSTINE: No, I was pulling your leg; let's take action on it, up or down.

MR. TRAVELSTEAD: Move that a letter be sent to the National Marine Fisheries Service and the U.S. Coast Guard regarding penalty fines and/or suspension and/or forfeiture of a captain's license/permits for fishing for striped bass in the EEZ.

CHAIRMAN BOYLES: Motion by Mr. Travelstead; second by Mr. O'Connell. All those in favor of the motion signify by raising your right hand; all opposed same sign; null votes; abstentions. **The motion carries 16 for, 1 opposed and 1 abstention.** Thank you for that discussion. The next item, Bob Beal, research priorities.

DISCUSSION OF FUNDING RESEARCH PRIORITIES

MR. BEAL: The good news is this agenda item has nothing to do with writing a letter.

CHAIRMAN BOYLES: Not yet.

MR. BEAL: Not yet, yes. I think a couple of times during the week the notion of funding for research activities and survey activities for ASMFC species has come up. It came up in the Striped Bass Management Board, obviously, as everything seems to have, with regard to the tagging cruise that is conducted every year for striped bass off the coast of North Carolina and Virginia and the fact that there wasn't federal vessel available for it this year, et cetera, and then funding wasn't funding wasn't available to hire another vessel.

During the Horseshoe Crab Board earlier this morning a discussion took place on the Virginia Tech Horseshoe Crab Benthic Survey and the fact that line item was zeroed out in the NOAA budget. There is concern, obviously, that neither of those surveys will be conducted. Some of this discussion offline has been associated with some longline surveys for sharks, the northern shrimp survey that takes place in the Gulf of Maine each summer.

I think the NEAMAP Cruise is probably all woven in here. There is a lot of discussion on what is the best way to fund these surveys that support the science essentially for the Atlantic States Marine Fisheries Commission species that we manage and what is the best group of people to tackle that problem and come back to the policy board with some response and plan of action.

CHAIRMAN BOYLES: Comments for Bob? Doug.
MR. GROUT: Don't we have our Management and Science Committee tasked with research priorities, developing research priorities on a periodic basis? Wouldn't they be the most appropriate?

MR. CAMPFIELD: Yes, the Management and Science Committee evaluates that periodically with the distinction that the current list looks at research and data deficiencies; so if there are existing surveys or long-term surveys, that is not necessarily spelled out there.

MR. LAPOINTE: This is an issue of funding and not research priorities. Vince has sent all of us an e-mail talking about the NOAA budget and those items that are important to the states that aren't in there. I think that we all need to look at that and importantly comment on things that we think need to be added in; equally important comment on things that we think are in there that need support.

Our issue in the past I think has been making sure that we have follow-through on those items of importance because without that – I know my visit with my congressional delegation are a lot more targeted than they have been in the past because of the aura around earmarks. We were pushing for lobster funding last year and a representative from, I believe, Texas was beating up on our representative because lobster is a luxury product and why are you spending money on a luxury product when the economy is in the dumps. I think we're really got to rethink our strategy in terms of making communications with our respective congressional delegations in a way that is consistent with the ASMFC priorities.

MR. COLE: Mr. Chairman, I think what we have – we just got an omnibus bill in the NOAA budget. The sense of what I got from the horseshoe crabs is this board needs to send a list in a letter to NOAA with our immediate needs and priorities. In other words, there are a lot things that were funded last year, and they need a clarification of how we view those this year so they can adjust their budget. That seems to be the sense of what I got from the horseshoe crab, and I think that was what that motion was, but I'm not going to make a letter motion.

EXECUTIVE DIRECTOR O'SHEA: It seems like we're certainly correct in saying that the amount of work we're going to need to do to pull together dollars, that is certainly true. It also seems to me that just as an example for the board, several weeks ago we were asked a question regarding the Striped Bass

Tagging Cruise, whether one of the solutions is to cancel the Gulf of Maine Northern Shrimp Cruise to pay for the Striped Bass Tagging Cruise.

Well, that begs the question of what is the process to evaluate whether or not the Cooperative Striped Bass Tagging Cruise is a higher priority for us than the Gulf of Maine. Logically, we said, well, the only input into the stock assessment for northern shrimp is the Gulf of Maine cruise; whereas, our understanding is there are multiple things that feed into the assessment of striped bass.

There is also the component of what is the status of the stock, how valuable the fishery is, so and so forth. I really think this question is – it sounds like a money thing, but I think there is a science component in it to give us the correct weighing factor to say what from a science standpoint do we need, what is the most cost-effective way to get that information and not necessarily how have we historically collected it, but right now what is the best way to get it and then feed that into a strategy to go get the money for it.

We heard two reports today and yesterday. The myco study in the Chesapeake Bay is heavily dependent on the Chesapeake Trawl Survey. That is zeroed out in the budget. The horseshoe crab guys this morning said that the horseshoe crab survey, the earmark has gone away for that one as well. Thanks, Mr. Chairman.

CHAIRMAN BOYLES: What I was going to suggest is perhaps this might be something that Paul and I work with the AOC to develop some kind of framework to bring back perhaps to the executive committee and to the policy board on how we start dealing with these issues. That was the only suggestion I've got, because I'm not sure we're going to solve this problem tonight or even if we were here tonight and tomorrow drafting letters. I think it would still take us a long while. Tom.

MR. FOTE: I was talking to Vince earlier today about the \$33 million for catch shares, which has tripled the budget for that. And you think about, because this is level funded, where that money came from, what programs were basically taken out. Catch shares is a management tool, but without good information you can't – and we haven't made the argument I guess to the new head of NOAA when you start looking at the budget where the priorities are. She is under the agenda of catch shares, and maybe we need to inform her of the seriousness of the situations here.

I will be doing that through our congressional delegation. I've already talked to a few people that we're trying to get a members' letter on this to basically look at the priorities. We wanted to increase the money – what I've been pushing for and many other groups and pushing for is a stock assessment appropriation similar to that because we've got to base it on state assessments, and there is no money being added to stock assessments in there.

There is no money being added to really getting a good handle on the recreational statistics. That is all stimulus money that could have been directed at those details and it has not been done. It is a failure on my part and I guess on all our parts because we haven't made that case to congress to basically do that and our legislators having to do that.

I will be working harder to make sure that I can do my part in making that happen, because that's all our responsibilities sitting around this table to make sure the commission is funded properly. It means banging on doors and I'll be back down here in a couple of weeks banging on doors again. It is a serious situation when I start looking where we are falling out of all the money.

MR. TRAVELSTEAD: I appreciate the process that you outlined for taking it to the AOC. I think that they do need to look at this over the long term. This is going to be an issue that is going to be with us for some time. On the other hand, I sense some urgency with respect to the budget that is being considered and maybe there is not time for the commission to get into that. I don't know, maybe we leave it up to the individual states to fight it out up on the Hill for what they can get. Vince, do you know what the timing would be on that issue?

EXECUTIVE DIRECTOR O'SHEA: Well, the bottom line this year was a conference committee approved a budget sometime in December of 2009 for the Fiscal Year 2010, so they did a continuing resolution. Budget writers over on the House side, staffs are asking for input around mid to late February, and who knows when – the Senate is usually two weeks after that.

All the input has been sort held up the President releases his budget, and we got that on Monday and you all got it this afternoon when I forwarded it to you. That has sort of opened the door for this discussion. I say the initial weigh-in on the President's budget to the House side probably needs to happen before the end of February.

MR. DIODATI: Just to clarify what it is that we're dealing with and what we're trying to address – I didn't realize that you sent that, Vince, so thank you, but the President's budget is probably based on input directly from NOAA, and so the shortfalls that we're seeing are the result of a reallocation of NOAA priorities. I think that goes to Tom Fote's point.

We're all aware of that and some of us may be benefiting in other ways in terms of distribution of funds based on this reallocation of priorities. How you offset that is going to be a difficult issue. Going to our delegations, are we going to be asking them to add money to NOAA's budget and earmark those additions or are we going to be asking for the reallocation to change, which, again, gets back to that cooperative nature that we're supposed to have with the federal government.

I think if that cooperation really existed we would have been having these kinds of offline discussions and had some input to what the NOAA budget was going to look like, but apparently that doesn't happen. I think that is why the survey results demonstrate the very low cooperative nature that we seem to be enjoying with our federal partners; not the folks that come to this meeting and not the way they voted at these meetings. That's not the disagreement. I just thought I would weigh in.

REPRESENTATIVE ABBOTT: We get money from NMFS to run this organization to help us do it, and now we're having problems funding surveys. One of the possibilities is trying to figure out a way out of our own pocketbook maybe in the short term to make it happen, which seems not very sensible.

If we did come up with money to do the horseshoe crab and the striped bass survey, then the feeling might be projected that, well, you really didn't need our money, anyway. I don't know if that would serve you next year. You may have to eat some pain this year to make a point that you need this funding to make the program work would be my opinion.

MR. MOORE: I have been listening to the conversation and trying to decide if I can say anything without getting into trouble, and I think I can. First, in terms of the priorities for this year, we definitely could benefit from a commission priority list as it relates to a funding request for this year specifically as we talked about today.

What is the most important thing that we can fund for the commission this year? What is the second most important thing? We are resource limited for this

year, and I think you all know that. However you want to work that in terms of calls, letters, whatever, I think that is an important thing for you to do.

The second thing is that this issue of budget and the input that the state directors or the states have into the federal budget was something that was discussed at the state directors' meeting. I would say it was probably the highest priority or the most controversial issue that was raised at the state directors' meeting, and there is still this internal struggle within NOAA Fisheries as to how to integrate folks into those discussions. As you know, we're already thinking about two years down the road, so we really need to figure out a better way to integrate the states into those discussions. Hopefully, that will happen. Thanks.

CHAIRMAN BOYLES: Thanks, Chris. I would ask for the policy board's acquiescence or approval that we maybe deploy the AOC, but we might bring in some of our federal partners as part of the discussion so that we have a better understanding of the dynamics and the pressures and the policy direction that the Service is going in.

If I can get a nod of heads that is suitable and it pleases the board, then that is the way we will proceed with this. There are no easy answers here. Okay, we've got two other items here. Bill Goldsborough, you had an item that you wanted to bring to our attention?

DISCUSSION OF THE CHESAPEAKE BAY CLEAN WATER ACT, S-1816

MR. GOLDSBOROUGH: At the Striped Bass Board yesterday, we heard three expert presentations on the problem of mycobacteriosis affecting striped bass in the Chesapeake Bay. Not to go into too much detail, but it became quite clear from them and from the presentation from the technical committee that this is a major issue.

We already knew that natural mortality had gone up significantly for resident striped bass probably as a result of this disease. As to causes, what was reported to the board was that the causes were likely physiological stress of some sort with nutrition and water quality being the primary ones, most likely ones.

Nutrition, of course, speaks to this commission's ongoing work on forage fish. Specifically, menhaden underscores the important of that. The water quality

issue, specifically dissolved oxygen, reduced dissolved oxygen is very well documented as a problem for striped bass and for other species, but for that the role of this commission is perhaps less clear.

What I mentioned to the board yesterday was that there is something that this commission can do in the immediate term to help address this major crisis level problem, I would say, with the Chesapeake Bay that affects migratory species that we utilize up and down the coast. It involves legislation before congress right now that has become known as the Chesapeake Clean Water Act. That is Senate Bill 1816.

Specifically, what that bill attempts to do is address on a comprehensive basis nitrogen pollution in the Chesapeake Water Shed. Of course, nitrogen is what drives the reduction in dissolved oxygen, what we call the dead zone, which in recent years has grown to encompass as much as 40 percent of the volume of the Bay for up to six months of the year.

That volume of the Bay becomes hypoxic or anoxic for that long every year. This is a terminal problem, I think you can say, of great concern to anybody involved in coastal fisheries. My suggestion yesterday was that this commission could be very helpful simply in writing a letter to the sponsors of the bill to express support for addressing that problem from a fishery habitat standpoint.

Now, it is true that there are a couple of other items that have added on to this bill. I don't if many folks around the table are aware of this, but one that is of interest to this commission and is noted on the commission's legislative tracking sheet – and I've got to speak to that for just a second. What the bill calls for is a five-year study of menhaden.

That's one of those things that gets added to a bill to satisfy some constituent group, and I don't know who it was, but we actually recommended to the senator's staff that they not put that in there and told them that this commission is already in the fifth year of a five-year study of menhaden, and that is really not helpful, but it is in there, anyway.

Given that this commission is actually cited as the entity together with NOAA that would conduct that study, it is obviously of direct interest here because I don't believe the resources are provided. I'm of the opinion it ought to be removed from the bill, and I think we can suggest that, but a letter can be written expressing support for addressing the nitrogen pollution problem through this legislation, but support contingent upon removing that item from the

bill. I think that would be perfectly appropriate. I would like to toss that out and see what the sense of the board is.

MR. FOTE: Bill, I haven't seen the bill. What does it give you, money, or do you do studies or does it do – like we're trying to do in New Jersey is a fertilizer bill that basically requires certain fertilizers to be used, certain fertilizers not to be used and look at a comprehensive fertilizer position to keep the nitrogen out of Barnegat Bay and the rivers and the bays, which Maryland can do already by using slow-release fertilizers and basically handling all those farms along the Chesapeake Bay and so Pennsylvania can do in the Susquehanna River.

That is what I'm looking at, what does the language do, does it give you money for studies, because we have been studying the Chesapeake Bay for a long time, and it is time to take some action if some of this doesn't do with fertilizer control.

I need to see a copy of the bill and look at the facts because we're working on state legislation right now to basically do these types of fertilizer bills which will cut down the nitrogen going into all our bays and estuaries.

MR. JOHN DUREN: Point of order, Mr. Chairman. It seems to me that except under unusual circumstances the policy board should deal with issues that have been vetted by the management boards or by the committees and we shouldn't be working on them the first time here at this policy board.

MR. GOLDSBOROUGH: As I mentioned, I brought this up at the Striped Bass Board and was told at the time that it should be brought up at the policy board.

CHAIRMAN BOYLES: What is the sense of the policy board; where do you want to go; do we want to write a letter in support of this or do we not? Is there a consensus to move a letter? I don't get a sense that there is consensus. Is there a motion? Bill.

MR. GOLDSBOROUGH: Yes, Mr. Chairman, I would like to move that the commission write a letter to the sponsors expressing support of the Chesapeake Clean Water Act, Senate Bill 1816, specifically for the purpose of addressing nitrogen pollution because of its critical role in degrading fish habitat in the Chesapeake Bay.

CHAIRMAN BOYLES: All right, that is a motion by Bill Goldsborough; is there a second? Dr. Kray, is that a second? Further discussion? Ritchie.

MR. R. WHITE: Bill, what is the timing on this; is this something that could wait until after our May meeting so we could become more informed on it, or is this something that you need faster action?

MR. GOLDSBOROUGH: My understanding, Ritchie, is that in the coming months there will be committee hearings on the legislation, so the sooner the better any expressions of support come in.

MR. LAPOINTE: Bill had mentioned a specific issue, and that was the Menhaden Study, that he thought if this letter goes forward it should – unless I hear otherwise it should include the need for the removal of that language from the bill.

CHAIRMAN BOYLES: Bill, was that your intention in the motion as well?

MR. GOLDSBOROUGH: Absolutely.

MR. FOTE: I have not seen the bill. I can't vote in support of a bill that I have not read and thoroughly researched, so I find it very difficult. It should have been vetted maybe at the Habitat Committee or someplace else before it came here.

MR. PAT GEER: I agree with Tom; we haven't seen this bill yet. Could this bill be sent out to us and then vote by e-mail? Is that possible? I mean, all it is is sending a letter of support. Is that possible?

EXECUTIVE DIRECTOR O'SHEA: I had two questions, Mr. Chairman, and that is whether the state of Maryland had taken a position on this bill yet and whether the Department of Natural Resources in the state of Maryland had taken a position; and also whether the governor or the Department of Natural Resources from the Commonwealth of Virginia, have they taken a position on it yet? That answer might be informative of what the board wants to do.

CHAIRMAN BOYLES: I look to Tom and Jack.

MR. O'CONNELL: My understanding is we have sent in comments in regards to the bill and it explicitly has stated a request to remove the menhaden component of the bill, recognizing that the commission has been formed to manage that species.

MR. TRAVELSTEAD: Mr. Chairman, we have a brand new administration in Virginia that just took office a few weeks ago, and I'm not aware of what their position is on this at all.

MR. ROBERT BALLOU: Mr. Chairman, while I've heard the concern about not having seen the bill, this commission has seen the information on bacterial concerns in striped bass and has heard about the linkages between that and water quality; so from a conceptual standpoint I can't see why the board would not support federal legislation that would be aimed at clearing up the Chesapeake Bay given its potential linkage to the striped bass issue.

Without having to go deep into the essence of the bill, it is really about the concept of cleaning up the Bay that supports that important fishery, so I don't see what the risk is in lending support to the essence of the bill. Thank you.

MR. LAPOINTE: First of all, with all due respect, Bob, I disagree entirely because it could be a great idea and it could have poor language, and we could end up with something we weren't intending. I think Bill mentioned this is already on our legislative tracking sheet; isn't it? What is the status on our legislative tracking sheet; to support or just to watch?

CHAIRMAN BOYLES: Brad, did you hear George's question?

MR. BRADDOCK SPEAR: Yes, it is on the tracking sheet as a bill to track. The commission hasn't taken a position on it, and there is none listed on there.

EXECUTIVE DIRECTOR O'SHEA: By the way, unless the commission decides to take a position or wants to take a position, that is normally the way these things happen. If something comes up from time to time, we bring it to your attention, so I would say a commissioner bringing a bill to your attention is part of our process.

MR. R. WHITE: Why couldn't we – it seems like there is consensus on removal of the five-year study of menhaden, so why couldn't we write that we support that and then we – we don't say we support the bill but we support the concept of lowering nitrogen and bettering the water quality in the Chesapeake Bay; so we kind of go after the support of what the bill is trying to accomplish without saying we actually support the bill by number.

CHAIRMAN BOYLES: Bill, would you consider that a friendly amendment?

MR. GOLDSBOROUGH: I would; I think that is perfectly appropriate.

CHAIRMAN BOYLES: And, Dr. Kray, a friendly amendment. Ben.

MR. BEN MARTENS: Is there any way that we could possibly table this until tomorrow so we do have some time to read it over and make a quick motion tomorrow?

CHAIRMAN BOYLES: We've got a motion on the floor; is there a motion to table? Tom Fote.

MR. FOTE: **Motion to table.**

CHAIRMAN BOYLES: Until when, Tom?

MR. FOTE: Until I read the bill.

CHAIRMAN BOYLES: We need a time certain.

MR. FOTE: Tomorrow. I'm not going to vote for a bill that I haven't seen.

CHAIRMAN BOYLES: Okay, the policy board can meet tomorrow to take this up if that is the desire of the policy board. Is there a second on the motion to table? A.C. seconds. All in favor of tabling the motion until the policy board meeting tomorrow raise your hand; all opposed. **The motion carries.** We will convene tomorrow to discuss the bill. The next item on the agenda, Jim Gilmore.

DISCUSSION OF NEW YORK INTERCOASTAL WATERWAY PROJECT

MR. JAMES GILMORE: Mr. Chairman, I will be very quick and I'm not going to ask for a letter. It is more of an acknowledgment and heads up. Back just before the end of the year the Army Corps of Engineers gave us a project requesting dredging the Intercoastal Waterway. When we told them that there was a winter flounder window that we had imposed from January 15th through May 15th, we got a bit of heat about it, and it went up to almost our governor's office in terms of resolving this issue.

At the time I had talked to Bob Beal and also Pat Kurkul, and we had gotten commitments to have letters written that this was an important thing because of the status of the winter flounder. Bob didn't have to write the letter because just the mention of the fact he was thinking about writing a letter the Corps backed down.

We need to incorporate that into our future letter writing; the threat of a letter may be all we need. That was a short victory. Unfortunately, what happened just last week is that the Army Corps met our executive in Albany, and they now have 25 projects that they're pushing, which seems to be all from stimulus money. There are five major projects from the New Jersey border and Staten Island and all the way up to Montauk that are being fast-tracked. They have already informed our executive office that these windows are not going to be something they can deal with.

They are challenging the windows and don't support them unless there is hard data indicating that there is a direct impact, so we seem to be into a bit of a battle that is going to come down the pike. Very simply, I think we're going to be requesting from at least the Habitat Committee some assistance on some of these things.

Again, these windows, we have two months from January 15th through May 15th, which is the winter flounder window. We have another summer when they're from June 15th through September 30th, which covers things like horseshoe crabs, weakfish and several other species, and we're going to need some assistance in maybe guiding the Corps in their positions.

Also, at this meeting they indicated that there might be projects along the coast, so the other states, if you haven't had a meeting yet you may get one soon. It was more of a heads up but also a bit of a request that we're going to need probably assistance from the commission and the service on some of these projects when we get into loggersheads. Thank you.

DR. DAVID PERKINS: I was just following on the tabling. The intent of tabling for tomorrow is so that we could have time to read the bill. Would someone have that available to e-mail to the board?

EXECUTIVE DIRECTOR O'SHEA: Brad Spear is e-mailing it to commissioners. Dave, if you see Brad and give us your e-mail, we can e-mail it to you.

CHAIRMAN BOYLES: Any other business to come before the policy board at this time? We will recess until tomorrow.

(Whereupon, the meeting was recessed at 6:32 o'clock p.m., February 3, 2010.)

FEBRUARY 4, 2010

THURSDAY AFTERNOON SESSION

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 afternoon, February 4, 2010, and was called to order at 1:20 o'clock p.m. by Chairman Robert H. Boyles, Jr.

CALL TO ORDER

CHAIRMAN BOYLES: Good afternoon, everybody. My name is Robert Boyles. I would like to reconvene the ISFMP Policy Board. The first item on the agenda is a consent. We've got one item the agenda. We have a motion that was tabled. Bill Cole.

MR. COLE: I have a followup item on Atlantic sturgeon that I request permission to bring before the board.

PUBLIC COMMENT

CHAIRMAN BOYLES: Okay, without objection. Seeing none, Bill, we will get to you in just a second. Now is the time on the agenda where we open the floor up for public comment. Is there anyone who wishes to address the ISFMP Policy Board from the public at this time? Seeing none, we will move right on. George Lapointe.

MR. LAPOINTE: **Mr. Chairman, I move we take the tabled motion off the table.**

FURTHER DISCUSSION OF ESA LISTING OF ATLANTIC STURGEON

CHAIRMAN BOYLES: Seconded by Pat Augustine. Any discussion? Any opposition to that? **Seeing none, that motion is now before the ISFMP Policy Board.** Just to refresh everyone's memory, this has to do with the Chesapeake Bay Clean Water Act. The motion is move that ASMFC send a letter expressing support of Senate Bill 1816, the Chesapeake Bay Clean Water Act, contingent upon removal of the five-year study of menhaden. That motion was made by Mr. Goldsborough and seconded by Dr. Kray. Further discussion on the motion? Tom Fote.

MR. FOTE: I did look through the bill. I found some things that concerned me. I didn't find things that I thought should be in the bill. I found it interesting that Pennsylvania wasn't included in the money since they basically are a big part of the Susquehanna River that goes into the Chesapeake Bay.

At this time I look at bills like this anymore, and I look at them very critically. There have been a lot of studies done in the Chesapeake Bay, a lot of grant money going in there, and I'm looking for more results after the 20-something years since this has been going on. If I would have seen where there were actually requirements of cutting 50 percent of the fertilizers. I didn't see that in this bill that I looked through.

Of course, I did it fast and I did it late at night, but at this time I can't support writing a letter. They can do it if they want, but I also looked – it was interesting the states that were included. For some reason West Virginia was to get money in the bill, and I'm just wondering why, but I remembered who is on the Appropriations Committee. I was just really concerned the way the bill was written.

MR. GOLDSBOROUGH: We were dealing in a vacuum of information yesterday, and so people wanted time to review the bill. I have taken the opportunity of that interval to invite to the board meeting today the Director of the Washington, D.C., Office of the Chesapeake Bay Foundation, Mr. Doug Siglin, who is sitting at the public mike right now.

He will be able to answer any questions, fill in gaps in information, and I know he will have things to say with respect to what Tom just mentioned. I just want to remind everybody that of the matters discussed at the Striped Bass Board and yesterday at the policy board, that what we have is the largest spawning and nursery ground on the east coast that produces some of our most important migratory species, with striped bass being the poster child and the one for which we have heard several expert presentations is afflicted by a serious disease that most likely result in physiological stress from water quality problems. This legislation would address that problem, and it would amount to major cutbacks in nutrients, Tom. Doug can speak to some of those specifics.

I also wanted to mention that another piece of clarification from yesterday is with respect to the menhaden study. I was under the impression that this was basically an unfunded mandate for this commission, but that is not case, and Doug can fill us

in on that. In fact, by our reading of it there would be no requirement of this commission to fund the study.

In fact, there would be support by federal agencies to get more work done on menhaden in collaboration with this commission. That is something that we all know needs to be done. We may actually want to revisit the motion with respect to that point. I want everyone at the board to know that they can direct questions to Doug if it is okay with the chair, and we can clarify any questions that people have. Thank you.

MR. AUGUSTINE: We were just trying to find who the cosponsors were from New York, and Mr. Culhane is looking up that information.

MR. LAPOINTE: This is a tough issue for us. Who doesn't like water being cleaned up? Who doesn't believe that we need to do more about habitat? I still feel like we're flying by the seat of our pants. Rather than getting into the details, which could take a lot of time, I think the best thing for this commission would be to refer to our Legislative Committee or the AOC if they do legislative matters and the Habitat Committee for review.

Importantly, one of the things I think that we need to look at is how it might impact habitat issues in other states. If we vote for this, are we hurting something in the Gulf in Maine or the South Atlantic? I'm going to move that we refer this to – and, again, I'll need some help from staff – the Legislative Committee and Habitat Committee for review and comparison with large-scale habitat restoration programs that may be occurring along the Atlantic coast as well.

CHAIRMAN BOYLES: George, is that a motion?

MR. LAPOINTE: That is a motion.

MR. AUGUSTINE: Second and more information on that.

CHAIRMAN BOYLES: Okay, so the motion then is to refer this discussion to the Legislative Committee and the Habitat Committee for –

MR. LAPOINTE: And the Habitat Committee. Again, I understand what Bill is doing, and I'm not speaking at all against this because if we don't figure these kinds of things out we're going to continually give trouble, but I am uncomfortable with this being brought to us and not being able to understand how it fits in with other programs and not to have, in my

case, the folks who know habitat better than I do look at it.

MR. AUGUSTINE: I'm just wondering if the maker of the motion would put some kind of sideboards on it as to what we would ask that group to look at. I don't know what the next action on the bill is other than it is on the floor. If a vote is coming up soon, do they need our input before or after – is it time sensitive? If it is, then I would ask that the maker of the motion might want to include a deadline when we should get feedback from those committees.

MR. LAPOINTE: I recall from the conversation last night that it is not that time sensitive. They're trying to build support for it and I understand that, but, again, other people may correct me on that.

MR. GOLDSBOROUGH: I actually wanted to ask what timeline George was anticipating for what he is proposing because this bill is before congress now, and they will be having committee hearings within a month. There is some time sensitivity to get in support for the bill at an early rather than later date, but I should toss it to Doug because he can put more specifics around that. Before we proceed any further, perhaps we can hear what he has to offer.

CHAIRMAN BOYLES: Doug, welcome. I'm sorry, I didn't get your last name, Doug.

MR. DOUG SIGLIN: Thank you, Mr. Chairman, my last name is Siglin, Doug Siglin.

CHAIRMAN BOYLES: Can you give us some background on this?

MR. SIGLIN: Yes, very quickly, I don't want to take up a whole lot of your time. I would start by saying that I've been involved in this bill for two years now. In fact, Senator Cardin has his name on it and some other people in the House. We were very involved in the writing of it, and I know intimately all 60 pages of it.

In terms of process, I just was on the phone to Senator Cardin's lead staffer on this to try to clarify a couple of things for you. One of the things he just told me is that Bill misspoke slightly. It is not a hearing that the senate plans to have. It is what is called a markup in committee, which means it is going to move through the process in March.

I think it would be extraordinarily helpful for your commission to not refer it to a committee, if you could possibly avoid that, but come to understand it

at least as well as you could today and then take some sort of proactive action on that because the senate really would like to know what you have to say about it.

This is the most important bill that has happened for clean water in not only the Chesapeake Bay but in the United States since 1972. Without going into a whole lot of the details, the bill would not only solve our nutrient and phosphorous and sediment problem in the Bay, which is extraordinarily important I would think from an east coast fisheries' point of view, but more than that it would fix the hole in the Clean Water Act that has been there since it was written in '72, which is to say that the Clean Water Act requires scientific analyses of what needs to be done called TMDLs, but it doesn't require any implementation.

This bill actually would set the precedent for doing implementation over the next 15-year period of the science, and that is precisely what all of us really should be looking toward is to have the science tell us what needs to be done and then have an implementation scheme that actually does it. This would be the first time since '72 that there really would be a mechanism to pull that off.

I've presented the case for support to several commissions like yours, several bodies of elected or appointed representatives, and in most cases the body itself has said, "We're comfortable writing a letter of support because we think that is important. We can't necessarily speak for our state legislatures or for governors or anybody else, but as a body that has a mandate to do a certain thing, we're comfortable with it." That is what I'd ask you to seriously consider.

As long as I've got the mike, let me just tell you what is going on with the menhaden study. The menhaden study is in the senate bill; it is not in the house bill. The way the menhaden study is written is it says that EPA and NOAA in conjunction with commission would do the study. What I just was clarifying with Senator Cardin's staffer is that it is the senator's intention that EPA would pay for that and that you would be a full partner, but that the money would come from EPA.

I guess I would say to the degree that you think the continued study of menhaden as a species is important and would like to be involved in a study in some way, it might be useful for you to express that, particularly if you don't have to come up with the funds to do it. I'd be happy to take any questions and give you answers as honestly as I possibly can.

CHAIRMAN BOYLES: Any questions of Mr. Sigland? Leroy.

MR. YOUNG: Tom made a comment and I did not – I looked at the bill but not in detail last night – he made the comment about money for Pennsylvania, which is my state; could you address that?

MR. SIGLIN: Yes, I'm sorry, I meant to, but I forgot to. With due respect to Tom, the money in the bill would go – there are several sort of pots of money in the bill, but Pennsylvania is absolutely included in all of them. There is no reason to believe that Pennsylvania doesn't get money from anything. There is a pot of money that would go directly to the state governments and Pennsylvania is included in that.

There is the money that would go for helping cities and towns to manage their storm water better. Pennsylvania is certainly included in that. I'm not sure how you got the idea, but I can guarantee that all the six states of the Bay Watershed plus the District of Columbia are fully included in all the funds.

MR. LAPOINTE: Given what I've heard about the timeliness, **I will withdraw my motion.**

CHAIRMAN BOYLES: The motion is withdraw. The seconder is okay with that? Okay. Other questions. Vince.

EXECUTIVE DIRECTOR O'SHEA: One of the ideas, Mr. Chairman, yesterday was rather than specifically weigh in in support of the 65-page bill was the notion of maybe weighing in and express an opinion on broad concepts that are within the bill, the goals of the bill to reduce nitrogen. Now I hear to provide financial assistance to the six states within the Basin to achieve those goals and the menhaden thing. My question is I wonder if that is sufficient detail to be of help.

CHAIRMAN BOYLES: Bill, I'm going to look to you as the maker of the motion; would that be of assistance? I guess this is where I am; I sense some real nervousness among the commission to sign off on a 65-page bill, the likes of which many of us have just seen for the first time yesterday.

From my perspective, if you will grant me this prerogative for a moment, I, like George, am reluctant to walk away from mother hood and apple pie of supporting cleaning up water quality and habitat in the Chesapeake Bay, looking at issues of menhaden and trying to make improvements there.

I really am afraid we're going to walk away with nothing here, and I guess that's really where I am, so how can we move this towards consensus. I'm looking to you and the seconder as can we talk about broad concepts? Vince.

EXECUTIVE DIRECTOR O'SHEA: I'm sorry I don't know the gentleman's name, but I was actually thinking about – my question was maybe directed to the gentleman from the Chesapeake Bay Foundation.

MR. SIGLIN: I think if all can you do – honestly, I think if all you can do is express conceptual support, that is certainly better than nothing. I think what is going to happen, though, in practice is that as this bill begins to pass through the senate and the house the senators from Maine and down to Florida and the coastal states are going to be interested in your guidance because they're going to eventually be asked to vote on the bill.

The money in the bill actually just goes to the Chesapeake Bay states because it is mostly a Chesapeake Bay bill, but the point that I think is the most relevant is that this is a place where I think all of us would like to go over the next couple of decades with clean water in the country, which is to evaluate the needs and then get there.

If you end up sort of doing a conceptual thing, it seems to me that is a point I would ask you to consider making as well, that you really would like have the science drive it just like you do in your fisheries, what needs to be done to clean up the water? I would love to have you endorse. If you don't feel like you can do that, then I would be happy to take second best.

MR. FOTE: I sit on the policy committee of the Barnegat Bay Estuarine Program, so I have been working on that, getting the same type of stuff done there. I look at look at Long Island Sound and it has the same problem. I look at it coastwide. Concept-wise I want it done up and down the coast.

My problem is because we don't have the amount of congressional delegations that actually live in Maryland and Virginia and basically senators that sail their boats on the Chesapeake Bay, we don't get the same type of consideration for cleaning up a lot of the other bays and estuaries. Over the years a lot of money has gone into the Chesapeake Bay, importantly and rightly so; but again, when I'm looking at the concept, as I just looked at NOAA's budget and realized when they did catch shares they did away with observer coverage, because EPA is

going to be directed to come up with the money and if our budget is flatlined, my good friend, Lisa Jackson, then where is she going to get the money from.

Concept-wise, yes, I can support this because I've been working on it for a long time in the three programs in New Jersey, the Delaware Bay, the Barnegat Bay and the Hudson River programs. But that is what I'm looking at; I'm looking at the concept to help all of us get to the same point. Again, the Clean Water Act we're hoping gets reauthorized one of these years to include stuff like that. That's what I think we really need to work on so all these things are done for all the bays and estuaries on the coast.

MR. SHIREY: I guess I'm a little surprised at the reluctance of the board to support this bill. Yesterday we discussed the value of the striped bass fishery and the states' benefits from that. Then when you have the main spawning area which supplies 75 percent of that stock's estimated in serious trouble with a huge portion of the population being infected by myco, and this is one of the ways to get around that, it seems like we're talking out of each side or both sides of our head at the same time. I'm just surprised at the board.

MR. DUREN: I've spent nearly all my life working for clean water and I really feel strongly about it, but I don't like this bill. For one thing, it seems that very much of the content of this bill represents anything that EPA could do today under existing authority if it wanted to. This bill represents congress directing EPA how to do its job, and I don't like that.

It also gets EPA into fishery management, which I don't like. Finally, it has some heavy-handed measures like banning the manufacture, sale and the use of phosphorous cleaning agents in the Chesapeake Watershed when maybe they ought to be used, you know, emission controls. There are a lot of things about the bill I don't like, and I would not support its endorsement by the commission.

MR. FOTE: Just to follow up on John's point, when we basically took phosphorous out of a lot of the detergents, and most of them had been removed already, we started adding surfactants, which is causing more problems than the phosphorous has caused. We mandate one and we wind up with another problem. That's why if we're going to do this, we need to do it in a thoughtful way.

I tired of basically recommending that we ban something and we find out that the solution to that, whether it is for car additives or something, is worse than what we basically started with. That is another one of my concerns, and that's why I needed more time to really go in detail and get with my people that deal with this.

MR. DIODATI: I'm getting the impression that we may have to go to third best, which is George's original recommendation is to bring this back to one of our committees or two to get a little bit more information about the bill. It seems to me that there is enough discussion around the table that there is certainly not a consensus on it. I don't know where George went, but if he wants to bring his recommendation back up to send it to the Habitat Committee for a thorough look, I would be in favor of that.

CHAIRMAN BOYLES: My sense is do we need a motion to that effect? Certainly, the discussion that this has generated I think is going to get the attention of the Habitat Committee as well as the Legislative Committee and whoever else needs to look at this. I'll entertain a motion if we need to do that or we can move that by consensus. Vince.

EXECUTIVE DIRECTOR O'SHEA: I think the problem with the consensus approach unfortunately is you did accept a motion from Mr. Goldsborough, who obviously feels strongly about it – he brought Doug over here – so you probably ought to formally deal with Mr. Goldsborough's motion.

MR. BALLOU: And I just want to note that my position, given the discussion I've heard, is to go with the second best option and that is the letter of conceptual support. I've got two or three sentences that I think would capture that. I wasn't planning to put them in the form of a motion but rather a sense of what the letter could say and be able to dispense with this issue and not have it subject to continued review because I just don't see how that would necessarily result in a fruitful outcome. Thank you.

MR. AUGUSTINE: Having heard that and heard the concerns around the table and particularly after listening to Mr. Duren, who has spent a lifetime involved with clean water, and some of the sidebars within this bill that he doesn't like, I would move to table this motion to a date certain or time certain – I may need some clarification on that.

If I can tell you why, it would be to bring back a motion similar to what Mr. Lapointe had started with

and I had seconded and go down the road of having those specific groups we have within the commission review and then come back with some assessment and/or recommendations to us. **I guess simply table this motion to a date certain or meeting certain, whichever is more convenient.**

CHAIRMAN BOYLES: Is that a motion?

MR. AUGUSTINE: Yes.

CHAIRMAN BOYLES: And what is the date?

MR. AUGUSTINE: I don't know when these committees could get this together. Could they do it for the spring meeting; is that too far out?

EXECUTIVE DIRECTOR O'SHEA: Well, I have suggested that Toni not type anything for a minute. Doug has reported to us that this thing is in play in March. This is the first week in February; so if you're going to send this out to a group like the Habitat Committee and then have some sort of legislative group of the ASMFC look at this, it's not clear to me, you need to make a decision whether you want to get all that done, say, in March and then what is the mechanism going to be to vet and approve and decide on this or is the goal going to be to deal with this in the May meeting, which then you have to reconcile with the advice you have been given about the timeline of the bill. I'm not clear at all of what you're trying to accomplish here.

CHAIRMAN BOYLES: I'm trying to get us a resolution. Here is where we are. We have a motion to send a letter supporting a senate bill. It is on the floor. There is a motion and it is seconded. We have a motion to table by Mr. Augustine that has not been seconded. Actually it has not been clarified and not been seconded. That is where we are.

MR. FOTE: Going to markup doesn't mean a bill is moving immediately. Also, presuming the date of the markup, there is a long time – you know, I've watched a lot of bills that I thought were supposed to go to markup and wind up four months later it still hasn't gone. Just because you go to markup, then it still has to go to the committee, then there still are going to be hearings after that. There is enough time to basically take this back to the proper committees and the commission.

MR. MILLER: Mr. Chairman, I was intrigued by Mr. Ballou's comments that he might have some alternative language prepared. I was wondering if we

might entertain that language if he feels so inclined to do so. Thank you.

MR. BALLOU: The language I came up with – and, again, this was just intended to capture the essence of what a letter might say, and that is that the commission strongly supports the central purpose of the bill, which is to continue and strengthen efforts to improve water quality in the Chesapeake Bay.

The commission notes that improved water quality relates directly to the health and sustainability of several important marine fish populations that rely upon the Chesapeake Bay, including and perhaps most importantly striped bass. While the commission takes no position on the mechanics of the bill – that could be altered to say “provisions” or “specifics – the commission wholeheartedly endorses the bill's primary purpose and intent and urges its favorable consideration.

The only additional thought I had is to that could be appended some specifics on the striped bass health issues that just speak about what the commission knows about striped bass and their health effects, but that the letter would simply address the importance of water quality improvements and not necessarily endorse the specific provisions of the bill in terms of how those would be achieved. Thank you.

MR. GOLDSBOROUGH: Mr. Chairman, would it be appropriate at this time for me to amend my own motion pursuant to Mr. Ballou's comments essentially to have it read move that the ASMFC send a letter of conceptual support for the intent of Senate Bill 1816 consistent with the language read into the record at the policy board by Bob Ballou.

CHAIRMAN BOYLES: Dr. Kray.

DR. KRAY: Approved.

CHAIRMAN BOYLES: All right that is a friendly amendment. Tom Fote.

MR. FOTE: The one addition that could get me to really support this is to basically include all the 14 states along the east coast should be having the same type of look at and the same type of regulations being put in.

MR. GOLDSBOROUGH: The mover would not consider that a friendly amendment.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, just give us a second to get your motion up there before you take other comments, please.

CHAIRMAN BOYLES: Bill, that is how your motion reads at the present: move that the ASMFC send a letter of conceptual support of Senate Bill 1816, the Chesapeake Bay Clean Water Act, consistent with the language read into the record by Mr. Ballou. Motion by Mr. Goldsborough; seconded by Dr. Kray.

MR. GOLDSBOROUGH: Yes.

EXECUTIVE DIRECTOR O'SHEA: I was just wondering about the reaction from Doug to this. I guess this still puts it in the category of your second best option?

MR. SIGLIN: Yes, it is the second best option, but if that is what the desire of the commission is, I would be very pleased.

EXECUTIVE DIRECTOR O'SHEA: So we're looking at a good letter, not the best letter or perfect letter, and we're looking at it on time.

MR. MARTENS: So depending on the timing of this, can we also send this to the committees to potentially have it reported back at the spring meeting; and if we want to write a more robust letter in support of it, we could do that as well at that time?

CHAIRMAN BOYLES: Any objections to that approach? I think that is a good suggestion and certainly implied. Any further discussion on this? Wilson.

DR. LANEY: Mr. Chairman, as the Chair of your Habitat Committee, it would be nice if you gave us a little bit more specific guidance as to exactly what you want us to look for as we review the bill. I mean "review" is kind of broad and unspecific. I think Mr. Lapointe did have some specific comments that he read into the record; so if you can give us guidance on what you want back from us, that would be good.

CHAIRMAN BOYLES: Wilson, I would encourage you just to review the record at this point, if you would, please. Dr. Kray.

DR. KRAY: For those of you who haven't seen the bill, the sponsors of it – and this may have changed since then – are Mr. Cardin, Ms. Mikulski – I know she is from Maryland – Mr. Carper from Delaware and Mr. Kaufmann from Delaware. There are two

from Delaware and two from Maryland. That is just for information.

CHAIRMAN BOYLES: Thank you; any further discussion? Bill.

MR. GOLDSBOROUGH: It that point is of interest, I could also inform the board that on the house side this bill has cosponsors from Virginia, Maryland, the District, Delaware, New York, Minnesota, Texas and Arizona.

CHAIRMAN BOYLES: Further discussion that would benefit the ISFMP Policy Board in settling this matter? Steve.

MR. STEVEN MEYERS: Just to note, Mr. Chairman, as this is federal legislation, I will have to abstain.

CHAIRMAN BOYLES: So noted. Further discussion? Is there any opposition to this motion? Two votes in opposition. **The motion passes.** Mr. Cole, you had a piece of business.

FURTHER DISCUSSION OF ESA LISTING OF ATLANTIC STURGEON

MR. COLE: Mr. Chairman, I know everybody has struggled to get out of here, but Dr. Daniel and I have had important and very persuasive discussions with many of you since the letter was approved opposing the ESA on Atlantic sturgeon yesterday. Significant to us in those discussions is our belief that unity among all member states is critical and the Commission FMP process works best to manage and not just designate.

Belief in our FMP process, which accommodates widely varying member states' management abilities and actions which are far more flexible, commit us in unison to constantly monitor, evaluate our results and make whatever regulatory changes necessary to achieve results. The bottom line is that Dr. Daniel and I believe in our FMP process; we believe we are committed unanimously to achieving the FMP process results.

In that vein and being on the prevailing side I would like to offer a substitute motion to the one that we passed yesterday on Atlantic sturgeon. Mr. Chairman, I move an ASMFC letter be sent highlighting the commission plan provisions and member states numerous significant efforts to restore, conserve and manage our stressed Atlantic sturgeon stock. Commission members,

hopefully unanimously, believe that our recent management measures, including harvest moratorium, monitoring and research are having positive results and will continue to do so without ESA action at this time.

CHAIRMAN BOYLES: Bill, thank you. I think appropriately and parliamentarily that is a motion to reconsider. You were on the prevailing side?

MR. COLE: That would be correct, Mr. Chairman. I apologize for the error.

CHAIRMAN BOYLES: Is there a second on the motion to reconsider? Second by A.C. Carpenter. Bill, you have read the motion that you would like the policy board to reconsider.

MR. COLE: Yes, sir.

CHAIRMAN BOYLES: Just so everyone knows, this is dealing with the letter regarding EAS listing of sturgeon. That vote passed yesterday by eleven in favor and two against. I think what Mr. Cole is attempting to do is see if we can get consensus and unanimity of opinion here. We have a motion on the floor, and that motion would be send a letter highlighting the commission plan provisions and member states numerous significant efforts to restore, conserve and manage our stressed Atlantic sturgeon stock. Commission members believe that our recent management measures, including harvest moratorium, monitoring and research are having positive results and will continue to do so without ESA action at this time. Discussion on the motion? Dave.

MR. SIMPSON: Looking back at my notes, I'm trying to figure out how this is substantively different from what we voted on yesterday.

MR. COLE: Well, first of all, it doesn't use the word "oppose". Basically what it says is that this commission believes in the management process. We have an FMP and we're trying to manage. It says that we don't believe that ESA designation is necessary at this time; whereas yesterday we just opposed it, we're just saying today we want the Secretary to give us a chance – give our management plan a chance instead of designation. We believe in management. That is our business here.

CHAIRMAN BOYLES: I think, David, it softens the tone a little bit of the message that was intended to be conveyed yesterday. Further discussion? Leroy.

MR. YOUNG: We were one of the states that voted against the motion yesterday and this really doesn't change our opinion, if that helps.

CHAIRMAN BOYLES: Thank you, Leroy. Further discussion? All those in favor of the motion signify by raising your right hand; opposed same sign; null votes; abstentions. **The motion carries.** For clarification, Bill, given the fact that was not a unanimous vote of support, I don't think we can include that word in the letter.

MR. COLE: You can always dream.

OTHER BUSINESS

CHAIRMAN BOYLES: I think, Toni, what that entails is deleting the word "unanimous". Any further business to come before the ISFMP Policy Board at this time? Paul.

MR. DIODATI: I think there is a motion for one of our states to be found out of compliance with the Coastal Shark Management Plan.

CHAIRMAN BOYLES: Paul, we took care of that as the policy board. We're going to adjourn the policy board. Any other business? Roy.

MR. MILLER: Mr. Chairman, if it is allowable we would like to withdraw our null vote from this and put it in favor of the motion.

ADJOURNMENT

CHAIRMAN BOYLES: Okay, so recorded. Delaware did register a null vote; and according to Mr. Miller and Mr. Shirey, they would like that vote recorded as a positive vote in favor of the motion. It does not change the outcome of the vote. That motion on the sturgeon letter did carry. Any further business? Seeing none, we will stand adjourned.

(Whereupon, the meeting was adjourned at 2:00 o'clock p.m., February 4, 2010.)
