

PROCEEDINGS
of the
ATLANTIC STATES MARINE FISHERIES COMMISSION
ISFMP POLICY BOARD

August 23, 2000
Radisson Hotel
Alexandria, Virginia

Graham Verbatim Transcriptions, Inc.
P.O. Box 314
Monson, Maine, 04464

(207) 997-2080

TABLE OF CONTENTS

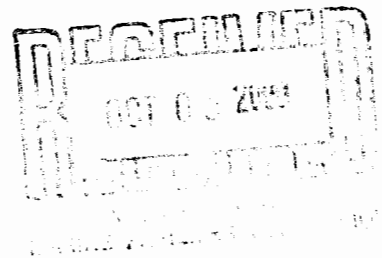
Call to Order, Chairman William V.D. Borden.....1
 Approval of Agenda.....1
 Approval of Minutes.....1
 Determination of a Quorum.....1
 Update of ISFMP Charter Revision.....2
 Briefing on East Coast Take Reduction Team.....4
 FY 2001 Funding Picture.....7
 South Carolina re Shad & River Hearing FMP.....12
 Other Business.....17
 Adjournment.....24

- - -

INDEX OF MOTIONS

MOTION	PAGE	ACTION	PAGE
Approve New Language to the Charter)	2	Carried	3
Add Subsection to ISFMP Charter)	18	Carried	23

- - -



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The ISMFP Board of the Atlantic States Marine Fisheries Council convened in the Washington Ballroom of the Radisson Hotel, Alexandria, Virginia, August 23, 2000, and was called to order at 1:00 o'clock p.m. by Chairman David V.D. Borden.

CHAIRMAN DAVID V.D. BORDEN: If everyone could have a seat, for those of you don't know me, my name is David Borden. I am the Chairman of the ISMFP Policy Board, and in today's session we have about ten items that we are going to cover on the Board.

The first item that I would ask Dieter to take place is to call the roll, please.

(Whereupon, the roll call was taken by Mr. Dieter Busch.)

CHAIRMAN BORDEN: All right, we have a quorum. The agenda has been distributed. Are there additions or deletions to the agenda? Any objection to taking the agenda in the order in which it appears? If not, we will do that.

Before we get into approving the minutes, is there any member of the public who would like the opportunity to address the Policy Board? As is our practice, we allow the public on votes usually to come before us and offer comment.

So, if there is no one here at the current time who wants to offer a comment, we will proceed with the agenda.

The minutes have been distributed. Are there any comments, additions, deletions to the minutes. No hands up? Are there any objections to approving the minutes as submitted? No objections, the minutes stand approved. Next, A.C., did you have a comment?

MR. A.C. CARPENTER: I have a question. They came around and passed out packets. Are they different than the one that we got in the mail?

CHAIRMAN BORDEN: No. All right, the minutes stand approved. The next item is the update on the Charter revisions. Susan Shipman.

MS. SUSAN SHIPMAN: Thank you, Mr. Chairman. This is going to be relatively brief. You will note, if you went through your minutes, on pages 20 through 22, at the last meeting in June, the legislative and governor appointees recommended to this Board that under the ISMFP process, we incorporate and utilize the caucus voting process that we have incorporated into our Management Board System.

There was general consensus to do that, and we were asked to go back and look at and bring to you the necessary charter changes and the language changes. You have before you a copy of the Charter that is dated August, 2000.

And, if you would look at that, the language that we need to bring to you today and ask that you adopt is language that is italicized and underlined.

That is on pages two and three. Also, through the entire document, you will see some italicized language. That is the language that you adopted in the fall of 1999 in Mystic.

You have not gotten a new copy of the Charter, so we wanted you to be able to see the changes that you have already adopted. I would hope that we would not go back and revisit old ground and second guess the language that we have already approved last October.

Anyway, the language on pages two and three are actually identical to the language on pages four and five that has to do with Management Board Membership and Proxy Membership.

What we did, we just took that language and repeated it under the membership for the Policy Board, such that the new language would say, "All member states of the Commission shall be voting members and shall be represented by all of its commissioners or duly appointed proxies in attendance. The position of a state on any matter before the Policy Board shall be determined by caucus of its commissioners in attendance."

The language on proxies is identical to what we adopted for proxies on the management boards. So, with that, I would move that the Policy Board accept and approve the new language to the Charter for the membership of the Policy Board.

CHAIRMAN BORDEN: All right, seconded by George LaPointe. Any comments on the motion? No hands up, Anyone in the audience have a comment on the motion? If not, are you ready for the question?

All in favor, signify by saying aye; opposed; abstentions. the motion carries unanimously.

MS. SHIPMAN: I do have one other item which is an item that really surfaced yesterday during the discussion of weakfish, and Chairman Borden and I talked about it this morning.

You will recall that we approved language last fall to accommodate technical addenda, and those are addenda to plans where there was an erroneous omission, inadvertent omission, oversight, so on and so forth.

We are wondering if this Board would also want to consider having a provision to extend the plan, the effectiveness of the plan for a time certain by a super majority, say, two-thirds or something like that, a super majority vote until we could get a plan done.

Weakfish is a prime example. We are going to have to go in, do an addendum, which is going to take a considerable amount of staff time and so on and so forth. And are there situations where we have not had the resources to get to a plan amendment or an addendum, and we simply need to extend the effectiveness of the management measures we have in place until we can get that done? I just throw that out for your consideration.

CHAIRMAN BORDEN: Just to follow on what Susan said, it seems somewhat ridiculous in this day and age of very tight type resources for the commission to go through all of the effort that is required to simply extend something that already exists. Do you have any language you want us to consider?

MS. SHIPMAN: No, I wanted to hear thoughts of the Board.

CHAIRMAN BORDEN: Comments on the question that Susan proposed? Pres and then George.

MR. PRESTON PATE, JR.: I think that it is a very good idea, Susan. I would hope that we might be able to get something in place to vote on at the October meeting that would poise us to approve the weakfish plan extension in that way.

MR. GEORGE LaPOINTE: My comments were much the same.

CHAIRMAN BORDEN: Anyone opposed to the concept? No opposition or comments from the audience? Bruce, first.

MR. BRUCE FREEMAN: David, what thought did you have so far as a super majority, three-quarters?

CHAIRMAN BORDEN: We were thinking two-thirds or something like that.

MS. SHIPMAN: We might want to use the same thing that we use on an emergency vote, and I would have to see what that is.

CHAIRMAN BORDEN: If the membership is generally receptive to the idea, we could ask our executive director, during the meeting here, to work on some language that might accomplish it and then we could meet Pres' pressing deadline.

MS. SHIPMAN: We use two-thirds for emergency approval.

CHAIRMAN BORDEN: All right, are there any comments in the audience. No comments? All right, what I would suggest is that we -- excuse me, Gordon.

MR. GORDON C. COLVIN: I just had one thought -- and I don't know that it can't be accommodated -- but a feature of the addendum process that wouldn't apply here is the requirement for a public comment period and the provision for public hearings at the options and discretion of the states.

The extension of a program of management that is scheduled to end is probably as significant to the stakeholders as a change in the program that would be subject to an addendum, so it seems to me that there ought to be some way of assuring that we provide some opportunity for input prior to taking the action, and that distinguishes it from an emergency action. That is just a thought.

CHAIRMAN BORDEN: All right, any other thoughts? If not, I would ask Jack and the staff to try to work on some language during the meeting; and if we can perfect it, we will bring it back on the table, if that is agreeable to everyone. Any other comments on this issue?

If not, we'll move on to the next item which is a briefing on the East Coast Take Reduction Team by Patricia Lawson. Welcome, Patricia.

MS. PATRICIA LAWSON: Hi. I am from the Office of Protected Resources, the National Marine Fisheries

Service, and we just thought it would be a good idea to come and, you know, hear what is going on here because it does involve our take reduction teams and under the MMPA, Section 118, we have to have take reduction teams to assist in the recovery or prevent the depletion of strategic marine mammal stocks that interact with certain fisheries.

We have a few of them that are the east coast, the Harbor Porpoise Take Reduction Team, which consists of two of them, the Gulf of Maine and the Mid-Atlantic Harbor Porpoise.

The Gulf of Maine was convened in 1996 and the Mid-Atlantic was convened in 1997. Both of them deal with -- we have been dealing with time and area closures and net tagging; and in the Mid-Atlantic, gear modifications for the small and large mesh gear.

If you have any questions regarding those two, Emily Hansen at National Marine Fisheries Service, she oversees those fisheries.

The Coastal Bottlenosed Dolphin Take Reduction Team hasn't met yet. The first meeting will be convening later this year or early 2001. The other one is the Atlantic Large Whale Take Reduction Team, which convened initially in 1996, and the final rule came out in February of 1999.

Right now they are working on interim final rule which deals with gear modifications for lobster and gillnet gear, gear marking midway on the buoy line and also nautilus weak links.

They are also looking into time area closures, but that won't be in this interim final rule. They are looking into that for next year. The next meeting will be held in winter of 2001, which will be dealing with the time area closures.

That is basically the four take reduction teams that deal with the east coast.

CHAIRMAN BORDEN: Questions for Patricia? Pete.

MR. W. PETE JENSEN: What is the level of take involved in these fisheries that you just went through, or the species, and what is the target that that take has to be reduced to?

MS. LAWSON: Okay, the Atlantic large whale, basically their main concern is the right whales, and they have to

get down to zero mortality rate for that one.

MR. JENSEN: And what is the take?

MS. LAWSON: Last year it was two.

MR. JENSEN: Two?

MS. LAWSON: Yes, and the coastal bottlenosed, the PDR for this is 25 animals and that was the take for 1999. The harbor porpoise bycatch for 1999 is currently at 342 and the PDR for that is 483.

CHAIRMAN BORDEN: Other questions? George.

MR. LAPOINTE: A comment more than a question. Ms. Lawson, I am from the state of Maine and with the large whale take reduction team process really not coming to a conclusion, a number of states have come up with plans to address the concerns that were being addressed, specifically time area closures, gear modifications and also getting the states involved in disentanglement.

It has been a slow start. We have, in the state of Maine, offered to get our marine patrol involved, and there has been haggling over funding and there has been haggling over the timing of getting fishermen involved in that process, so I would like to get together with you later.

I would encourage your office as well to look creatively both at funding availability and working with the states because we are unique partners in this process because of our roles in fisheries management that I think you should be able to take advantage of to the betterment of the take reduction process in whales.

CHAIRMAN BORDEN: All right, Jill.

SENATOR JILL GOLDTHWAIT: Thanks. I am also from Maine. Two questions. One is unless your comments were tailored for this particular meeting, I think that the most common danger to right whales is shipping, and yet the measures that you mentioned deal exclusively with fishing activity.

How are we going to get to zero, given that? The second question is that there was a round of vessel-based disentanglement training scheduled for this summer which was canceled.

Can you tell me why that was canceled and whether that is ever going to happen?

MS. LAWSON: Okay, to deal with the first question, I tailored my discussion to deal with fisheries. The gentleman who deals with the vessel -- there is a plan out for all of the ships to contact when they are in the area and to be notified where the right whales are, and that plan went out this year, but that gentleman is not here.

If anybody would like to talk with him about it, his name is Greg Silber. With the training, to answer the gentleman's statement, there was training for Maine Coast Guard and Marine Patrol. In fact, it was last month, there was training.

SENATOR GOLDTHWAIT: And this would have been training for fishermen?

MS. LAWSON: And for the fishermen, we tried to get a group together; and because the fishing season started, some of them canceled out. It was hard to get the allotment to do it.

We are still in the process of getting that together, but it is difficult with the disentanglement team going out to disentangle whales and also the fishermen during their season.

It is hard to coordinate that at the moment, but we have not canceled it.

SENATOR GOLDTHWAIT: They received a letter stating that it had been canceled.

MS. LAWSON: Yes, that one was canceled, but we are going to be reconvening that.

SENATOR GOLDTHWAIT: I see, thank you.

CHAIRMAN BORDEN: Other questions for Patricia? Anyone in the audience? If not, thank you very much, Patricia, for coming.

The next item on the agenda is funding. Jack Dunnigan.

EXECUTIVE DIRECTOR JOHN H. DUNNIGAN: Thank you, Mr. Chairman. I just wanted to take a second to bring the Policy Board up to date as to where we are in planning for our funding.

First of all, with respect to -- and remember we are dealing pretty much with a calendar year here because the funding for the ISFMP is dictated by our grant, which is on a February through January basis.

For the rest of the year 2000, we have been keeping a lot better track this year than we did last year of the funding expenditures. I think the boards have been very considerate in recognizing some of the funding limitations that we have to be aware of.

There haven't been a lot of demands for external meetings, and so we have been able to pretty much keep on with the spending plan that we started the year out with. The take-home message there is that I don't expect that you are going to have to face any surprises in September, October and November about funding availability.

The senior staff is going to get together beginning early next week and take a more detailed look at what is available to fill out the year. There are some things that we plan to do that we didn't actually get done, and so we will make some reallocations and looking at what some of the current needs are and see how much of that we can carry out.

We are in the process now of beginning to wind down our 2000 funding. For 2001, as we progress through fleshing out our strategic planning process, the next level of doing that is to take another step of opening up the priority setting for the expenditure of funds that we get under the Atlantic Coastal Fisheries Act.

The Administrative Oversight Committee will be coming back into Washington next month for a two-day strategic planning session. At that point, the staff will sit down with them and talk about all of the different tasks that we think we want to include in our action plan for 2001.

In the past, this is an exercise that we did just at the staff level, but now that we are implementing the strategic plan, we are able to move beyond that. The senior staff has already had some discussions.

I think that we are all aware that we are going to come into that meeting with an understanding of what it is we want to recommend in our various program areas that gets done and what it is going to cost both in terms of staff resources and in terms of dollars.

The Administrative Oversight Committee will be in a position then to start thinking about what are the tradeoffs between doing one activity and not doing another and what the relative priority of these things should be.

Coming out of that meeting will be a draft action plan for 2001 that will come to the Policy Board at the annual

meeting, and you will have the opportunity at that point to make the final decisions as to where you want to see the priorities fall out within the ISFMP and within our ACFCMA grant funding for 2001.

As I said to the legislators this morning, this is not going to work perfectly this year, but it is going to work better than it did last year and it will work better next year, so we are sort of gradually evolving to this more open and inclusive process for what used to be essentially a staff activity of working up priorities and asking you to approve them.

In a more general sense, Mr. Chairman, the other thing that I would like to report on for just a second is the status of congressional funding in the fiscal 2001 budget. The House has approved the budget for the Commerce, Justice and State.

The Senate subcommittee and committee have done their staff work on it, but they have not formally reported the bill to the floor yet. So, what we know, we presumably only know through speculation and rumor, although there have been pieces of paper that have been floating around from the committee.

They are not technically official yet, but what it provides is the Senate would provide an additional \$1 million to the funding for the Atlantic Coastal Fisheries Act Program.

If that money ultimately is enacted by Congress, and assuming the Senate approves it, it will then have to go to a conference committee with the Senate and the House, or it will be resolved as a part of a huge budget deal that the Congress will make with the President shortly before they all recess to go campaign for election somewhere around October 5th.

One way or the other, we will know by the annual meeting whether or not we are going to get an increase from Congress this year for the Atlantic Coastal Fisheries Act Program.

I think the Administrative Oversight Committee is probably going to proceed on the assumption of level funding, but we will have some priorities in line to recommend to you if additional funding becomes available, and we will know that before the annual meeting happens.

I think that it is a good sign that the Senate has enough confidence in the program that it is willing to provide

the additional funding to the states to carry out this cooperative effort.

That is what I wanted to report, Mr. Chairman. I would be glad to try to answer any questions.

CHAIRMAN BORDEN: Thanks, Jack. Any questions for Jack? Susan.

MS. SHIPMAN: Anything on CARA that you want to report?

EXECUTIVE DIRECTOR DUNNIGAN: CARA is the Conservation and Reinvestment Act. I sent an e-mail to commissioners last Friday. Has anybody seen it? The newest e-mail participant has it.

You should have it there. Let me tell you the status of CARA is that the House has approved the bill. The Senate committee has approved a bill and all of the effort right now is being expended towards trying to make sure that that bill goes to the floor.

If that bill goes to the floor of the Senate, it will pass. The problem is going to be getting it there, and that is a matter of overcoming inertia within the legislative process.

What we are trying to do right now is to get a letter, which has already started circulating, to Senator Lott and Senator Daschle, the two leaders in the Senate, telling them how important this legislation is and asking them to make sure that it gets to the Senate floor.

We need to get every United States Senator to sign that letter. From our standpoint, we have got fifteen states, that is thirty of them.

Some of them may not, but it is certainly worth it for you to get in touch with your contacts at the state level and to urge your constituents to get in touch with their contacts in the senator's offices and ask them to sign that letter.

There are more details in the e-mail that I sent out. There is draft language that you can use for a letter or for some editorial op-ed pieces with your newspapers. I would encourage you to do that.

That all helps. Phone calls help. Letters help. This is crucial. One of the things that may happen to CARA is that it may get -- because it is a major commitment of fiscal resources, it may get tied up in the big budget

deal that the Congress and the President will inevitably have to negotiate somewhere around October 1st.

Who knows what will happen then? The President was supportive of CARA when it was in the House. In his view, it embodies a lot of the ideas that he had in his Lands Legacy Initiative.

It apparently would get support from the administration, but exactly how much and how all of that would sort out is going to be hard dealing on the negotiating floor and none of us are going to be at the table.

So, we need to do as much as we can ahead of time to emphasize to our senators just how important this issue is. If you can't find that e-mail, let me know and I will resend it you, but we did send it out to all commissioners last Friday.

CHAIRMAN BORDEN: Any other questions for Jack? No questions? Thank you very much, Jack. I would just like to emphasize one point that I think it is going to be helpful on the issue of priorities to have a memo from the AOC sent out to all the commissioners at least a week or two prior to the annual meetings so that you can look at the priorities and have a chance to digest it, so we will definitely try to meet that schedule. Jack.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Chairman, is there a Legislator's Report on the agenda?

CHAIRMAN BORDEN: No, there was not.

EXECUTIVE DIRECTOR DUNNIGAN: Let me just say then, if I may, Senator Goldthwait, that this morning the legislators spent a lot of time talking about priorities, and one of the things that they asked the staff to do, and we will, is to begin thinking about and begin putting together some kind of a decision matrix that would allow the Policy Board to evaluate the different considerations that you have in setting priorities for fishery management plans and among fishery management plans.

I think that as we continue to work on that with the legislators and with other commissioners, it is going to give us a lot better handle on making some of these very difficult decisions.

But, the legislators discussed that this morning and I thought that the other commissioners should know that.

CHAIRMAN BORDEN: Thanks, Jack. Jill, do you have

anything you want to add to that? Anything else under this item? If not, we will move along.

The next item is the issue of a status report on the subject of South Carolina being out of compliance with the Shad and River Herring Plan.

My understanding is that David Cupka is going to dazzle us with a powerpoint presentation on the issue.

MR. DAVID CUPKA: Thank you, Mr. Chairman. Actually, I am not going to be doing it, but I did want to say that we appreciate this opportunity to brief the Commission on where we stand on the shad issue, and at this time I would like to introduce my boss, Dr. John Miglarese, who is here as Paul Sandifer's proxy.

Actually, John is going to be making the powerpoint presentation, so with that I will turn it over to John, Mr. Chairman.

CHAIRMAN BORDEN: Thank you, David, and welcome, John.

DR. JOHN V. MIGLARESE: Thank you, Mr. Chairman, I appreciate the opportunity. I have been Paul Sandifer's deputy for a number of years; and when he moved on to become the Executive Director of the Department of Natural Resources, I assumed the role as Director of the Marine Resources.

The one corporate history strength of what we have been doing here for all these years as part of ASFMC has been David Cupka, so he will continue to serve in a very strong and important role within the state of South Carolina.

This particular issue is one of compliance. It is at the highest levels of state government, and it is the crux of what this commission is all about and what the Atlantic Coastal Fisheries Act is all about.

What we wanted to do was to take the opportunity today to give you just a status report as to what we have been doing in the interim since the meeting in June in which the Commission found South Carolina out of compliance.

If you will just recall very quickly, this is obvious to all of you, that there was in 1998 the fishery management plan that had a ten-fish recreational creel limit to reduce shad mortality.

South Carolina did not have a recreational creel limit, so as part of the plan development, we were out of

compliance.

So, in March of this past year, prior to the June meeting of ASMFC, David Cupka and I and the rest of the marine division have been working on a rewrite of all the coastal fisheries laws. We have been working on it for about five years.

In March of this past year, it passed so all the laws in South Carolina were modified or consolidated and made much more efficient and everything else, except for the shad provision in which there is strong local legislative interest.

They retained a twenty-fish recreational creel limit for shad. Because of that provision, in June the commission found South Carolina out of compliance with the amendment.

So to stop there for a second in the status report, let me just go back to Section 807 of the Atlantic Coastal Fishery Management Act. It requires the finding of non-compliance based upon two issues.

One is whether the state has failed to carry out its responsibility as spelled out in the plan and whether the measures that the state has failed to implement and enforce are necessary for the conservation of the shad fishery.

In other words, both these conditions are necessary for a finding of non-compliance. After we came back from the June meeting, David and I met with Paul Sandifer and obviously, as you can imagine, the news release that was generated from the Commission in June reverberated through the General Assembly in South Carolina, and David spent a great deal of time reminding the legislators of their responsibility and also the responsibilities of the state of South Carolina in general.

This got to the governor's office, and we had a provision in law that we thought would go ahead and pass, but it missed the timeframe under which they would take action.

We went to sine die and we came back -- and this is what makes it very special in what David and I and the Marine Division and the Department of Natural Resources have accomplished -- we came back during that one-week session in which they are supposed to deal entirely with appropriations and actually got the General Assembly to establish, under H4864, a ten-fish creel limit for shad for all South Carolina waters except the Santee River, which remains as a twenty-fish creel limit.

Unfortunately, during this process, because of local politics, there was a provision placed in that legislation that had nothing to do with shad, but involved a provision that eliminated size limits on striped bass in certain reservoirs in South Carolina during June, July and August.

The bill was delayed in its signature and its implementation to not allow the striped bass issue during the summer so that we could come back to the General Assembly in South Carolina next year and deal with the striped bass issue and try to separate the shad issue.

Staff has just handed out a letter to you -- let me go back -- in August we received a letter from Penny Dalton in the National Marine Fisheries Service to Governor Hodges announcing the moratorium.

In that letter, there is a clarification, which we will come back to a little bit later on, that needs to be made by NMFS. There was a mistake in the letter to the governor.

But in any case, we responded immediately back to you with a packet, and you all should have received that via the mail, I hope. Have you seen the packet that David offered?

Okay. We were then given the moratorium letter that we received. Now, what I've just passed out to you is a letter from the governor to you, and I just gave all of my letters away.

I would like have this in the record, Mr. Chairman, if that is okay. I am not sure it is necessary to read it, or do you want to just --

CHAIRMAN BORDEN: We can enter it into the record.

DR. MIGLARESE: In essence, what the governor is saying and I will paraphrase this: "I would like to make clear to you that I intend to sign H4864, a bill that we believe will bring us into compliance with the Atlantic States Marine Fisheries Commission's recommendations for shad at the beginning of next month."

He is committed to it. The governor is engaged and involved and has been monitoring this, so our plan is to come back to you -- after he signs it in early September, our plan is to come back to the commission in October asking the commission to rescind the non-compliance finding for the state of South Carolina and shad.

The one issue about the Santee River has come back up during this discussion and the plan review team, during the stock assessment, the review team found the Santee River, the in-river stock, was not being overfished.

That was with no recreational limit and now we have a recreational limit, and I think it further provides conservation measures for the in-river stock in the Santee River.

As I understand from the documents I received thus far, the plan review team has commented thus far on the report that we put together and submitted and there is no real conservation issue.

What we will be dealing with is issues of agreement with the plan versus compliance with the law, and so we will be making our case in October to you as it relates to this final bullet, and that is that we will contend that we will no longer be out of compliance because both conditions are necessary for a finding of noncompliance, and they no longer exist.

In summary, the governor's signature of H4864 will be dealt with in early September. We will be petitioning the Commission in October to rescind their finding of South Carolina's noncompliance, and I believe you will find, or at least we strongly believe that our actions are consistent with the substance and spirit of the Coastal Fisheries Act.

I have to say that this issue is extremely important, and there is a great deal of local interest in the fishery. It is relatively new, as I understand from what I have been able to garner, in a commission process of how to come back into compliance.

One of the questions that we have and one of the things that we want to make sure we understand is what is the next step? We want to make sure that what we present to you all in October is agreeable not only to the Commission as far as the facts, but also agreeable to the National Marine Fisheries Service and also to the Secretary of Commerce.

So with that, I will be quiet, but I encourage you all with the information that we provided you, that over the ensuing couple of months that you contact David or I, and we will be as responsive as we can so that at the October meeting we can make our case a little bit more succinctly. Thank you very much.

CHAIRMAN BORDEN: Thank you very much, John, and we appreciate you coming to the meeting to describe the situation to them. Questions for John? Any questions? Yes, Bruce.

MR. FREEMAN: Thank you, Mr. Chairman. Relative to the fishery in South Carolina -- and I think David had indicated that is an early spring fishery only, the recreational fishery for shad, so at the present time there is no shad fishery that is occurring?

DR. MIGLARESE: That is correct.

MR. FREEMAN: The other issue deals with the exception of the Santee. As you recognize, the Board had indicated that all river systems comply with the ten-fish bag limit, and I can appreciate the local politics that are necessary in each of our states at times, but we, too, in New Jersey have a system which actually the resource is increasing and it is not overfished, but nevertheless, we are required to have such a bag limit.

That issue is going very difficult to deal with simply because it is exception that no other state has used. I believe you understand that.

DR. MIGLARESE: I do, but at the same time, since this is relatively precedent setting, I don't think the law or the plan is so bureaucratic that only those numbers need to be met.

I think that the other condition allows us to demonstrate other mechanisms and other ways of demonstrating whether the conservation measures are being met, and I believe that is going to be the case that we are going to be able to demonstrate to you in October.

CHAIRMAN BORDEN: Dieter.

MR. DIETER BUSCH: Mr. Chairman, to the question that was asked as to the next steps, according to the Charter, if every condition has been met, then the withdrawal would be automatic.

In a case where the conditions have not been met to the letter and to the intent of the out of compliance, then the state must provide a written statement to the Management Board as to what actions they are taking.

Then the Management Board will make a determination of whether this meets the requirements of the spirit of the compliance issue; and if it does, then, they can make a

recommendation to the Policy Board for withdrawal.

If it does not, then the state can appeal it to the Policy Board. So the next step would be, really, in this case, if I understand it correctly, a written description of the actions to the Management Board.

CHAIRMAN BORDEN: Okay, thank you, Dieter. David.

MR. CUPKA: Thank you, Mr. Chairman. That was our understanding of reviewing the ISMFP Charter, but since we haven't been in this position before, and this was a learning process, albeit a painful learning process, we wanted to make sure that we were going through the right steps and make sure that NMFS for the record was in agreement to that as well, and that we could, indeed, come back to the Management Board instead of going to the Secretary and making our case based on the changes that have occurred.

It sounds to me like, at least for the record, that what Dieter has outlined was pretty much our reading, too, so unless we hear otherwise from NMFS, that is our intent, is to come back to the Management Board in October.

CHAIRMAN BORDEN: Okay, any further questions for John? Anyone in the audience? If not, thank you very much for coming. I believe that concludes that item unless someone else has some other facet of that that they want to discuss. If not, Susan do you have a motion?

MS. SHIPMAN: We are going to; they are typing it in.

CHAIRMAN BORDEN: All right, we will have the motion on the issue of extensions here in a minute. Is there any other business to come before the Policy Board today? If not, as soon as this motion is up, we'll take that. Pete.

MR. W. PETE JENSEN: Well, I do have one other item of business related to weakfish, and I will bring that up after we vote on this motion.

CHAIRMAN BORDEN: All right. Dieter.

MR. BUSCH: Mr. Chairman, after this action on the potential language addition to the Charter, is it then your opinion that we could hopefully print this version and be done with it for a year or two?

CHAIRMAN BORDEN: I would not presume that the Charter is not going to be changed here in the next year or two. I

think this is a really adaptive type document, and we can go ahead and print it, but I wouldn't want to print a huge number of copies.

MR. BUSCH: Mr. Chairman, we took great care to address the Menhaden Board in such a way that no matter how it goes, we are covered.

MS. SHIPMAN: Absolutely, and everybody keeps pulling out the 1998 version that has been amended about three times, so nobody is working off from the right hymnal, anyway. We really do need to get some sort of current printing of it.

Okay, this is the motion that we would like to bring to you for consideration. We would move to add the following Subsection after 6(B)2 of the ISFMP Charter and renumber the subsections accordingly:

"A Management Board may extend the period of effectiveness for any management plan or provision that would otherwise expire for a period of up to six months if the Management Board is actively working on an amendment or an addendum to address the provisions that would otherwise expire".

On behalf of myself, I would so move.

CHAIRMAN BORDEN: Is there a second to that?

MR. LAPOINTE: Second.

CHAIRMAN BORDEN: Seconded by George. Comments? George and then Jill.

MR. LAPOINTE: Susan, two things. One is Gordon had mentioned public processes built into other parts of the Charter so we don't have to repeat it here.

MS. SHIPMAN: Well, Adaptive Management, actually the section that is right above that does speak to public comment, although this would not necessarily tie it to that, and you may want to amend this motion, something to the effect that any state that would request a public hearing would be afforded that.

The question would be where would you want that? What would be the timing of that?

MR. LAPOINTE: And then the second thing, you will remember a couple of years ago when we discussed emergencies, would this be extendable? We might as well

discuss it now.

MS. SHIPMAN: Yes, and y'all may want to wordsmith this. You may not think six months is a long enough time. We are just putting this up as the concept and for you to massage.

CHAIRMAN BORDEN: I would just offer a personal comment that I think maybe we want to add in a provision similar to emergencies that allows for like a one-time extension and that would give you a year, which is probably adequate time to do an addendum so that it is in progress. Jill and then Pete.

SENATOR GOLDTHWAIT: To the same point, I think the way it is drafted, it looks like you could renew those six-month extensions indefinitely.

CHAIRMAN BORDEN: Okay, Pete.

MR. JENSEN: Well, I wonder why six months. We talk a lot about quick changes and the confusion in the public. Why should this not be a year, which seems like the logical planning sequence that we are all on all of the time?

Is there any particular reason for six months as opposed to a year?

EXECUTIVE DIRECTOR DUNNIGAN: Well, it is an extraordinary measure. You should have taken care of this a long time ago and, frankly, I am not sure we would ever use this provision, but it gives you an opportunity.

We can always do an addendum in six months, but it gives the Board an opportunity to hold things in place while it decides what it really wants to do, and it does short-circuit procedures.

I didn't write anything in here about public hearings or anything like that, because at that point you might as well do an addendum. The idea here is to have something in place that allows you to short circuit the other procedures; and if you are going to be short circuiting your procedures, it is probably wise not to do it for too long.

So, if you are going to write in a longer period of time or more procedural background to it, I would argue that you are going to end up going through an addendum process, anyway, so why bother having this?

CHAIRMAN BORDEN: John Nelson.

MR. JOHN I. NELSON: Thank you, Mr. Chairman. I have really no problem with the six months. To the point on the public comment, I would assume that the debate is taking place before the Board, the ISFMP, and that public comment could be received at that time.

If you are debating extending this particular -- oh, it's the Management Board -- when the Management Board discusses extending a plan for a six-month period, if that's what it is, I would think that public comment could take place at that time, so that you could at least get an insight on that so you don't have to have public hearings on it.

CHAIRMAN BORDEN: Susan.

MS. SHIPMAN: Well, a couple of issues. You could certainly notice it in your agenda for that meeting. I mean, just like weakfish, we knew we were going to have to do something on that plan, so there was public notice on that.

The language that we have under emergency says, "Any such action shall originally be effective for a period not to exceed 180 days, i.e. six months, from the date of the Management Board/Section's action, but may be renewed by the Management Board or Section for two additional periods of up to one year each".

Now, if y'all wanted to do some sort of language similar to that, you might not want to do one year each, but another six months or six months each.

Where I envision this may come into play is where we are waiting on a stock assessment and we can't take the next step, and for whatever reason that stock assessment is backed up in the SARC process or whatever; I mean, that is not an uncommon happening.

As Jack noted, we probably ought to get to the point where we don't put sunsets into these plans. I would hope that we would start to manage that way, but we may find ourselves in this situation.

CHAIRMAN BORDEN: Other comments? Bruce and then A.C.

MR. FREEMAN: Two points I would like to make. One is there may be a situation where we agree that there is a large enough change, or a severe enough change to have not an addendum, but an amendment; and if in case that does occur, it would seem a tremendous waste of energy to prepare an addendum because you couldn't get an amendment

through in six months.

I would favor keeping the wording in here, but allow for an extension for an additional six to bring it up to a year, just in the contingency that we may need it and to save, again, a considerable amount of time and so forth.

CHAIRMAN BORDEN: Bruce, before you take your second point, let me just follow up on that now. Is there any objections to that suggestion? All right, then, if you could then, Jack, perfect the language. Bruce, your second point?

MR. FREEMAN: The second was a notification to the public. And I don't want to follow the framing we have on the federal side, but there probably should be a notice to the public that the Board will discuss this issue prior to when it is discussed, so that if anyone wants and has a severe or serious or overriding or compelling need to be involved in that, they know beforehand that we will be discussing it.

It could be easily effective by simply submitting this in the agenda or some way so the public is notified that the Board will be dealing with the issue. Then, as John indicated, the discussion could occur at the board meeting for the possible extension.

CHAIRMAN BORDEN: All right, comments on that suggestion? Any objections to that, so that we would have to, I assume, add some language in here that would say that this action can only be taken following it being formally scheduled on the agenda of a management board. Right?

So there is no objection to that? Jack.

EXECUTIVE DIRECTOR DUNNIGAN: How about if we just say that we have to give the public two weeks' notice?

CHAIRMAN BORDEN: Whatever, I think it is the same --

MR. FREEMAN: If I may, I think a month, Jack, on this.

EXECUTIVE DIRECTOR DUNNIGAN: Okay.

CHAIRMAN BORDEN: All right, Bruce, are you finished?
A.C.

MR. A.C. CARPENTER: Earlier, when we started, there was some talk of a two-thirds majority. I don't know that that is necessarily covered in this. It may be covered in some other place.

The other is it my understanding that the intent of this motion is to extend without change an existing management plan or an existing requirement? Do we need to specify that; that this is simply an extension without any changes?

CHAIRMAN BORDEN: That is clearly what the intent was and maybe we can wordsmith this --

MS. SHIPMAN: We could say the effectiveness of any management plan's provisions -- I mean, just take out the word "or". Would that work, Jack?

MR. CARPENTER: My point is I think that a continuation of the existing status quo without any changes is one thing. The Weakfish Board, for example, yesterday, there was a change to the original motion which ended up in changing some creel limits.

That, to me, is an addendum process that is not an extension, and I think that if we are going to have this extension and we are going to be able to use it, I think the intent is to hold status quo, everything exactly like it is for one more year.

CHAIRMAN BORDEN: I would concur. I think that if you start getting into the issue of tinkering with the specifics of it, then really you violate the public process that I think we are all committed to. We will have to work on that.

MR. FREEMAN: David, to that point, I agree with A.C., but the way it reads now is you are simply extending it. If you do make a change, it would require an addendum or an amendment, and I agree with A.C.

This would keep in place what is in place, no tinkering, no changes, and that is the way it reads. If we wanted to tinker with it, we would have to go through one of those two processes.

CHAIRMAN BORDEN: Susan.

MS. SHIPMAN: And I assume where we have got "Management Board", we may also add in "or Section" if that is agreeable to everybody, to carry the weight.

CHAIRMAN BORDEN: All right, any further comments on this? Anyone in the audience? Are you ready for the question? Susan, I will let the maker of the motion read it.

MS. SHIPMAN: Thank you. Move to add the following

Subsection B2 of the ISFMP Charter and renumber the other subsections accordingly. Management Board/Section may extend, after giving the public one month's notice, the period of effectiveness for any management plan or provision that would otherwise expire for a period of up to six months and may be extended for an additional six months if the Management Board/Section is actively working on an amendment or addendum to address the provisions that would otherwise expire.

CHAIRMAN BORDEN: Any further questions? A.C.

MR. CARPENTER: We still don't have the two-thirds in there or do we need it?

CHAIRMAN BORDEN: Let me just get concurrence here. Is it the concurrence of the Policy Board, do you want it by a two-thirds vote? All right, then, what I would suggest is that the staff has editorial license to add that to the motion.

Further comments or questions on the motion? Are you ready for the question? It includes the two-thirds requirement. All those in favor signify by saying aye; all those opposed; abstentions. The motion carries unanimously.

Is there any other business? Pete Jensen.

MR. JENSEN: Mr. Chairman, a little bit of background for the benefit of those who did not attend the joint meetings with the Mid-Atlantic Council.

At the Mid-Atlantic Council, we had long discussions about a bycatch of scup and the loligo squid fishery. The Board and the Council have recommended to the regional administrator that the loligo fishery be exempted from the regulated gear areas; in other words, the small mesh areas, that they would have to stay out of using the small mesh loligo gear in order to reduce scup bycatch.

The point was made yesterday that if, in fact, the regional administrator does not accept that recommendation and does, in fact, close those gear-regulated areas, then there is a high probability that those trawlers or fishermen that would otherwise be in the loligo fishery, may, in fact, redirect their effort to the weakfish fishery.

The concern was expressed that that additional effort might, in fact, shortcut what is headed toward being a success story.

I would like the Board to ask the staff to send a letter to the regional administrator pointing out that that concern exists, and it is another reason why the loligo fishery should be exempted in order to let that fishery continue and not run the risk of diverting a lot of fishing effort to the weakfish fishery, for which there exists no catch quotas, simply seasons.

So, I would like that to be a recommendation from the Policy Board to do that.

CHAIRMAN BORDEN: All right, Pete has made a suggestion that follows along the comment that Bruce Freeman made yesterday. Comments on the suggestion? If there are no hands up here, any comments from the audience?

If we have no objection, than what I would ask is Pete and Bruce Freeman to work together and work with the staff and prepare such a letter, and we will submit it on behalf of the Policy Board. No objection? Then we will make it so. Any other business? Tom.

MR. TOM FOTE: With the motion you passed at the beginning of this meeting, does that mean at the next Policy Board meeting there will be no longer a separate governor's appointee or legislative appointee? It would just be a complete caucus vote?

MS. SHIPMAN: Yes. I would say it is institutionalized with the next meeting, the fall meeting.

CHAIRMAN BORDEN: All right, Jack.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you, Mr. Chairman. I forgot to mention to the legislators this morning and for all the other commissioners who are here, their staff person, Lori Goodwin, is a mom, just in case anybody didn't know yet.

She had herself a baby boy. Mother and child doing fine. The boy's name is Christopher, and I am sure that she will appreciate all of your wishes.

CHAIRMAN BORDEN: All right, any other business to come before the Policy Board. If not, the meeting stands adjourned.

(Whereupon, the meeting was adjourned at 2:05 o'clock p.m., August 23, 2000.)

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