

**PROCEEDINGS OF THE  
ATLANTIC STATES MARINE FISHERIES COMMISSION  
ATLANTIC MENHADEN MANAGEMENT BOARD**

**August 16, 2006  
Doubletree Hotel-Crystal City  
Arlington, VA**

Approved October 25, 2006

## ATTENDANCE

### Board Members

George Lapointe, ME DMR	Russell Dize, MD, proxy for Sen. Richard Colburn
Pat White, ME Gov. Apte. (Vice Chair)	Bruno Vasta, MD Gov. Apte.
John Nelson, NH F&G	A.C. Carpenter, PRFC (Chair)
G. Ritchie White, NH Gov. Apte.	L. Preston Bryant, VA Secretary of Natural Resources
Rep. Dennis Abbott, NH Leg. Apte.	Jack Travelstead, VMRC
David Pierce, MA DMF	Sen. John Chichester, VA Leg. Apte.
Vito Calomo, MA, proxy for Rep. Anthony J. Verga	Catherine Davenport, VA Gov. Apte.
William Adler, MA Gov. Apte.	Preston Pate, NC DMF
Mark Gibson, RI DFW	Damon Tatem, NC Gov. Apte.
Gil Pope, RI, proxy for Rep. Eileen S. Naughton	Jimmy Johnson, NC, proxy for Rep. William Wainwright
Everett Petronio, Jr. RI Gov. Apte.	Robert Boyles, SC Leg. Apte.
Eric Smith, CT DEP	John Frampton, SC DNR
Lance Stewart, CT Gov. Apte.	Malcolm Rhodes, SC Gov. Apte.
Gordon Colvin, NY DEC	John Duren, GA, Gov. Apte.
Pat Augustine, NY Gov. Apte.	Spud Woodward, GA CRD
Peter Himchak, NJ DF&W	Luiz Barbieri, FL FWCC
Erling Berg, NJ Gov. Apte.	April Price, FL Gov. Apte.
Jeff C. Tinsman, DE Div F&W	Steve Meyers, NOAA Fisheries
Bernie Pankowski, DE, proxy for Sen Robert Venables	Jamie Geiger, USFWS
Howard King, MD DNR	

### Ex-Officio Members

Behzad Mahmoudi, TC Chair

### Staff

Brad Spear	Vince O'Shea
Bob Beal	Ruth Christiansen

### Guests

Derek Orner	Wilson Laney
Sean McKeon	Clif Tipton
Louis Daniel	Carroll Muffett
Keith Taniguchi	Rob O'Reilly
Jeff Corbin	Staci Stevens
Christy Goodman	Renee Blanchard
Jeff Kaelin	Tom Fote
Rob Wittman	Dick Brame
Shaw Thatcher	Kate Rooth
James Price	Kellen Dunlop
Charles Lynch	Howard Townsend
Tom Meyer	Alexei Sharov
Alan Risenhoover	Ana Lowry
Margaret McBride	Tim Wetterer
Charles Hutchinson	Katie Flynn-Jambech
Tom McCloy	Stephanie Hillman
Joseph Smith	Chris Moore

Kelly Place  
C.D. Roll

Toby Gascon  
Ben Landly

*There may have been others in attendance who did not sign the attendance sheet.*

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**Move that the Atlantic Menhaden Management Board approve for public comment the August 2006 draft of Addendum III and initiate the public comment process on a schedule that will return the addendum to the Board at its October meeting for final consideration.**  
Motion by Mr. Travelstead, second by Mr. King on page 17. Motion carried on Page 24.

**ATLANTIC STATES MARINE FISHERIES  
COMMISSION**

**ATLANTIC MENHADEN MANAGEMENT  
BOARD**

**Doubletree Hotel Crystal City  
Arlington, Virginia**

**AUGUST 16, 2006**

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The Atlantic Menhaden Management Board of the Atlantic States Marine Fisheries Commission convened in the Washington Ballroom of the Doubletree Hotel Crystal City, Arlington, Virginia, August 16, 2006, and was called to order at 10:15 o'clock a.m. by Chairman A.C. Carpenter.

**BOARD CONSENT**

**CHAIRMAN A.C. CARPENTER:** Good morning. I'm A.C. Carpenter, the chairman of the Atlantic Menhaden Management Board for the Atlantic States Marine Fisheries Commission. We're here today to go through a number of items.

There have been agendas which have been submitted, and we do have a revised agenda that we will be working from today. The first item on the agenda is the approval of the agenda. This agenda that I am looking at has ten items.

If yours does not, we need to insert an item. It will be report on the Menhaden Collaborative Research Program, and that will come right after Number 5. With that, are there any other changes to the agenda?

The staff is also passing out some correspondence that we have received today so that you will have that available to you as we go through the meeting.

The next item is approval of the Proceedings from the May 2006 meeting. Are there any additions, corrections or changes to the minutes? Seeing none, the minutes are, therefore, approved by consensus.

Public comment – it is the Commission's standard practice to allow public comment at this time for items which are not necessarily on the agenda. Is there any public comment at this point in time? I see a couple of hands.

**PUBLIC COMMENT**

**MS. BUFFY BAUMANN:** Good morning. My name is Buffy Baumann. I'm an oceans' campaigner with Greenpeace, an environmental organization with nearly 3 million members. Thank you for the opportunity to comment this morning.

As we all know, menhaden play a critical role in coastal Atlantic ecosystems, both as filter feeders and as forage for numerous other species. The ASMFC's failure to account for or protect the ecological functions prompted over 20,000 people to urge the Commission to take action last year.

The majority of these comments were in favor of a coast-wide moratorium on the reduction fishery, which Greenpeace continues to support. As a result of overfishing and poor management, menhaden have experienced serial depletions from the Gulf of Maine southward down the Atlantic coast.

Yet the ASMFC failed to respond to these depletions for years, even after a National Marine Fisheries Service Peer Review Panel recommended that the Commission set a firm limit on the coast-wide catch.

Faced with the growing concerns about localized depletion in the menhaden's most important spawning grounds, the ASMFC finally acted last August to cap the menhaden reduction fishery in the Chesapeake Bay.

While this cap falls short of what is needed to protect the coastal ecosystems and fishing communities, the Commission's recognition that limits on the fishery are needed is an important if overdue step in the right direction.

Greenpeace urges the Commission to not let this timid step be halted by a single state acting at the behest of a single company. After failing to lead his state in the timely ratification of the ASMFC's Addendum II, Virginia Governor Tim Kaine has belatedly introduced a proposal that not only exceeds the cap agreed upon by the multi-state Commission, but incorporates a measure that the Commission has already considered and expressly rejected underages.

Contrary to the Commission's decision, the Kaine proposal would allow industry to roll over any uncaught portion of its annual quota to the following year. Under this provision, Omega Protein could vacuum up to nearly 123,000 tons of fish out of the Bay in any one season, further magnifying the

fishery's already unacceptable impacts on the Bay ecosystem.

As Governor Kaine himself said in October, "If the menhaden are harvested too vigorously, then it reduces the source of food that can be helpful to a healthy rockfish population, for example."

It's a balance, and, indeed, balance is essential, but the Kaine proposal ignores this balance because the governor hopes to mitigate the potential for economic hardship on the menhaden industry.

We, along with nearly 20,000 people who spoke out last summer, speak for the hardship on the menhaden and the wildlife in the Bay that depend on them. More effort must be made to integrate the ASMFC's ecological objectives included in Amendment I to the Interstate Fishery Management Plan for Atlantic menhaden and to any plan for menhaden management.

These ecological objectives include protecting and maintaining the important ecological role Atlantic menhaden play along the coast. And as I believe the Chesapeake Bay Ecological Foundation will present today, menhaden are no longer able to fulfill its ecological role as a result of overfishing.

The irony of Greenpeace being the voice that urges the ASMFC to stick to its proverbial guns is certainly not lost on me. However, I urge the Commission to stand by its decision last August, and, in so doing, find Virginia in non-compliance for failing to meet the generous compliance deadlines set last October.

In the unfortunate event that the Commission bows to the will of the bullies in the room and initiates a new addendum process to consider Governor Kaine's proposal, then we respectfully submit that this process should also include other proposals not previously included in the Addendum II list of options, such as a coast-wide moratorium on the industrial purse seine fishery. Thank you for this opportunity to comment.

CHAIRMAN CARPENTER: Thank you. Are there any other public comments?

MR. CHARLES HUTCHINSON: Thank you. My name is Charles Hutchinson, and I am here today representing Maryland Saltwater Sportfishermen's Association, as well as the Recreational Fishing Alliance.

The major element to be decided today is the ASMFC's action with respect to the cap on

menhaden harvest in the Chesapeake Bay. I've seen the Virginia proposal and find that it doesn't differ substantially from the original ASMFC document.

There is one part of that proposal which I believe deserves some additional scrutiny; that being the duration of the cap. As it stands now, a period of five years is recommended to match the period of research that's been approved.

However, to the best of my knowledge, there is insufficient funding to carry out that program, and there is no assurance that there ever will be. Also keep in mind that the cap affects only the catch in the Bay and has no practical effect on the harvest of the coast-wide stock.

You have received information that I understand will be discussed today that the condition of the coast-wide stock is not as it has been described to be and may indeed be threatened. Until you make some decisions about what to do about that, you might want to reconsider whether you want to tie your hands for five years.

A shorter time period might be more desirable and allow for more flexibility. It certainly is not news to you that the actual harvest, both in and outside the Bay, continues to decline. This is not the result of a serious concern on the part of Omega about the health stock.

It's just the fact that the fish are harder to find and more costly to harvest. Omega is an intelligent outfit and undoubtedly knows more about the abundance of menhaden than anybody else.

Consequently, it may be the fact that this principal stockholder has put its stock up for sale; and, further, that nobody has rushed to buy that stock, may tell a lot about the sustainability of the business and the abundance of the resource.

I think this Board has got a lot of soul searching and a lot of work ahead of it. RFA and MSSA continue to believe that a full moratorium on the industrial harvest is the most appropriate action to take until the abundance issue is resolved. Thank you.

CHAIRMAN CARPENTER: Thank you very much. Mr. Price, while you're coming to the microphone, let me say that your materials that you had submitted to the Commission were distributed to the Board members in a supplemental mailing. We all have it, and we would like to take that up under other business, if that would suit you today?

MR. JAMES PRICE: Yes, that would suit me. I would like to make a very short statement. Would you like for me to make it now or later?

CHAIRMAN CARPENTER: You're here now, so go ahead.

MR. PRICE: All right, thank you, Mr. Chairman. My name is James Price. I am President of the Chesapeake Bay Ecological Foundation.

All Board members should have received my report entitled "The Atlantic Menhaden Decline Caused by Recruitment Overfishing", which is based on information from the ASMFC's 2003 menhaden stock assessment, with quotes from the National Marine Fisheries Service's scientists, and findings published in peer-reviewed papers.

The report documents long-term overfishing and provides the Board an alternative view of how the stock has been overfished and why the menhaden population has been declining for years. The historically widespread East Coast Menhaden Industry is now down to one plant as a result of the severely reduced population.

ASMFC's Menhaden FMP is a single-species approach which ignores the critical ecological role of menhaden in terms of forage production and nutrient removal. The menhaden decline has caused ecological problems in the Chesapeake Bay and has affected the health of many fish, mammal and bird populations along the entire coast.

If the Board agrees that the stock is overfished in both a biological and ecological sense, steps can be taken to ensure survival of the last reduction plant on the east coast and at the same time increase forage for Atlantic Coast predators.

The Board understands the seriousness of the menhaden decline because through Addendum II you have shown your willingness to consider taking action even though the single-species menhaden stock assessment states the stock is not overfished.

I would like to thank the Board for taking the first step and considering a broader view, but I believe more needs to be done as soon as possible to rebuild the stock. A more detailed report on the menhaden decline and its effects on coastal ecosystems will be completed in the near future.

This report will include data collected through our predator-prey monitoring program initiated in 2004 that has examined over 1,200 large striped bass. This

research is being funded by U.S. Fish and Wildlife Service, Maryland DNR, and the Chesapeake Bay Ecological Foundation.

I will be glad to answer any questions the Board has concerning my report now or later on. Thank you.

CHAIRMAN CARPENTER: Thank you, Mr. Price, and to the Board members, that report was included in your packet, so please take the opportunity to review it. I have another public comment. Tom.

MR. TOM FOTE: Tom Fote, Jersey Coast Angler's Association. Three weeks ago I was up on the Hill to testify about the opening of striped bass in the EEZ. Well, the conversation wound up on summer flounder, but it also wound up on menhaden when Congressman Gilchrest and Congresswoman Drake from Virginia got into an argument to basically say what was happening with the stocks in the Chesapeake Bay.

And, of course, they wound up calling me into the middle of the debate, and you know I don't like to debate people, but I basically expressed – of course, the question was asked what hasn't New Jersey seen since we've moved the reduction boats three miles out in New Jersey; how has menhaden done, how are the bass, the bluefish and everything that depends on them basically done?

Well, all I can look at are the last two years. We've had the best striped bass fishing that we've ever seen. We've seen the largest schools of large fish in New Jersey. We've seen bluefish, we've seen weakfish, everything else in those schools of menhaden.

And unlike the Chesapeake Bay stock, the stocks in the Delaware Rivers and the Hudson River are fat. They are not diseased and they look healthy. And, you know, when fish have forage to feed on and they are healthy fish when they have plenty of nutrition, they're able to fight off disease better.

That's the only time, when I'm sitting here, is I can do by observation and strictly anecdotal data, but we have seen – if you look at the numbers of striped bass and large striped bass that have been caught and were just basically present off New Jersey, in the Hudson River and the Delaware Bay, you see there's a lot of fish there.

It's not only striped bass, but it's thresher sharks. It basically bluefish; it's weakfish; it's everything else, porpoises. Everything is within a mile or two of the beach feeding on those schools. Thank you very much for giving me this time.



CHAIRMAN CARPENTER: Thank you. I have one more public comment.

MR. SEAN MCKEON: Sean McKeon, North Carolina Fisheries Association. First, just a couple of quick comments. One is this is not about one single company. While one of our fisheries in North Carolina has not fished in the most recent time, I know that they are considering staying in that industry.

Some of the problems they're having facing those decisions are a direct result of a lot of what is going on here. One person who spoke before me said that the industry is down to one plant because of reduced stocks. It's simply not true.

What is happening is the political environment and the unsupported rhetoric of so-called environmental groups has produced an uncertain business climate, and in that climate people are not going to invest in expanding or getting back into that industry.

In my state that directly affects some of the most economically depressed citizens that we have who relied on this traditionally over the years. So, we would encourage actions here today that would enhance the menhaden commercial fishing industry and not inhibit them. I thank you for this time.

CHAIRMAN CARPENTER: Thank you very much. The next item on the agenda is the Update on Stock Assessment. Dr. Mahmoudi, the chairman of our technical committee, will make that report.

#### **STOCK ASSESSMENT UPDATE**

DR. BEHZAD MAHMOUDI: Thank you, Mr. Chairman. The Atlantic Menhaden Stock Assessment Subcommittee met July 18<sup>th</sup> through 20<sup>th</sup> in Beaufort, North Carolina, to conduct an update of the 2003 Peer-Reviewed Assessment, with new information from 2003, 2004 and 2005, which were compiled in a data workshop held in March of 2006.

We were tasked to develop a model base run. I've got to emphasize that that model base run was basically based on fundamentally the same model structure used in the peer review, so we did not want to deviate much from the structure of that modeling approach.

Then we also developed a sensitivity run to evaluate the performance of our assessment model, evaluate updated benchmark based on the results of the

updated model, and evaluate the status of the stock based on terminal year of 2005 estimates relative to its corresponding threshold and limit benchmark.

I am going to briefly discuss the development of the model base run. We used, as I mentioned, the forward-projecting statistical age-structure model developed by the National Marine Fisheries Service Beaufort Lab.

So the base run included the bait and reduction landings and catch at age from the last assessment updated for 2003, 2004, and 2005. Life history parameters, maturity, and fecundity remain unchanged. We didn't have new information to add in that area.

Age-varying natural mortality from the MSVPA, which was the recently peer-review, was scaled to historical tagging estimates. That was a slight change, but new improvements, better information going to the model, but overall our sensitivity analysis shows very influence with the new natural mortality vector.

We updated the five-state seine juvenile abundance indices confined into a single coast-wide juvenile index and updated for 2000 through 2005. There were minor changes made, including normalizing to common years, and reduced the North Carolina time series to consistent stations. It's a very slight change compared to previous assessments.

We had an improved Potomac River Pound Net Index based on bait fish rather than number of licenses. Again, that's an improvement to previous assessments. We continued the assumption of constant flat-top selectivity for the reduction fishery and used the underlying record of spawning-recruit relationship as done in previous assessments.

We also conducted several sensitivity analyses' runs divided into two components, sensitivity to input data. We looked at the bait landings, and there were some areas from some years, between 1993 through 1997, that we conducted the interpolation of the data to better have probably a more accurate picture of the bait landings.

We looked at the coast-wide juvenile abundance indices and included New Jersey's new data into that. We also ran the model with the old version of the Potomac River, using those number of licenses as previously done. We also ran several sensitivity runs with the various natural mortality vectors.

We also conducted sensitivity analyses to the model configuration, using the time-varying selectivity in the reduction fishery. Basically, we divided that to three periods; one from flat-top selectivity for the early period, 1955 to 1981; and our selectivity for the transition period, 1982 to 1993; and we used the double logistic dome-shaped selectivity for the recent period.

So, these were all done as the sensitivity runs to look at the performance model compared to the baseline. We also conducted a retrospective analysis to add more credibility into the model results. So, we did all the steps required for conducting the complete assessment during July 18 to 20.

The next step, obviously, is to go through the technical committee's review and come back to the board with the complete report. What I can say today, in terms of looking at the preliminary results, is the condition of the coast-wide stock remains unchanged compared to previous assessments.

I am going to leave it there until we go through the technical committee's review and come back here with a more complete report.

CHAIRMAN CARPENTER: Thank you, Dr. Mahmoudi. I know that there was an awful lot work done in just a few days down there, and we do appreciate it. Are there questions?

MR. PETER HIMCHAK: Yes, Mr. Chairman, I have a question for Behzad. I am reading a four-page summary report on the July 18<sup>th</sup> through the 20<sup>th</sup> Beaufort Meeting. I'm not sure if this was done by Brandon, our representative, or the committee, but I'll ask you to comment on comments here under other discussions.

This is not on the coast-wide juvenile abundance estimate or the weighting thereof, but it talks about some survey data to corroborate that the menhaden stock, particularly in the Bay, is in trouble and getting worse recently. Is that in reflection of the juvenile abundance indices presented specifically for the Bay?

DR. MAHMOUDI: I don't believe so, Peter. I don't believe that was the discussion that we had necessary for the Bay; was it, Brad?

CHAIRMAN CARPENTER: Can you repeat the question?

MR. HIMCHAK: Yes. I'm reading in a summary report on the Beaufort, North Carolina, meeting in July. It says, under other business, "Some

survey data corroborating that the menhaden stock, particularly in the Bay, is in trouble and getting worse recently."

So that would lead me to conclude that you were looking specifically at the Maryland and Virginia Young-of-Year Indices, and is that what this comment is based on?

MR. BRADDOCK SPEAR: Pete, the summary that you're reading was an internal summary report that was submitted to the technical committee, and it was simply basically minutes of discussion at the stock assessment subcommittee meeting. That was just one opinion raised by one member that wasn't even on the committee. It was just transmitted to the technical committee for their consideration.

MR. HIMCHAK: Thank you for the explanation.

CHAIRMAN CARPENTER: Thank you very much. Yes, Derek.

MR. DEREK M. ORNER: I'm Derek Orner, NOAA Chesapeake Bay Office. I have a quick question for Behzad. I didn't know if there was any discussion of kind of a sub-model or sub-population model for Chesapeake Bay in any part of the discussions in the meeting?

DR. MAHMOUDI: Yes, we spent about an hour or hour and a half about what we want to do for the next peer review assessment, what steps we want to take in terms of both data and modeling approaches.

We discussed perhaps about two or three different modeling approaches that would address Chesapeake Bay's specific questions. I think that would be a part of also our technical committee's agenda in two weeks, to discuss what steps we need to take in the next year or year and a half to actually move towards those specific modeling approaches towards Chesapeake Bay.

CHAIRMAN CARPENTER: Thank you; and any attempt at moving in that direction is going to rely an awful lot on some of the ongoing research, Derek, that I'm calling on as the next item on the agenda here to give us an update on the Collaborative Research Projects that are underway as a result of the adoption of Addendum II.

## COLLABORATIVE RESEARCH PROGRAM

MR. ORNER: Thank you, A.C. That's one of reasons I was asking Behzad that question. Again, my name is Derek Orner. I work for the NOAA Chesapeake Bay Office in Annapolis, Maryland, and part of the National Marine Fisheries Service.

I'm putting together kind of summary of the research program that we've been funding of our office, but also in collaboration with a number of other entities. We don't necessarily have management authority in Chesapeake Bay. That's the states of Maryland, Virginia, D.C., obviously with the Commission here.

We provide the science, service, and stewardship in the Bay out of our office. Our competitive research program – some of this may be background. I think I presented this before, but it's been ongoing since 1985.

It's a competitive program that goes through the technical merit review or panel review selection, and it enables us to provide kind of an non-objective voice of science in regards to kind of debate fisheries needs.

The last two years called for proposals, or RFP. I basically call your attention to the four letters here at the bottom, A, B, C and D. Those were the technical committee's research priorities that were identified, I believe, back in 2004.

So, when we went out for our call for proposals, those were the research needs that we're identifying and trying to address. Some of the logos – I know this isn't all-encompassing; there are a lot more partners out there.

The kind of the process or steps that we're in now is trying to identify all the different programs that are out there supporting the research. At this point, though, I'd like to just spell out that this is a collaborative program, much different than a cooperative research program.

There are discussions underway with that, but right now I'm considering it's a collaborative program because there is funding underway from a number of different sources on these projects. Like I said, I know I have missed a couple, but I have just thrown a couple up there to show you there are a lot of partners.

What I'm going to do is go through each of the four different priority areas. I just a few slides on each one, not necessarily to start a lot of discussion in the

results of the findings, per se, right now, but just to show you that there is quite a bit of research underway on each of the topics.

The first one here, determining the estimate of removals of menhaden by predators, there are a number of different projects. Probably the two big ones right now that are a little bit further along the road, the top two.

The first one is CTILS, Chesapeake Bay Trophic Interaction Laboratory Services, run out of VIMS. They have collected and analyzed probably close to 8,000 stomachs in probably the past two years. And then the diet and prey size spectrum of large migratory striped bass is Andy Overton's work done at ECU.

I want to focus on those two initially here; and, again, just trying to show you some of the information that's coming from these studies. This is the stomach content from striped bass captured over the past, approximately, three years.

Atlantic menhaden is kind of the dark gray -- it looks like dark gray up on the screen – and showing kind of the main stem, the second column there, the main stem is where you're finding a larger proportion of menhaden in the stomach contents with striped bass.

This one is weakfish, basically showing – okay, obviously, we're seeing a larger percentage of menhaden in some of the tributaries and the seagrass beds, so a little bit different spatial coverage in the diet makeup.

Some of the work from Anthony Overton just showing the percentage of menhaden in the striped bass stomachs that he is finding -- between 2005 and 2006, a large proportion, anywhere from 70 to 80 percent or 85 percent of stomach contents, including menhaden as the primary species.

Another research project was trying to determine the menhaden abundance specifically in Chesapeake Bay. This is one of the reasons I was specifically asking Behzad if there was any discussion at the technical committee meeting on this.

The first one here, the LIDAR Study, evaluating the use of air-borne light detection ranging, obviously, it's something that the Commission has been supporting primarily through Maryland DNR, but also partnering with VIMS and U.S. Fish and Wildlife Service.

The second one, the data collection and analysis, that's our ChesMAP Program. I think I have mentioned that one a number of times before. It's a baywide multiple-species monitoring program throughout the entire Bay where they are collecting samples for stomach content, providing samples back to the CTILS stomach analysis program.

And then the stock assessment training program I'm going to talk a little more about in a minute. This is kind of a quick snapshot of the LIDAR studies. The big thing, really, to point out in this one, the four bullets on the right-hand side start with "calibrate", "compare" and "design".

You know, this first year is exactly that; we're calibrating or looking at the different methodologies, comparing the LIDAR and the hydro-acoustics, in designing a baywide survey. Right now it's a pilot study.

Coming up here at the end of August, there's going to be some LIDAR tank calibrations done at VIMS, using the LIDAR technology in a tank with menhaden. Then the first couple weeks of September, actually using the aerial component and hydro-acoustics and comparing that in helping design kind of that pilot or the full design of the survey for maybe the next year.

The sub-population stock assessment, which, again, the specific question I was asking Behzad, this is a project that we started about a year ago, looking at trying to develop a sub-population or a sub-model of the full coast-wide stock assessment for Atlantic menhaden and looking specifically in Chesapeake Bay.

So, there has been development of a working reference model. They've collected and kind of integrated all the Chesapeake Bay data that they can their hands on – they being the Virginia Institute of Marine Science and the University of British Columbia – to develop a working reference model and the framework for the model estimating key population parameters.

Like I said, I was asking Behzad because I wanted to make sure that discussion has been taking place between that group and the technical committee, which, obviously, it has. And over the next six months, obviously model testing development and continue discussions with the technical committee.

A couple of graphs just to show you the ChesMAP Survey I mentioned, the multiple-species baywide monitoring program, as well as the VIMS Trawl

Survey. Neither survey probably are new to you -- the figure up on the top left corner, the young-of-the-year juvenile index for menhaden.

The picture on the right is kind of the geographical or spatial coverage of Atlantic menhaden between June 2005 and May 2006, this past year. Also, coming from these surveys, this is the striped bass diet specifically from Chesapeake Bay from the years 2002 through 2005, four different years.

Each of the asterisks' column is the Atlantic menhaden stomach content or stomach percentage in striped bass. Briefly pointing out, in between years there is a lot of variability in the diet composition. It's relatively low in a few years, anywhere from 3 to 10 percent. In other years it's almost upward to 20 percent of the diet is Atlantic menhaden.

This isn't menhaden, per se, but it's Bay anchovy removals by weakfish, a very similar study; again, showing the variability in the percentage of anchovy being removed by weakfish, both spatially, over 2002 to 2004, but also temporally between Lower Bay, Upper Bay and various studies between ChesMAP and then some of the bioenergetic studies.

Larval studies becoming the recruitment to Chesapeake Bay, I am going to focus on two of the projects; the first one looking at environmental conditions and nursery habitats, both Chesapeake Bay and Delaware Bay; and also looking the temporal and spatial variability and growth in menhaden.

The first one is just to show kind of the spatial coverage. The green, blue and red dots are showing that there is quite a bit of spatial coverage between the two bays. A lot of the same surveys between Maryland, Virginia and Delaware and New Jersey are collecting a lot of the information.

What they're looking at doing is being able to prepare maps of the juvenile productivity in these two areas. A lot of the sampling has already been underway and is ongoing. We're looking at completing the 2006 field sampling and initial maps by February of 2007.

Looking at, again, the variability in recruitment, being able to produce these monthly distribution maps, young of the year and age 1-plus, not just for menhaden but also including anchovy and other obviously important forage species.

Preliminary results, we're not finding obvious differences in the growth rates among the bay regions and the tributaries, but we are finding that these

growth rates are varying from year to year, primarily dependent upon water temperature.

Looking at the last priority that the technical committee identified, the exchange between the bay and coastal systems, is probably one of the tougher questions to answer. The one project we have with the University of Maryland and Old Dominion University is looking at that population structure.

This is a three-year project that's recently underway, but just to let you know that sampling of juvenile emigrating menhaden has been conducted at the mouth of the Bay. A number of sites and net sets were put up near the Chesapeake Bay Bridge tunnel. Samples were collected but have yet to be processed.

Sampling for later-stage juveniles, obviously, young of the year, in some of the tributaries by seines were conducted. Some of the samples that have been processed, we're finding that we have the ability to core out sections of the otoliths to see what the natal origin of the larval or the juvenile menhaden are; and then once they're caught in the Bay, to determine how long menhaden are in those specific areas in Chesapeake Bay.

Our last category that wasn't necessarily one of the early kind of the four research priorities, but more of a general menhaden kind of research component; there is modeling that is being done with the Chesapeake Bay Program EPA, looking at some of the nutrient components and how that affects maybe a bottom-up correlation with the menhaden stock and multi-species management.

Looking at the feeding apparatus was some of the work that Kevin Friedland is doing out of UMass in New England. Ecopath with Ecosim; we have been doing a lot work out of our office in coordination with the University of British Columbia, Billy Christiansen, Steve Martel, Howard Townsend, looking at a larger ecosystem modeling component, specific to Chesapeake Bay, or fisheries ecosystem model.

And, another component here, the striped bass stock health assessment, looking at micobacteriosis prevalent in distribution, possibly menhaden is the vector for that disease in the striped bass. That study was with the University of Maryland. We're continuing some of that ongoing disease work with Wolfgang Vogelbein down at VIMS.

And, finally, just to wrap up, trying to get through fairly quickly, but I wanted to point out this is the initial stages of the program. Addendum II

mentioned kind of the establishment of a research program.

The timing worked out. We have pretty much stepped up in trying to fill that void in there. We are still in the initial stages, but the program is underway. We are starting to find some preliminary results, the data gaps are starting to be filled.

As I said, a lot of this is just being initiated. A lot of the projects started kind of the October-September timeframe this past year, so we're coming up now on just about the annual mark for a lot of these projects. A lot of these projects were multiple-year, two-to-three year projects.

We're getting some preliminary findings, clearly not complete. The results that I presented here are preliminary. We're going to continue with this kind of reporting as frequently as we can. Whether we can do it through quarterly reviews – I think I've mentioned the web, a new kind of internet-based technology – obviously presenting to the management board, working with Behzad and the technical committee to try and get the results of this research out as quickly as possible.

With that, and pretty quickly, I'll stop and be happy to address questions now or afterwards.

**CHAIRMAN CARPENTER:** Thank you, Derek, I appreciate the complete briefing. We would like to count you as part of an agenda item on all future board meetings as long as we have this going on because I think it is imperative that the Board is up to date on what research is being done to get to the answers to the questions that we're all here to try to solve. I appreciate that.

Are there any specific questions for Derek? Seeing none, I'll move along to the next agenda item, which is the PRT report on implementation of Addendum II. This will be Mr. Spear.

## **IMPLEMENTATION OF ADDENDUM II**

**MR. SPEAR:** Thank you, Mr. Chairman. I have one slide that briefly summarizes implementation to date. At the Board meeting in February, Virginia committed to implement the regulations of Addendum II by July 1<sup>st</sup> of this year.

As of that date, Virginia had not taken action consistent with Addendum II. However, in a memo from July 31<sup>st</sup>, Chairman Carpenter and ASMFC were notified by Virginia of its intent to implement a harvest cap.

CHAIRMAN CARPENTER: I recognize Jack Travelstead.

MR. JACK TRAVELSTEAD: Thank you, Mr. Chairman. I think by now all of the members, if they've looked at their supplemental material, have seen the letters that Brad has reviewed. For the last several months, Virginia has been working toward a solution on this problem.

There isn't anyone who has worked more diligently to finding a sound solution of that problem than the gentleman sitting to my immediate right, Virginia's Secretary of Natural Resources, Preston Bryant. With your indulgence, I would like to slide the microphone over to him and have Secretary Bryant describe Virginia's proposal for the Board.

CHAIRMAN CARPENTER: Thank you, Jack, and, Secretary Bryant, we do welcome you. I also note that Senator Chichester is to your right, and we welcome you to today's meeting as well. Secretary Bryant, I am going to turn the microphone over to you to present the Virginia Proposal.

SECRETARY L. PRESTON BRYANT, JR.: Good morning, Mr. Chairman, and thank you and Mr. O'Shea and members of the Commission. First, let me, indeed, recognize and thank the Menhaden Management Board and the Commission for your long-standing cooperation, your understanding of Virginia's efforts, and indeed your patience as we have gone about to fairly systematically try to resolve the situation.

Your understanding has really been because Virginia has found itself in a unique situation inasmuch as you all know the General Assembly regulates this fishery. The General Assembly has still been in session.

In fact, it's such a unique situation that in the state's nearly 400-year history it has never been in session this long this year. That sort of puts not too fine a point on the uniqueness.

Adding to that, the Virginia Code is open to legal interpretation in terms of the governor's action to regulate this fishery or put a cap on this fishery while the legislature is still in session; and, again, they are still in session.

I would also like, as you have done, mentioned that Senator Chichester from Virginia's northern neck is here, as is Delegate Rob Whitman, also from the northern neck, and each of them has been essential to this process for many years with this issue.

The process, over the last seven months – and I am here officially presenting and representing Governor Kaine to present his proposal. The process has been collaborative, it's been open and it's been inclusive. And because of the process I think that we have undertaken with industry, with conservationists, with key Bay states, especially Maryland, North Carolina, as well, and with other east coast states that we have consulted along the way, I think we have a proposal that generally has received very good marks, and I don't want to put words in anyone's month.

Let me briefly outline exactly what is in your packet and what is Governor Kaine's proposal. It consists of a couple of elements. One, there is an annual harvest cap; second, there is the item of a credit for underages; and, third, there is an agreement between Virginia and the industry to enter into what we all know to be much-needed critical research, so that we can have definitive answers.

I understand getting complete buy-in on the research has long been a sticking point, and we're pleased that that's very much a part of this proposal, and I'll go through it briefly item by item.

First, the governor proposes restricting the annual menhaden harvest cap in the Bay by the reduction fishery to no more than the average harvest from 2001 to 2005. As you know, Addendum II was 2000 to 2004. Since that time, we've had another year's worth of data, so we've simply updated that in keeping and consistent with ASMFC's methodology.

The harvest, for reduction purposes, would be prohibited when 100 percent of the cap is landed. This cap will be in place starting this year, 2006 fishing season, through 2010, and that cap, as you know, is 109,020 metric tons, which is the average of the last five years, updated. That is, again, consistent with ASMFC's preferred methodology.

Second, the item of harvest underages, in years when the annual menhaden harvest cap in the Bay, for reduction purposes, falls short of the 109,020 metric ton cap, it is proposed that underage amount be credited to the following year's, just the following year's allowable harvest, but under no circumstances would it exceed 122,740 metric tons, which I will explain in a moment.

The credit could only be applied in the following year's harvest, as I said, and it cannot be reserved for future years nor can it be spread out over multiple years.

The 122,740 metric ton hard cap, or upper threshold, if you will, is really derived by assuming that if, during that five-year review period, assessment period, we had had this methodology in place, then looking at to see what their maximum credit could have been, it would have been 13,720 metric tons, so we have added that to the 109,020 to get to the 122,740.

In calculating this not-to-exceed cap in this manner guarantees the industry can continue harvesting, on average, the 109,020, which is the goal, the broad goal, the overall goal of the Commission. As averages go up and down, as catches go up and down, that will keep it at 109,020.

Limiting the maximum annual harvest to this level safeguards against significantly exceeding an annual average harvest of the 109,020 over the next five years.

Third is the research. It's proposed that Omega Protein and the Commonwealth of Virginia enter into an MOU to participate fully and cooperatively in the specified menhaden research necessary to examine the effects of localized depletion and other factors necessary to scientifically adjust the harvest cap in 2010.

I will note that the "A" through "D" that you outlined is precisely what we have in the MOU. I have a marked-up copy here, and I'll just read verbatim that section:

"The Commonwealth of Virginia and Omega Protein Corporation agree to support the research program as determined by the ASMFC Atlantic Menhaden Technical Committee to examine the possibility of localized depletion of Atlantic menhaden of the Chesapeake Bay.

"The four areas of research identified are determine menhaden abundance in Chesapeake Bay, determine estimates of removals of menhaden by predators, determine the exchange of menhaden between bay and coastal systems; and, last, to determine the larval recruitment to the Bay.

"We also agree to engage a third party, and we are certainly agreeable to the NOAA Northeast Fishery Science Center or VIMS being an independent review of this critical evaluation." We think that is important as well.

And, last, I would say that it's in here that neither party, neither Virginia nor the industry, expresses any preference whatsoever for the entities conducting the

research. We leave that to you for contemplation and determination.

That, Mr. Chairman and members of the Commission, in brief, I think adequately goes over and describes what is in your packet.

CHAIRMAN CARPENTER: Thank you, Mr. Secretary. Jack, do you have any follow-up to that?

MR. TRAVELSTEAD: If there are questions of the Board, we will certainly try to answer them. I know there are a number of you I have spoken to in the hallways in the weeks past and tried to address those questions, but if there are others, we're certainly available.

CHAIRMAN CARPENTER: The gentleman from New York.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman, excellent report, very thoroughly presented. Only one question arises; what happens – and maybe you said it, but being a senior citizen, I often slip by these things – what happens if the total of 122,740 metric tons is surpassed in that following year? What mechanism have you identified or is there a mechanism that you've put in your approach that will address that issue?

SECRETARY BRYANT: Mr. Chairman, I would say to the gentleman that I did not say that, but in communication to Mr. O'Shea we have included that there would be the deduction the following year. That is in writing to Mr. O'Shea.

MR. AUGUSTINE: A follow-on, Mr. Chairman. All right, so that reduction would come out of the 109,020 metric tons, but it would still allow for the continuation to go back up to 122,740 next year, because you indicated that the carryover would only follow for the next year.

So, are you suggesting, sir, that the reduction would be not only in the 109,020 metric tons, but would also be against the 122,740 metric tons?

SECRETARY BRYANT: Let me turn that to my chief fishery scientist.

MR. TRAVELSTEAD: Pat, every year we will start the fishery under the 109,020 metric ton quota. That will be modified by what occurred the previous year. If there is an underage, it's added to the 109,020, but it can never go higher than the 122,740.

If they had gone over the 109,020 the prior year, the overage or the over-harvest is deduced from the 109,020. You simply balance the mean harvest of 109,020 over the five-year period. At the end of five years, you will have only harvested, on average, the 109,020 for each year of the five years.

CHAIRMAN CARPENTER: Thank you. Pete, do you have a question?

MR. HIMCHAK: Yes, thank you, Mr. Chairman. I have two comments; one I'll reserve until later. On first read, 109,020 metric tons versus 106,000 metric tons, especially in the menhaden fishery, does not appear to be a substantial amount of biomass.

But, then, what I'm looking at in a one-year worse case scenario, presently Addendum II caps the fishery at 106,000 metric tons; and then if you had an underage in one year and recouped it the next year and harvested an entire 122,740 metric tons, you're taking a one-year harvest above what's currently recommended of 16,740 metric tons.

That translates to almost 37 million pounds of forage fish. What I'm bringing up is it's kind of diluting the impact of Addendum II. If that worse-case scenario was realized early on in any of these five years, and coupled with the fact that we've already seen an increase in the bait landings – I know the bait landings are not covered in Addendum II, but they have gone up by 12-1/2 million pounds in the most recent years.

So, when you couple those factors together, Addendum II put in a very specific cap, and it just seems that there are avenues that can significantly water it down.

CHAIRMAN CARPENTER: You said you had a question as well as the comment?

MR. HIMCHAK: No, Mr. Chairman, I just had a comment for later.

CHAIRMAN CARPENTER: Thank you. Any other questions of the proposal? The gentleman from New Hampshire.

REPRESENTATIVE DENNIS ABBOTT: Thank you, Mr. Chairman. As you know, I am Representative Dennis Abbott from New Market, New Hampshire, and I am the legislative commissioner to this Body.

It strikes me that we are here in August two-thirds of the way through the fishing year, and we're still debating this subject. I must admit that I arrived on the scene earlier this week with my shorts wrapped right about around my neck with what I thought we were going to be doing.

But, again, having the ability to listen to many of the people around the table that have cornered me and I have cornered them about this subject knowing this was probably the biggest subject that we would deal with this week, I have a few comments and questions that I would like to make.

First of all, it's interesting to see that we're struck with sort of a Hobson's Choice of whose side of things that we want to be on. Do we go with the National Coalition for Marine Conservation, Environmental Defense, National Environment Trust, CCA-Maryland, CCA-Virginia, Teddy Roosevelt Conservation Partnership, Chesapeake Bay Foundation on the side of supporting this agreement; or, do go against the Maryland Saltwater Sportsmen's Association, Jim Price's organization, which name escapes me at the moment, or the Greenpeace folks in the back of the room?

Either way puts us in sort of a bad spot. I do applaud the Commonwealth of Virginia for taking action finally. I do applaud you. As a legislator, it is with somewhat disappointment that I'm sorry that the General Assembly didn't take action on a fishery that they have to maintain the responsibility of.

I feel as a legislator we have to do what we have to do that we choose to do and probably should have done that. I am sure with Senator Chichester that things aren't as easy as they sound, as we all know, sometimes.

That being said, I looked at a lot of numbers and see that our proposal versus the Virginia proposal – it's not our proposal, our addendum and the proposal we received from the Commonwealth really only has a difference of 1.9 percent. I don't think, again, that helps my shorts go down back a little closer to my waist, so I felt a little better about that.

The concerns that I still have – and my biggest concern was converting an underage to an overage. That's my biggest concern because I want to protect the process that this Commission has, and we have not, at any time, allowed an underage to be converted to an overage.

But it was explained to me, and I thought the most compelling reason for probably going along with this,



by Mark Gibson from Rhode Island, is when he told me that we're not trying to maintain an F rate and protect the fishery, and we're only dealing with a particular number, that satisfied me to that extent.

I want it to be clear amongst all the members that we are not going to allow this in any normal fishery in the future and for no one to come back to the table, in whatever species you want to choose, and decide that now that should be part of a management plan.

Mr. Chairman, I would like you to answer the question, or someone smarter than myself, that even though we have a five-year plan in place; is it not our prerogative within those five years, if conditions warrant, that we can initiate management action to do whatever is necessary to protect the fishery as the science improves? That's a question that I would like answered.

Another question that I would like answered were the remarks made by Mr. Bryant – actually, I think it was Mr. Bryant or probably Jack Travelstead – that Omega has agreed to support research. I can sit here and support research myself, but I'm not the one putting up whatever is necessary.

I would like to have something more defined as to what that support will consist of, either financially or in other ways. So those are my comments and the two questions I have; is it not our prerogative to take further action; and what support will Omega provide regarding the menhaden in the Chesapeake Bay arena? I thank you, Mr. Chairman, for indulging me.

CHAIRMAN CARPENTER: Thank you, Mr. Abbott. Let me answer my question first. I think the Board, as all management boards, has the ability to act when information is presented to it; and in a reasonable and responsible manner has to fulfill that obligation. That's why we're here.

So, yes, this has a five-year timeframe on it now, and that timeframe can either be changed or shortened or lengthened based on future information as it becomes available. That's the case with all of our management plans. We call it adaptive management by design, so I think the answer to that question is, yes, we can if conditions warrant.

I am going to ask Jack to reply or Secretary Bryant to reply to your second question.

MR. TRAVELSTEAD: Dennis, I think the Secretary laid out one of the more critical elements in our MOU with industry that indicates the industry's support for the ASMFC-defined research program.

One of the more critical elements of that research program, as you know, is the LIDAR survey that hopefully begin to identify abundance estimates of menhaden in Chesapeake Bay, and the industry is fully on board with that study.

There are a number of paragraphs in the MOU that precisely lay out in detail how the industry will allow their vessels and people to be involved in the LIDAR research, which is going to start here in just a few weeks.

In addition to that, the Commonwealth and Omega have agreed to seek both state and federal funding for future research that will need to be done. The LIDAR – again, which is most critical – as you know, only has funding for two years.

And if it's successful methodology, we're going to need long-term funding to see that that type of survey occurs on an annual basis or some regular basis. It certainly would be our hope that we could procure funding to see that that happens, and Omega is certainly on board to help us with that.

CHAIRMAN CARPENTER: A very quick follow-up.

REPRESENTATIVE ABBOTT: Yes, thank you. Those are the answers I did expect to hear, and I did want them to be part of the record as they are. Thank you.

CHAIRMAN CARPENTER: Thank you. We are starting to get as many comments as questions, so I think, Jack, if you have a motion, I should really have a motion to begin debating the motion, and we'll entertain questions during that process.

MR. TRAVELSTEAD: I have, in advance, provided a motion, which is up on the screen now, to staff. I would move that the Atlantic Menhaden Management Board approve for public comment the August 2006 draft of Addendum III – which staff, by the way, has prepared – and initiate the public comment process on a schedule that will return the addendum to the Board at its October meeting for final consideration.

CHAIRMAN CARPENTER: Do I have a second to that motion? Second by the state of Maryland, state of Maine – anybody else want to second? All right, I think we have a second. Howard, would you like to speak to that?

MR. HOWARD KING, III: I would, Mr. Chairman, thank you. Maryland does support going forward with Addendum III. I think the contents of the addendum that we have all seen is a testament to the work conducted by the Commonwealth of Virginia and your deliberations within your state, and I applaud you for that.

No addendum is perfect. The first one wasn't; this one probably isn't. I do think that the Commission is on the right track and that the menhaden train is moving in the right direction. This train should be fueled by research and not by emotion.

I think there has been some mention, and we certainly have discussed joining forces to try to obtain additional funding for research, both through the Commonwealth and through the state of Maryland, and through the Commission, because we do need to work jointly.

This will be an expensive proposition, but if we persist we will be in a better place five years down the road than we are today. So for those reasons, we do support and second this motion.

CHAIRMAN CARPENTER: Thank you, Howard. Mark Gibson.

DR. MARK GIBSON: Thank you, Mr. Chairman. Since Mr. Abbott raised the discussion I had, I thought I would share it with the Board. First, I agree that the difference between 106 and 109 was irrelevant in the context of our ability to estimate population sizes in one of the fisheries.

I shared the concern about allowing underages to be rolled forward, because at first look, it appeared to be a precedent-setting or a deviation from past practices, but it appeared to me that this is a cap. It's not a quota.

You know, these formal quotas, we have a design to deliver a particular fishing mortality rate that is designed to leave behind a specific biomass at the end of the fishing year, which is part of a rebuilding trajectory when we have rebuilding targets.

This is not the case. It's just a cap. I didn't see any issue with it as long as there's an understanding that we're not going to move this sort of process into the formal quota setting. There is a legitimate reason why with formal quotas we don't allow underages to be rolled forward, but I don't think that is applicable here, so I don't have a problem with that. Thank you.

CHAIRMAN CARPENTER: Thank you very much. For the record, I will note that the staff has distributed copies of Draft Addendum III around the table, and there are copies available for the public if you'd like, so we can all be looking at the same thing. Jaime Geiger, I had you on the list.

DR. JAIME GEIGER: Thank you, Mr. Chairman. I certainly appreciate the explanation of the proposal by Secretary Bryant, as well as Jack Travelstead. I am very pleased to see the commitment to research that has been made there.

I think one of my requests would be I would like a little more specificity over the next five years on exactly the contributions by the industry and the Commonwealth to the specific research proposals that are on the table or will be proposed.

I think that will certainly allow us to get a better sense of both the commitment of the industry as well as by the Commonwealth, as well as look at opportunities to leverage those additional funds and resources with other resources and other federal agencies. Thank you, Mr. Chairman.

CHAIRMAN CARPENTER: Dr. Mahmoudi just reminded me that the technical committee will be involved with that, and I am sure that they will work with Virginia in helping to decide specifically what the industry needs to cooperate with. That will be part of this process. George LaPointe.

MR. GEORGE LAPOINTE: Thank you, Mr. Chairman. My concern was the concern that was addressed by Mark and Dennis Abbott about making sure that the conversion of underages into future years' harvest cap isn't precedential on Commission activities. Given the fact it's on the record and we're all aware of it, I am satisfied that this is a good thing to do.

CHAIRMAN CARPENTER: Thank you very much. John Nelson.

MR. JOHN I. NELSON, JR.: Thank you, Mr. Chairman. First, I would like to thank your efforts, Jack, and other members of ASMFC in the other states in the area that have worked hard to solve a rather difficult issue that, unfortunately, was put upon the Commonwealth of Virginia.

I think the points that have been already covered have eased a lot of the concerns that I've heard and questions that we might have had about the use of underages, and I think that's adequately addressed.

I think Mark probably more articulately covered it than any of us probably could have. As I understand it, Jack, you currently have in place a cap; is that correct? You have the 109 cap in place?

MR. TRAVELSTEAD: No, it's not in place yet, no.

MR. NELSON: What would be the timeline -- after public comment is past, what would be your timeline for implementing that cap, and what's the process that would be put in place to have it in place for a longer term than just the governor's proclamation, if that's how it's initially being done?

SECRETARY BRYANT: Mr. Chairman, I would answer the gentleman in two ways. First, the industry, Omega, specifically, has agreed very much on the public record to voluntarily implement -- whether or not we had an MOU and regardless of this Commission's actions, if you took no action, regardless of whether the legislature took no action, they have very much agreed on the public record to stick to the 109 this year and then exit the Bay.

They have very much agreed on the public record to abide by the agreement that we have. As to the more formal implementation and alternatives, there are really two, and they're both relatively immediate.

First of all, I'm not speaking for the legislature, but we are currently in special session, the legislature is, and they could, should the House and Senate leadership agree and subject to procedural resolutions, all those things that I have no control over -- it's fully an Legislative Branch function -- but they could take it up this month and enact it into code.

And if they did it by way of emergency -- make it emergency legislation, quote, unquote, it would become effective immediately upon the governor's signature. That's all legislative prerogative.

Worse case, I would think, is that it would be introduced in the 2007 session, which begins in just five short months, and in that case the legislation would likely be drafted late this year, probably November or December.

CHAIRMAN CARPENTER: Thank you. Pres Pate.

MR. PRESTON P. PATE, JR.: Thank you, Mr. Chairman. Like many others have spoken already, I would like to commend Secretary Bryant

and his staff for putting together a proposal that is consistent with the intent of Addendum II, and takes into consideration the unique circumstances that we find ourselves in in trying to manage this fishery that's being harvested by essentially one entity in one state.

As Chairman of the Commission, I have spent considerable time interacting with the Commonwealth of Virginia in developing this plan to ensure that not only is it substantively meaningful and consistent with Addendum II, but also procedurally correct.

It's been a very sensitive issue for all involved, and I think it's important that we work within the process that the Commission has to address the concerns of the industry and the state, and I am confident that we have done that. I hope that we can get support from the Board to move forward, and I strongly support the motion. Thank you.

CHAIRMAN CARPENTER: Thank you very much. The next person I had was Pat White.

MR. PATTEN D. WHITE: Thank you, Mr. Chairman. I didn't know if it would be worthwhile at this point, relative to the motion, to have staff give an overview of what the addendum covers; or, are we considering basically what was presented by the Commonwealth of Virginia.

CHAIRMAN CARPENTER: Well, I think staff does have some overheads with the key elements on it, and I think it would be a good opportunity now to run through that very quickly. I think the Secretary did a very fine job of presenting that to us, but we can get it here, if that's agreeable, so let's go ahead with that.

MR. SPEAR: Thank you, Mr. Chairman. Staff did use the Virginia letters and embodied the proposal into Draft Addendum III. I'll quickly go through the sections of that addendum.

You will recall Addendum II was approved in August of last year. It establishes a five-year annual cap on the reduction landings in Chesapeake Bay. The cap is based on the mean landings over the last five years, at the time, and the cap is to be implemented from 2006 through 2010.

It also initiated the research program that was discussed earlier. Of note, the 2003 peer-reviewed stock assessment concluded that the Atlantic menhaden stock coastwide was not overfished and

overfishing was not occurring. However, the Chesapeake Baywide status was unknown.

Statement of the Problem: Draft Addendum III proposes to use data from the most recent five years, 2001 through 2005, to establish a cap that would be in place from this year, 2006 through 2010. Also, the Virginia Proposal included the ability to adjust the cap on an annual basis due to quota overages and underages.

Issue Number 1 in the addendum is regarding the menhaden harvest cap. Option 1 would be status quo, Addendum II, and verbatim from the addendum: "The annual total allowable landings by the reduction fishery in Chesapeake Bay are limited to no more than the average landing from 2000 through 2004.

"Harvest for reduction purposes shall be prohibited when 100 percent of the cap is landed. This cap will be in place for the fishing season starting in 2006 and going through 2010. Overharvest in any given year would be deducted from the next year's quota."

Again, that is Option Number 1, status quo. Option Number 2, which reflects the Virginia Proposal, the annual total allowable landings by the reduction fishery in Chesapeake Bay are limited to no more than 109,020 metric tons; the average landings from 2001 through 2005

Harvest for reduction purposes shall be prohibited when 100 percent of the cap is landed. This cap will be in place for the fishing season starting in 2006 and going through 2010. Overharvest in any given year would be deducted from the next year's quota.

Issue Number 2 of the addendum deals with the annual credit of harvest underages. Currently status quo is Option Number 1: No credit is given to states for harvest underages. Harvest underages cannot be added to next year's allowable harvest.

Option Number 2, assuming a cap of 109,020 metric tons had been in place over the 2001 through 2005 reference period, the maximum underage that would have occurred during that time period is 13,720 metric tons.

This option would establish a maximum rollover of unlanded quota at 13,720 metric tons. Adding that average to 109,020 metric ton soft cap would result in a hard cap of 122,740 metric tons.

Continuing with Option Number 2, under Issue Number 2, in the years when the annual menhaden harvest in Chesapeake Bay for reduction purposes is

below the 109,020 metric ton cap, the underage amount is credited for the following year's allowable harvest.

Under no circumstances can allowable harvest in any given year, from 2006 through 2010, exceed 122,740 metric tons. Such credit can only be applied to the following calendar year's harvest and cannot be reserved for future years or spread over multiple years.

Further, if no more than the underage amount is credited to the next year's allowable harvest, the annual average harvest for 2006 through 2010 cannot exceed 109,020 metric tons.

And just to quickly go over the research section of the addendum, to reiterate, the Addendum II research program is set up to examine the possibility of localized depletion in Chesapeake Bay.

Omega Protein and Virginia entered in a Memorandum of Agreement to participate in such research. The research is expected to provide the Board more information for its management decisions after the addendum expires. Omega Protein and Virginia will work together to secure funding.

And, just to point out, this section of research in Addendum III is complementary to the research section in Addendum II. It does not replace that research section.

Going over some of the points of compliance in the addendum, any state with reduction processing capabilities will be determined out of compliance if its program to implement the commercial fisheries management measures' section of Addendum III is not approved by the Board, if the state fails to meet the compliance schedule that would be set in the draft addendum, if the state failed to implement a change in its program that the Board required, and if the state makes a change to its regulations required under the commercial fisheries management measures' section of Addendum III, or any other addendum prepared under adaptive management without prior approval from the Board.

I summarized those points; those are verbatim on Page 5 of the draft addendum. And, as with all of our management actions, there are implementation dates, and those dates are left open in the addendum, and it would be up to the Board to set that schedule. The language is taken standard from our management plans.

CHAIRMAN CARPENTER: Thank you very much. That program, I think, is the technical language that we needed to consider to implement the plan as was presented by Virginia. I've got a list going, but let call on Gordon, who is very insistent right now.

MR. GORDON C. COLVIN: I think it would be useful for the record, Mr. Chairman, if we could inquire of the maker of the motion whether the addendum just presented is fully consistent with the motion on the floor.

CHAIRMAN CARPENTER: I think that would be appropriate question to ask at this point.

MR. TRAVELSTEAD: I have one small edit that I think needs to be made to the document before you. With that, I believe what Brad has gone through is fully consistent with what the Secretary has described as the plan and is consistent with the motion.

The edit, on Page 3, refers to "total allowable landings" by the reduction fishery in Chesapeake Bay; I think the more correct word there is "harvest", not "landings". We're talking about harvest of fish from Chesapeake Bay.

Landings generally refer to fish harvested at any location and brought to a central location. I think the more proper term there is "harvest" rather than "landings".

CHAIRMAN CARPENTER: I had that note as well, and I think as a document, we use "landings" and "harvest" almost interchangeably, but –

MR. TRAVELSTEAD: Sometimes we do and sometimes we don't.

CHAIRMAN CARPENTER: -- we'll ask the staff to go through and word search that to make sure that "harvest" is in the appropriate place. With that, I am going to turn to Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thanks, Mr. Chairman. On sort of the same point, there are a couple of sections that were presented by Mr. Spear where we talked about stopping the harvest once the cap was made, and I think it was the intent in Secretary Bryant's proposal that that would be the harvest in the Chesapeake Bay as opposed to total reduction harvest. I think we should add language to the document to capture that intent.

CHAIRMAN CARPENTER: Thank you very much. I think that is consistent with the intent of the motion and the intent of the action. I am going to return now to my list that I had. Robert Boyles.

MR. ROBERT H. BOYLES, JR.: Thank you, Mr. Chairman. Just briefly, I want to make sure I understand where we're going. We've got last year's Addendum II, which was approved but has not been implemented, fully implemented.

My question to the members of the Board – and please forgive my ignorance – is do we find ourselves in some peril in setting a precedence with moving to Addendum III, absent any full implementation of Addendum II? It's a procedural question and not a substantive question. For you, Mr. Chairman, or staff or other members of the Board.

CHAIRMAN CARPENTER: I think in this particular situation, I don't see any particular reason why we should not move to Addendum III in this situation. I think it's not a matter of fully implementing; this is a mechanism to get Addendum II corrected or adjusted so that it can be fully implemented.

I am going to look at our executive director to see if he has anything else to add to that. He's not jumping up and down, so I am going to assume this is the right answer and move on. I had Peter Himchak.

MR. HIMCHAK: Thank you, Mr. Chairman. Recognizing that I have not been on these boards as long as many of you, and I may be more blunt and not as politically correct, but, however, Addendum II took an enormous effort to develop, and the whole issue of localized depletion, the three-day workshop – I believe it was in Baltimore – we had a rather extensive joint meeting of the technical committee and Board, and Addendum II came up with a very specific recommendation.

It seems to me that if we're allowing a state to come up with a less restrictive management plan as a reward for not meeting the implementation date, procedurally, I think this is problematic. As I brought up at the Horseshoe Crab Board meeting, New Jersey's governor came up with a moratorium on horseshoe crabs that preceded the implementation date of Addendum IV on horseshoe crabs.

We were more restrictive, so is there any benefit in doing that? No, but can you come in after the fact – and I know everybody is in a tight situation here, but we're going to reopen the whole issue of localized

depletion that we dealt with in Addendum II in order to take this Addendum III forward? It seems like we're creating an awful lot of problems for ourselves all over again.

CHAIRMAN CARPENTER: I'm not sure that I see it exactly the same way. I see Addendum II laying out a problem and coming up with a precautionary cap while the research is being done to answer the question about localized depletion.

I see Addendum III as a minor adjustment to the conservative cap or the precautionary cap that we had in place with Addendum II, but a full continuation of the research and the full cooperation now of the industry in that research. So, I'm not sure that I necessarily agree with your conclusion there.

I'm going to move along the list because the list is getting longer and the hour is getting later. Steve Meyers.

MR. STEVE MEYERS: Good morning, Mr. Chairman. We at NOAA see a Addendum III as a very positive step forward. We are very happy to see the Commonwealth enter into an MOU with industry. We feel that this is going to further support the comprehensive research program already laid out.

We feel that this program will greatly increase our understanding of the science needed for management. We look forward to working with the Commission and with the Commonwealth and the state of Maryland in the planning and support of this research program and additional research.

We will be working with the Commonwealth and with industry in real-time quota management on this so that we can provide the Commission with excellent data needed for the management of this resource. Thank you.

CHAIRMAN CARPENTER: Thank you very much. Everett Petronio.

MR. EVERETT A. PETRONIO, JR.: Thank you, Mr. Chairman. Let me initially start by saying that I am in support of what we're trying to do, but I have some procedural issues as to how we're trying to get there. I want to kind of clarify it and see if we can't get where we're all, I think, trying to go.

There is a doctrine of law called "has been answered". Addendum II is done. Addendum II is in place as we sit here today. If I read the proposed addendum correctly, we're replacing Section 3.3 of

Addendum II, but as we sit here right now, Addendum II is, to quote, the law of the land.

Technically, we have a situation where Virginia is not in compliance as we sit here today. I'd like to hear from the staff or hear procedurally what will happen while we consider this addendum?

Let me put on the record my understanding and then people can correct me. We have a technical situation where at the moment Virginia is not in compliance. I believe that today we do need to take action on that.

However, if this addendum fails at our annual meeting, can we then move forward with the existing Addendum II, and at that time find – should we choose and no one wants to do this. I don't want the provisions of Addendum II to go away because we start Addendum III.

If for some reason Addendum III is not approved, can we come back and find Virginia out of compliance with Addendum II is the question?

CHAIRMAN CARPENTER: I am going to go out on a limb; and based on at least how our regulations work, and I would think ASMFC's addenda would work, that until Addendum II is replaced, it would become effective and the Board would certainly have the option, if this Addendum III were to fail, to then rely on Addendum II as the law of the land, so to speak.

At that point I think there would have to be a finding or determination by the Board whether there is compliance or not at that point. I am going to ask Vince to chime in on this.

EXECUTIVE DIRECTOR O'SHEA: Thanks, Mr. Chairman. I think there are a couple of subtleties here that are important for the Board to keep in mind. Number 1, the determination of whether or not a state is in compliance is a finding that the Board formally needs to make, Point Number 1.

And Point Number 2, in the past ASMFC boards, in the face of difficult issues, have deferred making compliance findings when the board has contemplated initiation of addenda to respond to the difficulty presenting to that board

So, in terms of the question, you have a proposed action to initiate an addendum. If the Board were to decide to go forward with initiating the addenda, that action alone has been rationale in the past for the

Board to defer a compliance finding pending the final resolution of that addendum.

If the addenda fails or this effort to initiate addenda fails, then the Board certainly has the ability at a later date to make a compliance determination.

CHAIRMAN CARPENTER: Thank you very much. There is a very quick follow-up.

MR. PATRONIO: Right, just to that point. I just wanted to clarify for the record that we're deferring, and I think that's everyone's intention is to defer until such time as we can fully consider Addendum III and follow our processes. That being said for the record, I just also want to put on the record that I am in support of Proposed Addendum III.

CHAIRMAN CARPENTER: Thank you. I am going to ask the commissioners, at this point is there anybody that has a burning desire to talk, because the hour is getting late, and we do need to take public comment on this. Jaime, I had you next on the list.

DR. GEIGER: Again, I'm looking on Page 4 of the proposed addendum under research; and, again, following up on my previous question to the state of Virginia, again, I see on the last sentence of the second paragraph Omega Protein and the Commonwealth of Virginia will work together to secure additional federal funding menhaden research.

Given the fact that the commitment to research is so critical to the success of this addendum, I would prefer some language to be put in there that Omega Protein and the Commonwealth of Virginia will work together to identify current levels of private and state funding committed on a year-to-year basis, as well as looking forward to secure additional federal, state or private funding.

I just want to make sure that we're seeing the additional level of commitment by both the industry and the state on this critical research issue. Thank you, Mr. Chairman.

CHAIRMAN CARPENTER: Thank you. With that, I am going to open the floor to discussion from the public. Tom, I'll start with you, and this will be to the motion.

MR. FOTE: I'm from New Jersey, also, so sometimes I'm blunt as Pete. Tom Fote, Jersey Coast Angler's Association. I understand this is not cap for mortality. I don't like the situation of rewarding

underages for the following year. I'm basically accepting that.

But, this cap was put in place for a specific reason, to basically provide forage species for striped bass. So, we have an underage in one year, and we allow the harvest to the following year; are we basically supposed to tell the fish to go on a diet that year?

Because, basically, it's going to be 16 million pounds less. That's the way I see it, if we're basically doing this for forage species and protecting that number because that was the number that you came up realistically to propose there, then we're now, in the following year, saying, well, because you didn't harvest this year – and so the fish had a lot of fish to eat that year, for the following year now, they're going to have 16 million pounds – is that really what we're supposed to do?

Again, this was not – I agree with some of the people, this was not for a mortality rate, but it was capped for a specific reason. It was to provide forage species, I think we have forgotten about that in the discussion here, or least the Commission forgot about that.

Because, you can't replace 16 million pounds -- there's not going to be 16 million pounds of anchovies or something else to replace that for the species to eat. Thank you for your indulgence.

CHAIRMAN CARPENTER: Thank you. Are there any other public comments? Yes.

MS. BAUMANN: Thank you so much for this opportunity to comment again. My name is Buffy Baumann with Greenpeace. As stated before, last year thousands of people from all up and down the Atlantic coast responded to Addendum II by asking for a coast-wide moratorium on the industrial purse seine reduction fishery.

Basically in the meeting last August, though those comments were recognized, we were told that wasn't officially an option. So we played by the rules, and we have been playing by the rules all along.

I just want to express outrage to the fact that, as Peter Himchak said, that a state that wasn't even in compliance, that has basically been dragging its feet, came to the Board with a late proposal, and that you are now considering reopening this whole process.

We were there at, I think, 14 out of the 15 or 11 out of the 12 meetings last summer for public comment. I know and I'm sure – I don't see Nancy here, but, I mean, that was a lot of time and work on everybody's

behalf, and the idea of reopening this process, just because Virginia doesn't want to play by the decision that was 12 to 2 last August, is a travesty. Thanks.

CHAIRMAN CARPENTER: Thank you very much. Mr. Price.

MR. PRICE: My name is Jim Price. I would very much like to remind the Board that in my report I referred to Hartmann and Brant's study in the early nineties, where they found that the forage in the Chesapeake Bay, particularly age one and older menhaden, were critical to the older striped bass health, and that there wasn't enough of those age classes available at that point.

Since then, conditions have gotten much worse. They mentioned, again, back in the early nineties that the escapement of age one-plus menhaden to the Chesapeake Bay would increase production of striped bass, bluefish, and weakfish.

My study that we're currently working on – and I have looked at over 500 striped bass this year alone from the Chesapeake Bay – indicates that the availability of age one-plus menhaden, the size that the reduction fishery would be targeting, is in very short supply, and the condition of the fish are much worse today than they were in the early nineties when Hartmann and Brant published their studies.

I think you ought to really consider that when you decide about increasing any kind of harvest limits on the Chesapeake Bay. Thank you.

CHAIRMAN CARPENTER: Thank you very much. Back to the Board, Mr. White.

MR. P. WHITE: Just seeing no more public comments, Mr. Chairman, I'd like to call the question.

CHAIRMAN CARPENTER: The question has been called. We will have a caucus. I assume most states need a moment for a caucus. We will have a caucus and then proceed with the vote.

(Whereupon, a caucus was held.)

CHAIRMAN CARPENTER: Ladies and gentlemen, I will call the session back to order. I am going to call the question. All in favor of the motion, signify by raising their right hand; all opposed, same sign; any abstentions, one abstention; any null votes, one null vote. The motion carries 14 to 1 to 1.

With that, thank you very much. I do have a couple of items that I think we do need to deal with this. Under our rules, we do have to have a public comment period. We do have to have a public comment period, but is there any state that wishes to have a public hearing on this addendum?

The state of Maryland has indicated they would like one. Virginia would like to have one. It is optional but not required; and since we have two, I think that would meet the needs of the Commission.

The draft addendum which was presented today will be available for the public hearing. Staff will work with Maryland and Virginia to set up those dates as soon as they can. We invite all public comments. There will be a process where that will come in through mails or – Vince.

EXECUTIVE DIRECTOR O'SHEA: Thanks, Mr. Chairman. In view of the Board's action with the last vote, maybe we ought to review the process of where we are.

In anticipation of this vote, staff took a first shot at a draft addendum that incorporated the elements in Secretary Bryant's letter to all of you, but in frankness and defense of the position of the commissioners, you basically have a piece of paper that was put in front of you fifteen minutes ago.

Now you have agreed to go forward with that. In those cases, what we have done in the past is to allow a certain period of time for you all to go home and look at it, look for, frankly, editorial improvements, clarification, and get those back to the staff at a certain deadline.

We will incorporate those into the document; and with that understanding, we would then release it for public review. So I think the only issue for us, Mr. Chairman, would be some sort of consensus as to how much time states would like to look at the document.

CHAIRMAN CARPENTER: Does ten days work for all of the states? Ten calendar days from today I think would give us the time.

I also would like to note for the record that the chairman of our AP, Bill Windley, was not here today. I did receive a FAX last night that he has had a family emergency, a health situation, and was unable to be here.

He expressed his concern, and he wanted the commissioners to know that he didn't stay away



because he didn't want to be here. It was an emergency situation.

With that, I think, Mr. Price, you had covered your comments with regard to your study earlier today. Is there any other business to come before the Board?

Seeing, none I am going to call for an adjournment of the Board. I have a motion by several people to adjourn and we are adjourned.

(Whereupon, the meeting was adjourned at 12:00 o'clock noon, August 16, 2006.)

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