

PROCEEDINGS
of the
ATLANTIC STATES MARINE FISHERIES COMMISSION
INTERSTATE FISHERIES MANAGEMENT PROGRAM
POLICY BOARD

November 11, 2004

Wentworth by the Sea
New Castle, New Hampshire

ATTENDANCE

Board Members

George Lapointe, Maine DMR	Eugene Kray, proxy for Curt Shroeder, PA
Patten White, Maine Gov. Apte.	Roy Miller, Delaware DFW
John Nelson, New Hampshire F&G	Pete Jensen, Maryland DNR
Ritchie White, Hew Hampshire Gov. Apte.	Bruno Vasta, Maryland Gov. Apte.
Dennis Abbott, proxy for Mary Ann Blanchard, NH	Russell Dize, proxy for Richard Colburn, MD
Bill Alder, Massachusetts Gov. Apte.	A.C. Carpenter, Potomac River Fisheries Comm.
Vito Calomo, proxy for Anthony Verga, MA	Jack Travelstead, Virginia MRC
Mark Gibson, Rhode Island, DEM	Preston Pate, North Carolina, DMF
Gil Pope, Rhode Island Gov. Apte.	Damon Tatem, North Carolina Gov. Apte
Eric Smith, Connecticut DMR	David Cupka, South Carolina Gov. Apte.
Lance Stewart, Connecticut Gov. Apte.	Robert Boyles, South Carolina Leg. Comm.
Fred Frillici, proxy for George Gunther, CT	Spud Woodward proxy for Susan Shipman, GA
Gordon Colvin, New York DEC	John Duren proxy for Ralph Balkcom, GA
Pat Augustine, New York Gov. Apte.	Gil McRae, Florida Fish and Wildlife Cons. Comm.
Brian Culhane, proxy for Sen. Johnson (NY)	Mitch Needleman, Florida Leg. Comm.
Bruce Freeman, New Jersey DFG&W	Jaime Gieger, USFWS
Tom Fote, New Jersey Gov. Apte.	Anne Lange, NMFS
Dick Snyder, proxy for Douglas J.T. Austen, PA	

ASMFC Staff

Megan Gamble	Lydia Munger
Bob Beal	Brad Spear
Tina Berger	Nancy Wallace
Vince O'Shea	Mike Howard
Carrie Selberg	Toni Kerns
Vince O'Shea	Geoff White

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Summary of Motions

November 11, 2004

Move that the ISFMP Policy Board direct the Striped Bass Management Board to begin an Addendum to establish criteria for defining spawning and nursery areas as well as describing these areas for the purpose of the Striped Bass Fishery Management Plan. Further, the Addendum should set out necessary action to protect these areas and consideration for states taking such action.

Motion by Mr. Freeman, second by Mr. Kray. Motion perfected with the subsequent motion.

Move the ISFMP Policy Board direct the Striped Bass Management Board to review the producer area status of the Delaware/Hudson Estuaries with regards to the Amendment 6 process.

Motion by Mr. Freeman, second by Mr. Kray. Motion tabled time certain.

Motion to table the previous motion.

Motion by Mr. Pate, second by Mr. Lapointe. Motion passes.

Move that the Policy Board find the Striped Bass Management Board followed proper procedure in adopting Amendment 6 to the Striped Bass FMP in removing producer area designation.

Motion by Mr. Pate, second by Mr. Abbott. Motion passes.

Move that the previously tabled motion be brought back to the Board for consideration.

Motion by Mr. Pate, second by Mr. R. White. Motion passes.

Move the ISFMP Policy Board direct the Striped Bass Management Board to review the producer area status of the Delaware/Hudson Estuaries.

Motion by Mr. Freeman, second by Mr. Kray. Motion amended.

Move to amend the motion to remove the word "Hudson."

Motion by Mr. Colvin, second by Mr. Lapointe. Motion passes.

Move the ISFMP Policy Board direct the Striped Bass Management Board to review the producer area status of the Delaware Estuaries.

Motion by Mr. Freeman, second by Mr. Kray.

Move to table this motion.

Motion by Mr. Freeman, second by Mr. Frillici. Motion passes unanimously.

Move to approve the peer review schedule as presented by the MSC.

Motion by Mr. Lapointe, second by Mr. Augustine. Motion passes.

Move to modify the ASMFC peer review process to include stakeholders in the ASMFC External Peer Review Process (attend but not as panel members).

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

Move to approve the recommendations on stakeholder involvement in ASMFC technical processes as presented by the Stock Assessment Committee.

Motion by Mr. Augustine, second by Mr. Lapointe. Motion passes.

Move on behalf of the South Atlantic State-Federal Board to recommend to the Policy Board to authorize the Executive Director to sign the Southeast Aquatic Resources Partnership Memorandum of Understanding.

Motion by Mr. Cole. Motion carries.

The ISFMP Policy Board of the Atlantic States Marine Fisheries Commission convened in the Wentworth Ballroom of the Wentworth by the Sea, New Castle, New Hampshire, on Thursday, November 11, 2004, and was called to order at 8:30 o'clock a.m. by Chairman John I. Nelson.

-- Welcome; Introductions --

CHAIRMAN JOHN I. NELSON: Take your seats. As promised, we're going to start a little bit earlier. It's 8:30 now so we're going to move a couple things up, so let me go through the agenda. The new agendas are being handed out right now.

-- Approval of Agenda --

The same basic format occurs for the first few items of the agenda, so let me just welcome everybody to the ISFMP Policy Board meeting. Since we are starting a little bit early, I've checked with some of our members and asked if we could have Number 15 and 16 moved up to right after the public comment.

George and Jamie have agreed to do that. They're not going to take too long, but I think we will probably kill enough time to get to quarter of with all those agenda items put in there. We'll see which one takes a little bit longer.

-- Approval of Proceedings from August 18, 2004 --

Okay, any other changes to the agenda? All right, seeing none, how about the approval of the proceedings from the August 18th ISFMP Policy Board. Any changes to those proceedings? Okay, seeing none, they are approved as they stand.

-- Public Comment --

Public comment -- and recognizing that I probably am starting a little early -- if a lot of the public shows up, I'll again ask for some public comment that is not associated with the items on the agenda, and also keeping in mind that we'll take public comment as necessary on the agenda

items, as usual. All right, let me go to George, if you don't mind starting off. It's the fish passage engineering support.

-- Fish Passage Engineering Support --

MR. GEORGE LAPOINTE: Thank you, Mr. Chairman. I don't mind starting and this is just an information item. We got a letter, as I suspect most of the states did, from the regional director of the U.S. Fish and Wildlife Service about a meeting on the 9th of December in regard to support for their fish -- I'm going to call it their fishway engineering section, the folks who work cooperatively with our state programs in designing fish passage facilities.

Obviously, this is important to the commission's states because of our work on anadromous and catadromous species. I just wanted to make sure people were aware of the meeting. The sense I get is the fiscal constraints of the federal government are coming to play and they want to talk to us about that.

If I read between the lines and look at reduced support for fishway engineering, I know for the state of Maine that would significantly impact our ability to work on cooperative fishway work and fish passage work, something that's accelerating in our state.

I just want to bring to people's attention the importance of that meeting on the 9th of December, the importance of the cooperative process that I think most states have with the Fish and Wildlife Service in moving forward. So that is just to make sure that people were aware of it and hopefully have it on their schedules. Thank you.

CHAIRMAN NELSON: Thank you, George. I know we saw that letter and we have been preparing letters of support for the engineering support group, because they've been very helpful to us over the years. And whether we're now trying to build any more fish passages or get rid of them, I think that support is necessary. Jaime, do you want to add anything else to this?

DR. JAIME GEIGER: Thank you, Mr. Chairman. Again, as George alluded, you know,

the Fish and Wildlife Service, especially in the Northeast Region, is again under severe budgetary concerns, both in the last fiscal year as well as facing FY'05.

I know many of you have received briefing material from our regional director on some of the proposed issues and impacts on the fisheries program, for example, and what may or may not transpire on that.

Equally severe, our ecological services program, where our fish passage engineering is sort of based and supported by, is also facing a real budgetary impact this fiscal year. Again, the issue is trying to discuss with our primary state partners which is the best way to maintain this kind of capability and try to, if I could use the word, "right size" the capability to meet the need.

And this meeting is to have a chance to solicit input, discuss proposed solutions and try to see if we can come up with some options that we can somehow right size this function to meet not only the state needs in fish passage and fishway engineering, but also the other associated partners and agency needs on maintaining this kind of expertise.

As many of you know, it's very, very difficult to try to cultivate and grow up or otherwise get a qualified fishway engineer, that unique combination between engineering and biology.

There's very few schools that turn these folks out. It's a long mentoring program and on-the-ground training. We're in a critical place where some of our folks are ready to retire, and we have to make some hard decisions on whether to either start rebuilding it with additional new expertise or do something else with the function. We'd welcome your attendance at the meeting and certainly welcome your input. Thank you.

CHAIRMAN NELSON: All right, Jaime, and I hope you come away with the sense also just from this meeting, although we haven't really spent much time discussing it, that group has served a very, very useful function, and the loss of it would be felt. Let me just leave it at that.

Any other comments on this particular item? All right, seeing none, back to Jaime and the update on your cormorant management plan.

-- Update on Cormorant Management Plan --

DR. GEIGER: Thank you, Mr. Chairman. As you know, most of you are painfully aware the double-crested cormorant populations have increased significantly in the last 25 years, primarily in the Great Lakes Basin and the Southern U.S.

To try to address this -- and again you realize that the double-crested cormorants are managed under the Migratory Bird Treaty Act. We finally published a final rule in the Federal Register trying to address new rules under the Migratory Treaty Act to reduce damages to hatchery and commercial aquaculture and the public resources, fish, wildlife, plants and their habitat.

These regulations went into effect on November 7th, 2003. What we're seeing is that these new regulations allow increased capability and flexibility to state agencies to regulate cormorant populations.

And, again, it allows us capability to put into effect a new depredation order to basically look at public resource comments and conflicts impacting cormorant populations and other species. We received over 10,000 comments on this draft EIS, and it was a significant level of work. As you can expect, there was a lot of controversy engaged and involved with this particular action.

But what I wanted to bring to the board's attention is that we do now have a final rule. We do have some more flexibility related to cormorant management. I will be, in the future, bringing some additional information and follow ups to this board to allow you to become more aware of these new regulations and giving you some case-to-case examples by which some other states, both in the Northeast and the Southeast, are using these new rules to actively manage cormorant populations, both for aquaculture and hatchery facilities, as well as in terms of public fish and wildlife resources.

Again, I want to emphasize this is a controversial rulemaking, but I do think it offers managers increased opportunities to regulate and manage these species and try to avoid some of the spot and localized impact that cormorant populations may have on sport fish populations.

And, Mr. Chairman, that's all I'd really like to say at that point, but I will keep the board updated, and I will be providing regular updates and more information on this specific rulemaking and opportunities relating to cormorants. Thank you.

CHAIRMAN NELSON: All right, thank you, Jaime. Questions for Jaime? Ritchie.

MR. G. RITCHIE WHITE: Thank you, Mr. Chairman. Jaime, is there any money available to departments if they're going to implement any measures?

DR. GEIGER: Thank you. Right now, to the best of my knowledge, there is no increased funding or grants or anything available to address this particular issue related to cormorants. I do know that in a public comment question and comments on the draft EIS, certainly the issue of funding and how we can assist member states in cormorant management was certainly high on the list of comments.

I believe this is some actions for future activity related to some interactions with the service and the Northeast and the Southeast state directors. I do know that we are still trying to put together a northeast cormorant management plan.

We started some preliminary work on that, but we have not gotten I think that management plan to a state that it is ready for prime time at this point in time. Thank you.

CHAIRMAN NELSON: Other questions for Jaime? Thank you very much, Jaime. We're back onto the agenda. Well, I'm not quite at quarter of, so I'm going to wait on the public comment.

-- Consideration of New Jersey Appeal --

We actually are at Item Number 5, which is the consideration of New Jersey appeal of Striped Bass Amendment Number 6. Let me give a little bit of background for everybody. I'll ask Pres, as the vice chair, who also participated in this, if I miss anything to just fill that in for me.

We received a request from the state of New Jersey on September 20th or a little bit later than that, actually, September 22nd, requesting an appeal of the Striped Bass Management Board's decision to eliminate the Delaware Bay River and Hudson River and associated bays, Upper and Lower New York, and so on and so on, from producer area status under Amendment 6 without the proper motion or proper justification.

They also appealed the board's decision to exempt Delaware's commercial shad gill net fishery from the coastal commercial requirement of 28 inches. They also appealed the board's decision to exempt the Chesapeake Bay and Roanoke-Albemarle Sound from the coastal recreational requirement of two fish at 28 inches.

As we set up very recently the appeal process, tried to define it and give some clarity on how to do this, and I thank the folks from New Jersey for trying to follow that procedure as obviously the first one.

I would have preferred the first one came under Pres' watch or somebody else's watch, but that's the way things go. But, they followed that pretty well. The chairs; that is, the commission chair, vice chair and past chair -- in that case it was Susan Shipman -- reviewed the request to see if it met the qualifying guidelines for an appeal as we've defined it.

We felt that they had followed the proper procedure and went and submitted it in a timely fashion. When we reviewed it, we agreed that the Policy Board should determine if proper procedure and public comment opportunity was adequate in support of the decision to remove the producer area designation in Amendment 6.

That's the part of the appeal that we are going to be talking about today. The other points that were raised we did not feel met the criteria of what we had set forth.

We felt that the Chesapeake and Roanoke-Albemarle Sound area were not comparable to the decision regarding Delaware and Hudson River. The Chesapeake jurisdiction maintains a separate monitoring program to ensure that the specific fishing mortality rate is not exceeded.

Then in North Carolina it has been shown to be a unique stock and does not mix with the coastal migratory stock. Then the issue associated with the Delaware River commercial shad gill net fishery, the discussion that took place at the board was clearly defined, and the bycatch associated with that reflected the fact that they were going to be subtracting that bycatch from their allocation that they had.

So those items were not considered to be justifiable for the appeal, and we sent a note back to the New Jersey contingent outlining our decisions. In subsequent discussions, the state of New Jersey asked if we would still submit the full appeal that they had generated.

They put a lot of time and energy into developing that document. We agreed to submit that. You have copies of that before you. Hopefully, you've all had a chance to review it. I think that kind of brings us up to date.

We are going to focus on the discussion associated with the producer area. I told the New Jersey folks that certainly if they want to use examples of different areas to illustrate their point, they certainly are able to do that; but as far as arguing for reconsideration of the items that we felt were not meeting the criteria, then I would have to rein that in. Pres, is there anything else that I might have missed on this?

MR. PATE: No, just a qualitative comment about the process, John, in that I was pleased with the depth of the review that the appeals committee gave to the New Jersey request.

We spent a great deal of time having some

objective comments and consideration of all the points that we made, and I was pleased with the outcome with respect to the quality of the process that we're using to bring these contentious matters back for consideration to the board. So, being the first test case, I was glad that it at least successfully passed that hurdle as smoothly as it did.

CHAIRMAN NELSON: Thank you, Pres. And, again, I thank the New Jersey contingent for working with us, working through that process and trying to make this go as smoothly as possible in order to provide them the opportunity to be heard as far as what we finally decided was their main concern and where there was some gray area associated with the record, and, therefore, we felt it was appropriate for that discussion to take place; therefore, that's why this appeal is on the agenda. So are there any clarifications that I need to make for anybody as far as the process and how we got here?

All right, thank you. Let me turn it over to Bruce and why don't you make your — hang on for a second, Bruce. All right, it is a new process and I already blew it.

According to the process, the staff gives the background information associated with it and then the state has an opportunity to provide further enlightenment associated with that and their point of view on it. So, let me have the staff first make that presentation. Thank you.

MR. ROBERT E. BEAL: Thank you, Mr. Chairman. What I'll be working off of is the document that was mailed out to everyone in the middle of last week. On the cover it states, "Background document for New Jersey's appeal to the ISFMP Policy Board."

It's 75 pages long or so, and the majority of that is minutes from previous meetings. Megan Gamble pulled this together for us to help out with the discussion and provide the background that the Policy Board will need to review it.

As John mentioned, in the new appeals process, the purpose of my presentation is just to give a time line and a statement of the facts of how we

got to where we are with the Amendment 6 situation.

My presentation is not either to support or dispute anything that New Jersey has claimed. It's just a track record of how we got here, so I'll briefly go through and hit the highlights of this document.

In this document, there is the letter that we received that was attached to New Jersey's appeal as the first appendix. The second appendix is the response letter that John Nelson sent back on behalf of the chair, the vice chair and the immediate past chair, which he just summarized in his comments.

Moving on to Appendix 3, which is the bulk of this document which begins with Page 1 of that appendix. Just highlighting the time line, the development of Amendment 6 began actually in 1999 or even earlier, but the public information document was approved for public comment in April of 2000.

In this document there were a couple issues that were relevant to the New Jersey issue and the public comment period and the process that was undertaken to develop Amendment 6.

As you can see, on the top of Page 2 Issue 2 of the public information document asked the public, "Should the management program differentiate between coastal areas and producer areas with dual size limits?"

So, at this stage there was some contemplation or some interest of the management board with respect to what should happen as far as coastal areas and producer areas. Following that question, there is a discussion of kind of the origination of the 20-inch minimum size in the producer areas and the 28-inch standard that we have for the recreational fisheries on the coast.

There is also a discussion on the harvesting practices and what some of the more recent data has shown on the landings that were coming out of the Hudson River, Delaware Bay, Delaware River and the Chesapeake Bay, which indicated a majority of the catch coming out of those areas

were smaller fish in the 18-24 inch range.

On Page 3, toward the bottom of that page, there is another issue that was contained in the public information document and that's Issue 3. The question there for the public was, "What is the fair and equitable allocation of the striped bass resource between jurisdictions and user groups?"

Option 4 under that issue was a status quo allocation and a description of what that meant. You can read it there. It's "The management of coastal striped bass recreational fishery would continue through a series of revised biological reference points.

"The coastal fisheries would have an allocation of available TAC that is divided among the states on historic landings. The Chesapeake Bay commercial and recreational fisheries would be managed on an annual bay-wide quota that is established to achieve a certain exploitation rate."

So, within that option, there is the realization that when Amendment 5 was implemented, the reality was there was essentially three components to the fishery. There is a Chesapeake Bay component, a coastal recreational fishery and a coastal commercial fishery, and then there is also the fourth, which is the Albemarle-Roanoke which, as John mentioned, is scientifically shown to be a separate stock that doesn't mix with the coastal migratory population at this time.

And then moving on through the time line, in May and June of 2000 we had the Amendment 6 public hearings, and for about two years, from August 2000 through August 2002, there is the development of the draft Amendment 6, so it took quite a while with a number of iterations that were reviewed by the management board.

In August of 2002, the public hearing draft of Amendment 6 was approved. In that document there is an excerpt of, I guess, ten pages or so that is included here. And this is the public comment period on the allocation of striped bass, and what we should do as far as separating out different areas and different management

units.

Issue 2 for the public hearing draft or the public comment draft of Amendment 6, the issue was choosing the allocation of the striped bass resource between jurisdictions and user groups. The verbiage in the document went through a description of how the fishery was prosecuted under Amendment 5.

There is a series of tables that begin on Page 4 in your document and go through Page 5, and what these tables do is describe what in effect the allocation would be under -- or what would be the effect of different size limits on the population.

In the titles of each of those tables you can see the different size limit combinations that were considered and described within those tables, and the effects on big fish being Age 15 and older, as well as the smaller fish, the young-of-the-year fish essentially.

So, as you can see, there is a suite of different size limit combinations, 22-26, 22-24, and then there is just a description of what the fishery would look like under those scenarios. On to Page 6, which is again part of the public hearing draft, there is a section on the impacts of size limit changes on allocation.

If you look at the second paragraph under that section, I'll just read it briefly, "Option 2 through 7 listed below establish specific percentages that could theoretically be allocated to three separate sectors of the striped bass fishery." And then in parenthesis, Chesapeake Bay, Atlantic Coast recreational, Atlantic Coast commercial. "These options do not create a separate allocation for the Delaware Bay or the Hudson River producer area."

So in that section, there is some contemplation of managing with the Chesapeake Bay stock unit as well as a coastal commercial fishery and a coastal recreational fishery and not separating out Delaware Bay and Hudson River, so that seems relevant to the situation.

Table 10 describes or illustrates what the effects

of Options 1 through 7 would be on the allocation of striped bass between the three sectors that I mentioned a moment ago, the Chesapeake Bay and the two coastal fisheries. So, in that table as well, there's no separation between the producer area of Delaware Bay/Hudson River.

The public hearing draft went on to describe in detail a series of different allocation options that were considered by the public. There were different combinations of increases to the commercial quota as well as different allocations between sectors of the fishery.

The options go on through Page 12 in the document that you received summarizing where we are. At the end of that section, which is about halfway down on Page 12, there is consideration of additional allocation options, and these are other things that the management board and the plan development team could consider in allocating the striped bass resource.

And there is really a large suite of options there. Number 10 in particular may have some relevance to the situation that's before you, and that is the allocation formerly including any or all of the above, so there is some consideration there for kind of a hybridization or a view of the 11 options that were presented in the document.

The process continued and we had public hearings on the public hearing draft in September and October of 2002. There was a special meeting held on December 19, 2002, in Rhode Island. There has been a lot of discussion about this meeting following that approval or that meeting.

The purpose of this meeting was to narrow down the options in the document and give staff direction to go back and modify the document for approval at a later date. During this meeting, there were a series of motions made.

If you look on Page 13, about halfway down or three-quarters of the way down, there is a motion that's in italics and bold there, Motion Number 7 from that meeting. This motion is the motion that really set the direction for the course

of Amendment 6. The majority of the direction that was given to staff was contained in this motion as well as the subsequent discussions that the management board had.

That motion reads: "Move that the coastal commercial quota will be restored to the base period average, which is 1972 through 1979, with the stipulation that Delaware will maintain its current commercial quota.

"The coastal recreational measures will be maintained at the level authorized in Amendment 5" -- and then in parenthesis, two fish at 28 inches -- and the current Chesapeake Bay mortality rate will not exceed F equals 0.27."

So that's the motion that staff used, as well as the subsequent discussion as you can see in this document, to go back and revise the document for further consideration in February of the following year.

One of the comments that has been referred to numerous times through the discussions at the policy board as well as at the Striped Bass Management Board following the approval of Amendment 6 is a comment that Mr. Colvin made about halfway down on Page 15.

There is a statement that begins: "Now, the motion we passed earlier today sets a standard of two fish at 20 inches." I think Gordon misspoke there. It's "28 inches for the coastal areas" and that's everything other than the Chesapeake Bay and the Albemarle-Roanoke."

And in the next paragraph, "It just hit me like a ton of bricks when I woke up about five minutes ago that this includes the Hudson River, and it includes the Delaware Bay and the Upper Delaware River. And you know what, so be it, that's our standard. That's what we'll have to live with for now."

So on the record Gordon made the comment that his interpretation and his understanding was that the Delaware Bay/Hudson River minimum size standard now for the recreational fishery now became two fish at 28 inches. There was

considerable discussion following that as well, a statement by Tom Fote following that.

February of 2003, during the February meeting week of the commission, the Striped Bass Management Board again went back and looked at the revised document that staff put together based on the guidance that we received at the December 19th meeting.

During this meeting, as you can see over the next few pages here, there is considerable discussion. New Jersey raised some concerns. Delaware raised its concern over the 28-inch minimum size for its commercial fishery, and there was a motion to make the change reducing the commercial size limit for Delaware down to 20 inches.

Mr. Freeman, on Page 21 near the top, raised the concerns regarding the 28-inch minimum size limit in the Hudson River, Delaware Bay, Delaware River system. There was some lengthy discussion regarding the removal of the term "producer area" from the document.

Ultimately at the end of this meeting, the February meeting, the management board did approve the Amendment 6 or recommend that the commission approve Amendment 6. Following that meeting, the policy board met later in the week -- actually, the full commission met later that week and discussed and considered the final approval of that document.

Again at that meeting, there was considerable discussion and concern raised by New Jersey and some other states regarding no longer differentiating Delaware Bay/Hudson River from the remainder of the recreational coastal fishery.

I'm not going to go through that. I think you can read through it. I think everyone has had this document for a little while. But ultimately, at the end of that meeting, the full commission did approve Amendment 6 for implementation.

The final vote on the approval of Amendment 6 was eight votes in favor and three votes opposed, so that motion carried. Following the

February meeting, the commission met again for another meeting week on June of 2003.

The Striped Bass Management Board met during that meeting as well to discuss some of the implementation issues associated with Amendment 6. During that meeting again, New Jersey raised its concerns regarding the 28-inch minimum size in the Delaware Bay.

Again, there was considerable discussion on making a change to that. At that time the board did not take any action to change the size standard that New Jersey has in place. At that same meeting -- actually at the following meeting, which was in August of 2003, the ISFMP Policy Board met.

One of the items on their agenda was a description of all the things that had changed from Amendment 5 to Amendment 6, as well as a brief summary of essentially the similar time line of how the events unfolded that ended up in the removal of the producer area status from Amendment 6.

That discussion occurred during the Policy Board meeting in August. During that meeting, the Policy Board did not make any changes. They did refer the issue back to the management board.

The management board, at the subsequent meeting in December of last year, at the annual meeting last year did meet and discuss this issue of striped bass. At the December meeting, there was a motion that was made by Mr. Freeman that moved that the staff begin preparation of an addendum to address the Amendment 6 issue and providing protection for the spawning areas.

This motion was not acted on or was not voted on at the meeting. The motion was tabled until the March meeting of the Striped Bass Management Board. The Striped Bass Management Board then met in March of 2004 and did address this motion, and at that time the motion did not pass.

Essentially that brings us to where we are. I think as you all are aware, New Jersey has

implemented the regulations that are consistent with Amendment 6. There was a non-compliance finding; however, New Jersey has modified their regulations to come into compliance with Amendment 6, and there is not a problem with that regard.

So that's a quick summary of where we are. Obviously, I haven't gone through all the dialogue that has occurred over the last four years in the development. They're included in the packet. I can answer questions if there are any.

CHAIRMAN NELSON: Any questions, clarification points for Bob? Well, is it a clarification point for Bob or is it starting to state New Jersey's position, Tom, because I'm going to give you the chance to do that shortly? A clarification, go ahead, then.

MR. THOMAS FOTE: Since we're not supposed to be reporting both sides of the story, could you please read my statement that I made after Gordon Colvin made? Since you read Gordon's statement, could you please read my statement.

MR. BEAL: Sure, Tom. On the top of Page 16 -- and this is from the December 19th meeting of the Striped Bass, December 19th 2002, meeting in Rhode Island of the Striped Bass Management Board.

Mr. Fote, his comment is, "Gordon said it more eloquently than I can. I can support everything he just said. We need to address this sooner rather than later or sooner or later. I mean, we management, as Gordon pointed out for three separate reasons, actually four. Because we do have a separate commercial quota that is basically allowed in the Delaware Bay, we really needed to go to this step.

"I don't know we can do it tonight. We can do it under Amendment 6, but it really needs to be done, and I think it should be. As soon as we finish Amendment 6, this should be the Number 1 priority, and we should move from there to basically let this happen. Thank you."

CHAIRMAN NELSON: Okay, Tom? Any other clarifications for Bob? Bill.

MR. WILLIAM A. ADLER: Thank you, Mr. Chairman. I didn't get all of the actual application other than the document. Would you run over one more time, briefly, what was in the document that went out to public hearing.

Did it suggest that this action might be taken to remove the producer state thing from the amendment? Did it go out to public hearing, get comment and come back? When was the public hearing for requesting comments on removing the producer area part from the document?

There were a couple of inferences in both of these documents that it wasn't taken to public hearing. And in the proposed amendment that went out to public hearing, this was not discussed. Could you just -- how did that get changed?

MR. BEAL: I'll try to answer that, Bill. The document that went out, as you mentioned, had a number of inferences to managing the stock as three separate units or in three separate sectors, I should say, the Chesapeake Bay, the commercial coastal fishery and the commercial recreational fishery.

There was not a specific question saying should we or should we not remove the designation of producer areas from Delaware Bay, Hudson River, Delaware River.

So, that's the issue before the board today is -- there was a series of points and issues highlighted in the public information document and the public hearing draft that made mention of managing under that scenario, but there wasn't a specific question asked of the public, should we remove that designation or not.

MR. ADLER: Is the final action taken more restrictive than what went out to public hearing?

MR. BEAL: Not necessarily. As I mentioned earlier, there were a suite of biological reference points, there were a suite of size limit options that could have been implemented by the board

that -- what was the final product of Amendment 6 was well within the range of what the potential impacts of Amendment 6 could have been given the range that the board had to pick from.

CHAIRMAN NELSON: All right, any other clarifications? All right, let me call upon Bruce to provide what you would like to see happen, Bruce.

MR. BRUCE FREEMAN: Thank you, John. Obviously, this issue is very important. As you can tell from the amount of effort that has been spent by us in the appeal, that we looked very carefully at the public record on this entire issue.

We feel that the public information document for Amendment 6 was probably the lengthiest, most complicated document that the commission has to date. There were extensive public hearings held throughout the coast, multiple hearings in most states.

None of these that we have reports from discussed this issue of the producer area until it finally came to the board for action. One of the aspects of the original plan back in the '80s, when we saw a precipitous decline in the resource, one of the first actions we took was to define the spawning grounds and to protect those.

One thing about striped bass as opposed to many of the ocean fishes, the marine fishes we deal with that have spawning over extensive areas of geographic size, that striped bass is an anadromous species.

We know where it spawns. We've defined those areas; and when the stock was in extreme difficulty, as I indicated, we protected those areas. Over the course of time, particularly through Amendment 6, that concept was completely eliminated, and we feel it was eliminated without public discussion, really without public notice, and that really is the basis for our concern.

We continue to feel that although the stock is doing quite well, although the discussion we had yesterday, we're not sure what it's doing,

whether it's doing well or not, but nevertheless it seems certainly it's at a high level.

We'd like to continue it there, but we also believe that we need to continue to protect a description of the nursery, spawning and nursery areas, and they should be an integral part of the plan. To simply ignore those at this point, we believe is foolhardy.

And as a result of our feelings, we have pursued this appeal process to the present state. Now I do have a motion relative to what we feel would be a reasonable way to proceed from here. I'd let Tom make any comments, and then I'd like to offer that motion.

CHAIRMAN NELSON: Tom, did you want to make comments before the motion or do you want to get the motion up first? Let's get the motion up first so we can see what the position is. Then I'll come back to New Jersey for any further comments that they'd like on explaining the motion. CHAIRMAN NELSON: Bruce, do you want to read your motion, please?

MR. FREEMAN: Yes, thank you, John. **I move that the ISFMP Policy Board direct the Striped Bass Management Board to begin an amendment or an addendum to establish criteria for defining spawning and nursery areas, as well as describing these areas for purpose of a Striped Bass FMP. Further, the amendment or addendum should set out necessary actions to protect these areas and consideration for states taking such action.**

CHAIRMAN NELSON: Thank you, Bruce. Could I have a second? Gene.

DR. EUGENE KRAY: Yes, I second the motion.

CHAIRMAN NELSON: Thank you, Gene. Okay, we have a motion on the floor. Again, while I don't want to cut anybody off, I don't want to have a lengthy discussion. I'm not addressing this to anyone on the New Jersey contingent.

We have covered a lot of this ground, so I think

it's very helpful to just stay focused right on what you have here for your motion and why you feel that's very appropriating and asking the rest of the board to support you on this. Thank you. So, Tom, did you want to go ahead?

MR. FOTE: Yes. What was pointed out, when we basically look at charts and tables for size limits, has nothing to do with producing area status. We went out with Amendment 5, as some of you remember that was sitting around this table, and we looked at going to one size limit for both inside the producing areas and one size limit on the ocean, and it was a 24-inch size limit.

There was a major discussion under that under Amendment 5. That had to do with the recreational size limit. It had nothing to do with producing area. When I looked at tables and charts in there, how you manage fisheries recreationally, and whether you want to do different size limits and everything else, whether one size limit fits all, that's another story.

Jersey has always supported that concept of one size for both inside and outside, mainly because we can't enforce separate regulations. I don't think so, and I don't really support having separate regulations inside for recreational anglers inside the Delaware Bay or inside the Hudson.

So, New Jersey, even though we were producing areas and we're allowed -- and there is a more restrictive clause that we lost, because understand under producing areas we were allowed a 20-inch base.

Again, there was nothing that went to public hearing to eliminate the 20-inch base, which is where we start. What it said was what size limit if you did different scenarios? We interpreted that to mean that we were going to set up the same way we manage Jersey.

I mean, New Jersey has managed its producing areas as far as recreational size limits under a coastal fishery, because that's the way we choose to do that, and we will continue to do that with one size limit.

What happened here was the words “producing area” got mixed up with size limits. And that’s why when Gordon basically made the statement -- and I guess I’m not as eloquent as Gordon. After reading my statement, I must have stumbled through. Again, that was 5:30 at night in Rhode Island after a long day, and I was running out. As a matter of fact, I left about 15 minutes.

If I could try to clarify that statement, what I was saying to Gordon, I agree with what you’re saying. I have always supported one size limit in the bay recreationally because of the enforcement problems we have in New Jersey in both of our producing areas.

But, I don’t think it can be done. It is not done under Amendment 6. The first addendum to the plan, which at that point Gil Pope had talked about, that we should basically -- the first addendum to the plan should address this size limit.

Again, that was discussed under Amendment 5 and it was discussed under Amendment 6. I did not interpret that as doing away with producing area. Producing area means a whole other ballgame. It means special area closures, special things we have to do in there.

It also takes into consideration the fact that certain areas in our producing areas, like up in the Delaware River, don’t have the availability of big fish all year-round, the same way with the Chesapeake Bay and the Albemarle Sound, and that we could choose to basically handle those problems for those individuals.

We have not done that. As a matter of fact, until we were forced under the addendum to Amendment 5, when we basically chose to protect large fish, we had kept 28 inches up and down, inside of both producing areas, and so had Delaware and Pennsylvania, because we all decided to manage together.

What I don’t feel was fair, the wording to remove producing areas, that special designation, the fact that the Hudson River

contributes about 25 percent to the coastal stocks, the Delaware Bay about 15 percent, there is also an understanding there.

Chesapeake Bay has made a long-standing point that because they are the producing area, that they should be allowed to harvest over 50 percent of the available stocks. Remember, if you look at the way the tables are set up and the way we manage fisheries in there, they harvest somewhere between 52 percent of what migrates out.

And that has been understood since we have basically set up this plan. I was sitting around the table in ’88 when they first voted on it, and we’ve talked about those discussions. I wasn’t a commissioner until ’91. But that was done.

We have never asked that for the Delaware. We have never asked that for the Hudson. But we don’t want to give away the ballgame without a fair discussion. I don’t think this really went out to public hearings that way. It was not put forth to the public.

Now if that’s the choice of this board, I think it should be sent out to the public and fairly viewed of how you want to handle this. I don’t think it was accomplished under Amendment 6. Thank you.

CHAIRMAN NELSON: Thank you, Tom. Let me just go over the motion for a minute before we get any further discussions on it. Staff has told me that this is doable under an addendum so you do not need the amendment verbiage in there. So if you agree, Bruce, we’ll just eliminate the amendment activity.

MR. FREEMAN: Yes, I simply put that in.

CHAIRMAN NELSON: I recognize that, yes, just trying to be helpful. So where we have “amendment”, we could eliminate that. Could you clarify, Bruce, what do you mean by the last component there, “and consideration for states taking such action.” How does that address your concern as far as the public process?

MR. FREEMAN: Well, we have strong feelings

that any state that takes action to protect fish during the spawning period, as well as the physical spawning location, the habitat, there are social costs involved.

Let me give an example. Using the Delaware for perhaps a 30-year period or 40-year period after World War II, the Delaware area, particularly in the Camden-Philadelphia-Wilmington area, was an abused system.

It was abused from the standpoint of various pollutants that were discharged, as well as sewage and so forth, and as a result of that, the available oxygen in the water was entirely depleted, particularly during the period when particularly striped bass would be in that area, and it was also the spawning area that this pollution block occurred.

There have been considerable amounts of money spent in order to alleviate that problem by the three states, Delaware, Pennsylvania, New Jersey. As a result that water quality is much better.

But there have been costs, society costs of the public to put in sewage treatment plants, to eliminate the discharge of other pollutants, and as a result, that area has now become an important spawning area for striped bass.

Those states get no credit for that under the existing plan. I'm not sure what that credit is, but nevertheless I think that's an issue that should be addressed in this addendum is the states take specific action in order for others to enjoy striped bass, then there should be consideration.

When this plan was first begun, it was recognized by, at the time, primarily the Chesapeake jurisdiction that they had large numbers of striped bass that were spawned and spent most of their three years of life in the Chesapeake.

Their argument was, well, what is the value of us protecting those fish and a size limit would be put in place that would prohibit us from harvesting these fish since most of these fish

would migrate out of the bay and up the coast.

So, the Chesapeake jurisdictions were protecting striped bass for spawning, providing nursery for the first three-four-five-six years or life, and then the fish would leave and other jurisdictions would harvest them.

This is really the whole concept of this dual size limit, in order to provide some mechanism where states would be able to fairly share the resource. We're looking for some process, be that or some other process, to recognize the contributions those states are making.

I don't have an answer, John, exactly what we'll come out with, but we would like that to be considered, and we would like the public to engage in that discussion.

MR. FOTE: The appeal that we sent in was a long, arduous task over a two-month period. I just asked two of the commissioners had they seen it. They did not.

I know we have not gone over that, so I didn't want to sit here as a lawyer and read pages and pages of what we put in this appeal, but it seems that some of the commissioners have not received it or had not read through it.

I'm a little disappointed over that, but there is nothing we can do about that unless you want to take a couple of minutes where we could basically read over to themselves, a few minutes to look over the document, if they had not read the document that New Jersey has spent two months putting together.

CHAIRMAN NELSON: Tom, I appreciate your desire to make sure everyone understands fully, and I think we'll do it through the verbal approach. These were sent out either with or shortly right after the CD went out.

It was right afterwards. I remember it was actually after we had our discussion, and I promised to send that along, and we did do that, so it's over a week. It's actually longer than that, as I recall, that those things have been in people's hands.

I realize that is a lot of material for people to look at. I think the letters probably help summarize it very nicely. Actually, I thought your letter was clearer for me than the other stuff.

But, nevertheless, the issue before us is really I think what you've got up there. You've expressed your concern about whether there was enough public comment and whether or not there needs to be a clearer sense of developing a criteria.

And correct me if I'm wrong, you'd like to have, the associated with the fishery management plan, criteria developed to identify how a separate managed area such as a spawning area or a nursery area could be characterized as such. Let me get comments from the rest of the members associated and let me start with Pres on that.

MR. PATE: Thank you, Mr. Chairman. As half a question to Bruce, half a statement of principle related to this process, and as I state my concern relative to the principle, Bruce, I guess the question will come out and provide the answer if you understand the question clearly enough.

My concern is this board not make a recommendation to the management board that would suggest that they go beyond the scope of the intent of the original plan, in this case Amendment 6 to the Striped Bass Plan.

My review of the petition indicated that there may be a procedural problem associated with removing the producer area language from that plan without proper notice to the public and without a clear explanation of what the implications to New Jersey or the other states involved would be with that action.

I don't think it's proper at this stage to grant the appeal and then ask the board to take action that would go beyond the scope of what would have happened had that proper notice been given and had the public clearly understand what the effects of that producer area removal from the plan would be.

And in listening to your explanation, and particularly what I consider a somewhat ambiguous use of the word "consideration" in this motion, I'm concerned that once we get back to the management board, we may be taking this discussion in a direction that's totally different from what Amendment 6 was had it been followed without flaw.

Maybe the more correct way to approach this would be to ask the board to correct that flaw in retrospect, go back out to the public with the original intent of Amendment 6, get that input and then make the decision on whether or not such corrective action is necessary. First, do you understand that concern and then do you have a response to it?

MR. FREEMAN: Was that the question?

MR. PATE: Yes.

MR. FREEMAN: Our concern is this is a very important keystone of the original plan, this whole issue of the spawning and nursery areas. It's unique in striped bass because we can define them as defining where weakfish spawn or bluefish spawn or menhaden spawn along a huge geographical area.

There are very specific, known areas where spawning occurs. One thing we've found, that if we want to eliminate the striped bass resource, we know how to do it. We just concentrate the catch in those few areas, and in about five or six years you'll eliminate the stock.

Because the stock now is in fairly or high biological level, we've simply forgotten about this whole issue or essentially brushed it aside, this whole issue if protecting the spawning areas. In my opinion it's something we should not do.

If we get back to a situation where the striped bass is in precipitous decline, I'm sure we'll go right back to protecting these spawning areas and making certain that there is everything done possible to protect these spawning areas.

I don't object, Pres, to how we do it, whether it's simply go back out to public hearing to discuss this issue. And if that's the determination of the Policy Board and the management board to do that, then certainly we'll be satisfied.

And if in fact it's the pleasure of the board that's what they want to do, then, certainly, that's something we feel will be beneficial and we would accept that.

CHAIRMAN NELSON: All right, let me try to keep this from the standpoint of any questions as far as clarity, as far as what New Jersey is asking for. Is there any clarification needed for them at this point? Then we'll speak for and against the motion. All right, so any further clarification? Okay, I had Gordon, Ritchie and.

MR. GORDON C. COLVIN: I don't know if my question is for New Jersey, but I have a question that I need an answer to before I can decide whether I'm for or against the motion, Mr. Chairman. I think maybe the staff is to whom I should direct the question.

Amendment 6 does have some provisions, if I recall, that address recommendations, perhaps not requirements, for states with respect to protection of habitat and harvest at least in spawning areas, possibly also in nursery areas, and I wonder if we could review those so that we understand what is in the plan before we act on the motion?

MR. BEAL: I think Megan is going to dig out the language for us, but my recollection, Gordon, is obviously there is a pretty extensive habitat section in that document, and there are recommendations on protecting the quality of the habitat in those areas.

There is also the recommendation of maintaining any provisions that you have with respect to spawning areas right now, as well as protecting the fish that are in those areas during spawning time. But that, as you mentioned, is not a requirement but a recommendation to the states.

All right, Gordon, there is, as I mentioned

earlier, a series of recommendations regarding the preservation of existing habitat. There's water quality issues and a whole host of recommendations with respect to that.

Then in the spawning area section, spawning area closures is the title of the section. The language reads, "Consideration should be given to the prohibition of fishing on the fishing grounds during the spawning season." Again, a recommendation, not a requirement.

John was asking me whether the document defines the actual spawning areas, and the way it's written right now there is not a definition of the spawning areas. As the striped bass management board goes through its deliberations, should this pass, then that's something we can include as well.

CHAIRMAN NELSON: Okay, I had Ritchie next.

MR. WHITE: Thank you, Mr. Chairman. I would ask Bruce that the intent of this motion would include Chesapeake Bay, and does consideration in your mind mean relaxed regulations/increased allocation?

MR. FREEMAN: No, it has nothing to do with the allocation.

MR. WHITE: But does this include Chesapeake Bay?

MR. FREEMAN: It would include all spawning areas regardless of where they occur.

CHAIRMAN NELSON: I would also, for clarification purposes, that's what we're doing right now. We're not going to debate what the striped bass management board would ultimately do, so please keep that in mind. I had Roy next. Please raise hands now for clarification, and then we'll get into back and forth on the motion, so this is for clarification on the position right now.

MR. ROY MILLER: Thank you, Mr. Chairman. Regarding clarification of the motion, Bruce, would you clarify for me the

term used “nursery area.” I need some clarification with regard to the Delaware, where we might be talking about.

In other words, the spawning areas is fairly well defined over the years by state surveys and so on, but nursery area is ill-defined.

One could argue that the entire Delaware Bay and all of its tributaries constitute a nursery area, as well as the Delaware River and its tributaries, so what was your intent? Was your intent to attempt to draw an arbitrary line somewhere to define nursery areas for these other spawning systems other than the Chesapeake? Thank you.

MR. FREEMAN: If I could answer that, no, it wasn't any pre-determined -- that's what I'm looking for, Roy, is criteria to make that determination. I think it's unclear at the present time.

CHAIRMAN NELSON: Okay, Roy. And, again, I don't want to start drawing lines or anything. If this goes back to the board, that's for the discussion for the board to work out. Does that help, though, Bruce's answer to you for clarification? All right, Dennis.

MR. DENNIS ABBOTT: Thank you, Mr. Chairman. I have a question probably for you. In the first part of the motion, where it says “proceed to begin an addendum to establish criteria for defining spawning and nursery areas” is that not something the management board would do outside of an addendum?

It would seem to me that the management board could task a subcommittee or a separate group to take this action if it so desired, and I don't see the relationship to an addendum. It would seem like following the establishment of the criteria, then an addendum at that point would come under consideration, the way I look at that.

CHAIRMAN NELSON: I think when a board defines there is some area that they want to address, they do it either through an addendum or an amendment. In this case they don't have to do a full-fledged amendment, so it's a change to the plan. If they're going to change the plan

or add to the plan, we're just saying you can do it through an addendum process.

Whatever subcommittees or whatever they do to get to that point, ultimately they decide to do an addendum, that's up to the board to decide. I'm just clarifying that they don't have to go through an amendment process to do that.

MR. ABBOTT: Thank you, Mr. Chairman. I don't mean to think they have to go through an amendment process. I'm just not sure where the cart is, in front or in back, that you should find out and answer these questions prior to the initiation of any action.

MR. BEAL: Well, Dennis, my interpretation would be the first step of any addendum development would be that the plan development team, the technical committee, whoever needs to do the actual analysis to define nursery areas, spawning areas, whatever this board decides on, that would be Step 1.

That would be brought back to the striped bass management board for their consideration before the addendum is approved for public comment and so on.

CHAIRMAN NELSON: Okay, Gene.

DR. KRAY: Thank you, Mr. Chairman. When Pres was commenting on the process and the appeal, it struck me that -- and Dick and I were sitting here talking about it -- he's attempting to get some clarification as to what do we really want to do, what happened?

I would like to offer a substitute motion that I think will get it at or may get at it. Again, the beginning part would be the same, move that the ISFMP Policy Board direct the Striped Bass Management Board to begin an addendum to address the issue of the procedures involved in the removal of the term “producer areas” in the Amendment 6 process.

I think what we're saying is the term producer areas was removed without public comment on that particular issue. And by bringing it back up to the table, we would give the public the

opportunity to get to that issue.

CHAIRMAN NELSON: All right, Gene, so you're making that as a motion. Is that your motion? Is that the wording of your motion before I try to get a second?

DR. KRAY: I can't see it, Mr. Chairman.

CHAIRMAN NELSON: We'll get it. We're going to do a little patching here.

MR. COLVIN: Could I raise a point of order, Mr. Chairman?

CHAIRMAN NELSON: Go ahead, Gordon.

MR. COLVIN: I know under ordinary parliamentary process, it might well be in order to consider a substitute motion, but I'm wondering in this circumstance -- and, again, we're breaking new ground here procedurally for the commission -- if it is appropriate for the Policy Board to consider a substitute motion that is substantially different from that offered by the appellant?

I have just a little bit of concern with that. We're here in an appeals process that is very specifically addressing one of our member's concerns, and I just have some concern about a different motion being introduced that is not what that appellant came to us with.

CHAIRMAN NELSON: Yes, that's a very good point, Gordon, and let me get the language up first, and then see if New Jersey finds that it either addresses their issue more clearly or fully, or if they are uncomfortable with that. So, Gene, is that your motion?

DR. KRAY: I think at the end just add "from the Amendment 6 process" because there was the whole process involved, meeting, going out to the public, et cetera. That's it.

CHAIRMAN NELSON: From my point of view, we've already done this. We've gone through the process. We've had staff take a look at the overall procedures that took place. We've produced a document that was presented to the

entire commission and the public on that scenario.

Let me get New Jersey's sense first, before I make any ruling on it. Bruce, what's your sense? Is this what you're looking for versus asking for? My sense is you're looking to have criteria developed that might not be in the plan right now.

MR. FREEMAN: My initial reaction is this would be acceptable, but it widens what we're asking for. It broadens the issue. If this were done, it probably would address our concerns.

Now, I don't object to this. The original motion we proposed would meet our concerns, so I don't want to be in a position to reject this as a friendly amendment, but I would also not like to see it fail.

CHAIRMAN NELSON: Yes, I'm not going to accept it, Gene, because we've gone through this process already. We've spent a lot of time last year providing that type of information.

I think that would be spinning the wheels again, so I would like to stay on the original motion, and I'd like to start taking comments as far as pro and con associated with that, unless there is really some clarifications that are needed.

DR. KRAY: I'll withdraw the motion at this time.

CHAIRMAN NELSON: Thank you, Gene. All right, I've already had pro for the motion from the state of New Jersey. Are there folks that would like to speak against the motion? George.

MR. LAPOINTE: I'm speaking against the motion because -- well, Gordon raised a point as did Pres. The use of the appeals process is brand new, and how we begin this -- our first time is incredibly important.

I think Pres addressed an issue that I think I share, and I think Gene was trying to address, and that's the correction to the board should be to right the wrong if the appeal is granted.

I think we've got to be really narrowly -- we've

got to narrowly define how we do that. I don't think this does it yet, and so I've got a concern about that. I think this is -- I'm going to use the term "expansionist" -- beyond what the appeal was granted for, and I think that's not a good way to set out.

CHAIRMAN NELSON: George, is there any component of this, like the last sentence, that confuses it or provides more direction than you're comfortable with providing?

MR. LAPOINTE: No, I think it's to establish criteria for defining spawning and nursery areas. I think this was about the elimination of the producer area status for the Delaware Bay.

I don't have exact language for this, and the process by which that happened; so if we went back out, discussing the process doesn't help us. It would be that there would be two options, to leave Delaware -- should this go on, I think there would be an option that says we leave it the way it is in Amendment 6, not granting producer area status, or there is a process to grant producer area status and what that means in terms of what happens in the other producer areas like a stock assessment and things like that.

I think that's, to me, the question that has got to be narrowly construed in this to serve the state of New Jersey as an appellant well and to serve this commission and its appeals process well.

CHAIRMAN NELSON: All right, so is it terminology that we're kind of stumbling over here or is it "the producer area" versus defining - - if you had defining producer area versus defining spawning and nursery areas, is that --

MR. LAPOINTE: Well, I don't think so because we already have some producer areas. I think it's the producer area status of the Delaware Bay. I mean, I might be missing something here but I think that's the question, the removal of that status was what they're appealing.

If there's an addendum, it's got to be two choices: We leave it as no producer area or we include it in the striped bass management

process as a producer area, just Delaware Bay, in my mind.

CHAIRMAN NELSON: Two that point, New Jersey.

MR. FOTE: To that point, Chesapeake Bay is not considered a producing area right now according to Amendment 6. There is no producing area. George, that's the point here. Under Amendment 5, they were considered producing areas.

What was considered and what was allowed was special management regimes in the Chesapeake Bay and the Albemarle Sound. Well, we're eliminated, and that's what happened not only to the Delaware but in the Hudson River, so it's both. That's why we're talking about both rivers.

CHAIRMAN NELSON: George.

MR. LAPOINTE: And the clarification about the Hudson may be true, but I get the sense there is -- as we move forward in the management process, everybody feels like they get treated less well than other places, but we have what's in Amendment 6.

And that is, I called it a producer area, it might be special, you know, other management measures for the Chesapeake Bay. People aren't questioning that. That's done. What we're doing is saying how do we treat Delaware Bay in this process, I think, and maybe the Hudson, these areas that were excluded without a public process.

I think that is, in my mind, what you would need to again address their concern and make sure this appeals process doesn't become a way to try to open up more issues than frankly were being appealed in this process.

CHAIRMAN NELSON: Does that help, New Jersey? Does that clarification or does that discussion help focus the discussion for New Jersey?

MR. FREEMAN: That certainly gets at our

problem.

CHAIRMAN NELSON: Can I ask New Jersey -- and I realize this is a little unusual, but it's the first one, so should I ask New Jersey to caucus with whomever to redefine the motion? Let's take five minutes and have that take place. Okay, thank you.

(Whereupon, a recess was taken.)

CHAIRMAN NELSON: All right, I think we're all just about ready for a clarification here, so let me have everyone come back to their seats. Then I'll have Bruce provide us with the modification of what he'd like to have up there.

MR. FREEMAN: All right, I tried to come up with some changes in the wording that I think will satisfy both our needs and the concerns of others. There has been a modification. Let me read what that is.

It's moved the ISFMP Policy Board direct the Striped Bass Management Board --

CHAIRMAN NELSON: Slow, Bruce, slow.

MR. FREEMAN: -- to review the status of the Delaware/Hudson estuaries with regard to the Amendment 6 process. That's it.

CHAIRMAN NELSON: And it would be the Striped Bass Management Board. Bruce, take a look at it; is that your clarification of your motion? And, Gene, are you comfortable with that, also? It's not a substitute, it's a clarification.

MR. FREEMAN: Yes, that wording is correct.

CHAIRMAN NELSON: That probably is cleaner I think, I hope. We'll find out in a matter of minutes. Okay, go ahead, Dennis.

MR. ABBOTT: Procedurally, was the previous motion rescinded by the seconder.

CHAIRMAN NELSON: Yes, it has been rescinded. This is a clarification -- this is a rewording of that previous motion.

MR. ABBOTT: A rewording of the previous motion?

CHAIRMAN NELSON: A perfection, thank you. All right, I'm going to take Bruce. Do you want to say a few words in favor?

MR. FREEMAN: We support the motion.

CHAIRMAN NELSON: Thank you. Okay, anyone opposed to the motion? All right, Pete, go ahead.

MR. W. PETE JENSEN: Well, I don't know that I'm directly opposed to the motion. There's a couple of things going on here in my mind. One is I thought Pres said it very well. I'm not sure of the relevance of this motion or the other motion to whether we grant or deny the appeal.

So whether we pass this or not, it still leaves a question in my mind as to whether we have granted or denied their appeal. It seems to me we need to be very straightforward.

My approach to this would be to say we deny the appeal; however, we recognize there are some ambiguities and perhaps misunderstandings in the process. Therefore, we request the management board to revisit the issue of producer area status with the idea that an amendment may be necessary to clear it up.

That would be my approach to it, which I think is straight-forward, understandable to me at least, because this leaves me confused as to whether we've granted or denied their appeal.

CHAIRMAN NELSON: Pete, I'm not sure you need to -- unless you're going to deny the appeal, which means that it doesn't do anything. If you are merely saying that you've reviewed their request and that you have some concurrence with it, and therefore you are agreeing to send this back to the Striped Bass Management Board for consideration, then you are agreeing with their position.

If you wanted to say, no, I'm not accepting this; I deny the appeal, I think those are the two

choices that you have. Okay, against the motion. I had Mark.

MR. GIBSON: Looking at the commission's appeals body response, this seems to be a very narrow process-related issue relating to whether or not stakeholders in the New Jersey area had sufficient information and sufficient public notice to understand the implications of that change, and I still don't understand any of these motions how they remedy that process.

That seemed to be a very narrow process, and I don't see the remedy yet. It would seem to me something goes back out for public comment, which very simply says one option is do nothing, Amendment 6 stands. Another one is give the Delaware Bay an opportunity for a special management program. That seems to be what was lost.

CHAIRMAN NELSON: Okay, thank you, Mark. For the motion. Ritchie.

MR. WHITE: Well, a point of clarification for me. If this passes, what happens to the appeal? Is the appeal withdrawn? Is it approved; not approved? I don't know what this does.

CHAIRMAN NELSON: This is what the state has requested to be considered as a part of an appeal. So if you accept this, then you accept that appeal and you send that direction back to the management board to review the status. That's what you're doing.

If you do not, in my mind -- and if I'm wrong on this, please, somebody who has got more experience with the appeal process pipe up and correct it -- you're either accepting the appeal and their remedy or you are not accepting the appeal.

MR. WHITE: So if this passes, then New Jersey's appeal is satisfied. Does New Jersey agree with that?

MR. FREEMAN: We're satisfied at this level. In other words, this appeal was made to the Policy Board. We would expect, if this motion passes, that the Policy Board would take some

action.

If the Policy Board says thanks a lot -- or the management board says thanks a lot, Policy Board, but we're not going to do anything then, no. I mean, there needs to be some action taken as indicated in review.

I don't want to get in a position, Ritchie, of saying, hey, we're totally satisfied, but this is a step process where this is Step 1 asking the management board to do something. We expect some action to be taken by the management board.

CHAIRMAN NELSON: Let me clarify that the direction from this board to a fishery management board is that if we tell them to do something, they have to do something. Now whatever the outcome of that is, I cannot prejudge that.

They would have to go through the process of reviewing the status if this passed. You would have to review the status of the Delaware/Hudson estuaries with regard to Amendment 6. A follow up, Dennis, go ahead.

MR. ABBOTT: Yes, again as to where we're going. I don't know if a review right now of the appeals process is in order of where we are right now and what we should be doing.

It would seem to me, as has been previously stated, that we should determine whether we're going to allow or deny the appeal. And if we allow the appeal, following that we would entertain a motion of how we would deal with the positive outcome of that appeal.

CHAIRMAN NELSON: We have allowed the appeal.

MR. ABBOTT: Who has allowed the appeal?

CHAIRMAN NELSON: I have allowed the appeal with the other two chairs.

MR. ABBOTT: To proceed but I thought the board --

CHAIRMAN NELSON: We have allowed the appeal to proceed, that's why it's before you now. That's what you have before you. You either vote it down or you accept the remedy that they have asked for. Maybe I missed something, but I think that is the clarity that you have.

MR. ABBOTT: Okay, I surely don't want to argue. I won't argue the point with you, John, but, again, I would ask that we look at the appeal process as we laid it out and what our action is for this board right now.

CHAIRMAN NELSON: Let me have Pres try it, anyway.

MR. PATE: Try being the operative word. The appeals process is a phased process with the first phase being whether or not the petitioner has met some very general criteria in order to advance to the next step.

When John and I and Susan discussed the petition, we found, with limitations, that the petition did meet the criteria, and we limited what could come to this board based on those findings.

It is now the responsibility of this board to determine whether or not the substance of the argument as presented in the background information and by Bob and in the petition by the state of New Jersey warrants further consideration by the management board.

Has the management board erred procedurally or substantively in its original decision in adopting Amendment 6? And if the answer to that question by this board is yes, then this board should take the action to remand it back to the management board for fixing those problems.

If the answer to that question is no, if this board finds that based on the information you've been given today that the management board acted properly in carrying out its responsibilities to adopt Amendment 6, then you can find that this motion should be denied and the process stops here. I don't know if that helps or not, Dennis, but that's the way I see the appeals process at work.

MR. ABBOTT: Yes, it does, thank you, Pres. I do agree with that, and that seems to be what I was thinking. I still think that we have to decide first about whether we're going to deny or approve the appeal. I'm not trying to sway anyone in either direction, but I just thought that would be the first step.

MR. PATE: Well, my opinion is that you can mix the two in the action on this motion by stating your reasons for voting against the motion or making it clear in the findings of this board that in denying this motion, we found that there are no grounds to consider going any farther in this appeals process than today. That's not intended to prejudice anybody's vote. That's just a procedural explanation of how things should work.

CHAIRMAN NELSON: Thanks, Dennis. And, again, the first scenario that we're running through and hopefully the last, you know, we can look -- we'll do an after action report and see where the clarifications need to be done if necessary. All right, let me do opposed. Ritchie, go ahead.

MR. WHITE: It was a point of clarification that I spoke previously. Now that it has been clarified, now I will speak opposed. I speak opposed because I do not believe the Amendment 6 process was flawed, so I oppose this for that reason only. I support the concept of this, and I support doing this but only after we've denied the appeal.

CHAIRMAN NELSON: All right, anyone want to speak for the motion now? All right, Eric, for the motion.

MR. ERIC SMITH: I want to speak for it in principle and ask for a clarification from the people who drafted it. Was there any reason that you didn't say after "Striped Bass Management Board to review", the producer area status, because my first read of that was so vague that six months from now, when we reviewed the record, we wouldn't know quite what we were talking about, and we'd have to go back through the minutes to get it clear.

That to me is really the nub of the issue as it has been debated here is because of the confusion in the Amendment 6 process, whether you agree there was a lot or a little of confusion, we would be directing the striped bass board to review the producer area status of those two estuaries with regard to the Amendment 6 process.

And just to be sure there was no reason to leave those particular words out, I'm assuming they were implied; and if that's the case, then I support the motion.

But if there was something different and there was a substantive reason that producer area was left out before the word "status", I want to hear that, because then the motion is so vague that I have to wonder why it's better than the first one. I don't know who was on the drafting team so that's my question.

MR. FREEMAN: If I could answer that.

CHAIRMAN NELSON: Yes, go ahead, Bruce.

MR. FREEMAN: That phrase was left out simply because that seems to be a touchstone for controversy, the term "producer area." But, if it doesn't generate a long debate, it would certainly be agreeable to putting the words "the producer area" prior to "status", if that would help the motion.

MR. SMITH: Mr. Chairman, if I may ask, so it is your intent that's what status means?

MR. FREEMAN: Yes.

MR. SMITH: Okay, I would be more comfortable with those words in there. Now it has become a minor point, in my mind. I support the motion.

CHAIRMAN NELSON: All right, I had a sidebar. What was the pleasure of the -- status is kind of an over-arching word. Do you want to narrow it down?

MR. FREEMAN: Yes, I would agree to the wording after "review the" add "producer

area", and then it continues with "status".

CHAIRMAN NELSON: Gene, are you comfortable with that? Okay. How about against the motion? Gordon, go ahead.

MR. COLVIN: Thank you, Mr. Chairman. I will oppose the motion, first because I agree with Ritchie White, that I don't think there was a process flaw here that warrants action. I also have a more specific, practical reason from our own perspective.

We've been implementing Amendment 6 in New York for some time. Yesterday the striped bass board approved some changes to our regulations that we developed after extensive interaction with stakeholder groups in the Hudson Valley and in the marine district.

Our staff attended many, many county federation fishing club meetings, solicited comments on a series of alternative proposals in the Hudson River through our Website and other processes. It just is not helpful to us, after the fact, to have the commission announce that they're going to undertake some kind of a review of the status of the striped bass in the Hudson estuary.

I just don't see it as being helpful to our process, and, frankly, potentially it could be disruptive to the regulatory process after we've put so much time and effort into it. We're past this issue. We're moving forward.

You who were on the striped bass board saw our proposals yesterday. I just don't see this as being helpful at all. I see it as being harmful to New York's process. Thank you.

CHAIRMAN NELSON: All right, thank you, Gordon. For the motion. All right, one more time for the motion. Let me just have one sidebar here. Obviously, we've had a lot of discussion and I think a lot of it had to do with the process.

Dennis raised that a little bit earlier. And, again, since this is the first time trying to follow this new procedure, I asked the Policy Board to give

us a little leeway to deal with this in a fair manner as possible. I appreciate that opportunity.

So, I'm going to turn to Pres and we'll walk through a scenario that we think will be procedurally correct, and then we can deal with outcomes after that.

MR. PATE: Thank you, Mr. Chairman. I'm prepared to make a motion to table the motion that is currently up for consideration. If that motion is seconded, we would set this question aside and revisit immediately after consideration and decision on another motion that speaks more directly to the findings that we feel are necessary by this board in order to accomplish the first step in this process.

MR. LAPOINTE: Second.

CHAIRMAN NELSON: Okay, I'll give you thirty seconds to caucus on this.

(Whereupon, a caucus was held.)

CHAIRMAN NELSON: Are you ready for the question? **All those in favor of tabling this motion – again, it's time certain -- please raise your right hand; opposed, like sign; abstentions; and null votes, no null votes. So the motion to table passes.** Pres.

MR. PATE: Thank you, Mr. Chairman. I now make a motion that the Policy Board find that the Striped Bass Management Board followed proper procedure in adopting Amendment 6 to the Striped Bass Fisheries Management Plan in removing producer area designation from that plan.

CHAIRMAN NELSON: Second by Dennis Abbott. Discussion on the motion? Just again housekeeping – unfortunately, this has taken a lot longer than any of us probably wanted to happen. It's a little after quarter after eleven. Checkout is at eleven. I suggest that what we do is deal with this motion.

I'll take about a ten-minute break for checkout, and then we will come back and deal with any

further motions to deal with this issue. Is that agreeable? All right, go ahead, Tom.

MR. FOTE: I will keep my comments short. We have made an appeal. Basically, we felt that in the appeal process that we sent in that the process was flawed. I think we've made documentation to that, and that's all I'll say on that.

CHAIRMAN NELSON: Thank you very much, Tom. Anyone else want to speak to this motion? All right, I'll give you thirty seconds to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN NELSON: All right, are you ready for the question? **All right, all those in favor of the motion, please raise your right hand; opposed, likewise; abstentions; null votes. Okay the motion passes.** We'll take a ten-minute break for checkout.

MR. FREEMAN: Mr. Chairman, would you give me the count on that, please.

CHAIRMAN NELSON: I'm sorry, it was 14 to 3, Bruce. There were two nulls. Okay, there were two nulls. Thank you.

(Whereupon, a recess was taken.)

CHAIRMAN NELSON: Let's take our seats again, folks. All right, if we could have the folks in the back kind of settle down, too, I'd appreciate it. All right, let me turn this back to Pres for a motion.

MR. PATE: Thank you, Mr. Chairman. I move that the previously tabled motion be brought back to the board for consideration.

CHAIRMAN NELSON: Okay, I need a second.

MR. WHITE: Second.

CHAIRMAN NELSON: Ritchie, thank you. Let me just get it up so we can see what it is that we want to bring back. **All in favor of bring this back for consideration, please raise your right hand; opposed; and abstentions; and null, one null.** Okay, back for consideration.

Pres.

MR. PATE: Thank you, Mr. Chairman. Since the board, in its last action, has satisfied the needs of the appeals process and determined that the Amendment 6 process was not flawed, going forward with this motion would require an amendment to separate this motion from the -- would require a change to separate this motion from the Amendment 6 process, so **I offer a friendly amendment to the motioners to modify the motion by putting a period after the word "estuaries."**

CHAIRMAN NELSON: Bruce, do you concur with that?

MR. FREEMAN: We would accept that as a friendly motion.

CHAIRMAN NELSON: Gene, you're comfortable with that?

DR. KRAY: Yes.

CHAIRMAN NELSON: Okay, that is done. All right, open for discussion on the motion. Gordon, go ahead.

MR. COLVIN: Mr. Chairman, I move to amend the motion by deleting the word "Hudson."

CHAIRMAN NELSON: Is that a friendly amendment?

MR. FREEMAN: No, it is not.

CHAIRMAN NELSON: Okay, we have a motion to amend. Is there a second to that motion to amend? George has seconded that motion. All right, discussion on the motion to amend. Anyone for the motion to amend? Anyone want to make a comment about it? All right, anyone want to make a comment opposed to that? Go ahead, Tom.

MR. FOTE: If we're going to ask the management board to look at both areas, there are two -- you know, both producing areas and to basically single out from one, New Jersey covers both of those areas, and we play a large

role in those areas.

I think we need to do the Hudson as part of our appeal and I would like to keep the Hudson River in there, so I speak against the motion. We're going to address this. I'm not happy with the motion, but Bruce was the maker of the motion so he accepted the changing of the wording on this. I would not have.

CHAIRMAN NELSON: All right, thank you. Anyone else want to speak on the motion to amend? Gordon, go ahead.

MR. COLVIN: My reason for offering a motion is based on the comments I made earlier in the discussion of this motion, and it relates to the status of the development of regulations pursuant to Amendment 6 by New York state.

The Hudson Estuary extends from the Troy Dam north of Albany, New York, in New York state law, at least, to the Verrazano Narrows Bridge. I'm not sure what proportion of the surface area of the estuary is in New York state, but it is obviously well in excess of 90 percent, if not more than that.

The entire spawning area for striped bass is in New York state, and the Upper Hudson is where the bulk of the recreational fishery occurs. We've made the investment of time, staff effort, and I continue to be concerned that the motion as originally stated would be disruptive to our process. Thank you.

CHAIRMAN NELSON: Thank you, Gordon. Anyone else want to speak? Okay, go ahead, Bruce.

MR. FREEMAN: So far as New Jersey is concerned, we share part of that estuary. We're not disputing the fact that the spawning area occurs in New York waters. As far as we know, we don't have spawning in New Jersey waters in the Hudson River Estuary.

There is indications at one time it did occur, but nevertheless we definitely share some of the area, and therefore it would defeat what we're trying to accomplish. We also don't see that this

necessarily will disrupt the rule-making process New York is going through.

We presently have 28-inch fish in that area. New York is proposing to go to 28-inch fish from an 18-inch fish. In fact, we would argue that New York's actions would bring the two states together on this. What happens relative to how we deal in the future with this estuary is something to be determined, but to prejudice that we think is a mistake at this point.

CHAIRMAN NELSON: All right, thank you, Bruce. Anyone else want to make a comment? All right, George, go ahead.

MR. LAPOINTE: Maybe Jack or staff from the Striped Bass Board to clarify something. We're trying to give New Jersey the change to look at these areas as what other people have called the special management areas; is that correct?

MR. BEAL: Yes.

MR. LAPOINTE: Do we have the ability to do that within Amendment 6 now? And if we do, it seems like some unnecessary steps are being taken, that we have the process in place to correct what this motion would do. But please help me with that.

CHAIRMAN NELSON: I think the answer is, yes, we do in Amendment 6. I think the sense is that it would be helpful for the Policy Board to probably highlight that for that management board. Anyone else want to make a comment? All right, why don't you caucus for a few seconds then I'm going to call.

(Whereupon, a caucus was held.)

CHAIRMAN NELSON: We're on the motion to amend. **All those in favor of the motion to amend to remove the word "Hudson", please raise your right hand; no, likewise; abstentions; null votes, zero. The motion to remove Hudson passes 11 to 3.** All right, back on the main motion. Any other comments on the main motion? Peter.

MR. JENSEN: This one still feels a little

awkward to me. What Amendment 6 did was it took out the designation of producer areas as a special management area. The reason we did that is because conservation equivalency had been developed to a point where if a state wanted to come in and make a proposal, then they could do it.

I believe that's the case now in Delaware Bay, if they wanted to do that. So my question is, is the management board being directed to review only producer status for the Delaware Estuary and not reconsider the whole issue of producer areas as a fundamental concept of the plan?

Is that the effect of this motion? The board, I presume, if they wanted to, even though they're being directed to do something specific, could or could not readdress the issue of producer areas as a fundamental aspect of this plan. It's more of clarification than anything else.

CHAIRMAN NELSON: My sense from this is we're asking them to or directing them to review the Delaware estuaries at least. I think the boards have various authority to do what they feel is appropriate, but at least they need to take a look at the Delaware Bay area.

MR. JENSEN: Sure, but the context of that is to direct the board to put back in the concept of producer areas as one of the fundamental management decision points in the FMP. That's what this says; isn't it?

CHAIRMAN NELSON: Jack, go ahead, help us on this one.

MR. JACK TRAVELSTEAD: It's just not clear to me what we're asking the board to review. You know, following up on George's point, there are provisions in the current amendment that allow any state to submit, under conservation equivalency, some provisions.

New Jersey could come in with a plan that says we're going to directly enumerate fishing mortality the way the bay states do. We're going to set up separate quotas for commercial and recreational.

I don't have a problem that much with the motion other than it's a little confusing. I would just encourage New Jersey, if and when this happens, that they submit some kind of plan that will facilitate the review. I mean, tell us what parts of it you want the board to review, what aspects of it and what you hope to get out of it.

MR. BEAL: Just as a process point, my interpretation of this or staff's interpretation of this is that if this were to pass, we would go back between this meeting and the February meeting, highlight what New Jersey has the ability to do under Amendment 6 and describe what the process would be for New Jersey to develop or implement a special management area for the Delaware Bay and associated rivers.

We could also highlight the process of if the management board opted to change the status of the Delaware Bay through some other manner, such as an addendum, what that process would look like and what steps the board would have to take to make that happen. It's my interpretation of the staff work, anyway.

CHAIRMAN NELSON: Does that help? All right, further clarification, so let me have Gordon first and then Tom.

MR. COLVIN: Mr. Chairman, I will not support the motion with the words "producer area" in it. I just believe there is too much baggage associated with that term. We don't know what it means, and it's origin was essentially allocative in nature, and I believe it's inappropriate.

I would support the motion if it called on the Striped Bass Board to review the status of the Delaware River spawning stock in the Delaware estuary, but I'm not going to offer any amendments at this point. I've probably got to the end of that rope today.

CHAIRMAN NELSON: To that point, Bruce.

MR. FREEMAN: We understand there is conservation equivalency. If we're doing what Bob Beal just indicated, it will take us probably a half million dollars of the next six years, and

that's something we're not going to do unless we withdraw our support of all other plans.

Our point is starting from the formulation of the plan, states were given the opportunity -- those states were given an opportunity that had spawning and nursery areas special consideration.

That now has been withdrawn. It has been withdrawn because two major jurisdictions now have the ability to do that. Other jurisdictions who don't are essentially eliminated, and we find that totally unsatisfactory.

As this motion is now, we tried to craft -- make amendments in order to satisfy concerns during these last hour or so discussion. At present we're going to have to vote against this motion.

It doesn't do what we want done and we're not going to get into a situation of essentially being told what we need to do for conservation equivalency. That's not what we came here to do.

CHAIRMAN NELSON: All right, thank you, Bruce. All right, I had Tom next.

MR. FOTE: I agree with Bruce. We came here to talk about the producing area status for the Hudson, Delaware, because the other two areas were left out. Once they have changed this motion, I can no longer support the motion.

You know, I wouldn't have supported the change once we did this, but this basically -- producing area status is what we came here. That's what our appeal was about. That's what we've asked for. Producing area status came with a whole set of implications, when I've been sitting here since 1988, and it was arbitrarily basically eliminated under Amendment 6, in my estimation and my feelings.

And since other producing areas were exempted, New Jersey, Pennsylvania, Delaware and the Hudson River and New Jersey -- and even though New York doesn't feel that way -- in the Hudson River and the Delaware Bay and the Hudson River, this does not address the

questions we've asked. This does not address the appeal that we sent forward, and so I can no longer support this motion.

CHAIRMAN NELSON: Okay, anyone else on the motion? All right, why don't you take a few seconds to caucus then. Thank you.

(Whereupon, a caucus was held.)

CHAIRMAN NELSON: All right, let's come back into focus here. Bruce.

MR. FREEMAN: Thank you, Mr. Chairman. I would like to move to table this motion.

CHAIRMAN NELSON: Is there a second to that motion to table? There is no time certain associated with it.

MR. FREEMAN: Let me just indicate it's my intention -- we've discussed a number of issues here -- is to work with staff and the chairman of the management board to try to refine and raise this issue to the board directly. Hopefully, we can satisfy our needs and get out of this morass we're in at the present time.

CHAIRMAN NELSON: All right, Bruce, and I appreciate that. Fred, you seconded it, didn't you? All right, All right, move to table. **All those in favor of tabling the motion, please raise your right hand; no, likewise; abstentions; nulls. The motion passes unanimously.**

All right, this closes the appeals hearing. It was actually interesting from the standpoint of process, and maybe we worked out some kinks that we never have to use again.

But, nevertheless, I appreciate your indulgence in doing this, and I hope that we have done this in a fair way so that the issue is going to be dealt with by the state through the process that they have outlined. I appreciate the state volunteering to do it that way.

We are a little bit behind on our schedule, so I'm going to move the management and science

committee report up to now, if Chris is available. I think on all these items just keep in mind we've got to make up some time. Thank you.

-- Management and Science Committee Report --

DR. CHRIS BONZEK: Good morning to you all. My name is Chris Bonzek. I wish I could offer some comic relief after the last couple of hours, but I don't know any good jokes.

Thank you for hearing our abbreviated report. I encourage you to read the entire report. It is being distributed now, I guess. I would encourage you to read that and to read our meeting summary that will appear in the Fisheries Focus.

We have two action items that we're going to request approval on. The first is the 2005 peer review schedule. I believe we're also combining our request with the stock assessment committee's report to approve the stock assessment schedule at the same time.

The schedule is on the second page of your report. There are two changes to the normal schedule that would have been followed, and on my copy one of them is a little dark, so you may not be able to read it.

For American shad and river herring, we are suggesting that be changed from a SARC review in 2005 to an external or to a SEDAR review in 2005.

The reasoning for that is the shad and river herring assessment is almost 30 separate assessments, one for each estuary or river system, and we're not sure that SARC is prepared to handle that, and so we thought the external review was probably a better path for that.

And then to decrease the burden on staff a little bit in handling potentially three external reviews in the same year, we're suggesting we move tautog from a 2005 assessment and review to a 2006 assessment and review.

CHAIRMAN NELSON: All right, so the request is to approve the 2005 peer review schedule? Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: I had a question about that recommendation. I don't know if this is the appropriate time to give you that.

CHAIRMAN NELSON: Is it a clarification before we get that motion?

EXECUTIVE DIRECTOR O'SHEA: I'll wait until the motion.

CHAIRMAN NELSON: All right, somebody make a motion. George.

MR. LAPOINTE: Motion to approve the peer review schedule as presented by the MSC.

CHAIRMAN NELSON: And Pat, thank you for the second. Okay, Vince, did you have a comment?

EXECUTIVE DIRECTOR O'SHEA: I did. Tautog is listed as overfished and overfishing is occurring. This came up in our discussion at the management board. I asked the question during the workshop about potential management actions that might flow out of the '05 stock assessment, and now there is a recommendation to further delay that assessment.

I was just wondering what the nature of the discussion was from our science advisors given the fact that the stock is overfished and overfishing is occurring, why it would be wise to delay this another year, which has implications of delaying additional management action for another year.

CHAIRMAN NELSON: Chris.

DR. BONZEK: Actually, that point did not enter into our discussion, so I apologize I can't direct it. We did think that it was a relatively easy assessment for staff to handle; so if it needed to stay in '05, I think staff said that they

probably could still do that.

CHAIRMAN NELSON: All right, so the sense of the motion is that it would be done by '06, which means it could be done earlier than '06 if possible.

DR. BONZEK: Correct. And there were also some uncertainties in the schedule as well with the status of the weakfish assessment and the status of the stock -- I'm sorry, the status of the scup assessment, that they are listed on a particular schedule, but may not quite meet that schedule, may be pushed into '05, so we are trying to ease any burden that we could.

CHAIRMAN NELSON: Questions? Pat, go ahead.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman. The concern is that when we looked at the last time the stock was assessed, that was in, what, 2001 or 2002 for tautog?

DR. BONZEK: Off the top of my head, I don't know. I don't know if staff can --

MR. AUGUSTINE: Maybe someone can help with that. I agree with Mr. O'Shea because we have I think a potential issue here to deal with. It could be a monster waiting for us on the other side of the hill, so do we have a date?

DR. BONZEK: '01.

MR. AUGUSTINE: It was '01. Is there any way that we could look at readjusting one of the other species, so that we could lock in tautog to 2005?

I know a lot of these others are pretty critical, but most of them have had stock assessments either since 2001 or in 2001, and we're five years heading toward six. Is there anything we could look at there to make a swap off?

CHAIRMAN NELSON: My suggestion is that staff has said they may very well be able to do that as far as tautog, so why don't we let staff work through and at some point in the future, if there is really a problem with not meeting

something, they can come back to us and let us know, Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman.

CHAIRMAN NELSON: Any other questions on the motion? All right, are you ready for the question? **All those in favor say aye; opposed; abstentions; nulls. All right, the motion passes.** Thanks, Chris. Go ahead.

DR. BONZEK: Thank you very much. The other action item is modification of the peer review process to include stakeholders in an ASMFC external peer review panel. We had lengthy and lively discussions on this.

The couple of paragraphs that you see are fairly carefully crafted, so let me just read them. The general recommendation, The ASMFC stock assessment committee has made recommendations regarding stakeholder involvement in ASMFC stock assessments at the data workshop and at the assessment workshop.

Keep that separation in mind, please, that that's the stock assessment committee has made recommendations at those two levels. Our purview is at the level of the peer review process, and MSC supports the recommendations of the SAC.

The MSC recommends that stakeholders participate in all levels of the stock assessment and at the ASMFC external peer review process. When there is an advisory panel, MSC recommends that this be the source of stakeholder input. If not, then other knowledgeable members of the industry should be that source.

Our specific recommendation on the peer review process, MSC recommends that stakeholders be invited to attend the ASMFC external peer reviews but not as panel members. The external peer review panel chair will encourage public comment and participation.

CHAIRMAN NELSON: Okay, motion to modify the peer review process to include stakeholders in the ASMFC external peer review panel. Bill Adler made the motion, and

Pat has seconded it. Thank you very much. Comments on the motion? Gordon.

MR. COLVIN: Just one minor point, Mr. Chairman. Throughout much of the text of the recommendation, the reference is to incorporation of stakeholders; however, in the very last line, the first paragraph there is an indication that if there is not an advisory panel, then knowledgeable members of the industry would be the source.

I think it would be appropriate for us to also use the word "stakeholders" there. I think increasingly we are finding that our key stakeholders are becoming more and more broad than members of the "industry." Thank you.

CHAIRMAN NELSON: Without objection, we'll modify that. Thank you, Gordon. Go ahead, Pat.

MR. PATTEN D. WHITE: I guess I just have concern when it blanketly says that there will be stakeholders participate in the peer review process. I think it's really important that they participate in the assessment process, but as a blanket invitation I have concerns about being involved in the peer review process.

CHAIRMAN NELSON: You can live with it, though, is that what I'm hearing? Go ahead, Vince.

EXECUTIVE DIRECTOR O'SHEA: I was just wondering what we have up here isn't exactly what Chris said. I thought maybe you could just clarify the motion. I would maybe clarify with Chris if that's what they've recommended to us, first.

DR. BONZEK: I think my preference would be that it be stated pretty much as we have it. As I say, our discussions were lengthy, and we had to incorporate a number of different sort of levels of feeling, so as close as we could get to what we have would be our preference.

CHAIRMAN NELSON: All right, so the language that we're seeing under the report is what fleshes out what the motion is all about, so

all of that general recommendation and also the specific recommendation is really what we're looking at under this umbrella; is that correct?

DR. BONZEK: That's our request.

CHAIRMAN NELSON: All right, so is that clearer for everybody, staff and everyone? And it was seconded by Pat Augustine. Okay, George, go ahead.

MR. LAPOINTE: I understand what the MSC is trying to do, and I support it, particularly with the change Gordon suggested, but what this says is we're going to include stakeholders in the peer review panel, the motion, to include stakeholders not in the process, on the panel. I don't think that's what we want to do. We want to have stakeholder involvement observers to the peer review process, not have them on panels so this doesn't wash.

CHAIRMAN NELSON: Chris, if we add after "panel" "process", is that correct and also addressing what George -- does that address, George, what you have requested?

DR. BONZEK: Yes, our recommendation is as Mr. LaPointe says; and as the sentence reads, that they be invited to attend external peer reviews but not as panel members. Our reasoning being that the peer review panels are scientists, technicians; and as knowledgeable as stakeholders can be, they're not peers, per se.

CHAIRMAN NELSON: Okay, the details are in the text there. How is that? Is everyone happier? Okay, any other comments? All right, ready for the question? Let me read it for you: **Move to modify the ASMFC peer review process to include stakeholders in the ASMFC external peer review process, attend but not as panel members.**

And the details are associated with the general and specific recommendations. **All right, ready for the question, all those in favor please say aye; opposed; abstentions; and nulls.** All right, thank you very much.

DR. BONZEK: That concludes our report

except that I would encourage you to read the rest. I would also make note that we're leaving MSC in a very and even more capable hands of Dr. Mercer from Maine.

CHAIRMAN NELSON: Chris, I just wanted to take a moment to thank you for all your efforts as chair. I think your hair was a little darker when you started that.

DR. BONZEK: No, not for a long time.

CHAIRMAN NELSON: No, but thank you very much acting as chairman of that. It was a lot of work that you guys do and we really appreciate it, so thank you very much. (Applause)

Again, we have a little time situation, so I'd like to move up the law enforcement committee report. Mike Howard is going to do that. And then, Doug, you'll be next on the list -- Doug DeMaster, I'm sorry.

-- Law Enforcement Committee Report --

MR. MICHAEL HOWARD: Thank you, Mr. Chairman. I'm filling in for Colonel Joe Lynch, chairman of the committee. I can cut out some time. The law enforcement committee met on Tuesday. The first order of business was relating to lobster law enforcement.

We are progressing on our assessing the compliance rates for the Amendment 3. We're looking to see if law enforcement is effective and to what degree the new regulations are being adhered to. We should have a report by the next annual meeting as a baseline of information has been developed in at least one state.

The committee also recommended and language has been proposed to modify provisions of the Magnuson Act to allow state enforcement access to VMS data. This is extremely important in many of the fisheries, especially herring, shrimp and possibly other fisheries, so the states can effectively enforce those regulations.

The last issue of significant concern is striped bass law enforcement in the EEZ. It was

decided at the spring meeting that we had to expand our efforts as this fishery was occurring in some areas.

To date we have seen little to no problem; however, the fish are gathering for the winter, and a significant effort through public relations and proactive law enforcement will occur in the Mid-Atlantic states through Carolina through the end of January.

If there is any question on those enforcement efforts or information, please contact myself. A briefing summary is being passed around, and also our minutes will be on the Website next week. Any questions, Mr. Chairman, or members of the board?

CHAIRMAN NELSON: Okay, any questions for Mike? Well, Michael, nicely done, and thanks for all your help this meeting week. All right, Doug DeMaster is next, and he's going to make a presentation on ecosystem management.

MR. BEAL: The Management and Science Committee summary or report, everybody was handed the ASMFC Multi-Species Implementation Plan. The idea is to review that prior to our next meeting and then we will take action on that at the next meeting of the Policy Board.

CHAIRMAN NELSON: Hang on for a second because we wound up with another time crunch here. Is that okay, Doug? We've got Doug up here and he's willing to participate as a spectator. Bill, I understand you have a time crunch. Let's see if we can accommodate you with your habitat committee report.

-- Habitat Committee Report --

MR. WILLIAM GOLDSBOROUGH: Thank you, Mr. Chairman. I will abbreviate my remarks in the interest of time. There are three items that I'd like to bring to your attention.

One calls for action, and that's in your agenda. That is the diadromous fish habitat source document that the habitat committee has been working on for a long time now. It has involved

a lot of authors and a lot of expertise. It was sent to you on its own CD. It has been reviewed twice by the Habitat Committee.

It has been reviewed twice by the individual species technical committees, and those would be for American shad, hickory shad, alewife, blueback herring, Atlantic sturgeon, the American eel and striped bass. Those are the species covered.

This will be a major reference, probably the best collection of habitat information for these species that will exist for the Atlantic Coast, so it will be a very valuable document and will feed into updated habitat sections and FMPs for each of those species for years to come.

But, like I said, it's been a long process. It's been through a lot of reviews, and I'll add individual sections being reviewed in detail by experts that we lined up for those species.

For those of you that were able to review it -- and it is a large document, I understand -- you will note that a few of the sections are not fully complete. That's because we are still in the process of incorporating the expert review comments that are still coming in. We've even had some since we sent you that CD.

We expect to finalize within the month, and we are hoping and planning to stick to our production schedule, which calls for printing before the end of the year. Therefore, this would be the last opportunity for it to come before the Policy Board, and we are requesting approval of the document so we can proceed with that schedule.

CHAIRMAN NELSON: Is there any objection to that request? All right, the document is accepted and you can print it within the existing dollars, this year's dollars.

MR. GOLDSBOROUGH: Exactly, thank you, Mr. Chair, how did you know? The second item I want to bring before the Policy Board has to do with the continuing outreach efforts of the committee.

You may have noticed by the registration table and earlier in the ballroom a new mobile habitat display, the vertical one that's out there. It's really sharp and it's really to the point. It's good information.

In addition to that, we are updating all of our species habitat fact sheets and we'll have them available in December. I wanted to bring this to the board's attention here on the eve of the winter fishing show season, so that anybody that desired to have habitat information on commission-managed species come to a show in their region, let us know and we'll see what we can work out and loan those materials to you.

And the final thing I'll mention is just to remind you, as per the strategic plan information that was gone over the other day, in the next year the FMP habitat sections that the committee will be developing include Atlantic herring and summer flounder, which will be done, of course, jointly with the councils, and Atlantic croaker, which will be a commission lead. I'll stop there in the interest of time, Mr. Chairman.

CHAIRMAN NELSON: All right, thank you, Bill. Any questions for Bill? Bill.

MR. ADLER: Thank you, Mr. Chairman. Bill, does the habitat committee have on its radar screen comments that may be pertinent to habitat in windmills, like the Nantucket Sound, that they're coming out with an EIS, and that, remember, is going to affect the habitat of one of the species that we manage, basically fluke?

Also, we have habitat destruction planned for east of Boston with the sand mining, which is lobster and cod habitat. And besides that is the LNG process, but mostly the sand mining and the windmills, which could destroy serious habitat, I think that the Atlantic States needs to step up to the plate.

As the fishermen and everybody understands, the ASMFC is very good at managing fisheries, but where are they when you need them is the approach. Like, for instance, why doesn't the ASMFC take a more active role in these non-fishing projects that tend to destroy habitat up

along the coast, and where are they?

Where is the ASMFC coming in to protect that habitat from that activity, not just fishing? I would encourage the habitat committee to keep these things on the radar screen; and through whatever process is necessary, that with the ASMFC heading, that this commission take some action, whatever action it possibly can, in commenting on some of these habitat destructive projects. I think the habitat committee can lead the way in saying to the ASMFC what could be said. I would encourage that to happen. Thank you.

CHAIRMAN NELSON: Bill, to that point, I think the habitat committee probably would be very happy to look into those and provide feedback, but I think as far as process it probably the appropriate thing to do is, to either through a letter or whatever, just bring that to the attention of this board, so we can charge the habitat committee for looking into that type of issue.

And, you have already verbally outlined those, so I'll then go and see if there is no objection for the habitat committee to look into those items. I'm just saying, as far as process, just bring it to the attention of this board, and we can have the habitat committee then take a look at it, all right, for the future.

MR. ADLER: All right, thank you. I did raise this at meetings prior to this, and the only thing that I would ask is that the process or whatever the process is of getting an ASMFC response be timely, because these things are under way in their process.

I wouldn't want to drag it out so that after the fact, ASMFC sends a letter so I'm not sure of the process, but I did bring this up -- I think it was an ASMFC ISFMP meeting -- to be looking out for this, so whatever the process is, I'll go along with it.

CHAIRMAN NELSON: Okay, we'll take a look at that. Is there any objection to -- Bill, did you want to comment on that first? Go ahead.

MR. GOLDSBOROUGH: Please, thank you, Mr. Chairman. The process that we have now is that we have a protocol through which any state or commissioners can bring to our attention a project of concern.

We tend to get involved in projects that are of sufficient scale or precedent-setting with respect to commission-managed species impacts, and then the protocol dictates that we go through a few steps.

The main criteria is making sure that all the commissioners from the affected states agree that the commission should be involved, at which point we investigate the process at work, whether it's an EIS or a permit application or what have you and provide written comments at the appropriate public comment time.

Now that's, for the most part, the extent of involvement to date. That's been our pattern. In addition to that, we provide information. We offer to provide information, and do so when it's requested, that further elaborates on those habitat needs.

I think the key point here may be Bill's term "whatever means necessary", and this commission would need to decide directly whether or not it wanted the habitat committee and the commission itself, by extension, to be more of an active advocate than that.

We have found that by being selective and thorough when we do written comments rather than barraging different agencies with letters, that our comments are taken more seriously, so that's a factor to keep in mind.

But, in this case our Massachusetts member, Vin Malkoski, is intimately involved in the projects Bill mentioned and is keeping the committee apprised of their progress. We are awaiting the proper comment period and do plan to comment as appropriate.

CHAIRMAN NELSON: All right, Bill. And let me have the staff work out if there is any procedural issues that need to be made sure that we're clear about for the letters, so that we have all three commissioners in sync on this, that type

of thing, Bill. So, let's just have them take a look at it also.

MR. ADLER: That's fine. I heard Bill say does the commission have to vote to do that?

CHAIRMAN NELSON: No, I think the way we have it set up -- and Bob can correct me if I'm wrong -- is that if we have a letter from all three commissioners of that state saying that there is an issue as far as environmental concerns, that we would then pass that on to the appropriate committee, the habitat committee for consideration or review and see if there is any position that should be taken. Pete.

MR. JENSEN: Well, I would simply note this goes beyond habitat. There are going to be exclusionary zone issues. There are going to be protected species zone issues, and so Bill's point is well made that this commission needs to have a way to respond to all of those issues and not just habitat.

CHAIRMAN NELSON: Right, and staff will take a look at what it is that we might need to do on that. Bill, anything else on any component of your report?

MR. GOLDSBOROUGH: I would like to just take this opportunity to thank Gill McRae for sending us Kent Smith, a new committee member from Florida. He is already well engaged and it looks like he's going to be a big help to the committee.

CHAIRMAN NELSON: Great, thank you. Any other questions for Bill? All right, Bill, thank you very much. Let me ask, before I get to Doug again, is there anyone else that has a time crunch? Okay, seeing none, we're back on to Number 6, and presentation on the ecosystem management. You can take a break, Joe, just relax.

(Whereupon, a presentation on ecosystem management was made by Dr. Doug DeMaster.)

CHAIRMAN NELSON: All right, the next agenda item is actually Number 8, the update on the non-native oyster activities, and Bob is going

to give us that update.

-- Non-Native Oyster Update --

MR. BEAL: Great, thank you. At your last meeting, Tom O'Connell from Maryland came in and gave a pretty lengthy and very complete update on where the process is within the state of Maryland, so I'll just give a brief update on what has gone on since the update from Tom.

The last month or actually about three weeks ago, down on the Eastern Shore of Maryland, there was a meeting of the modelers that are developing the demographic model for the introduction or to evaluate the introduction effects of non-native oysters in the bay, specifically the *ariakensis* oyster.

This modeling effort is on its way. They've got the basic framework for the model developed. At this workshop there was a series of presentations from the individuals that have received funding to do research on the non-native oysters and their growth habits and the properties of the larvae and those sorts of things.

The idea is that these research projects that are currently ongoing and funded will essentially serve as the inputs into this demographic model for the development or to support the EIS that's currently being developed.

At this meeting the commission's interstate shellfish transport committee was invited to that meeting. About half of the members of that committee did show up and did have some discussions with the modelers and provided more of a coast-wide input than a localized input, as a lot of the EIS input has been up to date.

The invitation and participation of our shellfish committee is consistent with the integration process that was approved by this policy board about a year ago or a little over a year ago when this whole process was kicked off.

So, we will continue to integrate our shellfish transport committee into that process to provide

a larger prospective on the development of the EIS. Pete can speak to the time line a little bit better than I can, but I think the intention now is to complete the draft EIS by February or March.

At that time a decision will be made if there is or is not enough information to evaluate the alternatives and/or support one of the alternatives for further action within the Chesapeake Bay region. That's the brief update on where we are.

CHAIRMAN NELSON: All right, thanks, Bob. I had gotten letters from New Jersey and Delaware expressing the desire for the adequate review process, to make sure it's taking place to make sure that we're looking at as much of this issue as possible.

You've heard what Bob has said as far as the shellfish transport committee. We did set that up to be involved in this process, to be our liaison between the state of Maryland, for example, and the overall process and back to this board. And, of course, we have Pete who is available to us also as sitting on the board.

My sense is that the shellfish committee is -- the request is for them to make sure that they are fully engaged in this, and that's what I'm hearing Bob saying, that they have the ability to do that and that they will do that.

And perhaps if I can, Pete, if I can ask you if there is some sense of timing or time frame that they need to be more involved in that will help provide the liaison back to us, as well as is there any other way of making sure that the states of New Jersey and Delaware's concerns, make sure they're being addressed. Go ahead, Pete.

MR. JENSEN: Sure, thank you. A number of responses. One, it's regrettable that some of the misperceptions that are out there are repeated in this joint position, and I would have preferred that whoever wrote that paper would have consulted with us first because I think we could have assured them that many of the things in there are simply not true.

Let me go back through a little bit of the history

here. There was a National Academy of Science, National Research Council report put out regarding non-native oysters and you've heard about this before.

But just so everyone understands what we did, Maryland and Virginia jointly made a proposal to do an EIS to evaluate the restoration of oysters in Chesapeake Bay. The format we chose was a federal-style EIS, not required.

We chose to do a federal-style EIS because it was the most comprehensive, most complete, most transparent process you can get into. Within that EIS, there were eight alternatives. Those are all aimed at the restoration of oysters. So this is not only consideration of a non-native oyster; it is the consideration of seven other ways to do it.

The schedule we have adopted is that we would — let me back up a minute. We took all of those recommendations from the NRC and went to all the preeminent researchers on oysters in the Chesapeake Bay area, Virginia and Maryland, and we said these are the recommendations.

Can you design research to answer those questions? The answer was yes. So the question was, well, how long do you think it will take, because the report has suggested it may take several years?

And they said, well, it's probably going to take at least a couple of years, and so we said, why. And they said, well, because you have to write proposals. You have to go get the money to do it.

So we said the money is on the table; there it is right there. And we gave them the amount. So if that money is available and we can agree on research proposals, can you do it in a year, and they said yes.

So we ended up giving research contracts in the amount of \$1,700,000 to the researchers to answer those NRC questions. They agreed in their research contracts to give us preliminary results at the end of October, and they have, and final results in December.

Based on that assurance from those researchers, we then developed a schedule that said we will get those results in, we will begin to write the draft EIS in January, and by March of 2005 we would hope to be in a position of making a decision on one or any or all of those eight alternatives. And we're still on that schedule.

I have made the offer to Delaware and New Jersey, and I will make the offer to any of you, we will come to you and we will make a presentation to you on what we're doing, the details, everything that we're doing, so if you want to hear from us directly and address your concerns face to face, we'd be happy to do that.

We have done that with congressional staff. We've done it with our general assembly. We've done it with a number of people. And the other point I want to make is we will be announcing, within the next couple of weeks, the formation of an independent panel that has not been involved in the research.

That panel will be asked to do three things. Sometime in early 2005, before we get the draft EIS finished -- and it will be a pre-draft -- we will ask this group to advise us on whether they think the information base we have is adequate to make a decision on any or all of those eight alternatives.

The second thing we will ask them is in reviewing the analyses and the research, did we miss any critical risk questions that must be answered before this action would be undertaken to introduce non-native? Now that question doesn't apply to a lot of the other alternatives.

The third thing we will ask them is if we were to make a decision, particularly on introducing non-native based on the information base we have, what are the risks that would be involved?

Dr. Brian Rothschild from UMass has agreed to chair that panel. The director of the French Marine Laboratory, Dr. Herral, will be included. There will be two members of the original NRC panel that gave out the report on non-native oysters. We will be adding a couple of other

people knowledgeable about oysters.

So, that's where we are. We're still on the schedule. And while I have the microphone, Mr. Chairman, we did get preliminary results from the researchers. Just to give you a flavor of what those reports were, there have been no diseases, no pathogens, no parasites identified in the Oregon strain of oysters that we would be using.

So what the researchers are telling us is they have found nothing of concern in terms of a hitchhiker, an unintended hitchhiker. The other researchers have told us that the ariakensis is just as susceptible to predation as the native oyster, very little difference.

They have done spawning studies to investigate whether there would be any hybridization, and what they have discovered is that, yes, they will cross fertilize, but those cross-fertilized eggs die within five to eight days, and so there is no hybridization apparent.

They're telling us that the feeding activities of the two are about the same. They're telling us that they believe that they will act similarly to the native oyster in terms of reef building. So, those are some of the early indications of things that we're getting from the researchers that will be part of the decision process.

CHAIRMAN NELSON: All right, thank you, Pete. Could I sum it up that it's the sense of this board that the staff would continue to work with the shellfish transport committee and Pete; and the states that have expressed the concerns that I've received in the letters, to try to make sure we've addressed all of those and that we've had a full -- make sure we are fully involved in the overall vetting process of this issue.

Anyone object to that? All right, we do have to move along. If that addresses the concerns that have been raised, which I know you weren't here, Bruce, when we went over a lot of it, but we understand what the concerns are.

We've got a process to make sure that everyone is involved in it, and especially the states of Delaware and New Jersey's concerns are

addressed via the staff. So if that helps, I want to move on to the next issue. Is that all right, Bruce? Bruce, if you do want to say something, go ahead.

MR. FREEMAN: Mr. Chairman, I was just interested in getting the shellfish transport committee actively engaged. If you mentioned that, good; if you didn't, I'd like to hear your thoughts.

CHAIRMAN NELSON: Well, we've agreed they are to be actively involved in this process. Actually, when we come up to the action plan, we can talk about the actual funding associated with that and deal with that, Bruce. Briefly, Jaime.

DR. GEIGER: Thank you, Mr. Chairman. I just want to make sure for the record -- and, again, I appreciate Pete's presentation. But, again, at least two members on this Interstate Fisheries Management Board, I think the National Marine Fisheries Service and Fish and Wildlife Service as part of the cooperating federal agencies still have concerns over intentional introductions of the non-native species, so it's not just related to Delaware and New Jersey. Thank you.

CHAIRMAN NELSON: Well, I wasn't prejudging anybody's position on this. It was just a matter of making sure we have the process in place to make sure that we can address and get the information back to this board for all the issues that are pointed out. So, Roy, go ahead and then we're going to move on to the next issue.

MR. MILLER: Thank you, Mr. Chairman. It still isn't clear to me, is it the intention of this board that the shellfish transport commission meet to review all information provided to them by the bay states prior to the release of the EIS that Pete referred to in March or would the activity of the shellfish transport committee, their review, would that take place after the release of the draft EIS?

MR. BEAL: Roy, my understanding is the Interstate Shellfish Transport Committee will continue to be integrated in the finalization

process of the EIS.

In other words, as it's set up now, they wouldn't have a review process, but they'd have more of a active role in developing and finalizing that document. It's up to the Policy Board since this is the body that tasked that committee.

MR. MILLER: If I may, Mr. Chairman, so then to clarify, Bob, the shellfish transport committee would review the draft EIS once it's released. Is that what you're suggesting?

MR. BEAL: That seems like an appropriate role, you know, if that's the will of the Policy Board.

CHAIRMAN NELSON: I don't see anyone objecting to that, so we will work with staff to make sure that happens. Okay, the next item is Item Number 9. That's the NEAMAP update. Linda.

-- NEAMAP Report --

DR. LINDA MERCER: Thank you. The NEAMAP Board met Monday and received a number of updates on what the data management activities and trawl survey design activities have been for the program.

For those of you who may not be as familiar with NEAMAP as some of us, it's the Northeast Area Monitoring and Assessment Program that was established to complement the SEAMAP program in the South Atlantic and to develop complementary trawl surveys to fill in gaps along the coast.

At the time NEAMAP was formed, there were a number of gaps including portions of the Gulf of Maine, which are now currently being covered. The operations committee has been focusing on developing a trawl survey design for the Mid-Atlantic area.

This would cover the area from Montauk to Cape Hatteras, the near-shore waters. It would also overlap the New Jersey survey. The board received a trawl survey design document, which we approved.

The cost of that survey would be somewhat over a million dollars to do it quarterly in the initial years to determine what the best survey times would be, so securing funding obviously for this is a major issue that we want to bring to the Policy Board's attention.

Another thing was brought to our attention by Dr. Frank Alameda of the Northeast Fisheries Science Center, with the coming of the Bigelow to replace the Albatross, this new vessel is going to have a deeper draft, will not be able to survey the inshore strata that the Albatross could do.

There could be substantial impacts on fisheries data collection in the near-shore waters particularly, I would say, along the Mid-Atlantic Coast, so we have directed the operations committee to go back and take a look at what species might be impacted by this and come back to us with more information on this.

I think in terms of looking at the NEAMAP program, trying to find funding for it, that particular issue makes this even more pertinent to begin really looking at serious fundraising. So those are the two main issues we'd like to bring to your attention, the need to find funding, the need to hopefully bring all of the commissioners on board to helping us find funding for the program, particularly in light of additional inshore gaps that we may be seeing. I'd be happy to answer any questions.

CHAIRMAN NELSON: Okay, any questions for Linda? I'm not sure we have a sense of providing you the funding source yet, but staff heard you and they will be looking. And if anyone else has some ideas, please feed that on to the staff. Eric, did you have a comment?

MR. SMITH: Yes, I know we're so on short time, I'll say it in a sentence. I'm astounded at this point that we're finding that the inshore strata of a 42-year long survey are now going to be impaired by the acquisition of a new boat.

How much water does it really draw? I mean, I'm astounded at that, but I don't want to belabor this process. I want to do my own

asking and answering. Thank you. And it's no offense to Linda or NEAMAP.

CHAIRMAN NELSON: No, we realize that. I just keep wondering where's a catamaran when you need it. Anything else for Linda? All right, Linda, thank you very much. Our next agenda item is the stock assessment committee report, Doug.

-- Stock Assessment Committee Report --

DR. DOUG GROUT: Thank you, Mr. Chairman. We had several action items. The first action item I think you've already addressed. As Chris mentioned, our job is to make recommendations on the scheduling of benchmark assessments, and it is the Management and Science Committee's job to make recommendations on the peer review schedule.

Of those benchmark assessments and since you've already approved those benchmark schedules for 2005, I think we can move right on to Item Number 2.

This involves stakeholder involvement in ASMFC technical process. With the Management and Science Committee, you've already approved a process of where the stakeholders would be involved in the peer review process. We made recommendations on where they would be involved on the data workshop and the assessment workshops.

Again, this is the new system that we've split out into two processes, a data workshop and an assessment workshop. Our stock assessment committee has recommended that stakeholders be actively and fully involved in the data workshops.

We are recommending that anywhere from one to three stakeholders would be invited by the commission to participate in those data workshops, but we would leave the exact number flexible in order to adequately represent the fisheries involved with this particular species; and that the ASMFC staff would aid in the selection of the stakeholders that would be

involved in those workshops.

However, in the assessment workshop, it is our recommendation that the stakeholders not be a formal part of the assessment workshop where you're actually turning the cranks of the models, running retrospective analysis.

We didn't think that was really an appropriate place, but again we would like to fully encourage that they be part of the data workshops.

Now, that being said, we added one other thing that we wanted to recommend to you, and that is when the stakeholders are invited -- and I think we came up with some guidelines that we'd like to have sent out with the invitation to the meeting materials, and I think these would not just apply to the stakeholders but to all participants in these data workshops.

They are the following; that we provide on the invitation and in the agenda and other meeting materials that the meeting is for technical and not management advice, that is made clear at the outset, and that all participants must work to achieve the most objective scientific viewpoint.

We also are recommending that if you are invited to participate in this data workshop, that you commit to attend the entire meeting, not just come in for a day. And also that the results of what comes out of this stock assessment or the data workshop -- again, this is preliminary. It hasn't even gone through the assessment process -- that these not be broadcast or let out to the public until it's gone through the proper channels, i.e., going up through the technical committee, the management board having a formal acceptance of the results of these assessments. I present those to you, the Policy Board, for discussion and approval.

CHAIRMAN NELSON: All right, so, Doug, the summary that you provided on the stakeholder involvement in the ASMFC technical process, is what you'd like to have moved as approved.

DR. GROUT: Yes, their involvement in the

data workshop, and we're recommending that they not be part of the actual assessment workshop; and then also to the third part down there, is that we're recommending that certain guidelines be sent out to the various participants.

CHAIRMAN NELSON: All right, so, Pat, you're ready to make that motion to that effect?

MR. AUGUSTINE: I would like to make that motion to that effect to include all of the elements as Doug has submitted to us.

CHAIRMAN NELSON: Okay, George seconded. Any comments, questions? George, go ahead.

MR. LAPOINTE: A couple things, and I just whispered over to Vince that we should discuss, first, endorsement of the participation doesn't necessarily mean that the commission is going to pay for the stakeholder's participation. I just think that's an important clarification.

And then under stakeholder participation guidelines, we can ask people to abide by these guidelines, but on the second page it said if participants don't fully abide by the rules, they won't be asked to participate in future workshops.

As public meetings, they can still show up. You know, we can do the best we can, and we just have to make sure that we don't appear like we're trying to exclude people from public processes. Thank you.

CHAIRMAN NELSON: Okay, understood. Bruce, go ahead.

MR. FREEMAN: Doug, the aspect of not having stakeholders attend, if in fact one of the stakeholders or a representative has the technical expertise, will they be excluded from the assessment workshop?

DR. GROUT: Our intent is that our assessment -- any of our meetings are open to the public, but to be on the stock assessment committee that's actually doing the work, we felt that that would - - because the stakeholders would have a

potential biased interest because of their stakeholder status, we felt as a stock assessment committee, that would not be appropriate, to have them as members of the stock assessment committee.

MR. FREEMAN: My understanding on the council side, that is not the case, that there indeed are at times people from industry or representatives of groups of industry that do perform that technical function, so this is a deviation from that.

DR. GROUT: Yes, this is an ASMFC process, not a council process. We were aware of that and that was part of our discussions, and it was the recommendation of the group that I chair that at least in the ASMFC process, that they not be part of the assessment process.

They are also actively part -- in the SEDAR process, the stakeholders are involved all the way from the data workshop through the assessment workshop and in the review panels. We have come up with different recommendations from that.

CHAIRMAN NELSON: Okay, any other questions on or any other issues on the motion? Are you ready for the motion? **All those in favor, please say aye; opposed; abstentions; nulls. The motion passes unanimously.** Thank you, Doug. The next motion.

DR. GROUT: Thank you. The next two items were items that came up from within the stock assessment committee, addressing essentially workload issues of the various stock assessment scientists.

We've seen some things that have occurred that at least from our standpoint, we have some recommendation on the way to improve the ASMFC process. Now Number 3 addresses annual stock assessment updates as opposed to the benchmark ones that you have a schedule for.

There are certain species the ASMFC manages that have annual stock assessments, and there was concern brought up within the stock

assessment committee that there may be some species where that really isn't necessary any more.

So what we are bringing to you for consideration and action at either this meeting, or if you feel you need time to look this over and think about it, consideration at a future meeting, is the following:

We are recommending to the Policy Board that the commission use the following guidelines when considering whether to conduct annual stock assessment updates. First of all, annual updates are generally not needed for species that are not overfished and overfishing is not occurring.

We are recommending that the timing of these updates should be based on the following characteristics: 1, life history; 2, management needs; 3, assessment scientists workload; and 4, the stock status.

However, we wanted to point out that we do recognize that annual updates may be needed for some short-lived species or for species where management has annual specifications that are required for it.

As a suggestion, again, a recommendation that when we have benchmark assessments, rather than going to annual updates in between, that these benchmark assessments should include recommendations for the timing of any future benchmark or any future updates, a forward projection of the stock status in between the updates, and an appropriate means of measuring in the interim the years between the updates, i.e., looking at landings information and survey values.

And, finally, the assessment update frequencies should be sufficient to ensure that any potential biases that the stock projection may have can be recognized in the updated assessment before any substantial damage to the stock occurs.

CHAIRMAN NELSON: Doug, let me just see if I can get through this a little bit. In all three things, the annual stock assessment updates

recommendations, I know you haven't gotten to the previously rejected benchmark stock assessments, and then the data and assessment workshop framework, are these items that at this particular time you'd like to have the board take a look at, think about, and then we could act on at the February meeting, or does it need to be acted on at this particular meeting?

DR. GROUT: That is up to you. We realize that these three items are not things that you were aware. They weren't charged to -- these two items weren't charged by the Policy Board to the stock assessment committee. We wanted to bring them up; and if you choose to act on them now, that's fine. If you choose to delay them until the next meeting, that's fine, too.

CHAIRMAN NELSON: Okay, I think there is a lot in here, and I appreciate the committee going to great lengths to develop these. I'd like to make sure that we've given it an adequate amount of discussion and thought.

So my recommendation is that these be looked at and put on the agenda for the February meeting in which we can have plenty of time to have reviewed it and plenty of time to have a discussion on it. So, is that an okay consensus of the board? Pat.

MR. AUGUSTINE: Mr. Chairman, that sounds good, but does that also include Number 5 which seemed to be a straightforward line item?

CHAIRMAN NELSON: Yes, it includes Number 5, also, the workshop framework. Yes, I was addressing three, four and five.

MR. AUGUSTINE: That's fine, thank you.

CHAIRMAN NELSON: All right, Doug, why don't we plan on doing that. And, again, thank you for bringing those forward and fleshing them out for us. Do you have more to provide to us as updates or anything else?

DR. GROUT: No, other than read the updates. Also, I believe you've been provided with that document, the data and assessment framework document, so read over that before the next

meeting.

CHAIRMAN NELSON: Okay, thank you. Are there any questions for Doug? Any questions for Doug on any particular point here? All right, Doug, thank you very much, we appreciate it.

The next item on our agenda is Number 13, and that's the motion from the South Atlantic State/Federal Management Board. Bill.

-- Consideration of Motion From the South Atlantic State/Federal Management Board --

MR. WILLIAM COLE: Thank you, Mr. Chairman. Recently 21 federal, state and conservation agency partners have agreed to a memorandum of understanding and have made a very strong commitment to work together for the benefit of aquatic resources throughout the Southeast.

Please be aware that these parties are from Texas to North Carolina, the two marine fisheries commissions and the two federal fishery management councils, as well as both of the federal agencies.

This is a nationally unique coalition of partners that are planning numerous projects from the white water to blue water. This is a perfect complement to our ecosystem-based management philosophies and concepts. Many members of the South Atlantic Board have been leaders in the development of this nationally unique coalition.

On behalf of the South Atlantic Board, I would move to recommend to the Policy Board to authorize the executive director to sign the Southeast Aquatic Resources Partnership Memorandum of Understanding.

CHAIRMAN NELSON: Okay, it's on behalf of the board and it does not need a second. Comments on the motion? **Anyone object to this? Seeing none, it shall be done.** Thank you, Bill.

All right, the next item on the agenda is Number 14, Jack Travelstead.

MR. TRAVELSTEAD: Thank you, Mr. Chairman. In the interest of time, I would ask that this motion be delayed until the next meeting when we can consider it along with the implementation plan linking multi-species assessments to single-species assessments.

The motion had to do with the formation of a multi-species technical committee. That recommendation is also found in the implementation plan along with multiple other recommendations. I think if we could have a more thorough discussion at that time of the entire plan, it would be more appropriate.

CHAIRMAN NELSON: All right, any objections to Jack's recommendation? All right, seeing none. Any other business to come before the ISFMP? Anne.

MS. ANNE LANGE: Thank you, Mr. Chairman. I just have a quick reminder that the National Marine Fisheries Service is holding its biannual state directors meeting April 11 through 13.

It will be in the St. Pete area, and the state directors will be getting more information on that. I just wanted to remind everybody to be sure their calendars are clear for those dates. Thank you.

-- Other Business; Adjourn --

CHAIRMAN NELSON: Thank you, Anne. Any other business? All right, again, we're going to go right into the business meeting. Before we do that, I do want to remind everybody that the sympathy cards for Susan and Wilford are down at the staff's desk. Anyone who hasn't had an opportunity to sign that can do so.

(Whereupon, the meeting adjourned at 1:00 o'clock p.m., November 11, 2004.)

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