

**PROCEEDINGS OF THE  
ATLANTIC STATES MARINE FISHERIES COMMISSION  
STRIPED BASS MANAGEMENT BOARD**

**Loews Annapolis Hotel  
Annapolis, Maryland  
October 31, 2007**

**Board Approved February 4, 2008**

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2. **Approval of Proceedings of August 15, 2007, by Consent.** (Page 1)
3. **Move to adopt Addendum I as revised to be effective immediately.** Under commercial fisheries: Data collection, Bullets Number 2 and Number 3; under discard mortality studies, Bullet Number 1; under technical committee analysis, Bullet Number 1. Under recreational fisheries: data collection, Bullet Number 1; under discard mortality studies, Bullet Number 1; under technical committee analysis, Bullet Number 1. Under for-hire fisheries: data collection, Bullet Number 1; under angler education program, Option 2 worded as follows: “Through the ASMFC, if possible, states are recommended” and then as written in the document on Page 13 (Page 6). Motion by Eric Smith, second by Howard King. Motion carried (Page 6).
4. **Move to approve a non-quota based fishery for Chesapeake Bay Spring Season for 2008.** Maryland regulations to implement open season from April 19<sup>th</sup> to May 13<sup>th</sup>; one-fish creel limit; 28-inch minimum size; and open season from May 16<sup>th</sup> to May 31; two-fish creel limit; 18-inch minimum; and only one of which may be 28 inches or greater (Page 7). Motion by Howard King; second by Vito Calomo. Motion carried (Page 13).
5. **Move to request that the Policy Board forward a recommendation to the National Marine Fisheries Service that it once again reconsiders the reopening of the EEZ to allow the harvest of striped bass under regulations considered appropriate by the Secretary of Commerce** (Page 14). Motion by Vito Calomo; second by Mark. Gibson. Motion withdrawn until the February, 2008 meeting (Page 16).

## ATTENDANCE

### Board Members

Terry Stockwell, ME, proxy for Geo. Lapointe (AA)	Frank Cozzo, PA, proxy for Rep. Schroder (LA)
John Nelson, NH (AA)	Eugene Kray, PA (GA)
Rep. Dennis Abbott, NH (LA)	Leroy Young, PA, proxy for Douglas Austen (AA)
G. Ritchie White, NH (GA)	Roy Miller, DE DFW (AA)
Paul Diodati, MA DMF (AA), Chair	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
William Adler, MA (GA)	Howard King, MD DNR (AA)
Vito Calomo, MA, proxy for Rep. Verga (LA)	Bruno Vasta, MD (GA)
Mark Gibson, RI DFW (AA)	Sen. Richard Colburn, MD (LA)
Gil Pope, RI, proxy for Rep. Naughton (LA)	A.C. Carpenter, PRFC (AA)
Eric Smith, CT DEP (AA)	John Siemien, DC
Dr. Lance Stewart, CT (GA)	Jack Travelstead, VA for Steve Bowman (AA)
James Gilmore, NY (AA)	Catherine Davenport, VA (GA)
Pat Augustine, NY (GA)	Kelly Place, VA, proxy for Sen. Chichester (LA)
Brian Culhane, NY, proxy for Sen. Johnson (LA)	Louis Daniel, NC (AA)
Erling Berg, NJ (GA)	Jimmy Johnson, NC, proxy for Rep. Wainwright (LA)
Dick Herb, NJ, proxy for Asm. Fisher (LA)	Steve Meyers, NOAA
Tom McCloy, NJ, proxy for David Chanda (AA)	Jaime Geiger, USFWS

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

### Ex-Officio Members

Doug Grout, Technical Committee Chair  
Jim Gilford, Advisory Panel Chair

### Staff

Vince O'Shea  
Bob Beal

Nichola Meserve

### Guests

Arnold Leo, East Hampton Div. Com. Fisheries  
Bill Goldsborough, Ches. Bay Foundation  
Tim Brown, USCG  
Brian Keehan, MCBA  
Ed O'Brien, MCBA  
Charles R. Sissen, MCBA  
Will Otto, MSSA  
Craig Breining, MARCO H&F  
Robert Sadler, NMFS  
Eric Schwaab, MD DNR  
John Griffin, MD DNR  
Martin Gary, MD DNR  
Linda Barker, MD DNR  
Alexi Sharov, MD DNR  
Beth Versak, MD DNR  
Carrie Kennedy, MD DNR  
Andrea Hoover, MD DNR

Gina Hunt, MD DNR  
Frank Dawson, MD DNR  
Lynn Fegley, MD DNR  
Cheri Patterson, NJ F&G  
Sean McKeon, NCFA  
Peter Whelan, CCA-NH  
Jeff C. Tinsman, DE F&W  
David Dansberger, SFAC  
Bennie Williams, USFWS  
Peter Himchak, NJ DFW  
Chris Moore, NOAA  
Ron Howey, USFWS  
Wilson Laney, USFWS  
Alex Williams, MD Charterboat Assn.  
Rob O'Reilly, VA MRC  
Kyle Lock, PRFC

## CALL TO ORDER

CHAIRMAN PAUL DIODATI: I welcome you all to the Striped Bass Management Board. This, I believe, is the last meeting of the day. At the end of this meeting, I will be handing over the foul flag to Mark Gibson, who will be chairing this in February. Congratulations, Mark.

## APPROVAL OF AGENDA

If everyone just takes a few minutes to look at the agenda, there are slight changes to it. What has been added is the review of Maryland's Spring Trophy Fishery Proposal, which is reminiscent from a past meeting, I'm sure. We're going to discuss when we get to that agenda item, why it's back before us again today and what actions we will be taking on it.

During the other business, there's been some discussion about the president's executive order that relates to striped and other fisheries in the EEZ, so I will allow a very brief discussion relative to that under other topics. Is there is any other change to this agenda; anyone have any questions about it?

## APPROVAL OF PROCEEDINGS

You should also have the proceedings from our last meeting of August 15<sup>th</sup>. Are there any questions or changes to that? **All right, seeing none, I'll move by consensus to approve both the agenda and the proceedings.**

## PUBLIC COMMENT

There are members of the public here. If you would like to comment on things that are not on this agenda, I'll give you an opportunity to do that now. Seeing none, Dennis.

REPRESENTATIVE DENNIS ABBOTT: Thank you, Paul. Knowing that you do have somewhat of a sense of humor and knowing that the hour is late and that we are behind schedule, and also believing, as I do, that the correct number of committee members to get things done promptly is an odd number of less than three, should a motion to adjourn be in order being that we are now conducting our Striped Bass Management Board business by a different method be in order?

CHAIRMAN DIODATI: I guess I don't follow that, Dennis. You'll have to explain that one. I know I have a sense, but I'm not getting that one.

REPRESENTATIVE ABBOTT: I'm sorry that I wasn't clear enough. With the president doing our business for us, maybe we don't need to have our management board meeting.

CHAIRMAN DIODATI: Okay, I get it now. Again, by consensus, the agenda and the proceedings I'll consider approved by the board. There is no public comment. We are now ready to hear from Nichola to clarify Section 4.1 relative to the planning horizon.

## CLARIFICATION OF INTENT OF SECTION 4.1, PLANNING HORIZON

MS. NICHOLA MESERVE: Thank you, Mr. Chairman. During the annual FMP review, there was some discussion among the plan review team members about Section 4.1, which is the planning horizon in Amendment 6. What it states is that beginning in the third year after the implementation of Amendment 6, any management measures established by the board will be maintained by the states for three years unless a target or threshold is violated.

The PRT was slightly unsure whether this was meant to put a three-year freeze on new amendments and addenda or on state-proposed regulatory changes. At the last meeting, the board tasked staff for looking into the background of Amendment 6. A memo was included on the Briefing CD which covered this.

Basically, what it said was that the planning horizon was a reaction to frequent coast-wide changes which were implemented through addenda to Amendment 5, which themselves were reactions to new assessment information. The process was placing a burden on the states and on the industries, and it did not seem that the planning horizon was intended to prevent any state-proposed regulatory changes which could be achieved through the alternatives management section of the FMP.

So, if the board agrees that the planning horizon is in regard to plan amendments and addenda, it should be noted that we are currently in the three-year freeze, which is 2006, 2007 and 2008, and that no new addenda and amendments should be implemented until 2009. Thank you.

CHAIRMAN DIODATI: Questions for Nichola on the planning horizon? Seeing none, and before I ask Doug to give the technical committee report, Jim Gilford, chair of the advisory panel, is here. Jim, did you want to offer any comments now?

DR. JIM GILFORD: No, as they come up, please.

### **TECHNICAL COMMITTEE UPDATE**

CHAIRMAN DIODATI: Okay. Doug, you're going to review the stock assessment terms of reference?

MR. DOUGLAS GROUT: Yes. Thank you, Mr. Chairman. At your January meeting or your January/February meeting of this year, we brought forward to you some terms of reference because we weren't quite sure which exact models we were going to be using in the peer-reviewed assessment. We gave you sort of a generic form, and you gave conditional approval until we brought these back.

I also brought these terms of reference to you at the August meeting just to remind you. At our September technical committee meeting, we were able to fill in the actual models into these terms of reference. We sent these out right after the technical committee meeting to get some comments on them, basically because by the time you folks were meeting, we were going to be within about a week or two of the submission deadline for the peer review. I got one comment back, and that was concerning potentially adding a term of reference.

A board member suggested a term of reference concerning the tag reporting rate, because that can have a significant effect on our tagging data models. That, as I pointed out to him, is included in how we addressed this Term of Reference Four. We have a sensitivity analysis showing how it will affect it. We used the most conservative tag reporting rate in it, and it should be addressed, since we address it, in the peer review of this assessment.

But what I need from you folks now is a formal adoption of these terms of reference by the board as part of our ASMFC process. I'll take any questions on these. If you'd like me to go through each individually, I'll be glad to, Mr. Chairman.

MR. PATRICK AUGUSTINE: The board has reviewed these before, Mr. Chairman, and I think we agreed through consensus that this is exactly what we wanted the team to put together. I reviewed it and I could not find anything wrong or different than what the board asked for. When ready, I would like to make a motion that we accept the terms of reference.

CHAIRMAN DIODATI: I think we can probably accept these by consensus. Does anyone disagree that we are about to accept these terms of reference? Seeing no disagreement, Doug, these are the terms of

reference approved by the board. We are exactly right on time with our schedule.

We have a Draft Addendum I to Amendment 6 that I think has been around for about years now. I'll first ask Nichola to refresh our memory, and then perhaps some board member here might have a suggestion as to how to move forward. I'll entertain a motion on how to move forward on this.

### **REVISED DRAFT ADDENDUM I**

MS. MESERVE: Thank you. This addendum is being developed to address the Amendment 6 requirement for a bycatch research and monitoring program. The overall objective of that is to improve discard and discard mortality estimates. Here is a very rough timeline. As Paul just mentioned, this started several years ago. It's been through numerous TC reviews, public comment. There has been a comment from the advisory panel, as well.

In October of last year, the board decided to postpone further discussion so that staff could make the document more complete and also add an option for an angler education program. So, rather than go through the whole document, I just wanted to highlight what was different in this version.

On a couple of slides is a rough outline of the document, and what is written in white is new. We have the same introduction that describes the purpose of the addendum. Section 2 breaks the management program into two components, the bycatch program and then the angler education program.

Under the bycatch data collection program, we have our statement of the problem, the background. This now includes some definitions for discard, discard mortality, and dead discards. Next is the status of the stock section, which has the information from the 2005 assessments; then the status of fishery section, which is now updated to have the 2006 information in it

One new section is on the current discard and discard mortality estimate methodologies. First it describes the means by which the technical committee develops recreational and commercial dead discard estimates for the assessment. Second, it describes the discard and dead discard estimates that some states provide in the annual compliance reports. Third, it describes discard estimates in federal waters, of which there was one. It was an estimate of discards in the Northeast Multi-Species Groundfish Fishery during the 2002 fishing year.

There is also now a section on the history of the addendum, since it's quite lengthy. This section references Appendix 2, which was the TC survey of existing state programs and an estimate of the costs for those programs, which the board had tasked the TC with doing in 2006, I believe. It also references Appendix 3, which is a TC estimate of discards from existing National Marine Fisheries Service sea sampling north of Cape Hatteras, which was also a task from the board to the TC.

Then the document gets into the management options for the bycatch data collection program. These are largely the same as they were before. It allows for all, none or some of the bycatch data collection program to be implemented. The program is split into a commercial, recreational and for-hire fishery section for each of those sectors. There are program goals, data collection standards, discard mortality studies and the technical committee analyses that would be conducted.

The second part of the management program is the angler education program. Again, there is a statement of the problem, and it says that ignoring fishing practices shown to reduce post-release mortality is considered contributing to unnecessary waste, and then an outreach program could help to minimize any discard mortality.

There is a background section that provides information on estimates of recreational releases and how an angler education program can be included in the addendum. The management options, there are three of them for this section. First is the status quo. The second and third are that states are either required or recommended to develop and implement an angler education program, for which the main tool would be a website that each agency could link to from its website.

Again, there are appendices that are now in the document that weren't before to help provide some of the history as to this addendum. Here, in case we need to look at them later, are the options laid out for both parts of the program. If the board chooses to adopt any of these options, there is a compliance section which needs to be filled in for dates as to when to implement the program.

There is also a recommendation to the Secretary of Commerce for coordinated action in federal waters. Specifically, it reads that the commission recommends that NOAA Fisheries ensure observer coverage at a level and distribution adequate to

estimate the magnitude of striped bass discarding in the EEZ, as well as develop and implement additional questions for the Marine Recreational Fishery Survey to collect information on fishing practices and gear and terminal tackle used by all types of shore-based and boat-based anglers. Are there any questions on the program?

CHAIRMAN DIODATI: I don't see any questions, but I would love a motion that either accepts portions of this or gives us some direction on where you would like to go. Eric.

MR. ERIC SMITH: Thank you, Mr. Chairman. You're quite right, this has been around 2005, and it has been complicated because we were trying to get to the right place with some competing needs here, so it's been redrafted a few times. I am going to offer a strawman approach to follow the way Nichola has organized the document.

And if you're referring to the document itself as opposed to the slides, at the top of Page 10 – actually it starts with one line on the bottom of Page 9 – there are four different way of dealing with it, either status quo, voluntary adoption of the entire program, mandatory adoption of some elements, Option 4 is mandatory adopting of the entire program.

I am going to refer – starting at the top of Page 11, which is the commercial section of this, I've asked Brad to put options and what bullets down because that's how they're presented in the document. But, essentially, if you want to get the Reader's Digest version, this is going to be a strategy that continues the things that are now ongoing in the collection of bycatch data in the striped fish fishery and does not mandate anything new. Just so you know, that's the tone of the recommendation, and then I'll go into a little more detail. There would be nine, essentially, required provisions, if you will.

Under commercial fisheries, which is Item Number 1 at the top of Page 10. It's commercial fisheries; then there is a subsection called "data collection", and that's what is number one up there. Bullet Number 2 is collection of data elements consistent with ACCSP standards. By that I would mean if a state decides to do sea sampling, at-sea coverage, the collection of their data elements should be consistent with ACCSP standards. That's Bullet Number 2.

Bullet Number 3 is again implied if a state does the at-sea observer coverage, it should be coordinated with the National Marine Fisheries Service to ensure coverage in federal waters. Okay, under discard

mortality studies, which is the subsection immediately below in the document, Bullet Number 1 is review existing studies to determine what information has already been collected. That's just to acknowledge that would be useful bit of information to have.

Under technical committee analysis, Bullet Number 1 is analyze newly collected at-sea observer data to determine if any discarding hot spots can be reliably identified; again, presumptively, that as new data become available, we certainly want to have it analyzed. Those are the so-called bullets that would be required measures under the amendment.

In the next section, which is recreational fisheries, following the same logic under data collection, Bullet Number 1 is continue collecting quantitative data on the bycatch of finfish species as reported by interviewed fishermen through existing recreational intercept surveys, and, again, by the ACCSP standard is how the document describes. Okay, so that would be required, to continue what is being done now.

Under discard mortality studies, Bullet Number 1 is to review existing studies for various species gears to develop an estimate – well, that sentence got ended as a dangling thought, but it's essentially to review existing studies. Under technical committee analysis, Bullet Number 1 is the technical committee should develop estimates for the proportion of discards based on things like temperature and salinity.

In the third group, which is the for-hire fisheries, under data collection, Bullet Number 1 is to continue collecting quantitative data on the bycatch of finfish species as reported by interviewed fishermen through existing recreational intercept surveys.

Those are the three fishery-specific sets of bullets or concepts that the motion I would be approved in Addendum I. There is a second section which is titled "Angler Education Program", and you have to drop down to the middle of Page 13 in the document to find that. The choices are states are either recommended to develop and implement an angler education program. Option 3 is states are required to develop and implement an angler education program.

I would include in this motion Option 2, which is states are recommended to develop and implement an angler education program. That is a very complicated motion. I tried to simplify it by reading and by having Brad put the bullets up there. I'll be happy to go back over it if it's necessary, but if you have the document in front of you, you can draw a circle

around which ones those options were. **That would be my motion, Mr. Chairman.**

CHAIRMAN DIODATI: A motion by Mr. Smith on the table; is there a second? Mr. King. Discussion on this motion? Mr. Augustine.

MR. AUGUSTINE: Mr. Chairman, I was just wondering if there are specific questions of some of the options put together in the first part of it, whether it may be easier to address them on a divided-motion basis. I am not sure. I went through it and there were some questions that were raised for some of the options that Mr. Smith put up there. I wonder if you might get a consensus from the board as to whether or not it would be appropriate to separate. If not, we'll just go in full.

CHAIRMAN DIODATI: I prefer to ask the questions and then we'll get a sense of how complicated it is for some.

MR. AUGUSTINE: Okay, and the final one on the education, I'm wondering if Mr. Smith was suggesting that each individual state develop – that's how it came across – develop an education tool, if you will, for their anglers as opposed to ASMFC supplying a common education tool for all states interested. Would Mr. Smith address that, Mr. Chairman?

MR. SMITH: Thank you. I was only feeding off of the way the options are written in the document. Option 2, literally, the key sentence is the first one. It says, "States are recommended to develop and implement an angler education program." It goes on to talk about a website and so forth, but it does not talk about the commission developing a composite. It talks about states doing this.

CHAIRMAN DIODATI: Let me refer to the commission as to whether or not they're in the position to coordinate a central program for education. I think there are already a lot of existing educational programs within the states, and if the commission could somehow act as a coordinating body, maybe we can put together a single program that deals specifically with striped bass, with your assistance.

MR. AUGUSTINE: To that point, Mr. Chairman, then in that final point on angler education, could we change the language in the document so it would reflect that we would ask staff to review the existing documentation that is out there and come up with a

common piece that may fit all? I don't care what language you use, but that's the message.

CHAIRMAN DIODATI: I'll have to go back to the maker of the motion.

MR. SMITH: If you have the document in front of you and you read after Option 2, I would add "Through the ASMFC, if possible, states are recommended to develop".

CHAIRMAN DIODATI: Any other questions? Discussion on this? I'm going to call the question. Do we need to caucus? One-minute caucus.

(Whereupon, a caucus was held.)

CHAIRMAN DIODATI: Before I ask for a vote, I'm going to ask Jim to give an advisory panel comment on this.

DR. GILFORD: The advisory panel has been concerned about the discard mortality during the discussions on Amendment 6 and has continued that concern right along. Originally, the advisory panel was in favor of the mandatory data collection. They have essentially maintained that position up until this point in time.

Page 37 of the document that was handed out for people to see is an original from the advisory panel with respect to the data collection program. They have been urging the management board to move forward with that program as quickly as possible. Nichola set out the document that the management board has seen, so that all the advisory panel members saw it. They were invited to present their comments either by e-mail or by phone.

Three of the advisory panel members responded; not a very good response at this point. But, there is no indication that those who did respond have made any basic change in the desire to see the data collection program go on. The preference generally seems to be for a mandatory program; yet the recognition of the funding problems with carrying that kind of program out.

So the best I can say from the advisory panel is they're in favor of a program. Their preference would be to see mandatory provisions in it, and yet they recognize the problems that the management board faces in your doing everything in mandatory fashion. Thank you.

MR. NELSON: Clarification, Mr. Chairman, thank you. The motion is to adopt as a framework or is it to adopt and implement Addendum I as modified?

MR. SMITH: This is actually the final action on Addendum I. It doesn't call for anything else other than if it passes, the states continue to do what they're doing and work with the commission staff to develop an education program.

MR. NELSON: Have we adopted Addendum I already?

CHAIRMAN DIODATI: No, I wish we had.

MR. NELSON: Okay, so I think the motion should be "move to adopt Addendum I as modified".

CHAIRMAN DIODATI: I think that is the motion.

MR. NELSON: To adopt as a framework?

CHAIRMAN DIODATI: Will the maker of the motion consider modifying it?

MR. NELSON: Yes, that's a problem of the fact that I didn't communicate a preamble to Brad and he tried to read my mind and picked the wrong word out of my mind. I don't blame him because I don't know what words are rolling around in there either. The fact is it is to adopt Addendum I as revised, exactly as John says it. The question now is whether Joe is going to need that read into the record. I am prepared for him Mr. Chairman.

CHAIRMAN DIODATI: And would you also be prepared to include that this will be effective immediately because there is no timeframe connected to this addendum.

MR. SMITH: Sure.

MR. AUGUSTINE: Point of information, Mr. Chairman, on the advisory panel report. Well, according to what Mr. Smith has indicated, under discard mortality studies, Bullet 1, that reads, "Review existing studies to determine what information has already been collected"; is that true? I think he says, "Option 1".

No, he says Bullet Number 1, and Bullet Number 1 in my document, unless I'm looking at the wrong document says, "Review existing studies to determine what information has already been collected"; whereas, in listening to Dr. Gilford and his panel recommendation three years ago, and some

concern voiced about creating a mandatory reporting of some sort, it would seem to me that Bullet Number 2 would be more appropriate. Am I in the right document?

CHAIRMAN DIODATI: You are, but I think that Mr. Smith's motion is dealing with the reality of funding and what is available for the states to work with right now and the fact that a benchmark stock assessment is due out by our next meeting.

MR. AUGUSTINE: Thank you, Mr. Chairman. I was just concerned the moment that Dr. Gilford mentioned that the advisory panel still believed we need to go that way, that that point is not lost forever.

CHAIRMAN DIODATI: I think we all recognize that. Are we ready to vote?

**MR. SMITH: I move to adopt Addendum I as revised to be effective immediately. Under commercial fisheries: Data collection, Bullets Number 2 and Number 3; under discard mortality studies, Bullet Number 1; under technical committee analysis, Bullet Number 1.**

**Under recreational fisheries: data collection, Bullet Number 1; under discard mortality studies, Bullet Number 1; under technical committee analysis, Bullet Number 1.**

**Under for-hire fisheries: data collection, Bullet Number 1; under angler education program, Option 2 worded as follows: "Through the ASMFC, if possible, states are recommended" and then as written in the document on Page 13.**

CHAIRMAN DIODATI: Thank you, Eric. Before we take the vote, is there anyone in the audience? We've already gone to public hearing on this addendum, but there is anyone that wants to comment on this motion, we'll welcome that at this time. Dr. Geiger.

DR. JAIME GEIGER: Thank you, Mr. Chairman. As I understand it, the original document went through public hearing.

CHAIRMAN DIODATI: Yes, it did.

DR. GEIGER: Okay, we received very few comments on that public hearing document. We have now made relatively substantial changes to that document.

CHAIRMAN DIODATI: Well, no, I think they're significant.

DR. GEIGER: Modifications of the original document.

CHAIRMAN DIODATI: We're adopting something that's less restrictive.

DR. GEIGER: Okay, and now we're seeking approval of that document without an opportunity again to go out to public comment. That's what I understand we're doing. Thank you.

CHAIRMAN DIODATI: Which is what the process allows.

DR. GEIGER: I understand, thank you.

CHAIRMAN DIODATI: All in favor of the motion, raise your hand; opposed, same sign; abstentions; null votes. **The motion passes 15 in approval.** Now, Mr. King, I think you want to present Maryland's proposal. I will remind everyone that this is one that has been with us once or twice before. Although we're going to listen to what Mr. King proposes, I don't want to be the one to encourage repeat business to the board, because I'll be the first one to do that, you know. But, Howard, why don't you go ahead and make your presentation.

### **MARYLAND SPRING TROPHY FISHERY PROPOSAL**

Mr. HOWARD KING, III: Thank you, Mr. Chairman. You know, I've never jumped out of an airplane, but I think I know how it feels. I wanted to thank the chairman and thank the commission and the commissioners. I wanted to explain the timeliness of this. Maryland, having gone through what we went through last spring with our trophy season, has done a lot of additional work.

One of the pieces of information we were to get to bring to the board was our own creel survey, a supplemental survey to MRFSS, and we did that. We spent \$70,000 for additional telephone surveys. Our biologists conducted their own intercept survey. That was a little late coming to us and the information is marginally useful and I may insert it later on. We also had to hold a series of stakeholder meetings to ask our stakeholders what they needed for the spring fishery in future years.

So I apologize for the relatively late notice of bringing this to the commission, but we were bound

to our own schedule with the stakeholders. I just wanted to emphasize that a Maryland Proposal for the spring fishery is one of maintenance. It's not one of expansion. We want to maintain what we have. We've had a basic set of regulations in place since 2003, which were based on a quota going back to the nineties, but in general we've had similar regulations in place since 2003.

The quota was based on the VPA estimate and expanded for the increased population size based on an original 30,000 fish floor back in 1996. You would hope that fishery science would be exact enough that an expanding quota in increasing quota would play out with an increasing harvest based exactly on the population size increase, but that hasn't happened.

In Maryland we found that with increasing population size, particularly the age eight and older fish, that we have an abundance of that age and size class in the bay, and that our harvest have varied more depending on availability of fish, which has been relatively constant, they're abundant, and weather.

So, for instance, in 2005 and 2006 we harvested approximately the same number of striped bass each of those two springs with consistent regulations, and that number was between 60 and 70,000 fish, but we've constantly been battling a quota that was based on a VPA estimate of population size expanded from an original floor of 30,000, and it just hasn't worked.

Our intent, again, has been to find a comfort level with the commissioners where we could have a set set of regulations and based on availability of fish, which we're beginning to be able to predict pretty and weather dependent, we would expect to harvest a number and pounds of striped bass within a certain range.

We have been confounded with trying to play catch-up with the overages of past years and seesawing our number of fishing days and our minimum size and slot limits to try to play catch-up to satisfy the overage. Now, last year we went to the technical committee, designed a season to have a target of not less than 30,000 fish. The technical committee approved our design, and in fact made it somewhat more restrictive because they thought the availability of fish would be even greater.

So, at the end of the day, when the season was over, we had an estimated 36,000 fish, which to me was pretty good given the preciseness of fishery science.

I will insert our creel survey information now. For instance, the MRFSS estimated that the private boat anglers caught 26,000 fish.

Because of the way our questions were asked and how the respondents answered, the best we could do was come up with a range 13 to 33,000 fish. So, the MRFSS estimate of 26,000 for private boat anglers in Maryland last year was probably an okay answer. It may not be precise, but it's in the ballpark.

So, my objective here today is to propose a motion that we will use as a basis for discussion to try to reach some agreement on what the Maryland Spring Fishery can be in the future, and hopefully one that gives everyone a level of comfort that we're not expanding, we're just trying to maintain, and that we would keep that fishery within bounds. And with that, Nichola, can we get that motion up there?

CHAIRMAN DIODATI: While we're waiting, Howard, when the motion comes up, could you talk a little bit about how this motion is different than what the board has seen already. And if it different, what about the technical committee review? I know what they've already reviewed.

MR. KING: Yes, certainly. Well, this is entirely different from last year's and has some similarities to prior years. In this case Maryland is proposing to permanently reduce the number of fishing days for our spring trophy season. In the prime part of the season, which runs from late April through May 15<sup>th</sup>, we're proposing to incrementally reduce the number of fishing days by two, and that is not to satisfy an overage of a quota for one year.

This would be something we would implement on a permanent basis and maintain these regulations until the stock assessment reviews would ever indicate that corrective action needed to taken for the coastal migratory stock, in which case Maryland would then further restrict their regulations.

**But, I would read the motion as move to approve the non-quota based fishery for Chesapeake Bay Spring Season beginning in 2008 and until a peer-reviewed assessment of the striped bass stock determines that corrective action is warranted for the coastal migratory striped bass population. Maryland regulations to implement open season from the third Saturday of April to May 13, one-fish creel, 28-inch minimum size; and open season from May 16 to May 31, two-fish creel, 18-inch minimum, and only one of which may be 28 inches or greater; May 14 and 15 would be closed to the**

**fishery and it would be a transition from that early spring fishery when the larger fish are most abundant to the late May and then June when the larger fish are less abundant. That would be my proposed motion.**

CHAIRMAN DIODATI: Does everyone understand how this differs from what you've already voted on? Do you want to try to explain that a little bit better, Howard, before I take a second on it?

MR. KING: It would be a reduced number of fishing days for our spring fishery.

CHAIRMAN DIODATI: Do you have a question about this, Pat?

MR. AUGUSTINE: Yes, I do. Does a motion that was given to the board in one year for one season definitely require a two-thirds vote to bring it back, because it is a different year and may have a different effect. Plus, to the second part of that, my concern is has the technical committee at least had a copy of this to get a sense for whether it's approvable or not?

Then, the third question is, is this an attempt by the state to maybe address the concern that the stock of striped bass in Chesapeake Bay is growing much greater than anticipated and is having an additional negative effect on menhaden? I'm not sure all those can be answered, but there is a three-part question here.

We heard in our report yesterday that the menhaden are under quite a lot of distress. In Howard's presentation he indicated that the stock has grown proportionately larger of a period of time and that they have a relatively higher level or number of eight-year-old fish. So I don't know how to address it, but I think we need those questions at least talked about or looked at before we move forward.

CHAIRMAN DIODATI: Well, I think I can answer some of those questions. I'm trying to determine myself how different this proposal is from what the board has already acted on. If it is different, then it won't require a two-thirds vote. It will be a majority of the board. Then I would ask Doug if the technical committee has reviewed it or does their opinion about this motion still stand. All the other parts of your questions, I'll ask Howard to address.

MR. KING: All right, I would reiterate that there are pieces of this that have been before the board and the technical committee in the past. The technical committee has reviewed a spring striped bass season

with a 28-inch minimum through May 15<sup>th</sup> and has also reviewed a May 16<sup>th</sup> to May 31<sup>st</sup> season, 18-inch minimum, one fish of which may be over 28 inches.

We have not ever proposed a season with this few number of fishing days. We're trying to find a level that the commission can be comfortable that we're trying to be conservative, and so we're reducing the number of fishing days. Having said that, let me try to answer your questions, Pat, if you would repeat them.

MR. AUGUSTINE: Well, I was concerned about your concern that there are a greater number of larger and older fish within the body – or residing here year after year. The question is has that increased significantly to have a detrimental effect on the menhaden that are available, as we heard in the report yesterday that they appear to be under duress.

MR. KING: I really couldn't answer that in a technically competent way. Certainly, striped bass feed on menhaden. We had a huge '93 and '96 year class. We've had a large 2001 and 2003 year class; above average year classes nine of the last twelve years. I would expect that the striped bass are preying heavily on menhaden.

MR. AUGUSTINE: A follow-on, Mr. Chairman. That was the answer I was looking for. It just seems to me that all the indications are that the striped bass is doing extremely well and the menhaden are suffering severely. I see no reason not to support this, and I would like to get comments from other board members before we vote.

CHAIRMAN DIODATI: Okay, we haven't gotten a second yet. Okay, why don't we hold on, and I'll call for a second in about two minutes. I just want to hear from Doug relative to the technical committee's review of this and what your reaction is, Doug.

MR. GROUT: Concerning the proposal to eliminate the quota, yes, we have seen that before, and our comments have been this is a policy issue; that the quota is not really constraining the fishery; the regulations are constraining it; and the effect on fishing mortality is very minor, less than 0.01. Those are our comments.

Now, as far as the exact proposal here, this is different from last year as far as the regulation. Yes, we have reviewed in 2005, I believe it was, a proposal with the 28-inch minimum size, different season. That was to try and – I believe our comments

back then – it’s a long time ago – were reflected towards whether this would stay within the quota.

CHAIRMAN DIODATI: So your impression is that it is different in terms of is it somewhat more restrictive than what you’ve reviewed the last time, fewer days?

MR. GROUT: More restrictive than 2005 or last year?

CHAIRMAN DIODATI: Last year?

MR. GROUT: That would have to be brought before the technical committee because, remember, last they had a prohibitive slot above 28 inches.

CHAIRMAN DIODATI: Okay, I’ll take a second on this motion at this point. Mr. Calomo offers the second. I am going to go to Dennis Abbott, who had his hand up earlier, and then I’ll ask any members of the Maryland delegation, either at the table or in the audience, that might want to support this to go ahead and have an opportunity to speak on it.

REPRESENTATIVE ABBOTT: Thank you, Mr. Chairman. Regarding the season proposed by the state of Maryland, in their proposal they say opening on the third Saturday of April running to May 13<sup>th</sup> and then May 16<sup>th</sup> to May 31<sup>st</sup>, and they go on to say that they’re going to reduce the season two days.

But, if you look at it carefully, if you begin on the third of Saturday, you can be beginning the season on the 15<sup>th</sup> of April or you could be beginning the season on the 21<sup>st</sup> of April. You could have a seasonal difference of six days, and I find that troublesome. I think Mr. Vasta told me that the fishing pressure is about the same day to day to day regardless of whether it’s a weekend or a weekday. I would be more favorable towards the motion if it contained a specific date for the initial opening of the season.

CHAIRMAN DIODATI: Howard, are you willing to address or modify that motion?

MR. KING: Yes, I only included the third Saturday of April because that has been the case, but I would **be willing to change that to open season from April 19<sup>th</sup> to May 13<sup>th</sup>**, if that is agreeable with Representative Abbott.

CHAIRMAN DIODATI: Anyone else in your delegation want to speak on this issue? If not, I will take comment from other members of the board. Ritchie and then John.

MR. G. RITCHIE WHITE: Thank you, Mr. Chairman. I guess I would ask the – I think the advisory panel looked at this originally, but hasn’t had a take at this one, so I guess I would just ask Jim what the advisory panel’s original input was. I guess a question, you know, is this something that should go back to the technical committee and advisory panel again? That would just be a question.

DR. GILFORD: Ritchie, I don’t think it’s appropriate for me to try to analyze what the advisory panel would suggest on this. They have not had a chance to see this proposal. In the past there have been advisory panel members who have been disturbed by it and would not support it. If I go any further, I am starting to inject my own sense of what I know about advisory panels and how our advisory panel and how they react.

It’s changed considerably but it seems to me that a couple of things that bothered them previously was the whole question of process, the concern about overfishing, things of this type. But, at this point in time I wouldn’t suspect that there would be a lot of opposition from the advisory panel, but on the other hand that’s a guess on my part.

I think that many of the concerns that the advisory panel members have had in the past may very well be dispelled by the process of what happened in the fishery this spring. I think it does away with some of those concerns about a large over-harvest and things of this type. But those are guesses on my part.

MR. JOHN I. NELSON, JR.: Thanks, Mr. Chairman. At this point I don’t know if this is fine or not, and it may very well be perfectly okay. My sense, from the discussion that has taken place, is that the technical committee has looked at this in pieces before, and there might be some new aspect to it, not having a slot restriction or something like that.

So that brings us back really to process, and I think it would be appropriate – since we put into our system a process for review so that the boards were not going to be making decisions unilaterally, they’re supposed to be getting input from the advisors and from the technical committee.

I think that this is a good example of this is exactly what should happen. If the technical committee and advisors come back and tell us that this is the greatest thing since our last meal in Maryland, then, great, no problem at all. I think the only thing that we need to wrestle with today, if we can, or maybe it’s in

February, is whether or not the non-quota based activity, which should be a policy call, should be discussed by this board.

As I understand it, we're dealing with a quote-based right now, and going to a non-quota based is something that does that have any ramifications that need to be aired. That's something that we probably could discuss, but I would recommend that we just go through the process. We would deal with it in February, which I think would still be plenty of time for Maryland to be able to implement any regulations for their season. At least I hope that would be the case. I think then our process would be done the way it's supposed to be done, Mr. Chairman.

CHAIRMAN DIODATI: And I am sure that Mr. King recognizes that the prospects for this motion moving forward positively would be improved if it came back in February, but you're going to have to decide how you want to proceed on that. Go ahead, Howard.

MR. KING: Yes, I'm under the impression that the proposal, absent the elimination of the two days, was discussed and reviewed at the technical committee, and so this would be more restrictive than that proposal they reviewed. That's my impression.

CHAIRMAN DIODATI: Go ahead, Nichola, did you want to add something?

MS. MESERVE: Yes, in the packet of material that was handed out before the Policy Board meeting that actually had the proposal, the last bit of that is the previous TC and AP comment provided on this proposal with the May 15<sup>th</sup> ending Part 1 of the season, not May 13<sup>th</sup>. So, just to clarify that the TC and AP did see it earlier this year, just slightly revised regulations.

CHAIRMAN DIODATI: Howard, how many fish do you anticipate being harvested in this fishery during that time? Do you have experience –

MR. KING: Under this proposal?

CHAIRMAN DIODATI: Yes.

MR. KING: A point estimate would be probably around 62,000 fish.

CHAIRMAN DIODATI: And in earlier discussions, I seem to recall that you were interested in making this a one-year proposal for the coming year, to be adjusted as needed, somewhat as an experimental

fishery. This is more open-ended the way it's described.

MR. KING: **If that would provide the necessary level of comfort, yes, it could be for one year or for 2008.**

CHAIRMAN DIODATI: Okay, I'll go to Eric.

MR. SMITH: Thank you, Mr. Chairman. I can support this. I can think of a couple of reasons why I would support this. Because I may not have another chance at the mike, I'll offer them, but then I also have the same question that you had for Maryland, and I'll ask that at the end. I just skimmed the – I thank Nichola for pointing that out to us.

I just skimmed the technical committee report; and picking up on the other things that have been said previously here, it's a very similar proposal. It's a little bit more conservative. The technical committee said, A, it's a policy call; and B, it's not likely to have much effect on the fishing mortality rate. So, to me, that's very persuasive in the sense of if no harm is done, a state should be allowed to try and manage within its jurisdiction in the way it thinks appropriate.

I would want that same consideration, frankly, if the roles were reversed. So, I find it supportable on that point. The other question is this is a new proposal for a new year, and there was just a little bit of an undercurrent about whether this required two-thirds or not. I don't happen to think it does.

I think when a state brings a proposal forward for a way to manage its fishery in a new year, that's a new issue subject to a majority vote. That's my view, so I can find it supportable. But I also am curious whether, if people are discomforted by not having another TC review and an advisory panel review, if the Maryland rulemaking process allows them to start a process after our February meeting and get it done in time for mid-April. That's pretty close; that's six weeks, and most states I think would say that's a problem; and if it is a problem for them, then I would rather vote for it today, up or down.

CHAIRMAN DIODATI: At this point I am considering this requiring a majority vote of the board unless staff has a different opinion. It's somewhat of a judgment call; and since Maryland is the host state –

MR. KING: We've already had dinner.

CHAIRMAN DIODATI: And as much as I'm enjoying my stay, I do want to leave here. Jaime.

DR. GEIGER: Thank you, Mr. Chairman. Again, I think John Nelson and Eric made some very good points that, certainly, I agree with. I was under the impression that this proposal was submitted to the technical committee for review, and now I understand that apparently it was not. Certainly, I appreciate, Howard, your willingness to do what it takes to get more comfort with this board with this proposal.

I am somewhat concerned about not going through the process. I find myself leaning towards agreeing with your proposal, but I also am firmly convinced that we need to follow through on the process. I am almost willing to consider a tentative approval pending technical committee review and acceptance. Thank you, Mr. Chairman.

CHAIRMAN DIODATI: I am going to go to Doug first.

MR. GROUT: I want to clarify and apologize. Both Howard and Nichola made a statement that I had forgotten about that the original proposal that we looked at last year, back in January, was for 28 inches, no quota, and no seasons. It was my mistake. I misspoke then. I was thinking about the revised proposal that they brought forward, which is what was actually ended up being implemented. So, we did review this proposal, with the exception of the two days out in May that they're proposing, last year.

CHAIRMAN DIODATI: Does that cover your thought, Howard? I'm going to take a comment from Mark, Gil, and then Ritchie, and then I'd like to take a couple of comments from the audience and then call the question. Before I do that, if you want to think about perhaps modifying this to make it for the 2008 season rather than having some perpetuity to it, I think that might help your motion.

MR. KING: I definitely will do that. Is it all right to wait until we hear the rest of the comments?

CHAIRMAN DIODATI: Yes. Mark.

MR. MARK GIBSON: Thank you, Paul. I was beginning to be swayed by John's comments about getting it to the technical committee and dealing with it in February and not that I want to deal with it as an incoming new chairman. I am concerned about Maryland's ability to put something into a rule soon enough.

But to Doug and just to follow up, this is an important question, because I think, clearly, they're proposing shifting from a quota-based system to a day's fishing limitation and bag limit limitation with the likelihood that the catch will grow proportionately to stock abundance, presuming that the number of fishing trips being made are roughly the same, and at some point the possession limit will probably become saturating on that.

But, the technical committee doesn't have – just to state for the record – doesn't have mortality concerns about shifting from a quota-based system to essentially an indirect input control type system on mortality rates.

MR. GROUT: What our comments were was essentially that the effect on mortality under the current system has been relatively small, and that what has been constraining this fishery has not been the quota but the seasons and the bag limits. Is that clear; does that answer your question?

MR. GIL POPE: Thank you, Mr. Chairman. Personally I have a little bit of problem with the way it's worded. The move to approve a non-quota based fishery for the Chesapeake Bay; non-quota to me – a lot of people love that term, other people find it to be somewhat scary and what could possibly happen.

The first time this spring trophy fishery opened, it was at 25,000 fish, but we were worried there for a while by Wave 3 that it was going to be over 120,000 fish. It didn't quite end up to be that high, but it was a pretty high figure. Number two, I am assuming that the spring season means spring trophy season and not just a spring season, that there is the trophy season as it was originally started.

Number three, until a peer-reviewed assessment of the striped bass stock determines that corrective action is warranted, to me, anything that is going to be peer reviewed is going to take a long period of time. Anytime you put something into law, then it doesn't matter what kind of law it is, it seems like that it's almost impossible to get undone.

So, it seems to me that this puts it really back on – if you approve this, it's going to put it back on the commission to make sure that this action is really a bad action or it needs to be warranted. To me, it just puts too much onus on the process and makes it too long of a period of time for any corrective action to be done. Thank you.

MR. R. WHITE: I want to ask Howard, will he do the additional survey work this coming year as he did this last year?

MR. KING: The answer is, yes, we will do more of it, actually. And if I may respond to Gil, if this is for 2008 only, which I have agreed we'll change, then I think your concern evaporates because we'll be back next year having, I think, proven our case that we're responsible and the harvest is within bounds.

CHAIRMAN DIODATI: So you're going to make that change, Howard?

MR. KING: Yes, unless the chairman would like me to wait for additional comments?

CHAIRMAN DIODATI: I think it would be best if you make the change now and we'll move on unless we're going to hear something different from the board. Roy.

MR. ROY MILLER: Mr. Chairman, it struck me that what Maryland is doing is switching from a quota-based management in the spring to a fishery like the rest of the coastal states have. Specifically, I wonder if this proposal – this may be an unanswerable question, but I'm wondering if this proposal is conservationally equivalent to two at 28 inches for a year-round season.

I just don't know how to rectify in my mind switching part of the year to a 28-inch equivalent and then factor in and then add to that the Chesapeake Bay harvest for the remainder of the warmer months of the year. I am just having difficulty determining in my mind whether this represents a conservationally equivalent proposal. And if it doesn't, is it even allowable without an addendum? Thank you.

CHAIRMAN DIODATI: You know, I sense that some people around the room are having some difficulty with the process on this issue. Some are having difficulty with not knowing the true biological or conservation impacts. Some are even concerned about scary words. I think we've heard enough on the issue for us to discuss this with our delegations when we caucus, and we'll get the vote one way or the other on it, up or down.

With that, I am going to go to the audience. I'll take just one or two people. I know that we've discussed this in the past with the members of the audience, and I know that it's been mostly a favorable comment that we have received.

MR. BILL WINDLEY: Thank you, Mr. Chairman, I didn't mean to be presumptuous. I'm Bill Windley. I'm a sportfish advisory commissioner for the state of Maryland, and I've been on the board of directors for the Maryland Saltwater Sport Fishermen for 14 years, 10 of which I've been president.

One thing that has been very obvious to all us in Maryland is during that 14 years the focus of Maryland fishermen has become more and more on conservation. Our guys are not the same guys. They don't want the same things, and they are afraid of doing anything that is even marginal today for the sake of one more fish.

We don't take the number of fish we're allowed to in our regular season because when everybody was worried about the age eight and older fish a few years ago, our solution was to take two at 18 but only one of which could be over 28. We've never gone back from that. That's been our summer season where we catch the bulk of our fish.

So, that being said, the department has answered our questions much to everyone's satisfaction. We have actually sent them back, as a commission and from a public hearing point of view, to come back and show us, you know, some more definite data. We're convinced that looking at the long-term history of this fishery that has had a tremendous look in the harvest levels, that we're looking at something that is going to be below what we might have as a quota for many years and above a little bit on some years, but in the overall will make little or no change.

We've taken five years at the commission level to become satisfied with that, before the department was able to get our approval to bring this forward to you. So, I'd just like to say that the current policy that we're trying to live with and shooting at a moving target every year, the regulation is all over board on the angler – you know, this year it was a slot.

It's different every year, what length, and that makes both a fishing nightmare for the angler and it makes – you know, it makes it really hard for the Natural Resources Police to boot. This method is not working for us in Maryland, and we're looking for a good answer. We're not looking to take anymore fish. This isn't a grab. I'm convinced, from a conservationist's point of view, that the state has, you know, done its due process at that level and has met the burden of proof. Thank you.

CHAIRMAN DIODATI: Thank you, Bill. We'll take one more very short comment. Seeing none, Ritchie, you have a question?

MR. R. WHITE: Yes, a question. Let's say that coastwide we had to reduce mortality and we went to one fish at 28 inches, let's say, how would that be interpolated into this season – how would you figure out how to cut back?

CHAIRMAN DIODATI: My guess is that we may have information about that sort of thing in February. Whether it's imminent, I don't think that it is, but at that point – this is only a 2008 proposal, so I'm assuming that we're not going to get that message in the 2008 assessment that we're going to receive in February.

So, it would be in 2009 or later years, and I think we'd have an opportunity – that's what I talked about yesterday at a meeting, that it might be time to consider Addendum II to Amendment 6 that deals strictly with allocation issues, in which case Maryland's fishery will start at the same starting point as all the others, and I think we look at them in that way. I don't know if I answered your question.

MR. R. WHITE: And I was not suggesting that we're headed there at all –

CHAIRMAN DIODATI: Yes, I know that.

MR. R. WHITE: -- but I guess my question is, is that something – is this unique in our system? Do we have any other season like this, that if we have to do a cutback or if we expanded; how is that interpolated into a situation like this?

CHAIRMAN DIODATI: Do you mean how do you cut back from this?

MR. R. WHITE: Yes.

MR. KING: It would be a percent reduction up and down the coast, and we would cut back a percentage probably in number of fishing days that would result in that percent reduction.

CHAIRMAN DIODATI: Okay, let's a two- or three-minute caucus. We're running a little bit, but we started late.

(Whereupon, a caucus was held.)

CHAIRMAN DIODATI: All right, board members, please take your seats. I'll ask Howard to read the motion for the record.

MR. KING: Thank you, Mr. Chairman. **Move to approve a non-quota based fishery for Chesapeake Bay Spring Season for 2008. Maryland regulations to implement open season from April 19<sup>th</sup> to May 13<sup>th</sup>; one-fish creel limit; 28-inch minimum size; and open season from May 16<sup>th</sup> to May 31; two-fish creel limit; 18-inch minimum; and only one of which may be 28 inches or greater.**

CHAIRMAN DIODATI: Okay, all in favor, please raise your hand; opposed, like sign; abstentions; null votes. **The motion passes 13, 2 abstentions, 1 null.** Thank you.

MR. KING: I would like to thank the commission.

CHAIRMAN DIODATI: And I'll just repeat, as I mentioned or suggested earlier, that this does not open our process up to repeat visits to this board or others. I'm sure that staff would be able to provide you with the proper procedures, rules and regulations and charter and so forth on how we handle these types of motions.

#### **PLAN REVIEW TEAM UPDATE: JUVENILE ABUNDANCE INDICES**

There are still a couple of important items of business that we'd like to cover today. Nichola is going to give an update on the Juvenile Abundance Indices, and then we're going to take other business, which might also result in an action item. I'm just going to give you a hint of that.

MS. MESERVE: Thank you, Mr. Chairman. A memo was included in the briefing materials to update the board on the 2006 Juvenile Abundance Indices. Normally the FMP review covers this issue, but the TC was unable to conduct its review before that document was written. The TC met in September and looked at the indices and found that the Hudson River Juvenile Indices in 2004, 2005 and in 2006 were below 75 percent of all the other values in the dataset.

According to the definition in Amendment 6, this classifies that index as showing recruitment failure. Normally what would also happen is the TC would provide a recommendation to the board as to how to respond to an instance of recruitment failure. However, the TC was focused on approving a stock

assessment for a peer-review so they didn't allocate any time to deal with this issue.

So, what the memo states is that the PRT is recommending or suggesting to the board that it postpone asking the TC for a recommendation about dealing with this issue until after they have the assessment peer reviewed so that they will have the most up-to-date stock information. Additionally, three pieces of information were provided from the state of New York.

This is that the survey method has changed in the last few years and that New York does not know what effect this might be having on the results, and they are planning to look into this issue. The second issue is that the survey naturally shows a fair amount of variation, and it might be less of an indicator of abundance now due to regime shifts in the ecosystem as compared to when the survey was first started in 1980. Third, the 2007 index is so far the third highest in the time series. Thank you.

## OTHER BUSINESS

CHAIRMAN DIODATI: Questions for Nichola? Okay, we are now officially in other business, and I just want to begin this by offering some opportunity for a very limited discussion relative to the presidential executive order that was issued earlier this month that pertains specifically to the protection of striped bass and red drum fish populations.

I think to get the discussion going in the right direction, I don't think it's necessary to talk about procedures. I think we all recognize that presidents and governors and other high-level leadership have the authority to do executive orders, and we follow those orders. I am somewhat pleased that something that we're involved in has been brought to the attention of the president, any president.

It's kind of nice that a president recognizes fisheries and some of the good work that's been done. Section 2 of this new executive order explains the implementation process for that policy. It states that the Secretary of Commerce shall revise current regulations to include prohibiting the sale of striped bass and red drum caught within the EEZ off the Atlantic and the Gulf of Mexico.

Now, consistent with that president's order and suggestion to revise policy, it seems to me – and it's in keeping with ASMFC's policy on the matter of EEZ striped bass fishing activity – there was in Amendment 6 a recommendation to the federal

government to promulgate all the necessary regulations to implement a complimentary measure that was contained in Amendment 6.

It would be my suggestion, and I think it's in order to request that the Policy Board later this week, tomorrow, in fact, forward a recommendation to the National Marine Fisheries Service that it once again reconsiders the reopening of the EEZ to allow the harvest of striped bass under regulations considered appropriate by the Secretary of Commerce. If there is such a motion, I'll gladly entertain that and look for a second.

MR. VITO CALOMO: **So move.**

CHAIRMAN DIODATI: Thank you, Mr. Calomo. Is there a second? Mr. Gibson seconds the motion. **There is a motion to request that the Policy Board forward a recommendation to the National Marine Fisheries Service that it once again reconsiders the reopening of the EEZ to allow the harvest of striped bass under regulations considered appropriate by the Secretary of Commerce.** That is the motion. Discussion on the motion? Jack Travelstead.

MR. JACK TRAVELSTEAD: Does this take a two-thirds majority to pass since we have done this before?

CHAIRMAN DIODATI: I would say no because this was a recommendation that was somewhat ratified by Amendment 6, and we're just echoing a recommendation. I'll defer to staff. I'm getting the impression that it would not require a two-thirds vote. It was done in 2005; that was the last time it was done, also.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Well, Mr. Chairman, I don't know what you would be amending or rescinding with regard to a previous decision. As I understand the motion here, it's to send another letter that says the same decision that you sent several years ago.

CHAIRMAN DIODATI: All right, so the read at this point is that it will take a majority vote of the board. Gil Pope.

MR. POPE: Thank you, Mr. Chairman. So there will be no mention of recreational or commercial or for hire in this letter?

CHAIRMAN DIODATI: No, I think that's up to the Secretary of Commerce to revise its current policy to

adhere to the presidential order as they see appropriate, so, no, it would go similar to this language. Mr. Leo.

MR. ARNOLD LEO: Arnold Leo, Town of East Hampton. First, I think I'd better immediately draw attention to the fact that the Secretary of Commerce is instructed by the executive order to prohibit the sale of striped bass and red drum caught in the EEZ. The motion, in effect, is asking NMFS to make a game fish of the striped bass and red drum in the EEZ.

There is already in place, as we all know, a prohibition on the sale and also on the possession of striped bass and red drum in the EEZ. I think this motion is really out of order. I want to continue by pointing out that it also encourages – that's the president's word, "encourage" – the Secretary of Commerce to encourage the states to designate as game fish the red drum and the striped bass for the purpose of conservation. Now, in the case of red drum, you know, the recreational catch constitutes 90 percent, almost, of the landings. In the case of striped bass –

CHAIRMAN DIODATI: I'm sorry, Mr. Leo, I don't want to debate the merits of the executive order. I understand –

MR. LEO: Could I make my point, though?

CHAIRMAN DIODATI: Very quickly.

MR. LEO: In the case of striped bass, 73 percent of the striped bass killed are by the recreational fishing. So, if there was in fact need for conservation, you know, declaring it a game fish would not serve the purpose of conservation very well, but there is no need for conservation. I mean, we have got an enormous stock of these fish.

I would strongly recommend that instead of going along with this thing, as this motion would propose to do, that we in fact protest that by declaration from the White House we're turning fisheries management into a political process rather than a scientific one. Thank you.

CHAIRMAN DIODATI: Okay, thank you, Mr. Leo. Just members of the board, please. Lou Daniel.

DR. LOUIS DANIEL: Thank you, Mr. Chairman. I would speak out in opposition to this motion because I think it is implicit that it would open the harvest in the EEZ to the recreational fishery. Just as an

example, in North Carolina last year 2 million pounds of harvest from the recreational side, 480 from the commercial side, and this simply adds more opportunity for potential over-harvest that would then impact both sectors. So, I would speak out strongly opposed to this motion.

The other point I think that needs to be on the record is there needs to be some understanding for us from the National Marine Fisheries Service is who is going to do the EIS for this action by the Secretary?

CHAIRMAN DIODATI: Before I go to Gene and then Jack, let me remind you whether you have a position on the merits of the executive order one way or the other, you're not going to be able to pursue that position very well until the order is effected. So, once the federal government effects the order, then you would have an opportunity to do what you need to do relative to that order. With that, I will go to Gene.

DR. EUGENE KRAY: Thank you, Mr. Chairman. Since 2002, which was the first meeting of this board in Providence, Rhode Island, that I attended, Pennsylvania has been opposed to the opening of the EEZ, and Pennsylvania will not support this motion.

MR. TRAVELSTEAD: I can't support the motion either. I fully support Dr. Daniel's remarks that he made earlier. We heard earlier from you, Mr. Chairman, that we'll get a new stock assessment I believe in February. Although we think it's going to be positive, we can't be certain of that.

We've not asked our technical committee lately what an opening of the EEZ might result in terms of changes in fishing mortality. I can assure you if the EEZ were open off Virginia, we all know that most of that stock winters right off Virginia Beach and northern North Carolina where they will be available to a massive recreational fishery.

I mean, we see boats lined up at the three-mile limit everyday in November and December, and they're going to cross that line, they're going to find the big fish, and I am convinced it's going to result in increases in fishing mortality. So, without further evaluation from the technical committee on that issue, I certainly couldn't support the motion at this time.

CHAIRMAN DIODATI: Other comments? Go ahead, Brian.

MR. BRIAN CULHANE: I'm opposed to this as well. I feel somewhat blindsided by this motion. I didn't know that this was coming; and because of the lateness of the hour, I think there is a lot for us to consider here, and we're not really giving ourselves enough time to fully deliberate this. With that said, I think we should call the question.

REPRESENTATIVE ABBOTT: Thank you. Listening to the various board members' comments, at this time I'd like to make a motion to table this.

CHAIRMAN DIODATI: We have a second. Actually, I was going to Pat Augustine. I was going to **ask the maker of the motion if he was willing to table it until the February meeting for more discussion?**

MR. CALOMO: Yes.

CHAIRMAN DIODATI: The seconder?

MR. GIBSON: Yes.

CHAIRMAN DIODATI: Okay, that was Mark. **Okay, so the motion is tabled.** Anymore discussion on the presidential order? Dr. Daniel.

DR. DANIEL: Thank you. I wanted to bring up one idea, and this would be for February. I'm expecting that there may be some state-wide actions that are proposed to put the executive order in place in the states. I think there are a lot of misstatements that were made in the executive order. I think it's incumbent upon the ASMFC to have a fact sheet or an issue paper developed that outlines precisely what the status of these two stocks are, so that the states have the cover, if they need it, at their state legislatures to be able to provide that support from the ASMFC on what the true status of these stocks are. I would like to suggest that we try to work with staff to develop something like that if it's agreed to by the board.

CHAIRMAN DIODATI: More discussion on the order? John.

MR. NELSON: Just to go back to the motion, Mr. Chairman, just for a second, I think the cleaner way, and maybe the terminology is that the motioner and the seconder withdrew their motion until the February meeting. Because, if you table it, I think we do need to vote on that, but if they withdraw it, you know, they can raise it again at the February meeting.

CHAIRMAN DIODATI: Does the maker of the motion agree to withdrawing the motion?

MR. CALOMO: If that's a better way of doing things – I'll be quite frank with you, I'm going to go against everybody sitting here not just because I made the motion, but I'm going to go against everybody sitting here. I think this is the way to go. I will give you time to think about it, and I will withdraw the motion if the seconder agrees.

MR. GIBSON: I agree.

CHAIRMAN DIODATI: Okay, the motion is formally withdrawn. Anymore comment or discussion on the executive order? I imagine with the new stock assessment that is imminent in the next few months, we will be able to draw up some kind of fact sheet. Okay, that is what Dr. Daniel asked for. Eric and then Ritchie.

MR. SMITH: I just wanted to close the loop on that. Was that an affirmative response? I didn't see anybody nod.

CHAIRMAN DIODATI: Well, Doug nodded and Nichola nodded, and our executive director looked a bit surprised.

MR. SMITH: Thank you, sir, two out of three is always good for me.

MR. R. WHITE: The fact sheet will also contain facts that we have in relation to assertions made in the executive order; in other words, the things that it does or does not do. In other words, if we have facts to support that or not, that would be part of the fact sheet?

CHAIRMAN DIODATI: Well, I don't think we want to debate the executive order. I think Dr. Daniel was looking for factual information about the condition of the stock and how we got there and what kind of fisheries are being exploited at this time and that sort of thing. Vince, do you want to weigh in on this?

EXECUTIVE DIRECTOR O'SHEA: Well, maybe some thought at packaging. I think maybe a white paper – if the intent here is a white paper, it's going to be a discussion, point of information for the members of this board, that's one thing. Starting to do an analysis and then perhaps that then becomes a criticism or weighing in on the executive order, that's a whole different thing. So if it's with the understanding it's a white paper thing, sure.

DR. DANIEL: And that's my understanding, Vince. I mean, that's what I'd like to see and what I'm expecting. I don't want to get into a debate with him either. I just want to be able to go to my folks and say this is the position of the division and it's likewise the position of the ASMFC, who is charged with managing these two stocks, and we feel that we have managed it and handled it in the best way possible and don't need legislative interference.

DR. GEIGER: Mr. Chairman, I totally agree with Dr. Daniel. I mean, I think a white paper will be very beneficial, and it certainly would be my intention to submit a white paper up to the Department of Interior. Thank you very much.

MR. SMITH: I agreed with Dr. Daniel right to the last of his statement. It may be the late part of the day, but it sounded like a debate with the president to me. I think what we want to do is have a fact sheet that states the condition of the stock, the progress of management, what it was like before, what it's like now, and so forth, so that our legislatures and our interested parties – if you read the president's speech underlying this, there is no word in the executive order that's really offensive, but the speech had some things about how it might be overfished and how it might be in jeopardy. I think that's what Lou is getting at, and I agree with him. That would be very beneficial to have an ASMFC one pager that says here is the condition of the stock.

CHAIRMAN DIODATI: Agree. Gil.

MR. POPE: Thank you, Mr. Chairman. I totally agree. I wonder how many people also feel the way that I do, but he didn't bother to consult with us, but I think we should bother to consult with him directly. Thank you.

CHAIRMAN DIODATI: Okay, there is one other item under other business I just want to discuss, and that is relative to the stock assessment that will be released hopefully by our next meeting. It may give us opportunity to look at the question of allocation more directly. If we do that, it would require an addendum at the very least.

We did have a workshop of the action plan earlier in the week. There doesn't seem to be anything scheduled in that action plan for a striped bass addendum that deals with allocation, and I think we

all can guess how busy that could be. So, I'm guessing if we entertain such an addendum, something is going to have to drop off the current action plan perhaps in order to accommodate that.

So, I guess I'd just like a little discussion to get the sense of the board whether or not you would like me to recommend at the business meeting tomorrow that we do pursue Addendum II that will deal with allocation, as appropriate, based on the February stock assessment. Gil.

MR. POPE: So moved.

CHAIRMAN DIODATI: Is there anyone who does not want to see that addendum? Yes.

MR. NELSON: It's not that I don't want to. I just need to have that clarification of what we had talked about earlier as far as that three-year freeze, if you would, on actions, and would that three-year freeze negate doing an additional addendum during that timeframe. I think we have one more year left on that freeze –

CHAIRMAN DIODATI: We do.

MR. NELSON: -- so I think staff could give us guidance on that.

CHAIRMAN DIODATI: Yes, the freeze would lift in 2009, and the thought here is that the addendum would be crafted during 2008, but I'd let Nichola –

MS. MESERVE: I believe the language is that the addendum could not be implemented until 2009, so it could be worked on in 2008 and implemented January 1<sup>st</sup>.

## ADJOURN

CHAIRMAN DIODATI: And there is no such addendum yet. I'm just looking for the agreement from the board that we set up a placeholder tomorrow at the business meeting to possibly craft an addendum. Seeing no disagreement here, I'll assume that I'll move forward with that. If there is no other business, we are adjourned. The meeting will be chaired by Mr. Gibson.

(Whereupon, the meeting was adjourned at 5:55 o'clock p.m., October 31, 2007.)