

PROCEEDINGS
of the
ATLANTIC STATES MARINE FISHERIES COMMISSION
ISFMP POLICY BOARD

August 18, 2004

Radisson Hotel
Alexandria, Virginia

ATTENDANCE

Board Members

George Lapointe, Maine DMR
Patten White, Maine Gov. Apte.
Dennis Damon, Maine Leg. Comm.
John Nelson, New Hampshire F&G
Ritchie White, New Hampshire Gov. Apte.
Dennis Abbott, proxy for Mary Ann Blanchard,
NH
Paul Diodati, Massachusetts DMF
Bill Alder, Massachusetts Gov. Apte.
Vito Calomo, proxy for Anthony Verga, MA
Mark Gibson proxy for David Borden, RI, DEM
Everett Petronio, Rhode Island Gov. Apte.
Jerry Carvalho, Proxy for Eileen Naughton, RI
Eric Smith, Connecticut DMR
Lance Stewart, Connecticut Gov. Apte.
Gordon Colvin, New York DEC
Pat Augustine, New York Gov. Apte.
Bruce Freeman, New Jersey DFG&W
Tom Fote, New Jersey Gov. Apte.
Ed Goldman, Proxy for Robert Smith, NJ

Dick Snyder, Proxy for Dennis Guise, PA
Eugene Kray, Proxy for Curt Shroeder, PA
Roy Miller, Delaware DFW
Pete Jensen, Maryland DNR
Bruno Vasta, Maryland Gov. Apte.
A.C. Carpenter, PRFC
Jack Travelstead, Virginia MRC
Kelly Place, Proxy for John Chichester, VA
Preston Pate,, North Carolina, DMF
Damon Tatem, North Carolina Gov. Apte.
John Frampton, South Carolina DNR
David Cupka, South Carolina Gov. Apte.
Robert Boyles, South Carolina Leg. Comm.
Spud Woodward, Proxy for Susan Shipman, GA
John Duren, Proxy for Ralph Balkcom, GA
Gil McRae, Florida WCC
Kathy Barco, Florida Gov. Apte.
Anne Lange, NMFS

Guests

Tom O'Connell, MD DNR
Mel Bell, South Carolina DNR
Michael Doebly, RFA
Tom Meyer, NMFS

Tony Bogan, United Boatmen
Jim Fletcher, UNFA
Jim Ruhle, F/V Darana R

ASMFC Staff

Megan Gamble
Bob Beal
Tina Berger
Vince O'Shea
Carrie Selberg
Vince O'Shea

Lydia Munger
Brad Spear
Nancy Wallace
Mike Howard
Toni Kerns
Geoff White

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Summary of Motions

August 18, 2004

On behalf of the Atlantic Striped Bass Management Board, I move that the ISFMP Policy Board recommend to the Commission that the State of New Jersey be found out of compliance with Amendment 6 to the Atlantic Striped Bass FMP in that it has not implemented a recreational management program in 2004 that is consistent with the options approved by the Atlantic Striped Bass Management Board on May 25, 2004. The size and bag limits are necessary to control the fishing mortality and maintain an adequate spawning potential to sustain the long-term abundance of striped bass populations. To come back into compliance, the State must implement a minimum size limit of 28 inches and a bag limit of two fish or a recreational measure proven to be conservationally equivalent to the Amendment 6 requirements and approved by the Management Board. Notification of this non-compliance finding will be forwarded to the Secretaries of Commerce and Interior as soon as practically possible.

Motion made by Mr. Travelstead. Motion carries (16 in favor, 1 opposed, 1 abstention).

Move that we select Option 1 for Consideration to Prevent Abuse of the Appeals Process.

Motion made by Mr. Travelstead; seconded by Mr. Pate.

Substitute Motion:

Move to approve the Appeals Process White Paper with the exception of the section: Considerations to Prevent Abuse of the Appeals Process.

Motion made by Mr. Diodati; seconded by Dr. Kray.

Motion to Amend the Substitute Motion:

Amend the substitute motion such that the motion would ask for the adoption of the appeals process excluding the section entitled, "Considerations to Prevent Abuse of the Appeal Process" and add a statement that ensures that an appeal will not delay the commission process for finding a state out of compliance nor delay or impede the imposition of penalties for delayed compliance.

Motion made by Mr. Pate; seconded by Mr. Colvin. Motion carries. Motion to amend becomes part of the substitute motion.

Substitute Motion:

Move to approve the Appeals Process White Paper and the adoption of the appeals process excluding the section entitled, "Considerations to Prevent Abuse of the Appeal Process" and add a statement that ensures an appeal will not delay the Commission process for finding a state out of compliance nor delay or impede the imposition of penalties for delayed compliance.

Motion to substitute carries and becomes the main motion.

Main Motion:

Move to approve the Appeals Process White Paper and the adoption of the appeals process excluding the section entitled, "Considerations to Prevent Abuse of the Appeal Process" and add a statement that ensures an appeal will not delay the Commission process for finding a state out of compliance nor delay or impede the imposition of penalties for delayed compliance.

Main motion passes.

Move approval of the Conservation Equivalency Guidance Document.

Motion made by Mr. Lapointe; seconded by Mr. Freeman. Motion carries unanimously.

Move that the ISFMP Policy Board task the Summer Flounder, Scup, and Black Sea Bass Management Board with developing an addendum for consideration at the October joint meeting with the Mid-Atlantic Council. The addendum would propose that the 2005 increase in summer flounder commercial TAL be apportioned to the states by the formulation embodied in the New York spreadsheet proposal discussed by the Board at the October 2003 meeting (that is, 9 equal shares). Further, the 2 options in the addendum would include this formulation, in addition to status quo, and would be applied to 2005 only, or for 2005 and 2006.

Motion made by Mr. Smith; seconded by Mr. Colvin.

Substitute Motion:

Move that the ISFMP Policy Board appoint an adhoc committee to advise the Policy Board on the matter of TAL reallocation in the summer flounder, scup, and black sea bass fisheries. Such committee should be composed of recreational representatives, commercial representatives, and state fishery administration as designated by the Policy Board. Such committee would consider TAL reallocation between the major recreational and commercial sectors and between the states within the commercial sector's for new TAL available beginning in 2005.

Motion made by Mr. Gibson, seconded by Mr. Fote. Motion fails (11 in favor 4 opposed).

Main Motion:

Move that the ISFMP Policy Board task the Summer Flounder, Scup, and Black Sea Bass Management Board with developing an addendum for consideration at the October joint meeting with the Mid-Atlantic Council. The addendum would propose that the 2005 increase in summer flounder commercial TAL be apportioned to the states by the formulation embodied in the New York spreadsheet proposal discussed by the Board at the October 2003 meeting (that is, 9 equal shares). Further, the 2 options in the addendum would include this formulation, in addition to status quo, and would be applied to 2005 only, or for 2005 and 2006.

Motion made by Mr. Smith; seconded by Mr. Colvin. Motion carries.

On behalf of the Advisory Panel Oversight Committee, I move that the ISFMP Policy Board approve the addition of up to 2 non-traditional stakeholders to each advisory panel to serve as at large members, separate from existing state-appointed members.

Motion made by Rep. Abbott. Motion passes.

Move on behalf of the South Atlantic State/Federal Fisheries Management Board that the ISFMP Policy Board send a letter at the appropriate time to Bill Hogarth requesting that the Secretary of Commerce implement, under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act, a prohibition on the harvest of red drum in the EEZ as part of the ASMFC Red Drum FMP.

Motion made by Mr. Woodward. Motion carries unanimously

The meeting of the ISFMP Policy Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Suite of the Radisson Hotel, Alexandria, Virginia, on Wednesday, August 18, 2004, and was called to order at 1:00 o'clock p.m. by Chairman John I. Nelson.

-- Welcome; Introductions --

CHAIRMAN JOHN I. NELSON: Let me welcome everybody to the ISFMP Policy Board.

-- Approval of Agenda --

We have circulated a new draft agenda. I want to just make a couple of changes to the one that you have, and then we'll look to see if there are any other change so has everyone got that in front of them?

What I'd like to do is, after public comment, I'd like to go right into the review of New Jersey's striped bass regulations, Number 11. I kind of hate to say it, but I guess I'll have to think about moving Number 12 up there, too, for that consideration if that's necessary.

And then the South Atlantic has a motion regarding red drum. We'll take that up under other business. And were there some addendum issues associated with summer flounder? Let me capture what I believe the rest of the addendum issues are, and they are associated with the summer flounder, scup and black sea bass management plan.

We'll take up the various addendums that are necessary for addressing that management plan under Item Number 7. I think ultimately we'll have three different addendums to deal with under that, if I understand that correctly. Eric, is that satisfactory?

MR. ERIC SMITH: Yes, thank you.

CHAIRMAN NELSON: Okay, any other changes to the agenda? Okay, seeing none, we'll move ahead with this agenda. Next we'll

have the approval of the proceedings from the May 27th Board meeting. Pat

MR. PATRICK AUGUSTINE: So moved, Mr. Chairman, unless there are corrections or additions.

CHAIRMAN NELSON: Thank you, Pat, and Dennis Abbott has seconded it. Any objections to that? Seeing no objections, they are approved.

-- Public Comment --

Let me go next to public comment. Is there any public comment on any items that are not on the agenda; again, keeping in mind that we would be taking public comment as necessary on any of the agenda items. Any public comment?

-- Review of New Jersey's Striped Bass Regulations --

Okay, seeing none, the next item is the review of New Jersey's striped bass regulations. We have on the board the recommendation of non-compliance to the ISFMP Board at our August meeting if New Jersey had not implemented a recreational management program by August 1st, 2004, that is consistent with the options approved by the Striped Bass Management Board. So, let me ask Bruce, Bruce, has New Jersey implemented the regulatory changes necessary to meet that recommendation?

MR. BRUCE FREEMAN: Well, Mr. Chairman, I'm sorry to report that we have not. We have, as you recall at the August meeting, heard from Assemblyman Smith, who chairs the Assembly Committee, Natural Resource Committee.

The bill was brought up to his Committee, went through the Committee, passed the Assembly. Unfortunately, it did not make it to the Senate Committee and was not voted on at the Senate. So, there was no bill that passed both houses and obviously was not sent to the governor for signature.

What I would like -- we are making efforts to move in that direction. The Legislature is on summer recess at the present time. We anticipate the Senate Committee to meet.

We have assurances -- and I'll let Ed Goldman speak to that, representing Assemblyman Smith -- that this will be heard in the Senate Committee when it meets. It first meets in early September, and then hopefully will be voted on later in the month, during the first voting session of the Senate.

I'll let Ed bring the board up to date where we stand. But at the present time, we do not have the action necessary to do away with this motion.

CHAIRMAN NELSON: All right, Bruce, thank you very much. Before I have any other comments associated with this issue -- and I will come back to you, Ed, and anyone else who wishes to discuss it -- I think we need to have the motion then as far as what New Jersey would have to do put on the board by the chair of the Striped Bass, Jack.

**-- Consideration of Non-Compliance
Recommendations --**

MR. JACK TRAVELSTEAD: Thank you, Mr. Chairman. I have a motion. On behalf of the Atlantic Striped Bass Management Board, I move that the ISFMP Policy Board recommend to the Commission that the state of New Jersey be found out of compliance with Amendment 6 to the Atlantic Striped Bass FMP in that it has not implemented a recreational fishery management program in 2004 that is consistent with the options approved by the Atlantic Striped Bass Management Board on May 25th, 2004.

The size and bag limits are necessary to control the fishing mortality and maintain an adequate spawning potential to sustain the long-term abundance of striped bass population.

To come back into compliance, the state must implement a minimum size limit of 28 inches, a bag limit of two fish or a recreational measure

proving to be conservationally equivalent to the Amendment 6 requirements and approved by the Management Board.

Notification of this non-compliance finding will be forwarded to the Secretaries of Commerce and Interior as soon as practically possible.

CHAIRMAN NELSON: Thank you, Jack, and you've made that on behalf of the Striped Bass Board so there is no second needed. All right, let me go back to New Jersey. I would note everyone keep an eye on the agenda; we do have a lot on the agenda.

I would note that about ten minutes have been applied to dealing with this particular motion. It just happens to be that's what it has in there, and so I'm going to try to keep this relatively brief.

Who would like to speak against the motion from New Jersey, want to speak against the motion? That means you're not in favor of it. Okay, Ed, you were mentioned first so let me go to you. Then I'm going have who wants to speak for the motion and then we'll come back to Jersey again. Thank you.

MR. ED GOLDMAN: Thank you, Mr. Chairman. First, I'd like to start off by saying Assemblyman Smith apologizes for not being here. He had hoped to be here for this important issue, but when the schedule changed he could not change his schedule.

Bruce basically told you what had happened. The public hearings we had, which were required by law, ended three days before the Assembly Committee met, so they were able to get it through, but unfortunately the Senate Environmental Committee had not met, and it could not be heard on the Senate floor without being heard in Committee first, which was the problem.

Assemblyman Smith assured me that the Senate Environmental Committee will meet in early September. He said hopefully the first week. Their Committee chair, which also happens to be named Bob Smith, has verbally assured him that the bill will be posted immediately and

heard that first week.

Hopefully, if all goes well with that, it should be heard in the Senate in mid-September and be signed into law hopefully by the end of the month. That's basically where we stand right now.

CHAIRMAN NELSON: Okay, thank you. Those that wish to speak for the motion.

MR. W. PETER JENSEN: Can I get a clarification, Mr. Chairman?

CHAIRMAN NELSON: Yes, go ahead.

MR. JENSEN: This motion says that they did not implement a recreational program in 2004. It's very late in the season, and, of course, they're not going to be able to do anything. If they take this action, are they going to be in compliance at the beginning of the 2005 season?

CHAIRMAN NELSON: They should be in compliance with the 2004 season, whatever is left of it. Does that help you? The changes that they are putting in place should make it consistent with what was needed to be in place for 2004.

MR. JENSEN: Yes, I understand that point, but are they then going to be in compliance with 2005 or is another change coming?

CHAIRMAN NELSON: The answer is, yes, Pete. All right, Ritchie.

MR. G. RITCHIE WHITE: Thank you, Mr. Chairman. I'm certainly disappointed that we're in this situation after the assurances of the New Jersey delegation at our last meeting.

I think the Commission has given more than enough time to the state to come into compliance, and I certainly support this motion.

CHAIRMAN NELSON: Okay, I'll get to the public, Michael, I promise. Anyone else who wants to speak against the motion? Okay, Tom, go ahead.

MR. THOMAS FOTE: Well, truthfully, I'm not speaking against the motion. I'm trying to explain part of the problem and asking for some indulgence in the motion with setting up a time period for it.

Basically what happened was that usually the Senate basically goes through June 30th in New Jersey, because that's when they do the budget. There are usually four or five committee meetings and then a full voting session on that period of time.

For some strange reason, unlike New York and a few other states here, we actually finished up the budget in New Jersey early, about a week and a half. And when they basically decided, they voted on the budget and the Senate went home.

The Assembly met but the Senate did not move any more. Usually there would have been a Committee meeting and we would have been able to pass the bill at that time. I also, at the last meeting, basically didn't promise that we would get it through.

I said we would work hard to basically accomplish that. The assurances were that we could do everything possible to make sure, and I think we did that. We got the Assembly to vote on it, and this Committee got the Assembly to basically vote on it and it passed the House.

We can't control when the Senate goes out of session, and we basically got a commitment to do this as fast as possible. We could be in compliance as early as the middle of September or late September. It depends on when the first voting session happens.

I mean, they haven't posted a voting schedule yet for the Senate. We do have a commitment to have a committee meeting within about the first week they're coming back, because they have committee meetings before they start posting, so we should be in compliance by the end of September.

I know you have to vote us out of compliance. That's the way the cookie crumbles, and I appreciate that. What I also do not want to do is

put the National Marine Fisheries Service and a whole bunch of people to a lot of work that basically won't be remedied in about a two-week period, because we know how long non-compliance basically to go through the system takes two or three months, and it's a lot of wasted effort if we will be doing that.

So that's what I'm asking the question of, some indulgence on time wise, not to not vote us out of compliance, but when you send the letter, at least give us time to do it in this short period of time. Thank you.

CHAIRMAN NELSON: Okay, thank you, Tom. I had Gordon next, and, Gordon, are you speaking for the motion?

MR. GORDON C. COLVIN: Mr. Chairman, I was going to ask a question of the delegates from New Jersey.

CHAIRMAN NELSON: Okay, go ahead.

MR. COLVIN: I think it may be partly related to or at least prompted by the comments that Pete made or the question that Pete asked. We all know what is blowing in the wind around here this week, and we obviously can't escape thinking about the possibility that next year's striped bass regulations may need to be different for all of us than this year's.

So my question to the folks in New Jersey is, is there a possibility, any possibility that the action before the Legislature can pursue the question of flexibility to enable the agency to adopt regulations for next year, or are we going to be right back here with the same issue with legislative action needed?

MR. FREEMAN: If I may, Mr. Chairman.

CHAIRMAN NELSON: Go ahead, Bruce.

MR. FREEMAN: I'll speak from the agency's standpoint. Like many states, ten years ago most all our changes were necessary through legislative process, and in that time period we were able to get regulatory authority to the division.

That has not happened in striped bass. In fact, it's the only species that has not happened. When we were facing a similar situation with lobster a number of years ago, the Legislature gave us that authority, but the division's policy is, yes, we would like to have regulatory authority at least over size, seasons and bag limits for striped bass, because we would be able to move on this and would have been able to move during that June meeting, in fact.

But I'll let Ed and Tom address that issue as well, because it's difficult for us to deal with the Legislature because of the restraints we have, but certainly from the division's standpoint, we'd like to have that authority.

MR. GOLDMAN: Yes, on that issue, at our July Council meeting, the New Jersey Council voted unanimously to send a letter to Assemblyman Smith asking him to have the bill amended to give us that authority, so we could regulate the seasons, size limits and bag limits.

I did talk to Assemblyman Smith last week when we were discussing this issue, and he said he is looking into that, so hopefully we'll get that authority, but the New Jersey Council is working on it.

CHAIRMAN NELSON: Tom, do you have anything else to add to that?

MR. FOTE: I don't know if the division will get that authority or not. Striped bass is a very ticklish issue, as it is in most states, but I will say that it's a different sort of situation.

Again, there was controversy on Amendment 6 in New Jersey and the way we felt we were treated. There was a lot of appeals process going on here and a lot of basically asking and going back and forth from the policy board to the management board.

If we have to do a reduction next year, if that's what the stock assessment says, we will all have to do the reduction. It will be fairly and equitably done in all the states. When it comes to that, we can get a bill through, if we need to, in the early session.

Again, the Senate president will be then also the acting governor, so it should be an easier thing to get the bill passed. But, that will be done in January and February, before the season open, so before the fishing season really starts. It's the same process everybody else will go through.

Again, what held up the process at this time was the fact that it is still controversial. Amendment 6 is still -- a lot of people in New Jersey would still feel they weren't fairly treated, but we're getting into compliance and that's what's being done here.

And if any changes come because of stock assessments, they will be done. We have always done that when it comes to stock assessments and that kind of request, so we will get a bill passed that needs to get us in compliance in 2005.

CHAIRMAN NELSON: All right, let me go back to the motion. Gordon, does that help you? Okay, let me go back to the motion. I had anyone who wished to speak for the motion, and I did have Roy next. Did you want to speak for the motion? And then Dennis.

MR. ROY MILLER: Mr. Chairman, thank you. I think I'd prefer to reserve my comments until the vote is taken on the motion.

CHAIRMAN NELSON: Okay, Dennis, did you want to speak for the motion? Go ahead, then.

MR. DENNIS ABBOTT: Thank you, Mr. Chairman. Like most of us around the table, I'm disappointed that we're in this position and that we have to take this action. I'm more disappointed in the fact that the Senator from New Jersey appeared before us in June and told us what he was going to do.

In my dealings as a Legislator, I've always been told that you're only as good as your word. The Senator from New Jersey should have seen that this action occurred. It shows to me that the New Jersey process in the Legislature regarding striped bass management is broken.

And it's my hope that the state of New Jersey

will help the department in putting them back on the right track so that they can implement regulations. I mean, we're really going back to approving this amendment last November, and we've essentially lost the fishing year.

I'm concerned about the effects, also, on the striped bass population. I'm concerned about the health of the ASMFC as we adopt plans and states do not comply with them. Thank you.

CHAIRMAN NELSON: Thank you, Dennis. Let me go back. We've had comments -- no, Tom, let me get some public comment. I will come back to the board. You can address whatever you want at that particular time, at that particular time. Just wait a minute, okay? Thank you. Michael.

MR. MICHAEL DOBERLY: Thank you, Mr. Chairman. Michael Doberly, Recreational Fishing Lines. This is a very difficult spot for our New Jersey chapter to be in, obviously, quite a bit of embarrassment regarding the situation.

As a participant and witness to the process in New Jersey, I'd like to have it on the record thanking Assemblyman Smith. He moved mountains just to get it through the Assembly in time. It was unfortunate that it could not be taken up in the Senate in what was a somewhat unusual year.

What we have done is our organization has been in touch with Senator Smith, the Chair of the Environment Committee, and has been in touch with the president of the Senate, Senator Cody. They are both aware of the gravity of this situation.

They are looking forward to moving on it just as soon as they come back in session. In fact, we were hoping to have a letter from Senator Smith arrive in time for this decision, just so you had something in writing assuring all of you that he is going to take action just as fast as he can. Obviously, it just didn't get here in time.

I understand there is a lot of frustration around this table. We're frustrated. Our members are frustrated. They're scared. We have businesses

that are already losing bookings, if you want to look at Charter boat captains because people don't know if there's going to be a fishery or not.

We have done everything we can to help move this along. You have to do this. There is no excuse. The only thing that we ask as an organization is that you consider some kind of control date for the official transmittal of your letter or whatever you have to do to notify the Secretary's Office so that we can get the legislative process completed and before there has to actually be a shutdown of the fishery the bill is signed into law. We're looking at about October 1. Thank you.

CHAIRMAN NELSON: Thank you, Michael. Any other public comment on the motion? All right, seeing none, back to the board. Tom, go ahead.

MR. FOTE: What I want to do is make some corrections here to Commissioner Abbott's statement. Assemblyman Smith is an Assemblyman in the New Jersey Legislature. He came here and committed to get the Assembly to move on the bill and get it past the Assembly.

That's what he committed to do. He said he would try to get the Senate to do it, but as you know as a legislator, you don't control both Houses. You can do what you can in your own House, get to your own speaker and move the bill.

That's exactly what he did. He tried to get the Senate to post it, and basically again they went out of session early. One assemblyman, as you know as a legislator, does not control the other house. Basically they can ask, they give a lot of courtesy.

And that's what he said when he was here, he would try to do everything. He says, "I will get it through the Assembly, but I will basically try and get it through the Senate, but I don't control both Houses." I remember him saying that here, so I think that was kind of not what should have been said.

CHAIRMAN NELSON: All right, thank you, Tom. Anyone else want to speak against the motion? All right, let me have a caucus. Let me have the various groups caucus and then we're going to bring it to a vote.

(Whereupon, a caucus was held.)

CHAIRMAN NELSON: Okay, I think we're already. Joe, you're all set with the motion? Okay, all in favor of the motion, please raise your right hand; abstentions, just one abstention; and any null, no nulls. So it's 16 yes; 1 no; 1 abstention. The motion passes. Thank you very much. Roy, go ahead.

MR. MILLER: Thank you, Mr. Chairman. Now that we've had the vote on this motion, I'd like to ask if there is any mechanism in the Charter to address nine or possibly more months of non-compliance with the plan?

CHAIRMAN NELSON: Yes. Roy, after I --

MR. MILLER: Could you brief me on what that might be.

CHAIRMAN NELSON: I'm trying to keep this somewhat on an even keel so you have to, you know, appreciate my somewhat of a sense of humor on it, which is limited, I think.

A couple years ago we changed the Charter to implement penalties for delay of implementing regulations -- and I'm not using this as an example -- in case some state did not implement required regulations, and it obviously impacts the resource and their neighbors.

The wording is that we were going to modify the various management plans as they became available to do so. Because of a number of instances that have taken place, what I have asked the staff to do is take a look at the work plan for this year, and we found in the work plan for this year -- and you have that on your agenda -- that we had money set aside for an addendum for summer flounder, scup and black sea bass that the staff identified as funds that could be available to deal with this particular type of issue.

The staff is developing a strawman that will be presented to that management board for their adoption of that type of penalty situation or clause in the management plan.

In addition, what we've asked staff to do is to put in the action plan for this coming year funds in order to prepare an addendum for each of the management plans that need it, to incorporate that same type of penalty clause wording.

So it should be in all of the plans for the coming year at some point in the coming year. Those addendums are meant to be directed strictly at this particular issue. There would not be any other issues associated with those addendums.

If boards need to have other work done under other addendums or amendments, they would be done under separate items, but we recognize the need to have this addressed. We are addressing it.

You asked me if it was in the Charter. It is in the Charter. It's not in management plans at this particular point so there is no penalty associated with not being in compliance.

Obviously we all have our feelings associated with that, and I think they're all of like mind, and so that's the action that we are taking to address this issue and get it behind us once and for all. Does that help you, Roy?

MR. MILLER: That answers my question, but it doesn't take it that one step further as to what, if anything, do we do in this particular instance. I gather nothing.

CHAIRMAN NELSON: The answer in this particular case is nothing. Pat.

MR. AUGUSTINE: Point of information, Mr. Chairman, Mr. Doberly asked a question whether or not this board would come forward with a specific action date as to when the board would move forward with their non-compliance action, as we did with New York with summer flounder. Is that going to be under the staff's advisement?

CHAIRMAN NELSON: Let me have staff answer that question. Usually, once the letter is prepared, it's usually sent out and unless there were some extraordinary circumstances, they'll try to take into account all that we have heard today.

Also, I think they will also have to take into account the time line of when we could have had this taken care of previously. Is there something else you want to add on this, Bob?

MR. ROBERT E. BEAL: The only thing I'd like to add is the wording of the Charter is that once the full Commission finds a state out of compliance, assuming that happens later this afternoon, once the Commission takes action, the Executive Director has ten business days to send his letter off to the Secretaries of Interior and Commerce.

So assuming that there is no other guidance in the motion with a date, it's ten business days from the time of approval.

MR. AUGUSTINE: A follow on, Mr. Chairman.

CHAIRMAN NELSON: Go ahead, Pat.

MR. AUGUSTINE: I know in the case of New York, when we found that we were in jeopardy and we were found out of compliance and it was a matter of days before it all happened, we ended up and were fortunate enough to have an audience and meeting with Dr. Hogarth and his staff.

It's rather interesting to note for the record that we went to Silver Spring on July 16th and were told that, yes, what our concerns were would be aired and reviewed, and it was interesting to note that in the announcement from the Federal Register on July 17th we were found out of compliance.

So I think New Jersey should be alerted to as soon as this sequence starts, the clock is going to tick. Thank you, Mr. Chairman.

CHAIRMAN NELSON: Unless I have a motion for a delay on the time line, I'm not going to really get into any further discussion. I think this issue has been dealt with. As far as our protocol is concerned, it will be following that unless I get a motion otherwise. Otherwise. Otherwise. Is this otherwise, Ritchie?

MR. WHITE: I'd just like to make the point the motion that we just passed tells us how soon we have to do this. The wording is in the motion.

CHAIRMAN NELSON: Yes, well, we have the time line. The staff has their direction on what they're going to do. Okay, I need to move on to other items. We've kind of beaten this one to death. We have beaten it to death, Tom.

MR. FOTE: I want to make a motion.

CHAIRMAN NELSON: Okay, I'll go back to that. You wanted to make a motion on a time specific?

MR. FOTE: Yes, I would make a motion that we basically send a letter September 15th to the Secretary, so this way in our --

CHAIRMAN NELSON: Okay, just make the motion.

MR. FOTE: I'll make the motion for September 15th.

CHAIRMAN NELSON: Anyone want to second that motion? Okay, there is no motion. All right, we're moving on to the next agenda item.

-- Review of Appeals Process White Paper --

The next agenda item is the review and consideration of the appeal process, the white paper that we've been circulating for almost about a year. Bob is going to walk us through that.

MR. BEAL: Thank you, Mr. Chairman. Brad and Nancy are handing out the latest version -- I think some folks have already picked it up -- of the appeals process white paper. Just so

everybody is working out of the same document, the most recent version is dated August 17th, yesterday, so you can see there has been some recent changes to the document.

But overall, the document looks very similar to the one that the Policy Board was presented with and discussed at the May meeting. A series of changes have been made to the document to reflect the discussions that took place at the May meeting, but overall, again, it's very similar.

The changes are all included in red in the version that's being passed around. Hopefully, it's pretty clear what the new verbiage is. Anything underlined is new. Anything struck out obviously will be removed from the document, but it's just there to kind of remind the members of the Policy Board where we were at our last meeting.

So what I planned to do is just quickly go through the red language in here just to highlight what changes have been made and some of the rationale for the changes.

On the first page, the word "jurisdiction" was taken out just simply because the current version only allows states to bring forward appeals. On Page 2, under "Appeal Initiation", there is new language that any state can request an appeal.

There was some discussion on who could bring forward an appeal, how the state voted on the motions to approve the amendments and those sorts of things, but any state can bring forward an appeal.

And, also, the document now notes that a group of states can put together a unified request for an appeal. The document now highlights that the Commissioners of the state's caucus are warranted to sign the letters.

Before it just said "members" but now it highlights that they must be the Commissioners that sign off on the letters and not the proxies.

Then there is some descriptive language on multi-state appeals and how the deliberations would work. If proxies are seated at the table

during the deliberations, obviously, those proxies would be able to participate in the deliberations of an appeal, but the Commissioners are the individuals that actually have to sign the letter. And then, again, it reiterates the meeting-specific proxy policy that the Commission has passed.

The small, one-sentence paragraph there that a state or group of states can bring forward a request for an appeal on behalf of the Potomac River Fisheries or D.C., this is new language, and it's in response to some of the discussions that the Policy Board had at its last meeting. Going down to the bottom of Page 2 and on to Page 3, there is a discussion of including a time line for the fact-finding committee to complete their work. This is just a simple timing issue and not a real substantial change to the document.

The next section is the ISFMP Policy Board meeting. The first new sentence there notes that if the chair is unable to attend the meeting or would like someone else to or would like to participate in the deliberations, the vice chair of the Commission will facilitate the appeals process discussion at the Policy Board level.

There is also a new note that the ISFMP director will also try to present the potential impacts of appeal on other states that may be affected by the appeal. At the bottom of that paragraph, it's just some relatively minor wording changes.

The red language in the paragraph midway through Page 3, the management board is obligated to make changes that respond to the findings of the Policy Board; this is a pretty substantial new addition.

There was some discussion of whether or not a species management board could actually take no action, if that's what they wanted to do, once they received guidance from the Policy Board on an appeal.

The way the document is written now is that species management board is required to take some corrective action to address the findings of the Policy Board. And there are, again, just

some wording changes in the appeal products paragraph.

The considerations to prevent abuse of the appeals, this section has probably the most substantial or the largest question that remains in this document.

At our last Policy Board meeting, there was considerable discussion on whether a state should have to be in compliance with all of the provisions of the management program or all of the provisions except the one that is being questioned or appealed.

The Administrative Oversight Committee, as well as the staff, had a lot of discussions on this. What's presented in the document right now is a series of options that the Policy Board needs to select an option.

If Option 1 is selected, then that's one course of action. If Option 2 is selected, there are sub-options under that that the Policy Board would need to take action on. John, do you want to stop now or do you want me to keep going through the document?

CHAIRMAN NELSON: Why don't you finish going through, Bob.

MR. BEAL: Okay, great. Down at the bottom of Page 4, there is a new sentence added at the bottom of Page 4, and this is in response to some discussion as to whether or not a state would be able to take other action following an appeal, such as a lawsuit was the one that was discussed on the record, but there may be other courses of action that a state may want to take to seek relief. That sentence was added to make it clear that a state obviously could take additional action if that's the course they chose.

There have been no changes to the appeals process time line. The notes that begin on the bottom of Page 5 are just a couple notes on things that were discussed at the last meeting and may not be obvious the way they are included in this document.

The first one is National Marine Fisheries

Service and Fish and Wildlife Service, should they be permitted to submit an appeal. Right now the document as drafted is not providing those two federal agencies the ability to submit an appeal.

There is a note that they participate in the boards, and they can provide input or seek reconsideration of an action at the board level, but if they want, they can try to discuss with the state bringing forward an appeal, and the state can bring forward an appeal on behalf of those agencies or to highlight the concerns of the federal agencies.

And the second one is a reflection of what I discussed earlier, that the management board must take action in response to the Policy Board finding that some sort of corrective action is necessary.

CHAIRMAN NELSON: Okay, thank you, Bob. Again, I think most of the items in here in red are the ones that reflect what the comments were that we had at our May meeting, plus additional input that we had received.

The AOC went over it and I think we've tried to address those points as well as we can. So let me see if there are any questions as far as clarity right now, and then we'll get into substance on dealing with the options that we need to make a decision on. So, any points of clarity that need to be done? Okay, Gordon and George and then Bruce.

MR. COLVIN: Bob, the second to the last paragraph on Page 3, it's one of the new ones, the first sentence, "In-season adjustments based on a successful appeal will not be allowed"; I'm not 100 percent sure I understand what that means. Could you kind of elaborate on it a little bit and maybe that will get me there.

CHAIRMAN NELSON: Yes, Gordon, I think what we looked at is the overall time frame that we had for an appeal process. Since we'll have a time frame set up in which you apply, if you would, for an appeal, that gives staff a certain amount of time to pull information together.

We looked at the shortest time frame associated with that. Assuming that a board had passed something, let's say, at our October/November meeting, the appeal would to be heard -- if someone was going to appeal, they'd be appealing before the next board meeting, I'm sorry, by the Policy Board meeting, which would be the next meeting week.

That would be sometime in the winter or early spring. And if indeed you could actually have everything in place for that time, so be it, but chances are it would be probably later than the February meeting, so you're probably looking at May or something like that for an appeal to actually have been heard.

At that time, if the appeal was successful, the item would be referred back to the species board for them to take some action associated with that. In order for them to take some action, they would have to do an addendum or amendment, probably an addendum, to deal with the modification.

By the time they got done with that process, assuming we have to go through a public process to do it, you're basically at the end of that year, and so we were just serving notice that essentially the process would take enough time so that you would not have an in-season adjustment.

That's what we were trying to make sure everyone fully understood and not to anticipate that you could get something changed in mid-course. So if you are not anticipating that, then it follows for some of these other points that we are going to get into shortly, I suspect. Does that help you?

MR. COLVIN: It helps me but I would suggest that maybe a little bit of adjustment to the text might make it clearer. "In-season", for instance, is kind of a term of art, and I don't know that it's sufficiently precise in terms of what it means.

Perhaps one wants to talk in terms of a fishing year or some time unit that is what we normally use that makes it just a little bit more clear and would eliminate the potential questions that

might come up.

MR. BEAL: Gordon, in addition to what John said, the other thing that was discussed was, just as an example, the black sea bass appeal that was brought forward by the Commonwealth of Massachusetts.

If the Policy Board agreed there should be some alteration in state shares, doing that mid-year is much more difficult than doing that on January 1 in the black sea bass example. And so there are some implications there, but the management board is also going to have to consider those as they address corrective action.

MR. COLVIN: Thanks. I think John's explanation made me understand the why of it. What I was trying to get at is what does "in-season" mean and what's the duration of it. I think if you scope in on a fishing year, then I think that does it.

CHAIRMAN NELSON: George.

MR. GEORGE LAPOINTE: Thank you, Mr. Chairman. I have a comment and then a question. My first comment is kind of going after low-hanging fruit. When we look at Note Number 1 about NMFS and U.S. Fish and Wildlife Service being permitted or not being permitted to request an appeal, could we add on Page 2 a state or group of states can request an appeal on behalf of the Potomac River Fisheries Commission, District of Columbia, NMFS or the Fish and Wildlife Service, just to clarify that, because that's the intent I think, isn't it?

MR. BEAL: Yes, that is the intent, George.

MR. LAPOINTE: Okay, thank you. And then on Page 3 under Appeal Products and Policy Board Authority, can you fill us in on why we switched from "will" to "may."

It strikes me that if an appeal came out and the Policy Board was giving direction to a board, it "should" tell them the corrective action like we do on compliance, and so I'd just be interested in the discussion that occurred.

MR. BEAL: The change from "will" to "may" reflects a discussion at the Policy Board that there was a lot of concern that the species management board should be the group that is actually making a decision on what type of changes should be made.

If the Policy Board felt something should be corrected, but they didn't know exactly what it was, there was more flexibility built in if they didn't know exactly what guidance to provide for a corrective action.

CHAIRMAN NELSON: I've got to go back to my notes. I think I had Bruce. Bruce was next. Thank you, Bruce.

MR. FREEMAN: Thank you, Mr. Chairman. On Page 2, the middle of the page where it says a state or group of states can request appeal on behalf of the Potomac River Commission or the District, was that to be any state or the border states?

CHAIRMAN NELSON: I think what we're leaving it, Bruce, is any state.

MR. FREEMAN: Okay. Well, that fits in then if you add the two services, but all right. Potomac River is a unique situation because it's made up of the states, and it was just unclear. If it's any state, then that's --

CHAIRMAN NELSON: Yes, that's the intent. Other questions for clarity associated with the document? Pete.

MR. JENSEN: First of all, Mr. Chairman, I'm an advocate that all of this ought to be settled at the management board; and I would hope if we adopt this, that it would only be employed in the most extreme cases or not at all.

But beyond that, I think there is still a little bit of problem with some of the wording. For example, on this business of whether the board is obligated, in the paragraph above that, it says the Policy Board determines that the existing management plan should be modified.

Is that intended to be that that would be the only

recommendation that the management plan be modified, or can other issues be brought for adjudication? I don't get the context of taking out management board action and putting in management plan.

CHAIRMAN NELSON: Pete is on Page 3 under the ISFMP --

MR. JENSEN: It's on Page 3, right in the middle of the page there.

CHAIRMAN NELSON: Yes, Page 3, under the ISFMP Policy Board meeting. I think, Pete, you're talking about the next-to-last sentence on that first paragraph, "If the Policy Board determines the existing management plan should be modified, it will issue a finding to that effect" et cetera, et cetera. Is that what you're talking about?

MR. JENSEN: Yes, is that intended to say that that's the only thing, because I was comfortable with management board actions as an appealable item. Now it has been narrowed to only a change in a management plan.

CHAIRMAN NELSON: I think we were trying to be more encompassing by saying "management plan." I see your point, but if our intent is to be all-encompassing, maybe there is some wordsmithing that we can put in there that doesn't -- George has some wordsmith.

MR. LAPOINTE: Well, could we change "management plan" to "management program", because that's the plans and the actions coming out of the management plans. It strikes me that would be a useful change.

MR. JENSEN: That seems broader to me than the wording that has been substituted.

CHAIRMAN NELSON: Okay, we'll have staff change that to "program." I think there is another place where program and plan were swapped at one point or another, and the staff will find that also and swap it back to program.

MR. JENSEN: I guess we have to make a selection on Page 4, right, Option 1, Option 2?

Are you going to get to that?

CHAIRMAN NELSON: Yes, I just wanted to get any clarifications first before we went into that, Pete, so I'll certainly come back to you.

MR. JENSEN: Okay, well, my general comment is I think we still need to go through and make sure the terms are consistent with one another in the different sections, because I still see some differences. I won't go into all the checkmarks I've made on here.

CHAIRMAN NELSON: Okay, Eric.

MR. SMITH: Minor point, and I guess in way of a question. Two-thirds down on Page 3, the last sentence under "Appeals Products", it says, "The report of the Policy Board will be presented to the management board for action at the next scheduled meeting."

I almost wondered why it just can't be mailed out immediately and get the ball rolling. Again, I'm looking for if there is a reason that it's this way, that's fine. Without a reason, getting the word out as early as possible might be better.

CHAIRMAN NELSON: Well, the intent is for the board to act on it at the next scheduled meeting, not that they would be receiving it at that time. And so, yes, I think your representation is really what the intent is.

The intent is that the report would be sent out, and they would be acting on it at the next scheduled meeting. That's the intent of the whole thing. Obviously, we don't want to delay it. We want to move this along, if we ever have to use this ever again.

Other questions for clarification. I don't see any so let me move back into the section starting on Page 3, which is the considerations to prevent abuse in the appeals process.

I don't know if I want to -- I mean, I've wrestled with this as much as anyone else, and it's an interesting problem. So let me throw my two cents into it, not trying to bias anybody one way or another, but merely to just let you see some of

the thought process that has been involved here.

Option 1 is fairly straightforward. That's actually on Page 4. If a state is going to appeal, then the bar is set at a level that means that they are in compliance with the management plan for all items.

We did put in a little wiggle room that unless the appeal could be completed prior to the start of that fishing season, and we're trying to take into account the fact that sometimes or some states may have to go through a legislative process to implement those regulations, and, of course, the first thing that comes to mind is, well, how would you, as a state that needed to go through that process, which can be kind of lengthy and sometimes contentious, go forward and say, well, we want to put ourselves into compliance with a plan and measures that quite frankly we hate and we don't want to implement.

But if you turn that around a little bit, in order for these plans to work correctly, you should have everybody working in good faith on the management board, and that's where all the activity should take place.

It shouldn't be under an appeals process. It should be really one of the last resorts that you have to go to, and hopefully our process is such that you don't have to do that. And, quite frankly, our history has been we haven't had to do that.

But if you are going to an appeal, it seems as though you should have everybody on the same level playing field and then present why you feel that that particular issue is a problem to you.

If that issue, which we've already stated is not going to be corrected or changed, I should say, in that fishing year, then there is really no reason why you shouldn't be in compliance with it because that's what the plan calls for.

So that's what Number 1 is all about, and, therefore, you're not disadvantaging your neighbors. You don't have any bias. You don't have any resentment already stored up or being presented at an appeals process.

You're coming in on a level playing field and just saying you feel this is the wrong thing to be having in the management plan. So, that is why Option 1 is in there, and that's why Option 1 has been recommended as the one to choose.

Option 2, let me run through that just briefly. Having my kindler and gentler hat on at that time, I said maybe we ought to have it set up so that they're not in compliance with all those points; and that particular thing that they're going to appeal, they haven't got the regulations in place for.

So, okay, they don't have the regulations in place. If they're unsuccessful in their appeal -- and this is then under Option 2 -- you have the state being assessed penalties for delaying of implementation of the compliance criteria.

And we've already talked about how we're going to have those in place for the beginning of sometime next year, I would hope, for all of the management plans. And so, therefore, that's fairly straightforward. So if you're unsuccessful, you pay the penalty for delaying compliance.

But let's assume you're successful. So you're successful, you've won that need to change something in the management plan. So what do you do then? So, you either stay at your existing regulations, which meant you weren't in compliance with the plan and everyone else is, and there's a certain amount of unfairness felt by your neighbors, and it might have an impact on the resource, but that's an option.

The other option is, okay, you've won, but that plan is not changing until the following year in whatever form it's going to change, and, therefore, you need to be in compliance with that plan for that year for the resource issue.

So, those are the options that we have in front of us. Option 2, we felt, was a little bit convoluted and complex and, if anything, kind of fostered the sense of, well, let me see if I can get a better deal at the appeals process, and I won't go into compliance and take my chances.

But at some point you need to come into compliance on the plan anyways during that year, because we're not going to have any changes associated with the program until the following fishing year.

So, having said that, let me open it up for a discussion associated with that. I've had my esteemed vice chair already writing down names. I've got Jack, Tom and then Pat and George.

MR. TRAVLSTEAD: Mr. Chairman, I thought you gave a good explanation of the two options, and I'm prepared to move that we select Option 1 for inclusion in the document.

MR. PRESTON L. PATE, JR.: I second it.

CHAIRMAN NELSON: Okay, Pres actually beat everybody because he is closest to me, and Pres has seconded that. Thank you, Jack. Okay, comments on the motion. Let me go down the list. I would assume we would probably still have the same thing, so Tom you were next.

MR. FOTE: I looked at the appeal process for the states as a place where they looked like they can get a remedy for something they felt like they were disadvantaged about, and the remedy would be handled by the Commission instead of fighting it out with the Secretary of Commerce or filing a lawsuit by that state.

I was looking for a system where the states felt comfortable in reacting and working toward this outcome. If the appeals process becomes so onerous and takes so long a process, then it promotes the states, if they're not happy with what's going on, if they think they were treated unfairly, is to basically just go file a lawsuit. I mean, that's what we're trying to get away from or some kind of other action.

And that's why, when I was looking at this, I said, well, at least Option 2 gives some handle on there. I mean, if a state feels like it's being disadvantaged, it really does, well, their option right now is either go into compliance, suffer this for two years, because it's going to take you a year to go through the process and maybe the

following year until the board advances, so it's going to be two years before you get redress on this; or, basically, you're better off to just go filing a lawsuit if you feel like that's the way to do.

And, I've had the experience of coming from the board to the Policy Board saying, yes, go look at a problem and going back to the board, and the problem still has not been addressed. I mean, the basically the frustration is there as I'm waiting for the appeal process to come in, or otherwise I file a lawsuit.

And, I mean, that's not what we're looking to do. We're looking at correcting this inside the system without basically spending your money, our money, all our money on lawsuits against each other.

So I was looking someplace where -- and I think part of Jerry's conversations and our conversation, when we talked about an appeal process, and Gil Pope was actually the one who brought this up years ago, was looking for our states to feel comfortable in the process. And right now under Option 1 I don't feel comfortable in the process. I don't think I could vote to support this presently.

CHAIRMAN NELSON: All right, thank you, Tom. I think part of this is to -- this whole process is to make sure that we've sharpened our thought process for the future and recognize we've set a level fairly high for appeals to take place, and therefore we're going to put all of our energies into working very proactively on the board levels.

The board levels are the important place for this activity to take place, and that's where our focus should be. That's the intent of all of this. So with that, Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. I kind of agree with Mr. Fote on this one. It would just seem to me that if the last few words of Option 2 were to be considered as a part of Option 1 -- it may require some wordsmithing -- I would add something to the effect that provided it is in compliance with all measures,

which you've already stated, except the measure that is being appealed. Then it would seem to me that might cover all instances in all cases.

Now, maybe I missed the point on it, but that was what I got out of it, if someone would help me on that. That's what I would recommend.

CHAIRMAN NELSON: So, Pat, so you are suggesting Number 2 --

MR. AUGUSTINE: Well, either Number 2 or Number 1. And if I were to suggest Number 2, I probably would get rid of the whole first sentence because we state in the second sentence of Option 2, a state will be permitted to request an appeal provided it is in compliance with all the measures except the measure that is being appealed.

That could apply, in my mind, before the season or during the season or after the season just commenced. It would seem to be broader based and not require all the verbiage that you've got in that one.

CHAIRMAN NELSON: Yes, but I think if you think it through -- and, again, I'm not debating this with you, I'm merely trying to provide you with information and the thought process that we all had to go through.

And at some point, if you understand that whatever change is going to take place is not going to happen in that fishing year, what do you do? What do the rest of us do? Everyone will be in compliance and you will not be.

Does that disadvantage your neighbors? Does that disadvantage the resource? Let's assume you get the change to take place in the following year -- I don't know what type of change might take place.

It may still not be exactly what you want. But in the meantime, either you're in compliance or you have come into compliance because that's what the management plan calls for you to do. So, again, just pointing that out.

MR. AUGUSTINE: I appreciate that, Mr.

Chairman. It seems New York would have been an excellent case in point to this point in this past year. We had some 21 or 22 or 23 options submitted before the season started for the fluke season, only to find out that -- and all of those were approved, and then we went back, using our own approach to addressing that issue.

We had all those options that were approved by the board, by the technical committee and so on. We decided to use a different scenario. Now, we had met all the compliance criteria up to that point in time.

Then we submitted to the board that we're going to do the following. So at that point, although we had been in compliance fully with the board and all those options, we took something else on, so this would be a case where we were not -- with the exception of the measure that was being appealed, the board came back and said you're out of compliance.

So we appealed it and went through that long, drawn-out process. Maybe that's not a good example, but I think it's almost a perfect example. So on the one hand, we were in full compliance before the season started, then there was a lag from the time we had this meeting until we had the next meeting, at which time we were found, if you will, out of compliance because we selected a different scenario.

If we go with Option 1, there would be no appeal. We couldn't appeal. I'm trying to clarify. Maybe someone else could help me. Do you follow what I'm saying on that?

CHAIRMAN NELSON: Well, I do. Let's look at the bigger picture. And, again, I'm just trying to present an overview of the future. In the future you would be faced with not being in compliance, and you would be faced with a penalty for not being in compliance.

So what's the incentive to not be in compliance? Why lose? Let's assume it's 50/50 on winning and losing your appeal. In the meantime, six months into the season, it turns out that you lose and you're going to pay a penalty, and you knew you were going to pay a penalty if you lost.

If you come into compliance with the plan, you're not paying a penalty other than you've put in your regulations; and if you lose your appeal, nothing happens to you other than you had your regulations in place. If you don't have them in place, then we're faced with the dilemma of, well, what do we do Day 1?

We're not going to change anything in the plan until the following year, and therefore do we leave you in non-compliance and everyone else is in compliance, and you know what that leads to, and that doesn't lead to a good situation is what it boils down to?

Or, do we say, okay, you won, get yourself into compliance now and deal with it on the species board for the future? The dilemma I think the Commission has to wrestle with on what is the fairest way of dealing with this type of issue. And it's somewhat -- it is thorny. It is a thorny issue. Does that help you, Pat?

MR. AUGUSTINE: Yes, it does, Mr. Chairman. I appreciate your indulgence in doing that for me.

CHAIRMAN NELSON: George.

MR. LAPOINTE: I'm not sure which option I like yet, but in the discussions with folks, I think it's important -- with the last couple comments, I kind of got the sense that we would use the appeals -- I was concerned that people might think the appeals process would be used for every non-compliance finding, and that's absolutely not the intent, isn't it?

Okay, because I mean just under extraordinary circumstances. I think what people are struggling with is if a state, like New Jersey has just done, has something legislatively that happens, and they are out of compliance because of legislative action, how do you move forward?

And under this process, if we chose Option 1, which we have the motion for, they couldn't appeal until after their legislature brought them back into compliance at whatever time. That's one of the struggles is just the timing for issues beyond our control.

CHAIRMAN NELSON: Okay, I know that's why we're wrestling with this thing. Maybe there is an intent that if the state has started their regulatory process, whether it is legislative or otherwise to be in compliance, that they certainly could appeal at that time, but understanding that -- again, I think the key point is we should have the penalty phase in there for those that have delayed coming into compliance with all measures.

But if you're under or if you started in good faith to be in compliance, then I think that's what the group of three, the chair, past chair and vice chair, will have to look at and use as a criteria and say, hey, are they showing good faith or not, and then move ahead accordingly.

And so maybe that helps address some of the concerns that Pat has raised and others associated with that, and we can wordsmith this to reflect that accordingly. Well, let me go down the list. I had Pete next and then Bruce.

MR. JENSEN: My thinking has certainly evolved, and maybe it's the case of I just don't get it. First of all, when is a state considered out of compliance? In my mind, it's after the Secretary makes a ruling that they're out of compliance, not when the board makes compliance.

And so, this implication -- and it's not stated in here that a state can use this to delay compliance, I don't think rings true, because I think what we're trying to do is we're trying to tie together two separate things here that should remain separate. Out of compliance is out of compliance.

If a state chooses to appeal an issue, then they do so at their own risk, but they're still out of compliance. And so, I'm going to argue that we don't make a choice here, that it's irrelevant to what we're trying to do.

It seems to me that there is already an appeal to non-compliance in the Secretarial review process. That is an appeal process where states can make their point, and so I'm going to vote against adopting either one or two, simply

because I don't think we need to do it.

CHAIRMAN NELSON: To that point, George.

MR. LAPOINTE: Well, the finding of non-compliance is by our body and not the Secretary.

MR. JENSEN: Well, I mean, it still happens as a final action, yes, right, because the Secretary either can overturn it, right?

MR. LAPOINTE: They can chose not to act on it with a moratorium, but they still -- I guess I would argue that the finding of non-compliance is by the full Commission.

MR. JENSEN: Okay, well, then that's the question. Yes, when is a state out of compliance? And so, I just don't think that it's necessary for a state to prove its worth to bring an appeal, that they are two separate processes. Out of compliance is one thing. Feeling you need to appeal a decision by a board is another.

CHAIRMAN NELSON: All right, thank you, Pete. Bruce.

MR. FREEMAN: Thank you. a couple of points. One, the way I look at this, if a state feels it has been treated unfairly, it could go through the non-compliance and appeal to the Secretary, go beyond the Commission, or it could stay within the Commission and use this appeal process. So there are various options.

It appears to me that Option 1 does not do what we really want it to do. Understanding, John, as you indicated, we don't want to encourage states to use loopholes to simply delay making a decision which the state may not like to make and use the appeal process to do it, but in an instance where there is merit in the case and it is determined that indeed some recourse needs to occur, and the state is successful in its appeal, it would, under Option 1, have actually given up some access to the resource or some catch which you could not then get back or recover.

And it appears to me that Option 2 allows that to occur. And the reason I say that, Option 2 really covers two instances. One is that if you're

unsuccessful or a state is unsuccessful, then it's subject to penalties, and those penalties could be provided by each board or each plan.

And the other option if a state is successful, then it allows two options, a and b, to maintain their current regulations relative to the appeal process or the state has to come back into compliance.

But in my thinking, I believe that Option 2 fairly represents what needs to be done. It doesn't encourage a state to use this to kind of skate on a regulation would like to.

But the penalty would be -- you play the game, you get some time to appeal and you lose that appeal, there's a penalty, and you're not going to continue the way you've been operating. So, again, I would argue that Option 2 is really the one that treats everyone fairly, and it treats a state fairly in whether it is successful or unsuccessful it lays it out.

CHAIRMAN NELSON: Thank you, Bruce. I would point out that you'd need to choose whether Option A or B under Option 2 was what how we would conduct business, so either you choose Option A in which the state doesn't change its rules or Option B that it comes back into whatever rules are necessary for it to be in sync with the rest of the folks until the corrective action is taken.

So, it is still somewhat of a dilemma in my mind as far as that goes. And a lot of this is -- and I'll get to Paul certainly in a second -- a lot of this is a matter of awkwardness as far as compliance type of thing, and Pete I think raised a good point. Well, you're either in compliance or you're not.

And maybe the language is focusing too much on the compliance thing. It's just that we wanted to make sure that we looked at an appeal isn't a delay type of tactic.

Most of the time you're looking at final actions, a quota system has been set up, and New Jersey has been allocated 15 percent of the quota and you don't think that's fair, but you don't have to change your regulations or anything, that's your

quota.

And you're appealing because you think you have a better baseline in past years or something else needs to be used, and the board didn't agree with you and you're appealing that. So, you're already in compliance.

There's nothing that you needed to do; it's just that you needed to see if you could be heard on that particular point and see if you can get some redress associated with that for the future. So, most of the time those are probably the issues that we're dealing with as far as any appeals process internally.

But, again, I don't think we wanted to leave loose ends out there and make it that a state didn't have to put in some regulation, whether it was being at 28 inches or a certain type of fish for that particular year because of the status of the stock, and yet your quota is something that you had a problem with. I'm looking for guidance. We've got some so far. We've got Paul. I've got Paul and I've got a list after Paul.

MR. PAUL DIODATI: Thank you, Mr. Chairman. First, I want to congratulate everyone who worked on this. I think this is an excellent start. I imagine that you'll be looking for an action to approve this document, and that it becomes inserted in the Charter at some point?

CHAIRMAN NELSON: Yes, we wouldn't need to change the Charter. The appeal process is already in the Charter. What we're doing is defining what the appeals process is so it would be guidance on how to make an appeal.

MR. DIODATI: Right, and this will be a living document so that maybe a state will get to try it and we'll see how it works and have opportunity to modify it.

CHAIRMAN NELSON: Well, I think that's the intent. It's not a Charter change. It is a dynamic situation. We did try to work through all the bugs, so to speak, but there is probably some critter out there with some state that --

MR. DIODATI: Yes, that's why I feel strongly

that if it ever comes in practice, we'll all get a better idea of what needs to be tweaked in it or added or deleted.

And I really agree with Pete Jensen's comments. This section titled "Considerations to Prevent Abuse", I don't think it's necessary to even have this section in here. I think what you really want to do is properly define the appeal criteria beginning on Page 1.

I think Pete is absolutely correct that compliance is a separate issue, that each of us as partners have to make that decision up front, whether we're going to be in compliance, how you're going to handle a non-compliance finding, and whether or not there is room within the process to appeal.

I sense what the authors tried to do here -- and I appreciate that as well -- but it's kind of like looking behind you after you drafted the document. I don't really think it's necessary. I think we'll see if there is any abuse, if we ever get to use this, and then perhaps if that's a finding, then maybe we make this change later on.

But upfront, especially with the three individuals named that review the request for an appeal, I'm comfortable with that. I think that there is a lot of up-front work, preliminary work to decide whether or not an appeal is justified, so I'd be more comfortable without this abuse section in here. I'm not going to support either of those options.

CHAIRMAN NELSON: Okay, I have a long list of folks here. Perhaps the better way of dealing with this is whether or not there should be a motion to amend the existing motion; or if the Commission is inclined not to include this section, then we should have a substitute motion to remove that one section, consideration of abuse, to prevent abuse in the appeals process.

I'm throwing that out for people to decide on which way they want to go on this so that we don't just keep going around and around on this. Paul, do that point.

MR. DIODATI: I'd be willing to make a motion to approve the appeals process white paper, with the exception of the section on Page 3 titled, "Considerations to Prevent Abuse of the Appeals Process". I'd be willing to make a substitute motion to that effect.

CHAIRMAN NELSON: All right, do I have a second to that?

DR. EUGENE KRAY: I'll second it.

CHAIRMAN NELSON: Okay, Gene, thank you very much. All right, we have the substitution motion. Do I have who would want to speak for that motion? Okay, let me go down my list because I've got to start a new list, otherwise.

I had Gordon, Eric, Jack, Vince, Gene and Everett. Did any one of those people wish to speak for the motion, and I'll be happy to recognize them at this particular point. Any one of those wish to speak against the substitute motion? Okay, Jack, go ahead.

MR. TRAVELSTEAD: It's not strong opposition, but it seems to me in the ten or more years that the Coastal Act has been in place, if you look at all the times that states have been out of compliance, has there ever been a case where they were subsequently judged to be correct and were allowed to continue whatever measure that kept them out of compliance?

I can't think of any, so it seems to me in almost every case you've had situations where states have been out of compliance; and in doing so, either the fish stock was harmed as a result of that or some, if not all of the other states, were placed at a competitive disadvantage.

And it just seems to me that Option 1 is a way of leveling that playing field and preventing those kinds of things from happening. It forces a state to come into compliance, even if they don't agree with that measure.

It prevents quotas from being exceeded. It prevents short, minimum size limits from remaining in place when they should be higher

or other examples like that that harm the rest of us.

It seems to me in almost every case where a state chooses to go out of compliance, we begin to hear back in our own states from our own citizens, look what so-and-so is doing. Why can't you do that?

And it just makes it so much more difficult on all the other states that I just think Option 1 is the way to go to prevent those very things that we gnash our teeth about every time a state chooses to go out of compliance.

CHAIRMAN NELSON: Thank you, Jack. Of my original list for the pro and con, Eric had his hand up next and Gordon. And, A.C., I've added you to that list and then Ritchie. I will start working my way around. Eric, go ahead.

MR. SMITH: Thank you, Mr. Chairman. Yes, I was trying to accommodate the time crunch and realized I sent a mixed signal. I actually was seduced by Paul and Pete's logic on this, and the logic is that we may be just worrying a little bit too much about the abuse possibilities.

I think it's right to worry a little bit about it. I think Jack's right with the sense of where people come to on a compliance criteria, but I wanted to make the point, compliance criteria are not appealable under this process.

They are specifically excluded on Page 2. So we've already spent a fair amount of time on that issue and probably shouldn't.

My biggest concern with Option 1 is that it requires me to go through a nine-month regulation and rule-making process on something that I've already taken a position that I'm publicly opposed to, and I'm engaged in an appeal request to do it.

That's a hard sell when you have to go through a legislature for approval. I like the idea, frankly - - I guess I don't like entirely the idea of not doing anything in this section.

I would rather start slowly, use Option 2 with its

Sub-Option A, which basically says you have to have adopted all of the measures in the plan except the one that you're appealing; and if you're successful, you can maintain your regulations until there is any action that is subsequently taken by the management board.

I think we ought to try that. If there's a couple of instances where -- let me back up. The other reason is I think the fact-finding panel that is referred to on Page 2 is critical here. If we get a read that this is a spurious proposal, then I would think that the Commission would say, okay, we're not going to follow through with this, the appeal is denied and it doesn't go forward.

I would hope that would be the process of the outcome of a fact-finding that says it's not justified. I think there are already a couple of in-built measures to prevent abuse.

One of them is to select Option 2, and the other one is this motion to substitute which is to do nothing and see how it goes. I guess I favor either one of those rather than Option 1, because I think it makes a state have to go through a lengthy adoption process for something that they've been on record as saying that they feel they have a legitimate argument against.

I say that with all due respect to the AOC's effort because, frankly, you guys have put an awful lot of work into this, and I know you gave this an awful lot of thought, so thank you.

CHAIRMAN NELSON: All right, thank you, Eric. In deference to all of the folks that do have their hands up and would like to say something, let me turn to my esteemed vice chair who has had an opportunity to think about this, and since he is the chair of the AOC, and see if he'd like to provide some insight that perhaps solves this problem or perhaps clarifies it a little bit more so.

MR. PATE: Thank you, John. As John noted, I was one of the members of the subcommittee or the group that worked on the original draft of this process. What we were intended to create was a process that would not open itself up for

abuse or an opportunity to cause the Commission to do something different from what they normally would if a state is not complying with the requirements of a particular management board and the plan that comes out of that board.

In hindsight, we might could have made a better product to accomplish that. I, too, have been influenced by some of the comments made today, and it has convinced me that we've gotten the compliance issue and the appeals process perhaps unnecessarily wound up with each other.

The problem might be quite simply solved by adding a statement in the appeals process that would make it clear and ensure that an appeal would not delay the Commission's process for finding a state out of compliance.

That process would go forward as it normally does now, the appeal overlay that and parallel it. And the state is not better off or is no worse or better off as a result of having those two run concurrently.

And if I may continue just with an additional thought, Mr. Chairman, that situation would become even more effective should we include in the future the language in the management plan of a penalty for non-compliance.

CHAIRMAN NELSON: Yes, thank you, Pres. I would also point out that when we were developing this language, we did not have in mind instituting the penalty phase, even though it is under Option 2.

You know, we did ultimately stick in that language, but probably didn't make the connection as far as if you're going to -- if somebody is going to be out of compliance with the plan, they're going to pay a penalty.

Let's assume that we're going to put that penalty language in those plans. I don't foresee that we would not. If that's the case, then perhaps this issue is not as needed as what we had originally thought.

I just wanted to again give you the context of when we were developing this, we really hadn't thought about the non-compliance and penalty phase associated with that, if we indeed have that in place. So, having said that, is Pres' language what people are comfortable with, that concept? You're comfortable with that, Anne, right?

MS. ANNE LANGE: I have concerns.

CHAIRMAN NELSON: Well, you can't go through the appeal process, anyway, so it doesn't matter.

MS. LANGE: If I could ask a question.

CHAIRMAN NELSON: Yes, and if they ever go along with it, I'll take care of them later. No, go ahead, Anne, and then I'll go to Pete. But, again, we're trying to deal with this as the -- perhaps this is not necessary; and if we do the other non-compliance issue and have a penalty associated with being a non-compliance factor, perhaps this particular point is not necessary in our appeals process. Go ahead, Anne.

MS. LANGE: My only concern is based on what Pres said, if there is a non-compliance finding from the Commission coming to the Secretary concurrent with a process to possibly change the action the state is supposed to take, the Secretary will be working on trying to determine a non-compliance on something that isn't even something the state is required to do any more.

If an appeals comes through and says, you know, that we appealed this, we don't think that this measure should go into effect, and the Secretary is at that time trying to determine if that state is out of compliance because they didn't implement a measure that the board thought was appropriate, I think we're --see, we're going in circles.

CHAIRMAN NELSON: Well, I think it's timing. I think it's still timing, Anne. We would not necessarily have anything changed in the management plan program until the following fishing year, so they still could be out

of compliance for that fishing year. Pete.

MR. JENSEN: Well, I still support the motion, but I guess I want clarification from Pres. Are you suggesting, Pres, that if we adopt this motion, that this statement would be added then to clear up the issue of whether there is some implication that you can delay implementation or something?

MR. PATE: The intent that I had, Pete, was to offer an amendment to the substitute motion that would add that.

MR. JENSEN: Well, I guess my response to that is it might solve the problem, but why create the problem in the first place? So, this seems like a round-about way to fix the problem.

MR. PATE: If I may go back to the substitute motion and let me -- Toni, can you go back to the substitute. The amendment that I would offer would be to substitute for the language that begins with the exception, with a statement as it appears on the board.

And what that does is add some clarity to how the process is going to treat an appeal relative to a state being not in compliance. It doesn't change the process any. It just addresses the issue of what the intent of the Commission is when they adopt this process. May I offer that motion, Mr. Chairman?

CHAIRMAN NELSON: To amend this particular one?

MR. PATE: A motion to amend the substitute, yes.

CHAIRMAN NELSON: Yes, let's get the language up so that we can get all of it in front of everybody, so we can see what it says and what the intent is, and then we'll have the discussion on this.

MR. PATE: Okay, I offer a motion to amend the substitute motion such that the motion would ask for adoption of the appeals process, excluding the section that is entitled, "Considerations to Prevent Abuse of the

Appeals Process” and add a statement. Put an “and” in there.

Okay, let me read that for Joe’s sake as much as anything:

The proposed amendment to the substitute motion would cause the substitute motion to read or would make the substitute motion become a motion, such that the — now I’m confused of exactly the wording.

The substitute motion would ask for adoption of the appeals process, excluding the section entitled, “Consideration to Prevent Abuse of the Appeals Process”, and add a statement that ensures that an appeal will not delay the Commission process for finding a state out of compliance.

A motion to amend the substitute motion such that the motion would ask for adoption of the appeals process, excluding the section entitled, “Considerations to Prevent Abuse of the Appeals Process”, and add a statement that ensures that an appeal will not delay the Commission process for finding a state out of compliance.

CHAIRMAN NELSON: All right, I need a second. Gordon, is that the second?

MR. COLVIN: I’ll second it if the maker is willing to consider a perfection.

CHAIRMAN NELSON: I’m sure he is.

MR. COLVIN: To add the words at the end, “nor delay nor impede the imposition of penalties for delayed compliance.”

MR. PATE: I will accept that, Mr. Chairman.

CHAIRMAN NELSON: Do you want to say that again slowly, Gordon, for Toni?

MR. COLVIN: Nor delay nor impede the imposition of penalties for delayed compliance.

CHAIRMAN NELSON: Gordon, again say yours, please.

MR. COLVIN: After the words “out of compliance”, “nor delay or impede the imposition of penalties for delayed compliance”.

CHAIRMAN NELSON: All right, Gordon, nor delay or impede the imposition of —

MR. COLVIN: The imposition of penalties for delayed compliance.

CHAIRMAN NELSON: Imposition of delayed compliance.

MR. COLVIN: Of penalties for delayed compliance.

CHAIRMAN NELSON: Gordon, how is that?

MR. COLVIN: Change “implementation” to “imposition.”

CHAIRMAN NELSON: Oh, imposition, yes, thank you.

MR. COLVIN: Second.

CHAIRMAN NELSON: Does the maker of the substitute motion concur with this?

MR. PATE: I concur, Mr. Chairman.

CHAIRMAN NELSON: Okay, so this is the motion before us. I’ll take a couple of questions. Pres, read that for Joe.

MR. PATE: Amend the substitute motion such that the motion would ask for the adoption of the appeals process excluding the section entitled, “Considerations to Prevent Abuse of the Appeal Process”, and add a statement that ensures that an appeal will not delay the Commission process for finding a state out of compliance nor delay or impede the imposition of penalties for delayed compliance.

CHAIRMAN NELSON: For the motion, Pat.

MR. AUGUSTINE: For the motion, Mr. Chairman, I call the question.

CHAIRMAN NELSON: No, no, I’ve got to

take a couple comments. I had all these poor souls that have not had a chance to say anything. We're not looking for everyone to say something. Anyone opposed to it? George.

MR. LAPOINTE: I'm not yet seduced. You all know I'm an easy person, but I'm not seduced by this substitute motion. If this group suffers from anything, it's falling prey to vagueness of language.

And as much as I'm troubled by Option 1 and Option 2, I like the clarity that they provide. I mean, we want to talk about people trying to bypass the appeals process. I think the language is important, and so I'm concerned about the loss of that clarity with the substitute motion.

CHAIRMAN NELSON: John, against? Okay, go ahead.

MR. JOHN DUREN: I am against this motion, but I am in favor of measures to prevent abuse of the appeals process. I am also in favor of penalties for non-compliance. My problem is that I don't see this language as -- well, I see this language as flawed is the best way to put it.

I don't think it provides equal protection to a state or group of states which may appeal to a management board. The things that concern me is what if a state or a group of states appeals, they are found in non-compliance, they are penalized, and they win their appeal, but they have paid a penalty for something they were right about in the first place?

I have a real problem with that. I recommend that we give some serious thought to getting this language exactly right before we adopt some measure that we might regret. It seems to me that the motion Mr. Diodati made is the correct one for us to take right now and then spend some time thinking through this issue very clearly.

If I were going to prescribe something right now, it would probably be something like Option 1.5. I think there's good points to both of those options. And probably with some careful thought by a smaller group than this

august body, we could get it just right.

CHAIRMAN NELSON: Okay, thank you, John. Okay, who would like to speak for the motion? Dennis, I have you and then we're going to call the question.

MR. ABBOTT: Thank you, Mr. Chairman. Listening to all this this afternoon has been very interesting. It's amazing to me how we can move our positions. Various people have stated that they had one position or one thought and listening to others they were able to change their minds.

I was initially in favor of Option 1 and very much against Option 2. Option 2 talked about being able to do everything except what you were supposed to. I thought that would allow us to be out of compliance, not allow it, but sort of take us in that direction.

Option A I think states the obvious, that we have to be in compliance. Paul Diodati said that we should have this paper, and it's going to be a living thing and it's going to evolve and we'll see how it works, I think he said as time goes on, so I don't think the exact language is that important.

I think that the language that finally appeared will allow us to move forward, and we now have the understanding that the issue of non-compliance is and will be treated separately from this appeals process, quite clearly.

And that was a concern that I had at the beginning. As I say, I was concerned that we were going to step away from that a little bit. I think that this is a good motion and I would encourage us to adopt it and move forward.

CHAIRMAN NELSON: All right, thank you, Dennis. Let's have a caucus take place and we're going to have a vote on this motion.

(Whereupon, a caucus was held.)

CHAIRMAN NELSON: Okay, is everyone ready? If you need more time, just let me know. Just for parliamentary procedure, this is

amending the substitute, then we're going to vote on the substitute, then the substitute becomes the main motion, and then we'll be done with it, I hope.

All right, on the amendment, all those in favor of amending the substitute motion as you see on the board, please raise your right hand; thirteen; no, four; abstentions, one; and null votes. Who couldn't make up their mind? Okay, zero.

That's good clarity. All right, the amendment passes. Now we're going to have the vote on the substitute motion. All in favor of the substitute motion please say aye; opposed. The motion passes.

Now the substitute becomes the main motion. All those in favor please -- yes, it is approving the document as you see it. There may be some editorial changes that need to be made and the staff will have the liberty to modify the language to have uniformity in it if that's okay with everybody. Gordon.

MR. COLVIN: Just to kind of make this point clear in everybody's minds, my understanding is that approving the document then gives us a final white paper. But, the next step is to actually develop and adopt text for the Charter that reflects the white paper; correct?

CHAIRMAN NELSON: The minor modifications that I'm talking about will be to the white paper. The Charter already calls for an appeals process, so we would not be modifying the Charter. We would merely be fleshing out what is our process for an appeal as directed by the Charter. Is that clear for everybody? Paul, go ahead.

MR. DIODATI: Just for a future consideration, while I probably agree that the two federal services shouldn't be capable of initiating an appeal, I think that they should be able to join a state that does initiate an appeal if they wish to do so. Right now this prevents them and they're voting partners in the Commission. Right now, the way this is written, they can't initiate nor join.

CHAIRMAN NELSON: Okay, I think they can support an appeal, but the Charter calls for a state, Paul, and the feds are often are a state of mind, but they're not necessary the other type of state.

Okay, to the main motion, all those in favor of the main motion, please say aye; opposed; abstentions; nulls. One abstention. Anne, thank you. The motion passes.

I do want to thank everybody because this is something that we've been wrestling with for almost a year, maybe even a little bit longer than that. I think the end product has evolved to the point where it's going to be very helpful to all of us if anyone ever does want to do an appeal.

Future Chairs will be happy to have something fleshed out to deal with this. And, again, I think that as we see how things do evolve, it obviously can be modified.

But, just the fact that we have the changes that we're proposing in the FMPs to have a non-compliance or a penalty for delay of implementation for compliance probably addresses a lot of what the uncertainty was in this last section.

So, thanks to the AOC. Thanks to all the Commission for their help. Why don't we take a break. I'll say couple minutes, but it's five minutes and then Bob's going to go on to his next action item, which is the conservation equivalency guidance document. Thank you.

(Whereupon, a recess was taken.)

**-- Review of Conservation Equivalency
Guidance Document --**

CHAIRMAN NELSON: We're ready to start again so if everyone could just filter back to the table, I would appreciate it. Okay, the next item on our agenda is the review and consideration of action on the conservation equivalency guidance document.

I'm going to turn that over to Bob and he can give you the little history associated with that

and any of the highlights associated with it.

MR. BEAL: Thank you, Mr. Chairman. The document that I'll be quickly going over is the conservation equivalency policy and technical guidance document, dated April 27th, 2004.

This is the same version of the document that was handed out to the Policy Board at your last meeting. It hasn't changed since the August meeting -- I mean, sorry, the May meeting. We're in the August meeting. There is nothing new here.

It was passed out at that meeting as part of the Management and Science Committee report. The Management and Science Committee initiated or was tasked with initiating this project. They formed a subcommittee. The membership of the subcommittee is included in this document on Page 8, I guess.

It's comprised of Commissioners, Law Enforcement Committee members, Management and Science Committee members, the Committee on Economics and Social Sciences, so a broad group was involved in working on this.

The Management and Science Committee has signed off on this document and recommended it for approval by the Policy Board. The Law Enforcement Committee and the Committee on Economics and Social Sciences has also looked at this and their edits have been incorporated, so this has been through a lot of layers of review, and it's up to the Policy Board for review at this time.

It was initiated in October of 2001 so this one has been kind of being developed for quite some time. Just quickly I'll just go through it. The overall intention of this document is to do as it says, provide policy and technical guidance on conservation equivalency.

If approved this document wouldn't -- the only modification to the Charter would be recognition that this document exists and would refer to this document for the use of conservation equivalency in our FMPs and amendments and

addenda in the future.

The document starts out with the current definition of conservation equivalency that's included in the Charter. The document does not recommend any changes to the definition that's in the Charter.

The document recognizes that different species use conservation equivalency, the term "conservation equivalency" in somewhat different fashions.

Probably sort of the true conservation equivalency is the striped bass example of two fish at 28-inch standard along the coast, and then states are allowed to modify that standard if they can provide evidence that it's an equivalent set of management measures.

It's also used in summer flounder where the states have to develop regulations to ensure that they don't exceed a certain harvest level for their recreational fishery.

In tautog there is an example where everyone had to go home and take a 29 percent reduction, and that was under the title of conservation equivalency. So, the document realizes that it's used a lot of different ways by different species and different management boards.

On Page 3, the general policy guidance section, this section gives kind of the view of how conservation equivalency should be used, what groups should be involved in the development of conservation equivalency programs.

The concept there is that the plan development team, as they're developing an amendment or an addendum, should include guidance to the management board whether or not conservation equivalency should be used for that species; and if so, what management measures should be subjected to conservation equivalency.

During the development and approval of an amendment or an addendum, the board has to make a conscious decision whether or not conservation equivalency should be included in the plan.

And then it goes on to describe the details that should be included in amendments or addenda for conservation equivalency. Then it further states that the states are the ones that have the responsibility for putting together the proposals which are detailed in here in a later section.

One of the new concepts for conservation equivalency that I don't believe are in any of our plans right now are that management programs should place a limit on the length of time a conservation equivalency program should remain in place without reapproval by the board.

There has been some concern that conservation equivalency programs are implemented, and they aren't actually equivalent in the long run, once those programs have been in place for a while, so this document explores the reconsideration of these sets of regulations that deviate from the standards.

The other overall policy guidance is that the plan review team will serve as the clearinghouse for the approval of the conservation equivalency proposals.

In the past it has been done by plan review teams, technical committees, or straight to the management board in some species, so in the guidance provided here the plan review team will receive the proposals and decide who they need input from to review the proposals, and ultimately the board will have the responsibility to approve the conservation equivalency proposals.

Halfway through Page 4, standards for state conservation equivalency proposals, the next I guess six bullets there include the details that should be included in all the proposals that come forward from a state.

The rationale on how or why -- the things that should be included are rationale for how or why alternate management programs are needed by the state. The proposal needs to include a description of how this alternate program meets the FMP objectives and management measures.

The proposals need a description of the datasets

and the analysis that are used. The proposal needs to include a length of time that the state is requesting conservation equivalency.

The standard in here is a maximum of three years unless the state can provide justification that a longer period may be appropriate for this set of management measures.

Each proposal must justify any deviation from the conservation equivalency procedures that are included in the FMP. Up front, the guidance is to include as many details as you can in the management plan or amendment on conservation equivalency and how it should be used.

So, if a state does something different as far as calculations or applying conservation equivalency, it needs to describe what those differences were and how they were used.

And then Number 6 is a new one, which is the state needs to provide some plan for follow up or monitoring of the potential impacts of the equivalency proposal.

So once a state implements conservation equivalency, they'll have the responsibility to monitor that program and ensure that it actually is equivalent to the standards that are included in the FMP.

The next section is the review process, and it's I guess eight bullets there. Again, the management board is the group that has the ultimate approval responsibility of these programs.

Bullet Number 2 is the time line for review and submission of these proposals. This is probably of interest to this board. The way it's written now is the intent to submit conservation equivalency proposals should be forwarded to the species board chair three months prior to a scheduled meeting.

Then the state is required to submit the proposal two months prior to that meeting to allow for the necessary review. The plan review team will then receive the proposal and determine who

they need assistance from in order to review this proposal.

In other words, if it's a relatively simple proposal where the states are just putting a formulaic thing in place where they're selecting something from Column A and Column B and putting it in an equation, then the plan review team can kind of check the math on that, and they don't really need additional input.

But some of the more complicated proposals the technical committee, law enforcement committee, or the CESS may be needed to provide additional input. The plan review team, no matter who they need input from, they will also make this available to all the committees that were mentioned in order for them to provide input if they would like to.

They will not be required to provide input unless the plan review team asks for it, but the document will be made available to them if they would like to provide comment.

Following the input from all these separate committees, the plan review team will compile these inputs and forward it to the advisory panel for their comment. Then the plan review team, taking into account all the information that they get, will provide one of three types of recommendations to the management board. It will be an approval, a rejection or a conditional approval.

A conditional approval is something along the lines of what the state is proposing doesn't exactly get them there, but if they were to do these certain things, the program would be equivalent, so it's something that's pretty close but the tech committee or plan review team finds a few adjustments that would be necessary to get them there.

Item 7 is the board will review and take action on the proposals. Then Item 8 is the follow up, which is the plan review team each year will evaluate whether or not these conservation equivalency programs are equivalent or not to the standards that are included in the FMP.

The next couple sections -- the coordination guidance is just kind of a recognition that NOAA Fisheries and the fishery management councils, we have joint plans with some of the councils, and some of the things that the Commission does obviously affects what -- you know, it affects federal permit holders and creates discrepancies between state water regulations and federal water regulations, so that section is kind of a recognition that we need to coordinate with the federal partners.

One of the main reasons this whole document was initiated or whole process was initiated is that the public had some concerns or didn't necessarily understand conservation equivalency, and they felt that their state may or may not be getting as fair a shake as some of the other states up and down the coast, so public perception is really one of the issues that this process is trying to address.

And the more information we can include in the fishery management plan to allow the public to understand how these things are calculated and how they're being developed would definitely help with the public perception issues.

And then the remainder of the document is just the subcommittee membership. Appendix 1, is a description of the conservation equivalency or the measures that can be modified through conservation equivalency as well as the measures that are currently implemented under conservation equivalency. Appendix 2 is simply the membership of the current plan review teams.

CHAIRMAN NELSON: All right, thank you, Bob. Any questions for Bob? George, did you have a question?

MR. LAPOINTE: I was going to move approval of the document, Mr. Chairman.

CHAIRMAN NELSON: Well, that's very nice of you, George. A second?

CHAIRMAN NELSON: Bruce, thank you. Did you second it, Bruce?

MR. FREEMAN: Yes, I'll second it, but I have just --

CHAIRMAN NELSON: No, no, with enthusiasm, you're going to second it; right?

MR. FREEMAN: Yes, true.

CHAIRMAN NELSON: Okay, Bruce.

MR. FREEMAN: On Page 4, under the standards for state conservation, at the very last sentence of that paragraph, it indicates that states should limit the number of options included in a proposal or prioritize the options. It's an interesting statement, but really what does it mean?

And the reason I say that in the instance of New York's last submission of their conservation equivalency, they gave 20 or so alternatives. And one would say, well, that's an excessive amount, but the manner in which they are calculated was done by a formula.

I'm sure they did this simply to allow the public a wide variety of latitude in choosing something. It really didn't take really much more time to analyze -- I won't say analyze but to understand. It wasn't a long, drawn-out process.

You simply apply the formula, and depending what numbers you use, you got a different answer. I could understand a state submitting 300 alternatives, but I'm just curious what the feeling was of the authors when they wrote that statement?

MR. BEAL: All the various committees that developed this had a lot of discussion on should we put a number in here. Number 3 was in there a couple times. The Number 6 was in there; ten was in there.

But then there was the realization that, as you mentioned, Bruce, some of these things are kind of formulaic and they're not that difficult. But, in the past one state brought forward over 40 different options for -- well, just 40 different options for one of the management programs and they were a different set of analysis.

So this is just in there to -- hopefully, the states will be somewhat understanding that there is a lot of people involved with the review, and it's a very time-consuming process. If you submit a large number of proposals, just prioritize the ones that you would like to definitely have reviewed; and then if there are others you would like to have reviewed, if there is time available, those could be reviewed, too.

If plan review team is just checking the math, it's probably not that big a deal if there's a large number. But if there is unique analysis to 10 or 12 or 40 different options, then it's a time-consuming process.

MR. FREEMAN: Well, I understand. It may be useful to simply indicate that the states should be cognizant of the amount of work required of the plan review team in that if they have large numbers, it may delay that review process.

A couple other minor things. On Page 6, Number 2, it talks about a time line to submit conservation equivalencies three months prior to the scheduled meeting. I recall in the past we've had much less time determined between when we decided conservation equivalency could be used and when it is to be submitted. Is it felt by the authors here that the three-month and two-month period is doable and reasonable?

MR. BEAL: The three-month number was essentially to allow -- that's more of a staff thing, to allow us to schedule a board meeting to review the proposals or a proposal or multiple proposals, to get them approved or considered for approval.

The two-month number is kind of what it takes to get -- given that under this approach the plan review team is going to receive the document, farm it out to separate committees and then compile their input and get back to the board, it's a more involved process than we currently have for some of our species. It's probably going to take a little bit longer than we currently have.

MR. FREEMAN: All right, well, I recall in the past we've had time lines and sometimes states

come in with their proposals the day of the meeting, and it would just -- was this meant to be a guideline or is this a specific time where you're going to -- if you come in and don't notify the board two months prior, it's not going to be considered, or is this just a guideline?

MR. BEAL: As it says, this is the guidance document. Kind of the worst case scenario is what you mentioned, a state bringing forward a proposal at a board meeting. The board has just a tough time dealing with those without technical analysis.

And it usually gets referred back to the technical committee, anyway, and delays it until the next board meeting. So, I think some fair warning to the plan review team and consideration for the amount of time it takes to review the proposal is necessary. Two months, again, is guidance, but there is some flexibility build in there, I suppose.

MR. FREEMAN: Okay, one last thing. Under Number 4, again on Page 6, where the plan review team is to review and consider a description of impacts from the adjoining jurisdiction or other management entities, I think we're in a situation that certain actions that are taken really we have no idea what those implications could be on an adjoining jurisdiction.

For example, a different size, bag or season limit on some species may force anglers from that state to go somewhere else, but we really have no indication of what that shift of effort could be, although it can be considerable. This was just meant to try to describe as best as possible those impacts?

MR. BEAL: Yes, exactly. It's obvious that what one state does may affect its neighbors; so if there is any way to kind of describe that to the management board that has to consider approval of these documents, it should be included in the review.

CHAIRMAN NELSON: Okay, I have Paul and I have Pat and David. And, George, did you want to speak again? Well, we'll come back to you. Go ahead, Paul.

MR. DIODATI: Okay, I guess I have a comment and a question. At first, I guess I didn't recognize even the need for this document. It seems that we're constantly making more rules to create a stage of failure for ourselves or our process.

But, I never recognized any problems within the species board when it comes time to recognize whether or not we should have conservation equivalency or not. Later on in this document, though, on Page 7, we do talk about public perception.

I could understand that being somewhat of a problem with the public not seeing what conservation equivalency really is. Maybe that section, it would be helpful if that was moved right up front as a statement of concern or statement of the problem or something like that.

And the question had to do with Page 5, Number 6, the monitoring requirements. I hope those aren't in addition to those monitoring compliance requirements that we have for every FMP. Is that what we're talking about, the monitoring requirements that we do for every FMP, or is this in addition?

MR. BEAL: Well, I think it's not necessarily in addition. I think if we're talking about a recreational management program, the landings information is really the monitoring that's required.

You know, what was landed under this scenario and then the comparison of before and after is the measure of is this equivalent or not, so that doesn't require any additional monitoring on the state's part, but just more of a realization that the state will look at the available landings' information to determine if the program is equivalent or not.

So, the commercial side of things it's the same way. There is the stream of landings information that will determine if this is equivalent or if the landings increase substantially or change substantially in size composition, or something that may negatively affect the overall population.

CHAIRMAN NELSON: Okay, Pat.

MR. AUGUSTINE: My question got answered, Mr. Chairman, thank you.

CHAIRMAN NELSON: Go ahead, Pat.

MR. AUGUSTINE: I would make a motion, move to accept, or I'll call the question, whatever words it takes. No, my question was answered, Mr. Chairman.

CHAIRMAN NELSON: Oh, I'm sorry, thank you. Pat, I did have a couple more folks that had raised their hands for questions and clarifications. Let me get them in. David.

MR. DAVID CUPKA: Thank you, Mr. Chairman. I have a comment, and then I'd like to follow that up with a question, if I may. In looking at the appendix to this document on Page 13, under the Shad and River Herring, it says "No states have altered the management measures through conservation equivalency."

Well, I can remember a time not too long ago I came before the Shad Board, when we were about to be found out of compliance because we had not adopted the bag limit on one of our rivers, the Santee River, and we showed or I tried to make the case, and I think the board approved it that we did achieve conservation equivalency by reducing the season and the fishing hours and all on that river to everyone's satisfaction.

I'm not sure that that's a true statement, which leads me to my question in that since that was approved and all, would this take effect -- I'm thinking about the requirement for having to go through that every three years again. Would that action have been grandfathered, or the new requirements I guess would take place with requests from this point after this document is approved?

CHAIRMAN NELSON: I remember the impassioned pleas that you had made at that time, David, and so, yes, it's still reality, and so they'll correct this particular point.

But, as you saw, the plan review team is supposed to look at the plans on a period basis to assess whether those existing conservation equivalent programs are still equivalent. So, that review would take place in the future, in the case of the shad and river herring for you.

MR. CUPKA: Well, if I may, that's an annual review that is done, but isn't there provisions in here, if this were to pass, that every three years or something, that you have to present it again or something?

I know it's being reviewed every year, and apparently the plan review team hasn't had a problem with it, but I'm just wondering, relative to the three-year review, whether we would have to take any action or whether that approval would have been grandfathered or just what the situation would be.

MR. BEAL: Well, in the section that says it's going to be reviewed a maximum of three years, there is also the statement that justification can be provided for a longer period or an indefinite period of time if requested.

So, I think the South Carolina situation is an understanding or was an understanding, when that was implemented, that the request was for an indefinite period of time, so I think it's probably covered.

MR. CUPKA: All right, I just wanted to get that on the record.

CHAIRMAN NELSON: Subject to change, of course. George.

MR. LAPOINTE: I'm fine, Mr. Chairman.

CHAIRMAN NELSON: Okay, anyone else? Peter, go ahead.

MR. JENSEN: A process question to David Cupka's point. Why do we have to approve the appendix when it's nothing more than an information document, and it's going to be dynamic to change, and we don't want to create a situation, where when there is a change, it's got to come back for approval again?

CHAIRMAN NELSON: Yes, Pete, the guidance document is what we're going to be approving. The appendices was provided for an informational item only. A.C.

MR. A.C. CARPENTER: Thank you, Mr. Chairman. I had a question about Item Number 3 on Page 6. It says the PRT should notify the state that the proposal is complete. I think that should be a "will notify" either that it's complete or that there is some missing parts.

CHAIRMAN NELSON: Got it, thank you, A.C. Anyone else? All right, Roy.

MR. MILLER: Mr. Chairman, after we take the vote on this, if you would indulge me with the opportunity to make a brief statement, I'd appreciate it. Thank you.

CHAIRMAN NELSON: After, did you say?

MR. MILLER: After the vote.

CHAIRMAN NELSON: Okay, sure. All right, why don't you caucus. I'll give you five seconds.

(Whereupon, a caucus was held.)

CHAIRMAN NELSON: Okay, ready for the vote? All those in favor of adopting the guidance document for conservation equivalency, please raise your right hand; likewise, no; abstentions; and null. It's unanimously adopted. Thank you very much. And, Roy, go ahead.

MR. MILLER: Thank you, Mr. Chairman. I would just like to call the New Jersey delegates' attention to what we just passed on Page 6, Item 4, specifically. Bruce already brought it up.

The review should highlight efforts to make regulations consistent across water bodies, and why I'm highlighting that section for them is since their legislature will be debating striped bass options next month, I would urge them to pay some particular attention to the potential impacts of the seven or eight options they'll be debating, what impacts they may have on the

adjoining states of Delaware and Pennsylvania. Thank you.

CHAIRMAN NELSON: Okay, thank you, Roy. Ready to move on to the next agenda item? Okay, the next agenda item is dealing with the addendums that we had talked about earlier.

One is the addendum to address delays in implementation, in this case of the summer flounder, scup and black sea bass fishery management plans. I'll just have Bob go through it very briefly.

Again, an addendum was funded under the work plan that had not been utilized, and so at the Chair's discretion, the Chair instructed staff to develop this type of addendum to present to the board in November. And then we have a couple other addendums that are requested also. So, let me just turn that over to Bob for a little bit of background.

-- Discuss Addendum to Address Delayed Implementation --

MR. BEAL: Thank you, John. The paper is kind of a one-page paper being handed around right now that summarizes the initiation of Addendum 15 to the Summer Flounder, Scup, and Black Sea Bass Plan. A couple other addendums may change that numbering a little bit.

But, just as a point of background, at the annual meeting in Williamsburg, Virginia, in 2002, the Policy Board approved a change to the Charter that tasked each management board with evaluating the current FMP amendment and/or addendum to determine if delays in implementation have impacted or may negatively impact the achievement of the goals and objectives of the management program.

And to follow up on that, in August of 2003 this Policy Board prioritized the species under ASMFC management and determined that summer flounder, scup and black sea bass have repeatedly been impacted by delays in implementation, and that these species are the highest priority and should be used as a pilot

program to determine how an addendum should be developed to address delays in implementation.

And as John mentioned, in the '04 work plan of summer flounder, scup and black sea bass, the concept of addressing delayed implementation for these species was included in the work plan.

It was to be tacked on the next amendment for these species, but it doesn't look like an amendment is going to be initiated this year, so the direction now is to initiate a separate addendum just to address delayed implementation for these three species.

So the initiation of this addendum is consistent with the work plan, it's just going to be under the title of an addendum versus an amendment that we anticipated was going to be developed this year, but it's apparently not. So, we're going a little bit different course but the same bottom line results.

The time line that is included here or is proposed here, for the plan development team/plan review team to develop addendum for the board to review in October at the joint meeting with the Mid-Atlantic Council, or a separate meeting in the evening or the day before or the day after, or whatever works with the Mid-Atlantic Council's schedule.

And if approved at that meeting, there will be public hearings late October/early November. And at the annual meeting in November, the Summer Flounder, Scup and Black Sea Bass Management Board will consider approval of the addendum.

Then those measures would be in place for the 2005 fishing year, so any delayed implementation for '05 would fall under the provisions of this addendum.

It's noted that this is a pretty ambitious time line given everything else that's going on with summer flounder and scup and completing the specifications for this year, but that's the anticipated time line that staff is going to shoot for to keep this on track for implementation for

2005.

On the back of this document, there is kind of a first shot or a first cut at the management measures that would be included for these three species. Primarily, they're the recreational season, size limit and bag limit for all three species; the commercial size limit; and for scup, the Winter I and Winter II trip limits and the Winter I and Winter II closure for those periods that the quota is harvested.

Based on a quick review of those plans, these are the management measures that have in the past been delayed in implementation and have negatively impacted the neighboring states or the entirety of the coast in some situations.

So, at first cut, it seems like these are the measures that should be addressed in the addendum, and the plan review team/plan development team will work on this between now and October and try to get a draft of a document together for consideration in October.

CHAIRMAN NELSON: Okay, thank you, Bob. Any questions on that particular one? Okay, Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Yes, thank you, Mr. Chairman. I know we had a discussion on this, and I can't remember what we concluded, but where would the failure to close or slow in closing a commercial fishery -- that's not really on here and I think we had a discussion on that. I just can't remember how we sorted that out.

MR. BEAL: The failure to close or the slow to close is only listed for Winter I and Winter II for the scup fishery, because summer flounder, summer period scup and black sea bass are all managed by state-by-state quotas, so the failure to close or a slow closing in that situation only negatively impacts that state the following year due to repayments.

EXECUTIVE DIRECTOR O'SHEA: Maybe it's getting too far down in the weeds, but I thought we had a situation where we were concerned about black sea bass overage early in the year having the potential impact to prevent

some of the other states from being able to take their state quota if the federal fishery closed.

MR. BEAL: Yes, that's true, and we can include that one in here.

CHAIRMAN NELSON: Pete, did you have a comment or was there someone else?

MR. JENSEN: I was really just curious as to whether the staff had any initial thoughts on how this was going to be implemented. I agree with the concept here, but we can't even evaluate the impact a year after it happens, so how are we going to do it ahead of time? I'm curious about whether there are any thoughts about how we do this?

CHAIRMAN NELSON: Yes, let's have the plan review team wrestle with all that, Pete. We don't need to solve that today. All right, Eric, you had a couple of requests for addendums.

-- Discussion of Summer Flounder, Scup, and Black Sea Bass Addenda --

MR. SMITH: Thank you, Mr. Chairman. I don't want to jump out in front of all of the issues, but this week there have been a number of discussions on things that might be done, ways that might be used to address some of the issues that we've had with fluke and scup in particular.

I'm simply going to, in a moment, offer a motion to address one of them. The issue is, if you'll recall discussions last fall about how to use the increase in the fluke quota that fell apart because of the lateness of the period; in other words, the quota increase had been adopted about this time of the year; and by the time October came, it was too late to start a process to change it. So, some of us have discussed -- "us" meaning some of the members of the board, the Fluke, Scup, Black Sea Bass Board have discussed getting an early start on that.

The problem is we're a little bit out of sync because the board met Monday afternoon, and then these discussions began to generate Monday night and through yesterday.

So, my motion is going to request that the ISFMP Policy Board task the Summer Flounder, Scup and Black Sea Bass Board with developing an addendum to consider at the October joint meeting with the Mid-Atlantic Council.

The addendum would propose that the 2005 increase in summer flounder commercial TAL be apportioned to the states by the formulation embodied in New York's spreadsheet proposal that was proposed last October.

Those of you on that board remember there was a multi-colored one-pager, and effectively it was take the increase in the total allowable landings and divide it by nine equal shares to the states rather than by the baseline shares. So that would be the sense of the motion. I want to point out --

CHAIRMAN NELSON: Do you want to make that? Eric, do you want to make that?

MR. SMITH: I will in a moment. I want to explain it a little more fully first, and the staff also has it on their computer, so when I get done it can go up on the screen.

The other discussions that we had Monday and later, basically one of them was to have an industry working group formed to talk in a broader context about quota allocations across all species, at least the three in this plan, possibly even including bluefish, where there are splits in quota allocations. I don't see this particular motion to start this addendum as inconsistent with that.

In fact, I think both processes can work in parallel fashion. This in fact can be a vehicle that is a strawman that deals with one issue that is fairly well fleshed out already in the sense that the staff has already pretty much analyzed it based on last year's work.

The larger question, which is the more provocative and maybe in the long run the more successful one will be if we decide to go with this industry work team approach to have industry members meet to see how they would look at the global picture of the allocation of all of these species.

So, having said that as a preamble, the motion which Toni put in the computer -- Megan, do you have that motion that Toni put in?

Move that the ISFMP Policy Board task the Summer Flounder, Scup and Black Sea Bass Management Board with developing an addendum for consideration at the October joint meeting with the Mid-Atlantic council.

The addendum would propose that the 2005 increase in summer flounder commercial total allowable landings be apportioned, it should say, be apportioned to the states by the formulation embodied in the New York spreadsheet proposal discussed -- that word "appropriated" should be "apportioned."

CHAIRMAN NELSON: Is that Freudian, there?

MR. SMITH: Discussed and appropriated should be apportioned. Okay, to continue, spreadsheet proposal discussed by the board at the October 2003 meeting. And in parenthesis, that is nine equal shares, closed parens.

Further, the two options in the addendum would including this formulation in addition to the status quo, obviously, and would be applied to 2005 only or for both the 2005 and 2006 increases.

CHAIRMAN NELSON: All right, I need a second for this. Gordon seconds.

MR. COLVIN: Mr. Chairman, may I second the motion and comment on it?

CHAIRMAN NELSON: Yes, you may. Go ahead.

MR. COLVIN: Thank you. Eric has done a good job of kind of laying out the background. I just wanted to mention a couple of other points.

One, to let the Policy Board know that in fact a motion was passed last week by the Mid-Atlantic Fishery Management Council and by our Fluke Board, when they met jointly, that expressed the support of those two bodies for proceeding with action of this nature.

Secondly, I'd suggest that I would fully support and advocate the approach that Eric referred to for an initiative on the part of the Commission to assemble key stakeholders to assist us in developing, for want of a better word, developing this proposed option, and perhaps some others, and perhaps even to broaden the discussion to involve other species or issues in our management program that might facilitate agreement and consensus in the coastal community on this very difficult issue, and one that has been very difficult for us for a long time.

And if at the end of the day discussions and input from a stakeholder group identifies additional options to those that appear here that could be incorporated into an addendum for review purposes, I would assume that they would be incorporated.

I'm sure that the intent of the mover is also not to limit the options available to us on the basis of the words of the motion but that it be inclusive of those and others that may emerge that have industry or particularly coast-wide consensus support of key stakeholder groups. Thank you, Mr. chairman.

CHAIRMAN NELSON: All right, thank you, Gordon. Staff informs me that there are adequate funds. Apparently, they've been thrifty on the Summer Flounder, Scup and Black Sea Bass Boards, which is very nice to hear, so they do have funds to provide toward this addendum.

In keeping with how we're doing this, is there anyone who wants to speak opposed to the motion? Okay, Bruce, I had you first.

MR. FREEMAN: I speak as the chairman of the Summer Flounder, Scup and Sea Bass Board, understanding the concern that both Eric and Gordon have expressed, and this was an issue that has been on our minds for several years.

But, I don't think this is the best way to approach the problem in that in discussions with other board members and industry members, it seems that we need to deal not only with

summer flounder but with all three species.

I totally support the workshop concept in that if industry doesn't believe it's involved in the process, looking at various alternatives, I think that our success rate, when the process comes to a vote, may be greatly diluted and we may not be able to get movement on this.

I would like to see action as quickly as possible, and personally I would like to see the workshops that we spoke about operate. And these workshops essentially would be a few members from each of the states' commercial fisheries talking about getting consensus on a way to approach the difficulties we're facing not only in the summer flounder fishery but also black sea bass and scup fishery.

And, the way this motion reads it's really specific to summer flounder. I think if we don't deal with all the species, we probably stand a much better chance of having this fail, because there will be great division within the industry.

CHAIRMAN NELSON: Bruce, do you have any particular language that you might want to suggest that might be acceptable to the maker and the seconder that would be more inclusive, that includes other species if time allows or something along those ideas?

MR. FREEMAN: Well, I just think by pushing this at this point, it's going to lead to failure. I'm just concerned about that. There's going to be a lot of time that staff is going to have to work to bring this forward.

It appears to me that we do have the money for the workshops, as indicated. That workshop could occur within the next six to eight weeks. That still could provide a mechanism to provide a framework for an addendum.

And there is some question whether it needs to be an addendum or an amendment because it's a reallocation. I think those issues need to be worked out. And from the board's standpoint, as the chairman, I would move to try to meet this October joint meeting.

But in talking with council staff, there are a number of impediments that we have to overcome in order to have this work both from the Council and the Commission standpoint. I would certainly feel much more comfortable with just stopping at the fourth line -- well, the first sentence.

CHAIRMAN NELSON: The first sentence doesn't tell me really anything, though, I don't think. Consideration for what, Bruce?

MR. FREEMAN: For developing an addendum. Well, the rest of it doesn't tell you anything, either. It just gives you direction of what you're to do. It's a reallocation. It's a consideration for a change in allocation for the summer flounder, scup and sea bass commercial fisheries.

CHAIRMAN NELSON: So you're suggesting that as a friendly amendment to the maker and to the seconder. Eric and Gordon.

MR. SMITH: Mr. Chairman, I believe in getting along, but I could not accept that.

CHAIRMAN NELSON: Okay, Bruce, anything else?

MR. FREEMAN: No, I'm just warning everyone that this may be setting us up for failure.

CHAIRMAN NELSON: Okay, thank you. Is there anyone who wants to speak for the motion who hasn't already spoken? Pete, okay, go ahead.

MR. JENSEN: Well, it's partly in response to Bruce. As I understood the maker of this motion, this was to be a pilot, and I think what we're doing here is we're trying to evaluate a concept.

I personally am convinced that when we go through this, we're going to see that it is a more fair way of doing it than everybody maintaining their traditional percentages, and that's what we're really discussing.

So I'm going to support the motion just because

I think it will be a good pilot to evaluate that concept. I'm hoping that the addendum that would be developed would include a full discussion of that fairness doctrine, which can then be applied to other fisheries.

CHAIRMAN NELSON: All right, thank you, Pete. Someone who wants to speak in opposition. I had Tom as the next one on the list for that.

MR. FOTE: It seems I'm doing a lot today. I was at the summer flounder, scup and sea bass meeting; a lot of you were not. And basically Jimmy Lovgren and a few of the commercial fishermen basically said, you know, at this time, with the 50/50 allocation issue going on and because of what can happen on a summer flounder vote, they don't even want to consider this at this time.

There was spoken opposition to doing a reallocation. I don't really think this is an appropriate place to do this. I mean, we didn't put a notice out to the people that would be concerned about this fishery we're basically looking at here.

Here we're making a Policy Board vote on something that should have went from the Summer Flounder Board up to the Policy Board to basically look at. I mean, I think there's a real problem because they're not in the audience.

And here we are right now trying to do a reallocation scheme without those people being present. I know it's only -- but it says specifically in this motion, for 2005 and 2006. This is not saying let's look at a scheme how we can do this.

This is looking at it for next year. And this is going to be a real problem with doing it, and we only have until October, so I have a real problem and I cannot support the motion.

CHAIRMAN NELSON: All right, thank you, Tom. Another person that would like to speak for the motion? Well, let me just make sure. I've got people on the list here. Vince, are you speaking for the motion? You're not. Let me

come back to staff. Did you have a technical question?

EXECUTIVE DIRECTOR O'SHEA: I think I do, Mr. Chairman, and that is it seems to me there is a sense of urgency regarding the quota of summer flounder that were recently made available.

The concern that I would express that including other species in the immediate problem here, I think would put in jeopardy the ability to get at the summer flounder problem. Thank you.

CHAIRMAN NELSON: All right, thank you. So speaking for, speaking for the motion. All right, I had Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. In regard to the reference to the New York spreadsheet proposal, as discussed by the board in October, I was at the same meeting that Mr. Fote was at, and it's rather interesting because the proposal was developed by Mr. Lovgren who thought it was probably the most sensible thing we could do rather than play around with reallocation.

Further, he went on to say in view of the fact that there was a pending action on this rule-making petition of looking at the 60/40 split at this point in time, because he didn't know where that was going to go, he wouldn't support it.

But that being aside, the issue at hand is this appears to be one of the only opportunities we've seen in the past or in the near future where this opportunity is there where the problem could be dealt with in a rather fair and equitable way, so, therefore, I fully support it.

I really questioned only one part of that and if the maker of the motion had put in the second to last sentence, would be applied to 2005 only or for 2005 and 2006, whether there is flexibility to make it just for one year, because I think the point that was made over here about a pilot program would be a good way to sell it. So, maybe you could address that, Mr. Chairman.

CHAIRMAN NELSON: Me?

MR. AUGUSTINE: I support it; let him respond.

CHAIRMAN NELSON: So you support the motion. I often don't get into that dogfight. All right, opposed, Mark.

DR. MARK GIBSON: Thank you, Mr. Chairman. I strongly support the concept of having the Commission discuss allocations both between the dominant recreational and commercial sectors as well as between the states involved with the commercial fishery.

I think the subject of allocation is one that potentially can damage the Commission's partnership if it's not dealt with. I don't support this as the way to do it; and because of that, I'll offer a substitute motion:

Move that the ISFMP Policy Board appoint an ad hoc committee to advise the Policy Board on the matter of TAL reallocation in the summer flounder, scup and black sea bass fisheries.

Such committee should be composed of recreational representatives, commercial representatives, state fishery administrators as designated by the Policy Board. Such committee would consider TAL reallocations between the major recreational and commercial sectors and between states within the commercial sector for new TAL available beginning in 2005.

CHAIRMAN NELSON: All right, I think we got the gist of it. Is there a second? Tom has seconded it. Do we have it written out? Thank you, Mark.

I would like to just voice one point here, and that is that, boy, I don't want to turn this into a board meeting on summer flounder and scup and black sea bass.

So, we've heard the for; is there someone who wants to speak against this particular motion? I did have Jack and I did have Gordon on the list before. I'll give you the opportunity to speak either for or against. All right, go ahead, Jack, and then I'll have Gordon.

MR. TRAVELSTEAD: I think the problem with this motion is it merely repeats everything we've been trying to do for several years now, and that is continually discuss the issue in a general fashion over and over again.

And that in fact is why I supported the original motion because it finally put a very specific proposal on the table that can be shown to industry and debated properly and modified, if necessary.

I just don't see us going anywhere if we continue to debate the issue in a very general fashion, and that's why on several occasions I have asked that a specific proposal be put on the table, and that's what I thought the original motion did.

CHAIRMAN NELSON: All right, thank you, Jack. So I had Gordon who was also on that list.

MR. COLVIN: I can't put it any better than Jack just did.

CHAIRMAN NELSON: Okay, now we've had a little bit of discussion already on the original motion. This is a little bit opposite to the original motion, so I really don't want to hear the same arguments back and forth, so I'm going to go one more for and one more against, and then I'm going to call the question, just to let you know that. I assume, Tom, you want to be for.

MR. FOTE: Well, I figure as the seconder of the motion, I should allow at least why I seconded the motion.

CHAIRMAN NELSON: Tom, do you want to speak for the motion?

MR. FOTE: Yes, that's why I'm --

CHAIRMAN NELSON: Then go right ahead.

MR. FOTE: One of the other points that Jimmy Lovgren pointed out and basically went through why he no longer supports what he basically proposed is because of the fear. And he basically went down and counted the states that would benefit and the states that would basically

be penalized by the reallocation.

And that's his fear, was that if he counted the votes, two states would give up the quota and the other eight states or seven states would benefit. Three states would be -- and that's the concern I have here.

That could be a very divisive issue. In order to accomplish that, in order to get consensus, that's what you have the workshop so you try and deal with those problems before you go out there. I mean, and that's what my concern is.

CHAIRMAN NELSON: All right, thank you, Tom. Someone who wants to speak for the motion. All right, I'm going to call the question, then, on the substitute motion. I said we were going to do one for and one against because we've covered a lot of ground already on the previous motion. All right, well, let me have you caucus for a moment.

(Whereupon, a caucus was held.)

CHAIRMAN NELSON: Are you ready to vote? All those in favor of the substitute motion, please raise your right hand; opposed to the motion; abstentions -- thank you, Anne -- null, no null votes. The motion fails 11 to 4 so we're back to the original motion.

Is there anyone else who would like to speak for the original motion? Is there anyone who wants to speak against the original motion that has not spoken yet? Okay, Gerry has not spoken yet so please go ahead, Jerry.

MR. GERALD M. CARVALHO: Thank you, Mr. Chairman. I think this problem needs to be addressed better than we're attempting to do it now. We don't have a set of guidelines, and we've talked about it. We're going to get increases in quota in all the different species, in particular fluke, scup and sea bass.

We don't have a set of guiding principles. We haven't established them through a working group that would help us in the reallocation of these species. There are equity problems that exist. That's why we needed to establish the

criteria.

If we go about this piecemeal, each time an issue comes up and we try to do it, we're going to perpetuate the problem we had to begin with and we're going to put ourselves in just a greater problem. I don't believe this is the way to go about it.

CHAIRMAN NELSON: All right, thank you, Jerry. Is there anyone who wants to speak for the motion again; and for the second time, as far as speaking against the motion? Okay, Bruce, go ahead.

MR. FREEMAN: I, as chairman of the Summer Flounder, Scup and Black Sea Bass Board, have difficulty with the way we're doing it. We're asking the Policy Board to tell a management board what to do. I don't think that's right.

We discussed it at the management board. It's an issue that we indicated we would address, but this motion would compel the board to set this as the priority, even though we have other things we have to deal with.

I just don't think that's the way that the Commission needs to operate. We indicated it's an important issue. It has been an important issue for several years at several different states.

And yet we never have time to adequately address it because of other issues on our plate. Now if this motion passes, you're telling the management board what you want them to do regardless of what other items they have to deal with, and I don't think that's the way we should operate, and I will oppose the motion.

CHAIRMAN NELSON: Thank you, Bruce. Again, Gordon had raised his hand to speak for the motion, so this will be the last one.

MR. COLVIN: Thank you. I respect where Bruce is coming from and understand it. Another point of view here kind of is related to what Vince said, and that is that we did take some action last week.

A motion was passed. This action I think is

consistent with that motion on the part of both the board and the Mid-Atlantic Council. What we've realized is that we don't have a lot of time.

In the past this has come up year in and year out. Last year it came up and I ended up sending a letter to all the board members suggesting we accomplish something like this by a voluntary transfer.

And while there was a lot of interest in it, many of the board members said, well, we really don't think that's the way to go. We really need to use the process because the process enables public disclosure, discussion, dialogue, pros and cons, public hearings if states choose and so forth.

The problem we're in now is we have a limited opportunity and time line in which to engage in and initiate the process and hence the motion.

I think if we didn't get started, we face the danger of having another year go by and the terrible frustration associated with that of having yet one more opportunity to address the problems that this motion is trying to get at without making any substantial progress on it.

So, while I appreciate where Bruce is coming from, I think our only option to actually get started is to pass this motion and get started now. Thank you.

CHAIRMAN NELSON: All right, please caucus and then we'll have a vote.

MR. FOTE: The public?

CHAIRMAN NELSON: Tom, thank you very much. Anyone in the public want to make a comment on this at this time, please come forward. All right, please caucus.

(Whereupon, a caucus was held.)

CHAIRMAN NELSON: Okay, are you ready for the question?

All those in favor of the motion, please raise your right hand; no, raise your right hand;

abstentions, two; and null votes, zero null votes. The motion does pass.

Is there anything else under this agenda item? Yes, okay, well, let me go down the board here.

MR. WILLIAM A. ADLER: Thank you, Mr. Chairman, a question. Okay, so does this mean that there is going to be a board meeting before the October meeting in order to formulate the addendum to bring to the October meeting? Is there going to be a special board meeting of the fluke, scup?

MR. BEAL: No, I think the idea is for the plan development team to work to put together the addendum for review in October, based on the content of that motion.

CHAIRMAN NELSON: All right, next I think I had Gordon and then it was Tom.

MR. COLVIN: Thank you, Mr. Chairman. I think at the outset of this discussion, you pointed out that there might be a couple of different issues that would be brought up, including one on scup. I think the scup one falls to me.

Now I'm not going to make a motion today or suggest initiation of an addendum, but I do want to just kind of let the Policy Board know that we are going to suggest initiation at an upcoming meeting of the Fluke, Scup, Sea Bass Board of an addendum for scup that will address alternative approaches to distribution of unharvested Winter I commercial quota.

Recall that last May, a proposal was made to reallocate that as an emergency action of the Commission, which was not approved, I think probably in retrospect on good grounds based on process and concerns about public notice and opportunity for impacted stakeholders to participate in the decision.

The issue still exists and an opportunity still exists to consider better uses for unharvested, but prospectively to be unharvested and retired Winter I quota to benefit both commercial fisheries and summer -- I mean, summer commercial fisheries and recreational fisheries,

to that end, we will be proposing some action on the part of the board to be initiated hopefully in October that will develop an addendum or some other approach to address that issue. Thank you.

CHAIRMAN NELSON: All right, and thank you, Gordon. And, please, yes, work with the Chair to bring that item forward on that agenda. Tom.

MR. FOTE: It was interesting to watch the vote on there because this was really a board issue that should have been handled at the board. But if we look at the number of votes that was basically cast on this, and we looked at the states that don't have a vested interest or basically declared interest in the species that voted on this it, made it an interesting vote.

And that's why I basically looked at the board. Also, it basically reinforced in my estimation what Mr. Lovgren was trying to say here, is when you come to a reallocation scheme, it's the votes that count, and that's sometimes the fairer. And that's why I was looking for a workshop to basically handle this.

CHAIRMAN NELSON: All right, thank you, Tom. Let me have George, and then I do want to move on to other items, if I can.

MR. LAPOINTE: The reason that Maine voted was we do have a vested interest, although we aren't declared members of the board, because there is a lot of other things at the board that don't influence us.

And I actually thought about should I get on the board? Should I have the Commission pay my travel, because although it's a very minor amount of quota, it's important to people in Maine. That's why we voted, Tom.

CHAIRMAN NELSON: All right, Eric, did you have anything else?

MR. SMITH: Yes, thank you, Mr. Chairman. I will be very brief. You had mentioned that there was a list, and there was. I will also follow Gordon's lead and not offer any more motions, but there are two issues that I'm compelled to

put forward so that we think about them between now and October and the annual meeting.

The first is I was in the awkward position of opposing Mark's motion only in form, not in substance. The form was that it was a substitute for my own. But the concept of his was the one that developed Monday night and Tuesday, which is to have a constituent group try and look at the global issues of allocation plans.

I do endorse that concept, and it was one that came about in these discussions, so I wanted to make sure that maintains some legs and we think about the right way to do that.

The second issue -- and I think this will call for a plan amendment, so I would only raise the issue because Fred Fellici, Senator Gunther's permanent proxy, is not here to make the point himself. We continue to be interested in the issue we had put forth in May, which was to consider a change in the scup commercial to recreational allocation.

It's an incredibly -- the issue will be divisive. It's a dicey issue. I know it needs an amendment. I won't belabor the issue more, but Fred would frankly crucify me if I -- he wanted me to make a motion, and I don't think it's appropriate at this time. I wanted this board to understand that issue.

CHAIRMAN NELSON: Thank you, Eric. Yes, I had a few nails left over here, so I'll be certainly willing to use them. Let us move on to the next agenda item.

And, again, any of these other items, I think it is appropriate, bring them up on the summer flounder, scup and black sea bass. A number of points have been raised. I would hope that management board would work together to deal with all of these issues and look at all these points of view. The next item is the habitat committee report. Bill.

-- Habitat Committee Report --

MR. WILLIAM GOLDSBOROUGH: Thank you, Mr. Chairman. The Habitat Committee met

this morning and had a very good meeting. I appreciate your indulgence in pushing this report back in the afternoon, because we also had a subcommittee meeting after that, which just wrapped up a little while ago.

I will be brief. I know you're late in the day. I probably only need about an hour or so. (Laughter) And just a couple of things that I think you'd be interested by way of update.

Habitat sections for FMPs, we've completed two that were incorporated this year. One was menhaden; the other, winter flounder.

We are almost done with the diadromous fish source document. This is going to be a very valuable publication, I suggest. We hope to have that on the November briefing CD, and we'll be requesting approval in November.

And it looks like our next focus is going to be Atlantic croaker next year, if there is to be an amendment I believe for croaker. We'll be working on a new habitat section there.

The next thing I want to brief you on is a topic that got a lot of discussion today that is looming for all of us on this coast. It's liquid natural gas. Under the current world energy market, it's becoming one of the energy sources of preference; thus, we have lots of proposals for new facilities.

And, we were told by NOAA Fisheries folks today that they're seeing proposals for as many as 50 along the East Coast. I guess a number of them are competing with each other, so not that many would eventually be built, but surely it would be dozens. Some of these would be on shore under the purview of FERC and some would be offshore.

In fact, I think it was a majority of them are proposed to be offshore under the purview of the Coast Guard. So these are facilities where the large LNG tankers would dock and where the liquefied natural gas would be warmed up and converted to gas in a form that could be piped wherever it was needed.

So, obviously, what we're talking about is facilities that use a large amount of water. There are lots of concerns that they would have impacts very similar to power plants. No surprise there.

So, there are substantial implications for Commission-managed species. And there are lots of other issues as well. If you haven't heard from some of your fishermen groups, you probably will about exclusionary zones and so forth.

Many states are being asked to comment on the facilities and in most cases on very quick time lines. And these are very complex. The information needed to be able to discern and comment on potential fisheries impacts is often hard to find or unavailable, so what to do about that.

What the committee is doing and will continue to do is a small group will be working with NOAA to provide feedback to the Coast Guard and to FERC about the kind of information that the states need to be able to provide comments on these projects.

So it's sort of an interface role that the committee is forging for itself. If there are no comments on that, there is one other item. I thought there might be.

CHAIRMAN NELSON: Let me see if there are any questions for you, Bill. Go ahead, George.

MR. LAPOINTE: God love my partner state. I know a lot more about LNG than I did a couple months ago. We've had a couple proposals in Maine. The only clarification on Bill's report is although there are some 50 proposals, looking at the economics of these facilities, they are hundreds of millions of dollars to develop, and there is a certain number that will be accommodated by the market.

I don't hear that there will be dozens along the East Coast. I hear that we will have a maximum of five. And what the 50 proposals are is competing proposals because companies expect to make a lot of cash off of these.

Importantly, as well, the LNG energy source is what they call a transition energy source. These facilities will be operational for some 15 to 20 years, and then they'll move to something else because the gas reserves won't be there any more.

CHAIRMAN NELSON: Any other questions? Pete, go ahead.

MR. JENSEN: Just one comment. We had one. It was inactive for a lot of years. They have reactivated it and because these ships are literally floating bombs, the exclusionary zones really do affect a lot of local fisheries.

So it's something you really have to pay attention to because they're talking about huge exclusionary zones, not just when the ships are tied up to the dock, but when they're transiting to the site.

CHAIRMAN NELSON: Thank you, Pete. Anyone else? George, go ahead.

MR. LAPOINTE: That's a good reminder. In our case, there was discussion about our marine patrol, our marine fisheries agency contributing to the security on those exclusionary zones. And so it would have, under some of these proposals, taken away our law enforcement ability from enforcing fisheries laws as well.

CHAIRMAN NELSON: All right, go ahead, Bill.

MR. GOLDSBOROUGH: Thank you, Mr. Chairman. I thank you, George, for identifying the one thing that I ad-libbed on. (Laughter)

MR. AUGUSTINE: He's just trying to keep you on your toes.

MR. GOLDSBOROUGH: I'm telling you. Just one other thing, and this is in the category of ongoing. We are still working on a shellfish bed habitat paper. That will be the next in our series that we started with underwater grasses on.

And we are also working on a document on living shorelines as might implicate

Commission-managed species, and that's a pretty exciting prospect, too. And continuing to coordinate with council activities, and that's about it for now.

CHAIRMAN NELSON: All right, thank you, Bill. Are there any other questions for Bill? Yes, go ahead, Bill.

MR. ADLER: Thank you. Bill, was there any discussion with regard to the sand-mining project that we have up in Massachusetts where they want to take 100 square acres of prime fishing bottom habitat, bring it in and dump it on the beach? Did they talk about that at all?

MR. GOLDSBOROUGH: Yes, Bill. Actually that was brought up by Vin Malkowski, who is on the committee, brought it to the committee's attention.

MR. ADLER: Yes, and I know that the ASMFC has sent a letter in to someone, I think that I'd like to have the ASMFC be a little more vocal, if possible or where possible, and maybe through Vinnie you can find out where that would be appropriate.

I think it's time that ASMFC step up to the plate with those types of habitat disruptions if possible. I think it's time that we, the ASMFC, take a stand. Thank you.

CHAIRMAN NELSON: Thank you, Bill. Anyone else, any questions for Bill? All right, Bill, thank you very much. Next we have the update on the non-native oyster activities. Tom.

-- Update on Non-Native Oyster Activities --

MR. THOMAS O'CONNELL: I appreciate the opportunity today. It's been a while since I've spoken to the Commission, back when I was doing horseshoe crab, and that was one of my more memorable working experiences.

So I'm just going to provide about a ten-minute update on this EIS that Maryland and Virginia have been working on. We've been at it for about a year, and we're right in the middle of a lot of the research and just wanted to provide a

good baseline background of where we're at and where we're going.

I know Pete and Jack have been briefing you a little bit, but just as a recap, Maryland and Virginia are the lead state agencies in developing this EIS. It's been voluntarily proposed by the states.

After that, last fall the U.S. Army Corps of Engineers, Norfolk District, was directed by Congress to assist the states. And the Fish and Wildlife Service, NOAA and EPA are acting as cooperating agencies in the preparation of this EIS.

Where we have been is earlier this year we went through a public scoping process. We had a series of public meetings; and upon public input, we defined the scope of the EIS.

The purpose and need for the EIS was identify for which the actions will be evaluated against. The purpose is to identify a preferred alternative for establishing an oyster population that reaches a level of abundance comparable to the 1920-1970 time period.

This is being done because there is a need to restore the ecological benefits as well as the commercial industry that oysters once supported within the Bay region.

Maryland and Virginia have a specific proposed action, and that is to introduce the Suminol oyster, *crystosoma ariakensis*, diploid reproductive animals, into the Chesapeake Bay, utilize an Oregon stock of this Asian species in accordance with international protocols for transferring marine organisms.

There were some handouts provided to you. Some more detailed information on the Oregon stock is in one of the handouts. And also to continue native oyster restoration along with the introduction of the non-native.

A series of alternatives were identified through public scoping. They range from continuing and expanding native oyster restoration. Under the expanded native oyster restoration, we plan on

looking at disease-resistant strains and adjustments to the fishing mortality fishery management program, including temporary implementation of a harvest moratorium; also looking at establishing or expanding native or non-native aquaculture programs.

Alternative 6 is looking at alternative strains of *ariakensis* that may be available in its native range. And then the last, Alternative 7, is similar to the proposed action by introducing a non-native *crystosoma ariakensis*, but would discontinue native oyster restoration and then a combination of alternatives.

Where we are currently, we're implementing a research framework that was developed based upon the research recommendations from the National Research Council's report that was put together last fall; and also based upon recommendations on the Chesapeake Bay program and scientific technical advisory committee.

The preliminary research results are due at the end of October, and the final research results will be available at the end of the year. Based upon that information, there will be some modeling and assessments.

Those frameworks are being developed. And the assessment on Virginia-related alternatives is due at the end of November, and the assessment on the *ariakensis*-related alternatives will be due in mid-January.

Just to give you a sense of some of the research that is going on, here is a list of some Maryland DNR and Potomac River Fisheries Commission studies. You can see the broad scope. These address the critical, short-term research needs in the NRC report.

They is also a larval dispersal and population growth model, an ecological risk assessment, which is not included in this slide, as well as an economic and cultural assessment. And then we're getting some assistance from Maryland Environmental Service to prepare the EIS.

Those studies are not the only studies that are

being utilized. Virginia has committed significant resources over the last several years studying non-native oyster issues. NOAA has funded several projects over the years, as well as some additional studies that are being funded now.

North Carolina has some field investigations. Over on the West Coast, they've had this animal for about 30 years, and there is some information that can be obtained from their involvement, as well as the significant amount of information that is contained in the National Research Council report.

As I mentioned, the demographic oyster model is being developed based upon the best available information that is being compiled. This will examine the growth and population dynamics of each alternative, including the proposed action.

A workshop was held a few weeks ago amongst scientists within the bay region to look at the data parameters associated with this model. I foresee later on this fall, when this model gets more clearly defined, to ask the ASMFC Shellfish Transport Committee that has been reassembled to assist with reviewing this model.

The demographic model output will be significantly crucial to evaluating the ecological risk associated with the proposed action in the alternatives. The NRC report identified several risk factors which would be examined with ecological risk assessment, looking at the ability to reestablish oyster populations, disease-related issues, human health concerns, oyster reef habitat, et cetera.

You can see them there, including invasiveness of disbursal beyond the Chesapeake Bay region that I'm sure many of you are concerned about.

Another significant component of the EIS is the social-economic assessment. Doug Lipton and Jim Kirkley, University of Maryland VIMS, are conducting an economic assessment looking at the benefits and risks associated with the commercial oyster fishery, non-oyster commercial fisheries, recreational fishing community, and the effects water quality improvements will have to the individuals that

live within the bay region.

There is also a cultural assessment looking at what the beliefs and values are to the bay community, commercial watermen and recreational users, scientists, resource managers.

Just a brief update on some of the research or issues that have been raised over the last year. One of the big risks with introducing a non-native oyster or non-native species is the accidental co-introduction of diseases, hitchhiker organisms.

Just to recall, the NRC report recommends that any non-native introduction strictly apply to international protocols. This is what the state's proposal is. It recommends using the quarantine system and only introducing progeny that are free of any observable diseases.

The stocks that are currently being used in North Carolina and Virginia and now Maryland, triploid animals, were obtained from the West Coast. Those animals have been out there for about 30 years, and they've been examined by a couple laboratories and found to be specific pathogen free.

And researchers from the University of Maryland and VIMS are also looking at this issue and have not discovered any pathogens of concern to date. They're also conducting a viral risk assessment, because viruses that are potential transmissible genetically would not be controlled by ICES protocols.

There has been debate over whether *ariakensis* is a reef builder, a few citations from the NRC report. It is common knowledge among oyster workers in China that *ariakensis* is a reef builder. There have been reports in India and Pakistan that this oyster can be found on both harder substrates and muddy substrates, very similar to our native oyster.

A lot of people associate *Virginica* with reef habitat, but you can commonly find oysters in the *Virginica* in muddier habitat just as well.

We also funded researchers from VIMS and the University of Maryland to do a trip over to

China. They went over there in July, and they came back and reported exploration of an oyster reef consisting of a mixed species gigas and ariakensis. In the backdrop of this slide is a picture from that reef, demonstrating that ariakensis does grow in dense oyster reef habitats.

There was an issue raised will ariakensis pose increased human health risk. Will they retain ecoli vibrio at a higher degree and threaten human health, and will that result in additional fishery closure areas, and ultimately an economic impact to that industry?

The NRC report concluded that as long as the states continue monitoring their shellfish human health concerns, that there is no reason to expect that these human health risks would be any greater with ariakensis than they would be from Virginica.

We also approached the Maryland Department of Environment and Virginia Department of Health, and they concurred with the NRC report and see no reason to expect any different human health risks, nor do they see any reason to expect that there would be increased fishery closure areas, so some very positive information related to that issue.

There has been also concern regarding the state's proposal with utilizing the Oregon stock of this species. As I mentioned, this animal was brought over to Washington and Oregon back in the early 1970s.

It was a limited number of animals, and there is concern that there may be genetic bottlenecking if this animal is used for large-scale restoration purposes. The limited use of this animal out on the West Coast has not reported any apparent in-breeding characteristics.

Virginia Seafood Council, which has been utilizing this stock for a number of years, has also not reported any growth or survival impairments. Recognizing this, though, Stan Allen in VIMS is obtaining additional strains of this species that can be made available if it is deemed necessary to increase the diversity of this stock.

And that's just reflected there in the hatchery production. If a decision is made to introduce the Oregon stock and increased genetic diversity is necessary, the hatchery program can incorporate that into the hatchery program.

Where we are going, after the assessments are available in January, that information will be compiled into a draft EIS, which is scheduled for February of next year. And then a key decision point is to be made amongst the decision makers whether or not the risk and uncertainty are acceptable to proceed with releasing the draft EIS to the public or if additional information is needed before this can occur.

If the information and policymakers feel comfortable with proceeding, the document will be made available to the public in March and May. Then another decision point will be made based upon public input whether or not the policymakers feel comfortable with proceeding with completing the EIS or if additional information is necessary.

If the decisionmakers agree to proceed, the final EIS is scheduled for June of 2005, after a 30-day waiting period, to make a decision, and then implementation of the preferred oyster restoration alternative would be initiated.

I just wanted to just kind of reiterate Maryland and Virginia are very committed to this EIS process and will not proceed with the introduction of a non-native oyster if unacceptable risks are identified.

The states are committed to restoring the bay, not further endangering it. That's kind of a broad overview of where we are and where we are going. I'd be happy to answer some questions, if time permits.

CHAIRMAN NELSON: Okay, questions for Tom. Okay, Roy and then Bruce.

MR. MILLER: Thank you, Tom, for that quick overview of the process. It would appear, if I understood everything you said correctly, that we appear to be on a fast-track, perhaps as early as next summer. Are we looking at potential introduction of diploid oysters; is that possible?

MR. O'CONNELL: That is the schedule right now, but if a decision is made and the preferred alternative is to move forward with the diploid introduction, that could occur beginning next summer.

MR. MILLER: May I follow up, Mr. Chairman?

CHAIRMAN NELSON: Yes.

MR. MILLER: If so, does that not run counter to the NSC/NAS recommendation? And, also, didn't we have a request that the Shellfish Transport Committee be convened to consider this? I don't believe that particular committee has met yet.

MR. BEAL: Roy, just to respond to the one question regarding the Shellfish Transport Committee, I've been talking with Pete Jensen and Tom regarding when that group should be injected into this process.

And right now we're discussing an October meeting of the plan development team or the project delivery team, I guess it's called, as well as some of the modeling activities that are going on, so we're going to bring that group together in October and probably again at a later date as the decision comes closer. They will be involved in the process.

CHAIRMAN NELSON: Roy, anything else?

MR. MILLER: I have a number of concerns concerning the fast-track nature of this process, Mr. Chairman. I think those concerns were probably addressed by our shellfish representative to the Habitat Committee.

I just want to point out that some of the adjoining jurisdictions to the Chesapeake jurisdictions are not at all comfortable with the speed with which this process is proceeding. Thank you, Mr. Chairman.

CHAIRMAN NELSON: All right, thank you, Roy. Bruce.

MR. FREEMAN: I have to join with Roy in

indicating our concern over the speed on which this is moving forward. But, Tom, a question relative to the fact that this is a conscious introduction, despite various safeguards that are being looked at.

If in fact it's determined if these are introduced and after they're introduced they create various detrimental problems, are the states that are introducing this, the jurisdictions going to be responsible for liability? Has that issue been addressed?

MR. O'CONNELL: One component of the EIS is a mitigation plan. If there are significant problems that occur after an introduction, there is a section that is being developed to evaluate that. Whether or not Maryland and Virginia would be legally responsible, I can't respond to that. Maybe Pete would be able to or Jack would.

CHAIRMAN NELSON: Any other questions? Pete, go ahead.

MR. JENSEN: Mr. Chairman, I would hope that those that have some concerns would not stand aside, but would look at the substance and the comprehensive nature of what we're doing. We have very scrupulously gone through the NRC report.

We have implemented every one of their recommendations in terms of funding, both short-term, primarily short-term, but also there is some long-term research which is already under way. And so if there are people that have suggestions on other things that we ought to do, we are open.

We do not consider this any kind of a rush job at all. It is comprehensive, and at the end there will be an EIS. There will be a full public record that will support one decision one way or the other.

There is no predetermined decision here to put them in. That's why we're going through the EIS process. So, please, those of you that have concerns, let us know what they are. If there are specific research recommendations, we are

prepared to fund them.

CHAIRMAN NELSON: All right, thank you, Pete. Jack.

MR. TRAVELSTEAD: I just want to encourage Roy and Bruce and anyone else who is concerned about this to involve themselves or their staffs in the process. There's nearly \$4 million worth of research on this issue that is currently under way.

Maryland has put up quite a bit of money, as well as NOAA, to do very specific research to address a number of the concerns. So, as that information is available, I hope that you will take the time to look at it and see what it tells us.

CHAIRMAN NELSON: All right, also my sense is that the October meeting that Bob has mentioned is a good opportunity for both the Shellfish Committee; and perhaps if some states aren't on that, which I don't think is the case, but just in case they are not, staff will make sure that everyone is notified of that meeting, and anyone who wishes to attend that would be able to attend and go over the information provided at that time and voice any additional requests that they might have. Pete.

MR. JENSEN: While we're on the subject, I'd like to make one other point, if you don't mind. One of the reasons we embarked upon a full-fledged federal-style EIS, not required in the states, but we chose to do a federal-style EIS, full-blown EIS

-- one of the reasons we did that is there is very extensive work underway with triploid.

It is acknowledged by everybody that will amount eventually to an ad hoc introduction of diploid animals. It's just going to happen eventually. And so we said why are we going to sit around and wait for that to happen? Let's do a full EIS. Let's evaluate what a diploid introduction means.

And that's what we're doing, because otherwise it would be irresponsible for us all to sit around and recognize that this triploid research that's going on doesn't constitute a risk that diploids

would eventually occur.

CHAIRMAN NELSON: All right, thank you, Pete. Any other comments? Tom, go ahead.

MR. FOTE: I guess the problem is we don't have a gate up between states that we can stop things from migrating through, and that has been the concern all along here. I mean, we can spend a lot of money, do a lot of research and basically this is what you might want in your state, but we wind up -- because of the proximity to our state, it's going to wind up with the same thing in our state whether we like it or not.

And that's the concern here, and we haven't really bought into the program. If you pass the program and do the program, we're buying into the program because it's going to wind up as we have wound up with all the other invasive species that come up the coast and have changed the ecologies of the bays and the estuaries.

CHAIRMAN NELSON: Thank you, Tom. Let me just see if there is anyone else who hasn't spoken. Okay, I don't see anybody. Bruce, go ahead.

MR. FREEMAN: It was mentioned about the Shellfish Transport Committee which we have for the Commission, and Roy mentioned the fact that they have not yet been involved. And, Bob, could you bring us up to date exactly when they're going to be involved, when this is going to occur, and the extent of their involvement?

MR. BEAL: Yes, as I mentioned, Bruce, they will attend the meeting in October. I think it's the project delivery team, which is the group that is kind of leading up the development of the EIS, as well as some of the modeling groups will be meeting at the same time exploring I think some of the risks or the risk assessment approaches and evaluating those models.

They'll be included in that meeting, and they can interject their concerns at that point, as well as a later meeting which is kind of to-be-determined as we near or as the agencies near their decision on what should happen with Asian oysters.

CHAIRMAN NELSON: Okay, Roy, go ahead, one more.

MR. MILLER: Just a quick follow-up question to that statement Pete Jensen made. I'd like to make sure I understood what you said, Pete. Is it your opinion that because of introductions of triploid oysters that have already taken place in experimental trials, that the horse is already out of the barn with this animal, and that we'll eventually have diploid populations whether we want them or not?

MR. JENSEN: I think the consensus opinion among the state agencies and the federal agencies, which was arrived at well over a year ago, was that we ought to be doing an EIS anyway because there is the possibility of reversion to diploid in triploid experimentation in the water, and that is going on to a large degree all over the place, all up and down the coast.

Triploids are being experimented with, so it's not that it's out of the barn. It's just that there is that very high likelihood that the more and more triploids you put in the water, the more likely you are to get a diploid reversion.

MR. MILLER: Are you saying there's enough there now?

MR. JENSEN: No.

CHAIRMAN NELSON: Okay, any other questions for Tom? All right, Tom, thank you very much. Okay, our next agenda item is the Advisory Panel Oversight Committee Report. Dennis.

-- Advisory Panel Oversight Committee Report --

MR. ABBOTT: Thank you, Mr. Chairman. Before we start, I'd just like to do something other than the advisory committee. I'd like to apologize for my remarks earlier in the day today, because if in assuming the statements that I made regarding Assembly Smith and the fact that he did or did not state what New Jersey would do by August 1st, I stand corrected and I

apologize to Assemblyman Smith for my statement.

I also apologize even if my understanding of his statements were correct at that time, because he wasn't here to defend himself today. I am sorry for that, so I apologize to Assemblyman Smith. I also apologize to Mr. Goldman from the state of New Jersey. Thank you.

Mr. Chairman, the Advisory Panel Oversight Committee met on Monday afternoon and welcomed several new, enthusiastic members. Discussions were held on improving the Commission's advisory panel process.

The committee reviewed the survey results of the weakfish pilot program. We compared the Commission's AP process with the three East Coast Councils, and we discussed ways of streamlining AP membership approval and incorporating non-consumptive stakeholders into the AP process.

We reviewed also the draft guidelines for a working and communicating document for the Atlantic States Marine Fisheries Commission Advisory Panels. This document builds upon the AP primer, further clarifying the roles and responsibilities of ASMFC staff, the Commissioners, technical committee chairs and advisors in the AP process, and providing guidelines for communication amongst all the groups as related to advisors.

The committee will continue to work on this document, and we will be providing comments over the next month for consideration and approval at our next meeting in November. The committee has two issues for your consideration.

We believe that to streamline the AP membership approval process, we request that the Policy Board provide the management boards the option of approving new AP members by either using e-mail or fax, rather than waiting for a management board meeting. This will significantly reduce the time lag between membership nomination and approval.

Secondly, to incorporate non-consumptive

stakeholders into the AP process, we offer a motion. On behalf of the APOC, we move that the ISFMP Policy Board approve the addition of two non-consumptive stakeholders to each of the APs to serve as at-large members, separate from existing state-appointed members.

I think I would like to discuss the first – well, we could discuss this or we could discuss the first one about approving AP members. Maybe we could have a discussion on your thoughts on having AP members approved by the management board prior to or having to have a management board meeting vote on them.

CHAIRMAN NELSON: Let's deal with the motion, and this is seconded by Pat White. So let's deal with that first. Discussions on this motion? Tom, go ahead.

MR. FOTE: Just a question. When we say two non-consumptive users, what is non-consumptive users? Do they not eat fish? Do they have to be -- I'm not sure. You know, no vested financial gain or something else is different.

But non-consumptive users or stakeholders, I guess I would have a problem with non-consumptive stakeholders. I mean, I'm not sure what that means. That's my difficulty.

MR. ABBOTT: Thank you, Tom. We discussed that. We're unsure at this point what specific non-consumptive users we would have. The details of this proposal have not been ironed out. If we receive your approval, we would move forward with detailing this a little more.

It would be my assumption that if we publicly advertise that we were willing to take on -- when we used the term "non-consumptive users", we also started out with NGOs. You can put whatever title you want on them.

But, it would be my idea that we would receive applications; and through a process, we would decide who we thought would be most fitting to serve on the board. Again, keeping in mind that you would have only up to two.

We thought also that we should be more inclusionary in our process of advisors. We think that it would probably help the advisory panel process if some of these folks were aboard, whether we agreed with their positions or not.

Maybe they would agree with our positions more if they saw a working advisory panel process. So we think it could have benefits for bringing these people to the table. But, again, we have not decided or have made no decisions on who these folks would be.

MR. FOTE: Can I just follow upon that?

CHAIRMAN NELSON: Yes. There's some confusion on language, but I just want to make sure we have a chance to address all that. Tom, go ahead and finish up with your thought on this.

MR. FOTE: Yes, my problem with non-consumptive -- because some of these groups have a lot of money and they like to sue, and they might look at the fact that non-consumptive means non-consumptive.

It means that I could wind up with only groups like PETA or somebody else on there. I would be more comfortable with NGOs than something else. And that's really what I'm looking at when we look at non-consumptive users.

CHAIRMAN NELSON: Yes, George, go ahead.

MR. LAPOINTE: I support the intent of the motion. I jokingly one time looked up non-consumptive in an old dictionary. It was somebody who didn't have pneumonia. (Laughter)

I think what we're looking for is -- and I will tell you the freshwater fish and wildlife community has been struggling with this definition for 30 years. What we're looking for is non-traditional advisory panel members.

And by "traditional", I mean recreational, commercial or in the buyer/processor sector. I

mean, that's where our folks come from. And what we want is to broaden the community because there is an interest beyond those three sectors in our process. So I would not get too bound up by the language, but concentrate on the intent, and I think it's a great one.

CHAIRMAN NELSON: Let me do a little clarification here on what's the normal process for advisors. Bob is going to give us that and then see what's the difference that's being requested according to the AP.

MR. BEAL: The normal process for nominating or approving someone for an advisory panel spot is the state brings forward a nomination of an individual with background.

There is a standard form that's filled out by the state. That nomination is brought to the species management board, and that management board takes action on the approval or the appointment of that person to an advisory panel.

CHAIRMAN NELSON: So, Dennis, what you're asking for is that instead of having the states appoint somebody else, you'd like to have a collection of names provided to the Policy Board, and then the Policy Board selects those additional members to be serving there? What is the difference between the at-large and just regular?

MR. ABBOTT: We understand that each state can appoint members to an AP from a variety of background. But, the honest way that it has to be done is states have to, I think, put advisors on that are more traditional.

A state would not end up putting on two of these supposed non-consumptive users and not have a recreational fisherman have a seat at the table or a commercial fisherman. Say in fact one recreational, one commercial, they're very unlikely to nominate non-consumptive type users. If we did it, we'd do it at-large. They wouldn't have to come from any particular place.

MR. BEAL: Dennis, my understanding of what the APOC is asking for is for the Policy Board

to approve two new spots on each advisory panel. The appointment of those individuals, non-consumptive individuals is what we're calling them now, the appointment of those individuals would be done by the Advisory Panel Oversight Committee. Is that what you're asking?

MR. ABBOTT: Again, we would come back with a process at a later time about how -- first we have to decide whether we want to do it. And then the how we would do it I think would be open to further deliberation, whether we wanted to have them approved by the Policy Board or the management board or whomsoever.

CHAIRMAN NELSON: All right, so you're asking for two new spots to be added to advisory panels?

MR. ABBOTT: Yes.

CHAIRMAN NELSON: Okay, thank you, Dennis. I had Dave. Tina, did you want to add something after David?

MR. CUPKA: Yes, during our discussion, the intent was not for this group to select those, but for us to develop a process. It could be the oversight committee. It could be the management board.

But I did want to ask Dennis, though, because I know Rich made the motion -- Ritchie White originally made the motion and I seconded it, and the motion that I seconded said up to two members, which is a little bit different than what we have here.

The idea was not to have more than two on there, but certainly depending on the AP, it could even be one. But, the way this is worded it says two for each one, so I wasn't sure whether we needed to clarify that or not. It is different.

MR. ABBOTT: Yes, thank you, David. In writing this out, I think I probably missed the "up to" two, and I think that was our intent was to have up to to. We may choose to have zero, but we could have up to two. So I'd like to amend my motion to -- well, it already has been.

CHAIRMAN NELSON: We got a friendly amendment.

MR. ABBOTT: You're so fast, John. Thank you.

CHAIRMAN NELSON: Tina, did you want to add something here?

MS. TINA L. BERGER: No, it's been clarified.

CHAIRMAN NELSON: Okay, and, Vince, you're all set? Yes, go ahead, Vince.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Mr. Chairman. I just had a question. I think on one of our boards we have a member of the Ocean Conservancy, which would appear to fit into the category that Commissioner LaPointe spoke about. I can't recall what the process was that that member got appointed to the Spiny Dogfish Board. Thank you.

CHAIRMAN NELSON: To that, Dennis, yes, go ahead.

MR. ABBOTT: Yes, I think Tina could explain to us. We have several boards that have what would come under the non-consumptive members, and maybe Tina could quickly help us out in that area.

CHAIRMAN NELSON: Okay, but, Dennis, the clarity is then that if you don't have those positions already available, you'd like to be able to add those positions; is that what the intent is here? Okay. Tina.

MS. BERGER: The intent is to allow each advisory panel to have up to. If they currently have it, I don't think there is a need to add an additional two members to that. With regards to spiny dogfish, the management board made the decision to have an at-large conservation member.

That's how most APs are developed. The management board determines by state, geographic range and user group who they want represented on the AP.

CHAIRMAN NELSON: Okay, thanks. Bruce.

MR. FREEMAN: The question I have is, Dennis, how is our process improved by doing this? And the reason I say that, I know in our instance, when New Jersey put forth members for advisors on the horseshoe crab, we put a conservation group on here.

And as Tina indicated, they've been put on other advisory groups as well. And the point is they -- depending on what a state wants to do, they can put various members on to represent different views. I'm somewhat puzzled as to how, by doing this, it improves our process. There may be a very logical explanation. I'd just like to know what that is.

CHAIRMAN NELSON: Well, let's get it from Dennis.

MR. ABBOTT: Sometimes I'm neither logical nor very intelligent. But, I think that the knowledge that we receive from anybody can be helpful in the process. I'm one that likes to listen to anyone's point of view because it helps form my point of view.

I think that having people with differing opinions is very important as we head towards a direction of having more inclusion in our Atlantic States Marine Fisheries Commission process.

CHAIRMAN NELSON: Okay, Gene and then I'm going to get some public comment.

DR. KRAY: Mr. Chairman, I approve the proposal. I would make one suggestion to Dennis, however, to change the word "non-consumptive" to "non-traditional."

MR. ABBOTT: Gene, I have no problem with the words because at the meeting that we had, we struggled for a bit. We didn't spend a great deal of time, but, as I say, we weren't sure which was the correct words, and we would welcome whatever words, you know, rings your bell or whatever. I have no problems with what they may be termed.

CHAIRMAN NELSON: How are the bells ringing right now?

MR. ABBOTT: Well, that's fine.

CHAIRMAN NELSON: That sounds good. Okay, let me get some public comment if there is any public comment. Michael, go ahead.

MR. DOBELY: Thank you, Mr. Chairman. Michael Dobely, Recreational Fishing Alliance. We like the idea of this. You know, I sat here a year ago when we had that town-hall style meeting, and one of my biggest complaints was the amount of ignorance on the part of some of the non-governmental organizations that decided to get involved in fisheries issues over the past couple of years.

All the criticism they hurl at us, how it has been -- the status of our fisheries, the lulls have been grossly distorted trying to make it sound as though all fisheries are in a state of collapse, and we're doing absolutely nothing to bring them back.

So if these folks want to get involved in the process, see how much time is dedicated to this by volunteers who serve on the APs and engage in a constructive dialogue and maybe help them learn what is really going on, I can see nothing but good coming from that. So, RFA likes this idea and we support the vote and we hope you adopt it. Thank you.

CHAIRMAN NELSON: Thank you, Michael. Anyone else in the public? All right, back to the board. I've got a couple of hands. A.C. and then who do I have? Okay, David.

MR. CARPENTER: Has anybody analyzed the number of advisory panels we have and two additional people on each one and what the financial impact to the Commission is going to be?

CHAIRMAN NELSON: Well, I haven't had that done yet because I just saw the motion, but, Dennis, did you guys give any thought to that?

MR. ABBOTT: Well, I'll answer that, A.C., by

saying that one thing that we're not overwhelmed with is overparticipation in the AP process. Monday, prior to our meeting, one of our members, was at the winter flounder meeting.

We had a board meeting Tuesday morning. The chairman was there with three members, I think two from New Jersey and one from New York on winter flounder. We sure weren't suffering from overparticipation.

If it's not striped bass, and I can't name any others, we're not overwhelmed with input from the advisors. And hopefully we can make this process work a little better by having these various voices there.

CHAIRMAN NELSON: Okay, David, you're going to have the last word, my friend.

MR. CUPKA: Very quick to Bruce's question or comment, I guess, about what it was going to add or why. You know, your comment about the state could appoint people like that is true. But traditionally they haven't, and I guess there was a lot of discussion at the oversight committee that we didn't want to use those traditional type appointments.

We didn't want to use those places to add someone like this on, so the idea was to add a couple people to the APs in addition to the traditional members that were on there.

CHAIRMAN NELSON: Okay, do you want to caucus for a minute on the motion, and then we're going to call the question or we are calling the question.

(Whereupon, a caucus was held.)

CHAIRMAN NELSON: Okay, are you ready for the question? All those in favor of the motion, please say aye; all opposed; abstentions; and nulls. Okay, the motion passes. Thank you very much. Anything else, Dennis?

MR. ABBOTT: Yes, the first item was we wanted you to consider the option of approving AP members outside of a management board

meeting. This would allow people to become advisors right away, get involved in the process, receive the primer, et cetera and et cetera, and be ready to hit the floor running somewhat quicker.

We all know that it's really a rubber stamp. When the state provides an advisor's name, at the end of the meeting, when everybody is running for the door, that's usually our last item of business, do you approve this person as an advisor?

We trust the states are putting forward good candidates. We think we'd be better off if we could do it other than our present method.

CHAIRMAN NELSON: Anyone disagree with that?

MR. AUGUSTINE: Just a question, Mr. Chairman. Does that mean that the state, whoever the state delegation or representative is, they have an opportunity to review the paperwork of that applicant or not?

MR. ABBOTT: The beginnings of it would be no different. The state's three commissioners are the ones that sign the person on and present that to the Commission. There would be no change to that. It just wouldn't require the board approval. It would require approval of either the chair or whomsoever.

MR. AUGUSTINE: Just a follow on. So the process would be that they would apply directly to ASMFC? Oh, they would apply directly to the state, anyway?

CHAIRMAN NELSON: The states would still submit that application form that the three commissioners have signed off on.

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

CHAIRMAN NELSON: And then it would be - - really what I think the AP is asking is that the Executive Director or the chair of the Commission give the approval for that rather than the board meeting, and then approving at that time.

MR. AUGUSTINE: Thank you for that clarification.

CHAIRMAN NELSON: Is that correct?

MR. ABBOTT: One further thing regarding that. Ritchie reminded me what we thought we could do. You could do it through all the board members by e-mail or fax so they would all be aware of the nomination and have them express any disinterest regarding that nomination.

CHAIRMAN NELSON: Okay, let's look at it this way. If we follow through on that process, the state sends it in to the Commission. The Commission then sends it out to the appropriate board.

If there is no objection, then the person would be able to go to the upcoming meeting. If there is some type of objection, then the discussion would take place at the next board meeting. Okay?

MR. ABBOTT: Yes.

CHAIRMAN NELSON: Thank you. Gordon.

MR. COLVIN: And just so the record is clear, this process, which sounds very logical to me, would be applied to state-specified AP members, but at-large members would still be appointed by the process to be proposed?

MR. ABBOTT: Yes.

CHAIRMAN NELSON: Okay, is there anyone that is opposed to that slight modification in our AP nomination process? Seeing none, it is done. All right, moving along, Dennis, did you have something else?

MR. ABBOTT: Yes, one final thing I'd like to thank staff, in particular Tina, for helping us get through this. She provided us with a lot of information to do our jobs, as usual.

CHAIRMAN NELSON: Okay, good. The next item on our agenda is Item Number 13, the Committee on Economics and Social Science update. Elizabeth.

**-- Committee on Economics and Social
Science Update --**

MS. ELIZABETH GRIFFIN: The Committee on Economics and Social Sciences has two recommendations for social sciences seminars to train commissioners, committee members, staff and other interested parties.

Staff is passing out written descriptions of these two seminars as we speak. The first proposal is for February meeting week. It's a seminar in input/output models, such as IMPLAN, and how these models are used in the fisheries management process.

Commercial and recreational fishing groups often use the models in improper manners to build support for their causes. The presentation will help attendees to understand how fisheries agencies use the model and allow them to recognize when someone is trying to sell them on bad information.

In the process of developing this topic, CESS decided that there was also a need for a conflict resolution seminar. CESS would like to conduct this seminar in either late 2005 or early 2006.

The session will focus on different social tools that can be utilized to help resolve conflicts that arise during the fisheries management process. Some of the potential topics that may be covered during this session include using conflict-resolution skills to conduct effective public meetings with stakeholder groups; how to resolve conflicts between the rulemakers; and how understanding the biases of different user groups can help you to resolve conflicts. CESS would like for the Policy Board to approve the development of these workshops.

CHAIRMAN NELSON: Okay, I know that some of us could use some of that. Is there any objection to putting these into the work plan recommendations for the Commission to consider when we do the action plan in November? My colleague to the right has not an objection, but he has a comment.

MR. LAPOINTE: I do have a comment. I like

the idea of the seminars, and we really have to pay attention to our time. I'm more interested in having the conflict resolution seminar before the economic input-output models just in terms of the things we're interested in.

CHAIRMAN NELSON: Okay, I think, though, the scenario that we would do is we would take both of these recommendations, unless this board decides that they just want to do one of them or none, and put that into the action plan. And at the time of our review of the action plan, you can determine what time line and which ones you would like to have held. So, does anyone object to what I said? No. Did you have something that you wanted to add?

MR. FOTE: I was just going to say I support the idea of these two things and we'll let everybody decide when we should have them.

CHAIRMAN NELSON: No, when we do the action plan, we can have that discussion and we can look at what our overall workload is and then see where we can fit these in. Okay, does that work out for you, Elizabeth, also? All right, everyone loves this idea. Okay, that's it. Anything else, Elizabeth? Thank you very much.

Okay, we are not going to do the -- much to everyone's dismay, we are not going to do the update on the Cormorant Management Plan.

All right, the next item is the other business, and under other business at this particular time we have the South Atlantic has a recommendation regarding red drum, I believe. Spud, you're going to do that?

**-- Discuss Red Drum Management
Authority --**

MR. WOODWARD: Thank you, Mr. Chairman. Actually, I'm very relieved because I knew the cormorant was going to be a tough act to follow so I feel very relieved.

Just a little brief background, to give a little frame of reference for this motion that we would like to have the Policy Board endorse.

In the year 2000 the South Atlantic Fishery Management Council voted to pursue a course of action that would transfer authority for management of red drum in the Atlantic EEZ over to the Commission per the authority vested in it through the Atlantic Coastal act.

It stalled because of the American lobster litigation and just sort of was in a holding pattern for a while. All that cleared up, and right now the council has a draft letter that is in legal review.

Once it clears legal review, David's signature will be affixed to it, and it will be requesting that the Secretary basically discontinue the federal plan, and that responsibility for red drum in the EEZ come over and become part of the Commission plan.

There is an action necessary on the part of the Commission to sort of ensure that there is a seamless transition and that we don't have a gap in the current prohibition on either harvest or possession of red drum in the EEZ.

And that's what this motion does is, and I'll read it into the record for you, Joe.

I move, on behalf of the South Atlantic State-Federal Fishery Management Board, that the ISFMP Policy Board send a letter at the appropriate time to Bill Hogarth requesting that the Secretary of Commerce implement, under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act, a prohibition on the harvest of red drum in the EEZ as a part of the ASMFC Red Drum Fishery Management Plan.

That's a fairly straightforward action but it's a necessary one.

CHAIRMAN NELSON: Okay, and that's a recommendation from the board, so it doesn't need a second. Comments on the motion? Anyone object to the recommendation? Seeing no objection, we'll take care of it accordingly.

Any other business before the Policy Board? All right, seeing none, we'll go right into the business session.

(Whereupon, the meeting adjourned at 5:20 o'clock p.m., August 18, 2004.)

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-- Other Business --