

**PROCEEDINGS**  
**of the**  
**ATLANTIC STATES MARINE FISHERIES COMMISSION**  
**ISFMP POLICY BOARD**

**August 27, 2003**

**Double Tree Hotel Crystal City**  
**Arlington, Virginia**

## ATTENDANCE

### Board Members

George Lapointe, Maine DMR  
Patten White, Maine Gov. Apte.  
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  
David Borden, Rhode Island, DEM  
Gil Pope, Rhode Island Gov. Apte.  
Jerry Carvalho, proxy for Rep. Naughton (RI)  
Eric Smith, Connecticut DMR  
Gordon Colvin, New York DEC  
Pat Augustine, New York Gov. Apte.  
Brian Culhane, proxy for Sen. Johnson (NY)  
Lance Stewart, Connecticut Gov. Apte.

Bruce Freeman, New Jersey DFG&W  
Martin Mchugh, New Jersey DFG&W  
Tom Fote, New Jersey Gov. Apte.  
Gene Kray, proxy for Curt Schroder, PA  
Roy Miller, Delaware DFW  
Howard King, Maryland DNR  
Bill Goldsborough, Maryland Gov. Apte.  
A.C. Carpenter, PRFC  
Jack Travelstead, Virginia MRC  
Catherine Davenport, Virginia Gov. Apte.  
Bob Craft, proxy for Sen. Chichester, (VA)  
Preston Pate,, North Carolina, DMF  
Damon Tatem, North Carolina Gov. Apte.  
David Cupka, South Carolina Gov. Apte.  
Kathy Barco, Florida Gov. Apte.  
Anne Lange, NMFS  
Bill Cole, USFWS

### ASMFC Staff

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

Lydia Munger  
Brad Spear  
Nancy Wallace  
Mike Howard  
Toni Kerns

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**Summary of Motions**  
**August 27, 2003**

**Motion that it shall be the policy of the Commission to refer FOIA requests for information held by the Commission back to the state or states providing such information.**

*Motion made by Mr. Pate; Second by Mr. P. White. Motion Passes with 2 abstentions*

The ISFMP Policy Board of the Atlantic States Marine Fisheries Commission convened in the Washington Room of the Doubletree Hotel, Arlington, Virginia, August 27, 2003, and was called to order at 2:30 o'clock p.m. by Chairman John I. Nelson.

**-- Welcome; Introductions --**

CHAIRMAN JOHN I. NELSON: Seeing that we have a quorum here, I would like to welcome everybody to the ISFMP Policy Board meeting. Before I get into our agenda, which you all received over the CD-ROM, we have an opportunity to do something that is nicer than most of the things I get to do.

Anyway, there's a young lady that has spent ten years of dedicated service with the commission and we would like to give her a certification of appreciation. So, Lisa, would you come forward, please? Let me read it while Lisa is standing here being embarrassed.

"The Atlantic States Marine Fisheries Commission greatly presents to Lisa L. Kline, PhD, this certificate of appreciation in recognition of ten years of dedicated service to the commission and its members states as Director of Research and Statistics.

"As the commission's first Director of Research and Statistics, Dr. Kline established a collaborative and productive environment for the states to conduct research projects. Demonstrating outstanding leadership and vision, she led the development of the Atlantic Coastal Cooperative Statistics Program through her service as the first chair of the Operations Committee.

"Through her steadfast commitment to integrating science into the management process, Dr. Kline has ensured comprehensive information has been provided to the commissioners, supporting their efforts to improve the quality of their management decisions. By these and many other efforts, she has truly helped advance the commission's vision of healthy, self-sustaining populations of

Atlantic coast fish species." Thank you. (Applause) Do you want to make a speech?

DR. LISA L. KLINE: Not really.

CHAIRMAN NELSON: No, go ahead.

DR. KLINE: Well, I want to say thank you to everybody. You have definitely caught me unawares, and I guess I would like to thank all the people -- I mean, I haven't done this myself -- my staff, the state and federal people, Management and Science Committee, who has worked very closely with me on a lot of this stuff, and, of course, all of the people in the ACCSP that helped build that program. Thank you all and I thank you for having great staff to work with. (Applause)

CHAIRMAN NELSON: And, of course, I recognize this is August, and I think we would have done this in June when it was closer to the ten years of service, but I believe that Lisa was busy at that time obtaining a new member to the family, picking up her baby. How is the baby?

DR. KLINE: Very good, three months old.

CHAIRMAN NELSON: Sleeping all night?

DR. KLINE: Sleeping all night.

CHAIRMAN NELSON: Hallelujah. (Applause)

**-- Approval of Agenda --**

Looking at our agenda, one of the changes that I would like to make to the agenda, we forgot to put in the AOC Committee report and that we'll take right after public comment. Are there any other changes? Anne.

MS. ANNE LANGE: Thank you, Mr. Chairman. We have on the agenda a NMFS report, which is an update on a couple of items. There are two additional items that I would like to include either there or Other Business, just very short comments.

CHAIRMAN NELSON: Are these very short?

MS. LANGE: Very short. I mean, I can tell you what they are, if you would like. It's an update on weakfish and a question about the whelk fisheries.

CHAIRMAN NELSON: The whelk?

MS. LANGE: Whelk fisheries.

CHAIRMAN NELSON: Well, why don't we do it under the National Marine Fisheries Report?

MS. LANGE: Okay.

CHAIRMAN NELSON: Any others? David, go ahead.

MR. DAVID V.D. NELSON: I'm not exactly sure what you've got planned for the update on coastal sharks, but I would be happy to report the results of that discussion we had yesterday, if anyone is interested.

CHAIRMAN NELSON: All right, thank you. Anne.

MS. LANGE: Just a quick clarification. That's related to the NMFS regulation on large and small coastal sharks that has recently been published.

**-- Approval of Proceedings from June 12, 2003 Meeting --**

CHAIRMAN NELSON: Okay. Anything else? Seeing none, the next thing were the proceedings from the June 12 meeting. Are there any changes or additions or modifications to those minutes? Joe got them all right. Any objections to those being accepted? Seeing none, they are accepted.

**-- Public Comment --**

Public comment, anyone want to make any public comment at this time, keeping in mind that we will also take public comment as we go through the various items on the agenda. Seeing none, we'll proceed to the AOC report. Pres.

**-- Administrative Oversight Committee Report --**

MR. PRESTON PATE, JR.: Thank you, Mr. Chairman. The AOC concluded its meeting just a few minutes ago; and during that time, we went over a number of issues that have been around our periphery for the last several meetings.

Some we have brought up on our own initiative and others have been brought up during this board's meetings or the management board meetings, and there have been some directions to the staff to respond to requests from those various sources.

You've been handed out a paper on which some of those outstanding issues have been summarized, and attached to that paper is a series of white papers that get into a little bit more detailed discussion about each one of those individual issues.

What I want to do today is ask Bob Beal to run very quickly through the white papers with the intent of reintroducing these issues to the board and asking each of you to review the white papers in the context of the atmosphere in which they were generated and the experiences that we have had since those issues were first discussed.

We'll talk about the process of getting comments back to the staff for refinements to these draft white papers and further and perhaps final action on those that need final action at our December meeting.

It's not necessary that we get into any detailed discussion today. Again, this is an introductory effort and we'll have ample time to review these at future meetings. So, Bob, if you will jump in, please.

MR. ROBERT E. BEAL: Thank you, Pres. What I'll be referring to is this eight- or nine-page thick, stapled document that was just handed out, and at the top the title is "Outstanding Administrative Oversight Committee Issues."

The first issue on there is the proxy and conflict of interest issue. If you flip to the third page of this packet, there is a draft white paper, as Pres mentioned, on this issue. The white paper goes into and basically summarizes all the commission's guidance on proxies that we have right now.

All the commissioners around the table and those that aren't here, obviously, have the ability to grant proxies or to provide proxies at meetings to act on their behalf when they are unable to attend.

The first issue in the background, or the first subparagraph there is from the ISFMP Charter, and it is the language from the charter describing how proxies should function at meetings. It goes into the different types of proxies, those being permanent, ongoing, and specific proxies.

There's some language on who can be chosen as a proxy. There is guidance on the person has to be from the same state of jurisdiction or agency. That's the language out of the charter.

The following paragraph is Article 3, Section 3 of the Compact and Rules and Regulations, and this, again, is further guidance on the proxy issue, and this describes the different types of proxies. It describes what an ongoing proxy is, what a permanent proxy, and what a meeting specific proxy is.

It also describes some of the limitations on proxies and how frequently proxies can be changed. It also puts a limitation that even by proxy nobody can have more than one vote at a board meeting or a section meeting or a committee meeting.

The paragraph at the bottom of page 3 is an introduction of the Commission's Code of Conduct. The Commission's Code of Conduct is the section of the Rules and Regulations that describes the conflict of interest limitations of direct and indirect financial interests that may conflict with the fair and impartial conduct of a commissioner. That language is included here.

The following paragraph is a statement of the problem. Over the last couple of months, and really over the last few years, but in particular in the last year or so there has been some concern raised about the proxies that commissioners have chosen, and the focus of this comment has been on meeting-specific proxies.

The ongoing proxies and the permanent proxies haven't raised near as much concern in the last year or so. As I said earlier, in the Code of Conduct there's the statements on financial conflicts of interest.

The options that are presented at the bottom of the paper are options that were developed so that no formal definition of a financial conflict of interest had to be developed.

It's really difficult to say what is or what is not a conflict of interest that will prevent someone from impartially serving as a commissioner or a proxy. The conflict of interest refers to proxies rather than actual commissioners.

Actual commissioners are appointed by the governor and the concerns over individual interests in those are handled by the governors in the states conflict of interest statements.

But, when it becomes a proxy, kind of a secondary person, that person usually is not reviewed by the state to determine if they do or do not meet the state's conflict of interest statement.

There's a couple of options down at the bottom. The first one is a full disclosure of financial interests. The way this would work was that anyone serving as a meeting-specific proxy would be asked to provide a financial disclosure of their activities. The details of this aren't fully developed. It could be developed in a lot of ways.

It could be just your financial interests with respect to fishing or those sorts of things. The idea there is that if everyone's cards on the table, the public, as well as the other commissioners, can see what type of activities these individuals are involved in that are serving on the board. It

doesn't affect their process. It just lets them know what activities they are involved with.

The second option is that meeting-specific proxies don't vote on final actions. The way this would work is that if a person came in as a specific proxy for a meeting, they would be allowed to fully participate in the deliberations and the state caucus and everything else that goes on at a board meeting.

However, they would not have an input to the vote for final action. They would be able to vote on interim actions such as approval of documents to go out to public hearing or options to be included in public hearing drafts.

The idea is that if the board were taking final action, such as setting a quota or a seasonal allocation or a final approval of an amendment or addendum, something along those lines, these meeting-specific proxies would not be able to vote on these sorts of issues. That's a quick summary of the white paper on proxies. Do you want to stop there?

CHAIRMAN NELSON: Yes, why don't we stop there. Any questions for clarification at this stage for Bob? Go ahead, Tom.

MR. THOMAS FOTE: On the first one, if you want to put down financial disclosure for a committee meeting or for a board meeting, please keep it simple and do it fisheries.

The document I fill out for the state is I think 23 pages long and requires every bank and all my wife's salaries of wherever she goes, and it's so confusing, that if somebody had to fill it out and had to go to their accountant, we'll never get a proxy for anything. Just keep it simple when it deals with fish items and fisheries items if we're going to do that.

Second of all, the second part you have here, going back to the years when governor's appointees and legislative appointees had no vote, New Jersey always caucused on every vote, and we had decided among ourselves whether we had a vote or not, we weren't going to do something that we couldn't agree to.

So this really would have been an irrelevant statement, anyway, because basically that's the way we behaved in the New Jersey delegation. I don't know how effective that would be. I mean, it wouldn't be effective in New Jersey because we basically say that. That's just my two comments.

CHAIRMAN NELSON: Other comments? Pat, and, again, keeping in mind these are drafts for the consideration of the commission and we're looking at certain timelines for getting final comments back to us. Thank you.

MR. PAT AUGUSTINE: Thank you, Mr. Chairman. Option 1 I would definitely support very quickly. I would only suggest that the form that we use for disclosure for the council might be one where you might want to look at as opposed to the 27-page one that you do for state. Other than that, it's a great way to go. Thank you.

CHAIRMAN NELSON: Kathy.

MS. KATHERINE BARCO: Actually, if we're looking at one or the other, under the financial disclosure, I don't have a problem with it as long as they keep it simple, but I think you should do not one or the other, but maybe both.

The financial disclosure, you can have somebody that does everything they do on a volunteer basis with no financial investment in any one industry and still be able to sort of stack the deck, which is what we're worried about of giving proxy. There's a lot of ways you can hide your financial interests in something. It either needs to not be the one we choose or 1 and 2.

CHAIRMAN NELSON: All right, thank you. Gordon.

MR. GORDON C. COLVIN: Thank you, Mr. Chairman. I want to express appreciation to the AOC for their efforts to get into this issue and to try to come back to us with some proposals. I do believe it is something that is very much needed and look forward to being able to approve something before the end of the year.

I have a couple of comments on this draft that I hope will be helpful. First, I agree with what is said here in terms of the current proxy practice creates some concerns about the appearance of conflict of interest and/or questions about relationship of individuals voting to the Commission's Code of Conduct.

I believe that there are some other issues as well besides that one, and in some instances these other issues may in fact be more of a real concern as opposed to an appearance of concern.

The two things that concern me specifically, and these are words that I recall hearing more than once this morning, are transparency and accountability.

When we have proxies at our table that are new to the process and are appointed for one meeting only, we lose a degree of our transparency in that none of us as commissioners, the commission as an entity, the states as its members, and the stakeholders may not know who the parties are that we're dealing with.

Because of where the proxies originate from, that does create, I think, a potential problem with respect to transparency of our decisionmaking, and it ought to be addressed and I think it ought to be cited in the statement.

With respect to accountability, there is an issue - - and this goes back to kind of how we constructed the proxy policy as it presently stands.

Each state has three commissioners and each commissioner is fully accountable to the government of the state from which they emanate based on who appointed them; governor's appointees by governors, legislators by the leadership in an established process of the state legislators, and the state directors also ultimately by the governors.

Proxies appointed by commissioners themselves can take us one step away from that accountability to the elected officials who originally made the appointments, and that's something that we want to bear in mind and just

make sure that we understand that proxy policy can lead to a loss of accountability, and it ought not to do that.

We ought to have flexibility, we ought to be able to operate and make decisions, but we ought not to lose accountability. It just occurred to me that perhaps a third option for the proxy process, beyond what is indicated here, is that proxies could only be appointed by the parties who made the original appointments and not by commissioners themselves.

That would certainly make sure that the accountability was maintained, and it would make things less flexible, perhaps, but it's an option that we ought to at least think about. Thank you.

CHAIRMAN NELSON: Thank you, Gordon. I had Dennis.

MR. DENNIS ABBOTT: Thank you, John. I appreciate the efforts being made in this direction, also. In Example Number 2, if you could help me a little bit, from the state of New Hampshire, if Ritchie White couldn't come to the meeting, then Ritchie White's proxy could not vote on an issue, a final issue.

If from New Hampshire John Nelson didn't come to the meeting, could someone from your department also not vote or does that need to be spelled out a little clearer than what is here?

CHAIRMAN NELSON: Yes, we can spell it out a little clearer. Where we have ongoing permanent proxies, for example, most of the state directors have that designated already in that case. Gerry.

MR. GERALD CARVALHO: Thank you, Mr. Chairman. Being an ongoing proxy, this raises some concern. If we make this standard too rigid, we're going to eliminate the participation from people like myself.

We had a problem in the state of Rhode Island on the Rhode Island Marine Fisheries Council where the statute requires that three of the representatives be recreational, three of them be

commercial, and three of them be from the scientific community.

The commercial representatives, on all occasions, were found in conflict because they had a specific financial interest in the management of the fisheries stocks. The recreational representatives were not found in conflict because their interest in managing the stocks was not, supposedly, financial.

What we did was we wound up negating the commercial fishing participation. I think we can go overboard on this. I appreciate Gordon's concern. If a representative appoints a proxy, that representative is still responsible for the actions of the proxy.

I believe in accountability, but I think that we can go too far on the issue to the point that we eliminate participation from people like myself.

I can always bring that expertise from the fishing community, from the field. If you make things too difficult and you eliminate this type of person, you're going to eliminate the contributions they can make.

CHAIRMAN NELSON: Thank you, Gerry. And just for clarification, the intent is not to limit ongoing proxies from being able to vote on anything, including the final determinations. The determination is specific proxies, folks that are appointed that might show up for a particular meeting for a particular vote, something like that.

If they haven't had the full experience of developing an FMP and understand and share in the accountabilities of what we are about to do, it's trying to address that particular one rather than the folks that we have used as slave labor all the way along, such as yourself. Gil.

MR. GIL POPE: Thank you very much. Every year, I don't know about the other governor's appointees, but I fill out a report to the Ethics Commission in the state. They send me one and I'm sure they probably send a lot of their appointees one.

But, there is something in Number 1 here, this information would be made available to the other commissioners and the public for review at the meeting.

There are certain things in Rhode Island, when we take certain information from certain people about boats and about what they catch and what they make and so on and so on, that are not allowed to be put into the public arena.

While I'm sure that's okay, it sounds like I wouldn't want to know some of the details of the other person's maybe financial on goings, and I would feel very uncomfortable viewing it for some reason. Thank you.

CHAIRMAN NELSON: Thank you very much. Let me work on the other side. I had Eric.

MR. ERIC SMITH: Thank you. I hope this is constructive. It may be a little bit -- Gerry, hold on to your seat. As I read the first indented paragraph there, I read proxies must be from the same state or jurisdiction or agency as the individual making the designation.

It's not how we operate now, but was that language originally intended to mean that a legislator would appoint another legislator and a governor's appointee would appoint another person from the private sector, if you will, and then the agency person would appoint another agency person.

The reason I ask that is I initially had looked at these options, and much like Gordon, I thought that one part of the solution might be to add an option that basically -- if the issue is in the governor's appointee proxies, and I'm not sure I understand exactly what the issue is, one option, whether it's desirable or not, is to simply say that the governor's appointees would not be able to appoint a proxy.

Then I started to think about legislators, and even in our own state Fred Frillici is pretty much a permanent proxy for Doc Gunther. Fred is not a legislator and I'm certainly not trying to exclude him.

But, in looking at that language, the clearest way that this proxy situation works in my mind is when an agency employee who is a commissioner appoints another agency employee of the same agency when he can't attend -- and that's much like the councils are and in fact in the council process it's embodied in the law.

There are no proxies for the publicly appointed members, but there are proxies for the state agency directors. I'm not trying to create waves or exclude people who are valued participants here now, but I want to get it back to maybe if the area of concern is governor's appointees from a particular type of fishery experience, on a case-by-case basis appoint someone else who then comes with some particular different interest and that's confounding the system, one option here could be to say the governor made his appointee, but unless the governor appoints someone different, then there is no proxy for that person. This is for your consideration.

CHAIRMAN NELSON: Thank you, Eric. Just so that we clarify the state or jurisdiction, there are a couple of members that are still considered as jurisdictions. I'm going to get to one of them shortly, and I'm sure he still appreciates being included in the commission. Let me have Jack and then we'll get to the jurisdiction people.

MR. JACK TRAVELSTEAD: Bob, is there currently, within the charter, a definition as to what constitutes a financial interest; and if there isn't, it seems to me we need one. We might work on that while we're doing the rest of this.

I mean, it's obviously some level of money or some percentage ownership of a company. I might suggest you look at some of the states laws for examples of that.

MR. BEAL: Yes, there currently is not a definition, but we could try to craft one. I guess there may not be value in putting that time into crafting one if the Policy Board wants to choose an option where we don't have to define that, if they want to pick a different course.

MR. TRAVELSTEAD: Well, see under the Code of Conduct you already mention the words "financial interest" and you say no commissioner shall have a financial interest. You know, is it one dollar's worth of interest in a fishing company?

MR. BEAL: Right.

MR. TRAVELSTEAD: A person could own stock in a company like IBM or something that is likewise invested in a salmon farm in Alaska. Is that a financial interest? There needs to be some definition there.

MR. BEAL: Sure.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, there is a sentence in your regulations that say no commissioner shall have a direct or indirect financial interest that conflicts with the fair and impartial conduct of official duties.

Now, that's an attempt to define, albeit a not very tight one; and if I understand your suggestion, it's to look about ways to make that more specific, and you mentioned the word charter. I'm referring to your Rules and Regulations, which is overarching to the charter. Thank you, Mr. Chairman.

CHAIRMAN NELSON: Thank you, Vince. I had Roy next.

MR. ROY MILLER: Thank you, Mr. Chairman. I am trying to come to an understanding of the suggestion number 2. For the past year, I have served as a permanent proxy for the Director of the Division of Fish and Wildlife.

Now, if I were to miss a meeting for one reason or another and appoint another staffer from the Division and Fish and Wildlife, does that person then become a specific proxy, and under point number 2 would therefore not be able to vote for the state of Delaware on issues that may be very important to us? I don't think that was the intent, but I look forward to your answer for that.

CHAIRMAN NELSON: The answer would be that you would designate an ongoing proxy for yourself at the beginning of the year, as do the other state directors.

MR. MILLER: May I follow up, Mr. Chairman? Let's say I'm the ongoing proxy for the director, but if I miss a meeting, I wouldn't be appointing someone for the rest of year. I would only be appointing someone for the next meeting.

Would that person have full voting authority for our state, because as you may have noticed, sometimes we only have one commissioner representing our state.

CHAIRMAN NELSON: I probably can't answer that right now, and the staff has written that down to take that under consideration, Roy. A.C.

MR. A.C. CARPENTER: Thank you, Mr. Chairman. I've got several thoughts. One, Option Number 2, I think based on Roy's question and a number of other questions that will come up about what a final action is I think is cumbersome at best and maybe unworkable. Now that we have at least most of the commissioners most of the time, the idea of a caucus sort of negates the need of Number 2.

Item Number 1, the financial disclosure, it seems to me that we've already got a form that gets to the crux of the issue, but doesn't necessarily rely just on financial. That is the advisors committees nominating form that we fill out to have somebody represent us on the advisory committee is quite extensive as to their background in general terms, what experience with what fisheries they have, and whether or not there are any financial interests.

It may be as simple as having the proxy submit an abbreviated advisory committee form filled out and then just make that available to all of the members around the table so you know who is the person that is sitting in the chair. I think that gets a little bit to Gordon's point that you need to know who you're dealing with. Those are my thoughts.

CHAIRMAN NELSON: Thank you, A.C. I have a number of people. If you do want to speak and I haven't had a chance to get to you, right now I have Tom, Dave, and then back to Eric. Is there anyone else, please raise your hand.

MR. FOTE: Eric, as you pointed out rightly this morning, you've been gone for a few years and this long battle went on about how we would deal with legislative governor's appointees and how we would all be treated fair and equitable as we go.

The proxy discussions came along as part of that conversation that went on there, and it was decided at that point in time, after much deliberation by the governor's appointees and legislators, that we would be allowed proxies, the ongoing proxies as a way of dealing with this.

So, that's part of the things you missed in the last ten years. We did a lot of discussion and a lot of soul searching on those questions to be all treated as fair and equal commissioners, and that's what makes up the commission and its power.

The financial disclosure brought up an interesting thing and that's what I really -- in New Jersey, if you release information on a financial disclosure form that goes into the governor's office, there's all kinds of hell.

There's statutes and there is everything that covers that and there's legal repercussions if you release that information to the general public.

I don't know how we deal with that, and so that's why it has got to really be kept simple because I didn't think about -- but I know when I give a form into the governor's office, if any of that information becomes public without my permission, then it becomes a real problem. We've got to be careful how the information is distributed.

Again, the proxy system has become a little different and I'm trying to think of a way -- I don't want to throw out the baby with the bath

water. I think we have to be careful how we do this.

We still need to give the flexibility to commissioners because things happen. I mean, I've been lucky enough that I have been able to make every meeting, but suppose I'm sick one day or something like that and that doesn't happen -- the expediency of being able to get to a meeting.

I will check with the governor's office and the director, which I usually do, and say this is who I would like to send and have you got any problem with that, and that should be done within the state.

To try to get approval for a proxy, say, as a legislative proxy and go through the committees you've got to go through could sometimes take -- since we're out of session for nine months and I think it's in Maryland and we're not in session in New Jersey during an election year for six months, it's almost impossible. We could never get proxy approval like that, so it really needs to be a simple method of doing it.

CHAIRMAN NELSON: Thank you, Tom. Dave.

MR. DAVID CUPKA: Thank you, Mr. Chairman. I just wanted to make a couple of comments relative to some earlier comments I heard around the table.

I guess the first one is the one that Eric made about a governor's appointee being someone from the public, and that's not necessarily the case. I don't think there is anything in the charter of this commission that requires the governor's appointee to be a member of the public.

In fact, I guess my state is somewhat unique in that I serve as the governor's appointee, and yet I'm an agency person and have for a number of years.

About five or six years ago, this issue was raised and in fact our state attorney general rendered an opinion that said there was nothing to prevent

me from serving as a governor's appointee even though I am an agency employee. I don't think it necessarily has to be somebody from the public. Historically, most of the time it has been in the other states, but it's not required to be.

The second thing has to do with a comment that Gordon made relative to accountability and having the original jurisdiction designate a proxy.

Again, I would be a little concerned about that in our case because the governor's appointee is not directly appointed by the governor, but it's with the advice and consent of the Senate.

So, we have a whole formal process we have to go through where we have to be confirmed by the Senate, and I think the end result of that would be that we probably wouldn't have somebody serving as a proxy in that because it would be extremely difficult to get someone through that process in the case of a specific proxy or something like that.

So, it's not as straightforward, I think, as we would like it to be. I know what the concern is and I think it needs to be addressed somehow, but I think we need to be careful how we craft the solution to this issue. Thank you.

CHAIRMAN NELSON: Thank you very much. I have about four more folks that want to provide some insight on this, and then I think that does provide the staff with enough additional information to put the white paper together as a revision and send that out to everybody and then you can provide additional comments back to us. Having said that, Eric, you actually are next.

MR. SMITH: Thank you. After that good debate, I would like to say my idea stinks, and I don't like it anymore either.

CHAIRMAN NELSON: What idea was that, Eric?

MR. SMITH: After having a chat with my colleague from Connecticut, who is a governor's appointee, we think the more this debate has

gone on, Number 1 has become something that might be of lesser significance, but Number 2 is actually becoming more attractive.

It accomplishes two things. If there's a perspective the state would like to send, that perspective can come and it can be voiced, but not having that person be able to vote on it tends to eliminate what I think has been the generated concern here, that on a special basis a special interest might come and in effect distort the otherwise stability of the commission on all of these issues.

I know we're not picking a final decision today. First, I wanted to make sure that Vince and staff didn't follow up on my suggestion. I think that ought to be off the table. Thank you. The other point is to really look hard at Option Number 2 because it makes a lot of sense to us. Thank you.

CHAIRMAN NELSON: Thank you for simplifying their life, too, Eric. I had Pat next.

MR. AUGUSTINE: Thank you, Mr. Chairman. I'll simplify it also. I don't agree with Number 2, but I agree with Number 1. It's interesting because the way the charter is written right now, the compact is written right now, the piece that Vince read about having if you have a financial - if your decision is making a financial impact or have a financial impact on the decision, I think you should reclude yourself.

We don't do that around this table. The concern I have about going with Number 2, where you do bring someone in, if I brought someone in to take my place representing the governor's appointee, I would feel uncomfortable not knowing that person would satisfy the need of what my responsibility is.

And if it were a person that had a special interest or had more experience in a specific area, I would be more inclined to invite him to come to the audience to make a public comment and not lose the opportunity of one of three that participate in the final vote on each and every single issue. Thank you.

CHAIRMAN NELSON: Thank you, Pat. Gil, I know you've been waiting patiently.

MR. GIL MCRAE: Thank you, Mr. Chairman. As a newcomer to this process, I would like to submit that in my opinion neither 1 or 2 is needed, and they're unnecessarily complicating the existing policy.

I believe the existing policy is very clear that the Commission's Code of Conduct applies to all proxies, and what may be needed is an objective process for determining if the Code of Conduct has been violated and some ramifications of a violation. In fact, that would do more towards stopping this than any additional complicating policy, in my opinion. Thank you.

CHAIRMAN NELSON: Thank you very much. Ritchie.

MR. G. RITCHIE WHITE: I was just going to suggest that maybe the next step is to have a detailed definition of specific proxy -- and there obviously was a problem at some point -- and try to craft a definition that created this issue and outline the powers of a specific proxy as opposed to an ongoing proxy, and that might clarify it.

CHAIRMAN NELSON: I had said the four, but I did have two souls that raised their hands and they haven't spoken yet. So being the kind and gentler soul that I am, go ahead.

MR. EUGENE KRAY: Thank you, Mr. Chairman. This is about my fourth or fifth meeting, and it's the second time where I'm the only representative from Pennsylvania.

Now if we were to adopt Number 2, Pennsylvania would not have a vote. Now I know that's not your fault. It's not my fault either that the other two gentlemen are not here, but that's the way it is.

Someone suggested that to go back and have the person who made the appointee -- now I'm the proxy for the legislator. He is appointed by our Speaker of the House.

That becomes extremely cumbersome to try to wield through that maze in Harrisburg to get that kind of an appointment. I have absolutely no problem with Number 1 and full disclosure, but I think -- and Roy touched on this a little bit, too - - disenfranchising a particular state, if that proxy is the only representative of that state, is a problem.

CHAIRMAN NELSON: Thank you. Last one will be Bill.

MR. BILL COLE: Thank you, Mr. Chairman. I assume that the Number 2 option deals with state delegations. I think that's what it implies. In other words, the commissioners involved in state delegations would not deal with the agency-specific proxies, et cetera.

It's a little unclear. The first part of it is all inclusive, but the tail end of that first sentence deals with just the state delegation, so I'm interpreting this to mean that you're talking about that the commissioners holding specific proxies shall not vote as part of the state delegation.

CHAIRMAN NELSON: We'll clarify it, Bill, and see if we're willing to include something that deals with the agencies. Thank you all. I think that's very help -- Gordon.

MR. COLVIN: Well, I just want to specifically express support for the comment that A.C. Carpenter made. We make decisions that have important ramifications and effects on the states. When we adopt a management plan, we set a quota, we divide or allocate a quota, we find a state out of compliance or back in compliance.

The simple way to look at this is that transparency and accountability demands that we know at least as much about the individuals who are making that decision that has that effect as we know about our advisors. It's a simple enough thing to do. I think it was a very good comment and it may constitute the solution to this.

CHAIRMAN NELSON: Thank you very much, Gordon. The timeline, if you would, Bob will

put together a revised white paper and get that out to you. We would like to have comments back -- I think we're going to be shooting for October 15. He'll put that in the cover letter to the commissioners, but be thinking along those lines and be looking for it in the mail.

MR. BEAL: Thank you, Mr. Chairman. To continue on with the document that was handed out earlier, the first page, there is another issue of consistency.

The staff will be developing a paper on consistency to address concerns that the commission doesn't handle all of its issues consistently from species to species or board to board. Since there's a number of committees and groups and sections and boards, the issue is all issues being handled consistently.

The paper is going to develop some examples of issues that were perceived as not being handled consistently and guidelines developed to ensure that these issues are addressed consistently in the future. Hopefully, a draft of this paper will be ready for the December meeting. That's the process on that.

CHAIRMAN NELSON: On the consistency, the AOC is going to wrestle with that, but I would like to have a show of hands for some other members to participate with the AOC to help provide them with additional insight.

I know I already had received the desire by certain individuals from Massachusetts to participate, and I appreciate that, Paul. Who else would like to participate on that committee? Gil would; thank you, Gil. How about one more from my side on my left here. Eric will be very happy to do it; thank you very much, Eric.

MR. BEAL: Our next item on the list is the Freedom of Information Act requests. The commission, from time to time, gets requests for data that it holds in some of its databases and some of its other compilations that we have datasets up and down the coast.

The question that was raised, the commission received a request for some information that was

collected by another agency, and there's concern over letting this information out.

The ACCSP has a standard, consistent with what is recommended here, and that is to refer any information requests back to the original state or agency that collected that information.

Our legal counsel, Paul Lenzini, has provided a memo to Vince O'Shea, which was provided to you, and it's dated July 1, 2003. That was passed around at the beginning of the meeting. It's a four-page memo.

In summary, what the memo says is that the position of referring information requests back to the states is defensible and is a consistent, reasonable way to handle data requests. I think, without going through the four-page memo, the issue is basically bringing the commission up to the ACCSP standards of referring back to the original agency.

CHAIRMAN NELSON: Any questions or clarification on this? Let me start with Bruce.

MR. BRUCE FREEMAN: Bob, is there information collected by the commission outside the jurisdiction of the state where this would not apply? Do we collect anything that would not be state-provided information; and if so, how would the Freedom of Information Act apply?

MR. BEAL: I can't think of any information right offhand that is originally collected by the commission that is confidential. I think the answer is no, Bruce.

I'm trying to think of the data programs that we have, but our function is not to collect a lot of original data, it's to work with the data that is collected and compile it in different ways.

MR. CARPENTER: I may be part of the problem here because I have on occasion referred people to ASMFC for copies of annual reports, not necessarily the ones filed by the PRFC, but are annual reports in compliance with the management plans considered information that you would disseminate, or are they considered information that you would return

the solicitor back to each jurisdiction to get copies of that?

MR. BEAL: Those documents don't include any confidential data. They're public documents. Referring those people to the commission would still be fine. It's just the issue of confidential data.

CHAIRMAN NELSON: Dave.

MR. CUPKA: Thank you, Mr. Chairman. I can't think of any datasets either, but if you read the memo from Paul, it seems to me that the commission wouldn't even fall under the requirement of a federal agency and, therefore, would not even be covered by the FOIA or the federal Freedom of Information Act request. Is that correct, Vince?

CHAIRMAN NELSON: I didn't get the question; I was having a sidebar. Who did you want to have answer that, David?

MR. CUPKA: I was asking Vince, since he's the recipient of the memo, at least that was my read on it, that we wouldn't be covered under that?

EXECUTIVE DIRECTOR O'SHEA: No, that was my understanding as well, David. Thank you.

CHAIRMAN NELSON: George.

MR. GEORGE LAPOINTE: It strikes me that the question of FOIA comes up and what this policy allows us to do is to deal with the issue to make sure that it doesn't become kind of a political bind for the commission.

These are such touchy issues, that if it gets sent to the commission and you say, well, we're not bound by FOIA, it looks like we're not being transparent. What this policy allows us to do is to say, well, gee, there is some confidential data, if there is, send it to the state of Maine and they'll deal with it under their FOIA laws.

That's what it allows us to do, and that's important. Mr. Chairman, in the paper you gave

us, it talks about a motion about at the business meeting and is that going to come next?

CHAIRMAN NELSON: That will come next, after everyone has had a chance to make any comments. Any other comments or clarifications? All right, Pres.

MR. PATE: Thank you, Mr. Chairman. Based on the discussion that we had at the AOC meeting just passed, I would like to move that it shall be the policy of the commission to refer FOIA requests for information held by the commission back to the state or states providing such information.

MR. PATTEN D. WHITE: Second.

CHAIRMAN NELSON: Second by Pat White. Discussion on the motion? Do you need to caucus? I'll give you about thirty seconds. Yes, Dennis.

MR. ABBOTT: During this thirty-second caucus, are you going to caucus with Ritchie and I.

CHAIRMAN NELSON: No, I'm going to leave this up to your great mind. Bruce, go ahead.

MR. FREEMAN: Just a question. Is it your intention of the Policy Board's action being taken to the full commission for final adoption?

CHAIRMAN NELSON: That's what we were just discussing, to make sure that we understood this. The sense that I got from staff is that if we adopt it here for the policy, that this will be the policy for the policy boards and the commission.

We weren't going any further than this body, which in essence is the commission too. If that is sticky, we can certainly -- let me know.

MR. FREEMAN: It's not. I'm just curious if we are going to go another step or not. It doesn't necessarily bother me, but if there's concerns that someone may question how we proceeded, it may be worthwhile of raising this again at the December meeting just to consecrate this. It doesn't really bother me, though.

CHAIRMAN NELSON: All right, let us look into that, Bruce, and we're not ruling that out at all. Anne.

MS. LANGE: I may be off the mark on this, but does this relate to ACCSP data where once it is implemented, federal data will be involved in the whole -- is the data part of this or is that strictly a different issue?

MR. BEAL: If an information request comes to the commission that involves federal data, it would be referred back to the federal government under this scenario.

CHAIRMAN NELSON: All right, ready for the question? All those in favor, please raise your right hand; opposed, likewise; abstentions; any null votes.

The vote is 16 in favor and 2 abstentions. The motion passes. We will bring this to the commission in December to make sure it's fully ratified.

MR. BEAL: The next item on the list is the appeals process. If you flip to page 5 of the packet that was handed around, there's a white paper on the commission's appeals process.

The Policy Board charged the Administrative Oversight Committee with exploring and further developing an appeals process. This document had a few iterations over the past six months or so; and during that time, the Policy Board has also heard an appeal initiated by the Commonwealth of Massachusetts regarding black sea bass.

As we go through this, and as you supply comments back to staff, it's probably good to keep in mind how that appeal went and what you thought of the process.

The process right now is very vaguely defined. In the ISFMP Charter, it essentially says the Policy Board is the group that will hear appeals from aggrieved states, and there's not a lot of details on exactly how that process should work.

The white paper goes on to describe a series of issues associated with the appeals process. The first overarching issue is Issue Number 1, and the question is what is the appropriate appeal body.

The ISFMP Policy Board right now is the group that hears appeals. The question is should a separate group be formed for each appeal that is submitted by a state.

For example, if there was a separate board formed, it would be made up of some subset of commissioners. There's four bullets in the document: the correct makeup of the appeal board, the selection process of the voting members of the board, the roles and the legislators and governor's appointees, and the voting dynamic of the board.

It all needs to be considered if the Policy Board determines that a separate appeals body is more appropriate than having this group hear the appeals that a state may submit.

The remaining issues, 2 through 7, the paper recommends that even if the Policy Board is selected as the group that is going to continue to hear appeals, Issues 2 through 7 still need to be addressed, and the language in the charter needs to be fleshed out a little bit to include guidance on the next six issues.

The first one is appeal criteria and initiation. The question here is what is a valid appeal? Can a state send something forward to the commission, and everything that is brought forward in the form of appeal has to be heard by the Policy Board or the separate group that is formed; or, is there some sort of culling process that goes on that determines if an appeal is justified or if it's a valid appeal or not.

So there's a series of questions there and a recommendation for the commission chair, vice-chair, and past chair to determine if appeals are valid.

Issue 3 is the functioning of the meeting of the appeals body. Issue 4 is the appeals body's product and authority. Once an appeal is heard,

what is the product that is produced by that appeal?

Who does it get referred back to and does the Policy Board or the appeals board take action that is immediately binding? What is the process that is undertaken and what is the authority of the appeals group?

The next issue is consideration to prevent abuse of the appeals process. There's some concern that there's the potential, anyway, for states to use the appeals process to slow down the existing commission process with board action on an individual species.

So, there's a couple of mechanism recommended in here to prevent states from developing appeals just to alter the rate at which the process proceeds.

Issue 6 is preventing an appeal chain reaction. If one state submits an appeal and the appeals body makes a change based on this appeal, that change may likely affect another state and the other states that are affected may then submit an appeal, and there would kind of be this snowballing of appeals. There's some questions there on how to prevent that.

The seventh issue is just a timeline of once an appeal is received, what events occur and what is timeline for those events to occur.

Those are the issues associated with an appeal process. As I said earlier, the Policy Board has recently heard an appeal and probably has a memory and a recollection of how that appeal went fresh in their minds.

**CHAIRMAN NELSON:** Any points of clarification or just additional insights at this time for Bob and staff? Otherwise, it will be under the same timeline and any revised white paper would be submitted to the commissioners.

If there are none right now, then you've already got it and then we would be looking for the response back by the October 15th timeline. Yes, go ahead.

MR. BENJAMIN GREGG, JR.: Mr. Chairman, my question is are the decisions made by the commission on an appeal, is that decision appealable to the courts?

CHAIRMAN NELSON: I think anytime you want to go to the courts, certainly you can; but once the appeal has been heard at the commission level, that is it. You can still go to the courts. That's outside of the internal system of the commission is what I probably should say.

MR. GREGG: The reason I raise the question is that I was at the appeal back in June, and I think we need to look at making sure that our procedures meet legal due process if there is an appeal to the courts.

If a decision is made on appeal by this commission, an attorney for the state that's on the losing end could look at our procedures and say that perhaps for whatever reason legal due process is not met.

I think we might need to have a more structured and more formal type of hearing where we have an appellant make the case, and we have somebody make the case defending the commission's position, and that would be somebody on staff perhaps or from another state.

I think we need to make sure that if the decision that this commission makes on appeal is appealed to the courts, that we have a fair and balanced process that meets the legal requirements of due process in the courts.

CHAIRMAN NELSON: Thank you, Benjamin. Other comments? Paul and then Jack.

MR. PAUL DIODATI: Can our appeal be reheard through that process?

CHAIRMAN NELSON: I think that the last time I checked on that, I was assured that we did provide a fair process. Thank you, though. Jack.

MR. TRAVELSTEAD: What was the thinking on Issue 2 as to not being able to appeal an out-

of-compliance finding. It seems to me that type of a decision a state would almost always want an opportunity to appeal; and by not allowing them to do so, you enhance the probability that they're going to immediately go to court, which ought to be something we ought to try to avoid. By granting them an appeal process, you might prevent that.

MR. BEAL: Jack, the reasoning that went into this draft, anyway, is that an out-of-compliance finding has a number of review steps already built in it. First, the species board makes the finding and then the Policy Board and then the full commission.

There's almost an appeal process built into an out-of-compliance finding before it leaves the commission. Then once it gets to the Secretary and the federal government, there is also their determination of whether the state is or is not out of compliance; and if whatever action was or not taken, does that compromise the management and rebuilding of the species. Again, this is just a draft, but that was the kind of thought process that went into it.

CHAIRMAN NELSON: Any other comments? I had Tom first and then I'll come back to Eric.

MR. FOTE: I guess what I look at the appeal process is for a state that thinks its aggrieved to come before the commission one last time to present its arguments of why the decision should be changed to give it an opportunity to save us going to court or to save that process of going up to the Secretary of Commerce for non-compliance or wherever that goes.

I think it should be as simple as possible, not as confusing as possible, because what we're trying to do is save litigation, that amount of costs that it would cost the commission to go to court.

Anything we can do to basically eliminate if the states felt they had a fair process where they could go through and to hear it, it might stop them from going to court. That's more what I look at as the appeal process.

CHAIRMAN NELSON: Thank you, Tom. Eric.

MR. SMITH: Thank you. I have two comments on Issue 5 and they both -- this must be a bad afternoon for me because I keep prefacing my remarks with "I hope I don't offend", and I should have said that before the other one.

There are two points in this issue that I think sound to me a little bit punitive, and we may want to reconsider them. The first one is the parenthetical statement at the end of the first paragraph.

I agree with the concept that a state should not be able to employ the process to circumvent the management board process or delay a non-compliance finding, but I think it's over the top perhaps to require the appellant to pay travel and meeting costs for the appeals board.

I mean, you look at the funding situations in states, and that would just be a different way of saying let's not have an appeals process. I would suggest maybe that suggestion could be struck, and we might just want to employ a standard that keeps people from abusing the process.

The other one, a similar point, at least in part, the very bottom of page 7, the state that is requesting an appeal must be in compliance with all ASMFC management plans. Sometimes getting into compliance is a lengthy process in a state.

It can involve legislation that has to be introduced when the legislature is in session and so forth, and I might suggest that that one could be revised to say any state requesting an appeal must be in compliance with all other provisions of the ASMFC management plan.

If you're appealing a scup issue, you ought to be in compliance with the scup plan. That may be a less onerous way to deal with that. Thanks.

CHAIRMAN NELSON: Thank you, Eric. Dennis.

MR. ABBOTT: Thank you, John, a question and not a criticism. On Issue 1, the third bullet where it says the role of the legislators and governor's appointees, what is the explanation for the bullet? Why is that different than the other commissioners? I don't understand.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Mr. Chairman. One of the early parts of the thinking on this included people like the chair, the past chair, and the vice-chair, and then it occurred another dimension to look at the hearing process, or appeals process, to ensure that there was representation from a legislative commissioner as well as a governor's appointee commissioner.

It's just a concept of talking about how to balance the voting board to sort of distribute the power and try to have sort of an equitable reflection of the composition of the commission. It's really sort of a discussion point. I don't know if that answers your question.

MR. ABBOTT: I guess that does answer my question. It would seem to me. when you talk about having the chair and the vice-chair and the past chair, I think it should be automatic that the LGA's should automatically have representation on that appeals board without having any further discussion than that.

CHAIRMAN NELSON: Gil and then David.

MR. POPE: Thank you very much. I have to totally agree with Jack Travelstead on this. One of the main reasons that I remember, going way back for even the request for this appeals process, was the fact that during a period of time there we had a lot of out-of-compliance findings that seemed to be coming one after another after another, depending on what the fishery was in the state, and so on and so on.

I think that there's a possibility that this appeals board, if it's done correctly and if it's chosen correctly and if you get the correct makeup of the appeals board, that a lot of out-of-compliance findings could be handled in a different fashion; and in that particular case,

save us lots and lots of money that we're now spending. Thank you.

CHAIRMAN NELSON: Thank you. David.

MR. CUPKA: Thank you, Mr. Chairman. I would hope, after some deliberation, the outcome of this would be to continue to use the Policy Board as the appeals board, and then you would avoid a lot of these issues in terms of getting a balanced appeals board.

Plus, a lot of the things that would normally come before this appeals board are things that the entire commission probably would have to take action on, anyway, originally approve. I would hope that we would continue to use that.

Also, I would hope that they wouldn't be so often that the use of the Policy Board wouldn't be cumbersome. Obviously, if it was something that was happening all the time, you might want to streamline the process and use a smaller group. I would hope they wouldn't be so frequent as that we couldn't use the Policy Board to serve as the appeals board, Mr. Chairman.

CHAIRMAN NELSON: Thank you, Dave. The allocation is one every two years, so we've used that up. Pres will be ready for the next two years after that. I had Bruce.

MR. FREEMAN: John, there's an issue that is unclear to me. This goes back some time where there was a suggestion of doing away with the Policy Board and simply keep the executive committee in that they were the same people and just doing different jobs.

One of the objections on the Policy Board being done away with was this appeal process, which the Policy Board does hear that. And then it seemed to me there were a number of discussions and votes on getting rid of the Policy Board.

Where do we stand on that issue and is this meant to essentially be a surrogate for the Policy Board; is that what this is intended to do?

CHAIRMAN NELSON: The issue on doing away with the Policy Board, I don't remember if you noticed it going down in flames about a year ago, but it did. That one did not go anywhere and obviously you still exist. This is not intended at all to in any indirect way take away or phase out the Policy Board.

Since we had a request previously for an appeal, it was also noted at that time that the appeal process was unclear in our charter and that we needed to clarify that. So when we started looking into it, we saw that indeed there was some need for clarification.

This was going on about the same time that we talked about the Policy Board and its role. So we had the two options still being considered, and that is does the Policy Board continue as the appellate body with some clarifications on how you go about it, what is the criteria, and so on to help clarify the situation, and I think that the point about making sure it meets legal standards, et cetera, is a good point.

The other thing was, well, is there another way of doing it that was a smaller body that didn't tie up everybody to be involved in that type of thing, and that is basically what this white paper is proposing, to take a look at still -- I think that where we have the opportunity -- and I don't want to bias anyone's thoughts on here, but where we had the opportunity to go through an appeal process recently, it probably has given people an opportunity to see what works and what doesn't work.

So, that's what we're looking for as far as input and make a final decision on this and get this squared away by December. I do not have anybody on the list at this time. A.C.

MR. CARPENTER: I would just like to endorse Mr. Cupka's suggestion that I think the Policy Board is the proper place after you have finished your deliberations.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Mr. Chairman, perhaps two additional things that may be helpful for you as background. In our earlier work on trying to

assemble an independent appeals board, I chatted with Jack Dunnigan about this as well and tried to draw on some of his eleven years experience working with the commission.

He felt strongly about the value of retaining the appeals process within the Policy Board. He was able to cite two examples, one involving the state of Maryland and the other involving the state of Virginia where a hearing before the Policy Board seemed to be responsive to what the problems were.

In the Maryland case, his explanation was Maryland thought they had another chance to come in with new and additional data, I believe it was on striped bass, and they felt that they had gotten a fair hearing on it and that met their needs.

I think the second case he cited was a horseshoe crab issue with Virginia. It was a compliance issue and that process was helpful in sort of a brinkmanship situation of addressing and resolving the issue.

So, you know, as sort of background, if Jack was here today, I suspect the advice that I just repeated would be what he would be putting out on the table.

The second issue is -- and it responds to one comment that was made about expenses -- what would be helpful, as you think about this, is you have a process right now; and when you get to an appeals situation, you're basically saying that process, at least for some of the parties, has broken down and you want sort of an escape valve type of mechanism, and that's good.

The down side is that becomes a part of a deliberate strategy. I think building cost into appeal is an important for you all to think about. One comment that had come in early on was the notion that one of the prices of appealing would be a voluntary or an agreement not to go to court pending the outcome of the appeal.

Now that was dismissed pretty early on because most states don't have the power or wouldn't give up the power to do that, but it's really not

that specific issue. It's more the issue of saying what disincentives might you want to build into this process to really force the work to be done at the management board in the first place and arrive at a compromise there rather than have a party wait until the appeals process because they think they can get a better deal, and that's where the disincentives to appeal need to be considered. Thank you, Mr. Chairman.

CHAIRMAN NELSON: Thank you, Vince. We're going to finish up with the next two items on the AOC report, and that does include Number 4 on your agenda, and then we'll take a break. Bob.

MR. BEAL: Thank you, Mr. Chairman. The last issue in the packet that was handed around deals with the process that the commission uses to go back and revisit final actions. The ISFMP Charter includes the language "meetings will generally be run according to the current edition of Robert's Rules of Order."

However, a couple issues, spiny dogfish and Atlantic herring -- I've highlighted the need to potentially standardize the way that the commission revisits issues.

On both of those issues, the executive director and staff went back and looked at Robert's Rules of Order. The process was since there was no preliminary notice on those issues, that it would require a two-thirds vote of the entire voting membership of the management board for each of those species in order to change the previous decision.

What this white paper proposes is to make the two-thirds vote policy, make that the way the commission will go back and revisit issues, whether or not preliminary notice is given. Under this scenario, if the board wanted to go back and revisit a final action, it would take two-thirds of a vote whether or not -- if it was on the agenda or not, it would still take a two-thirds vote of all the voting members of a board.

One of the issues here that A.C. brought up on an earlier issue is defining final action. Right here, in this draft, anyway, they're listed as

quota-setting allocations, season, and approval of FMP's, amendments, or addenda.

That will have to be shored up a little bit as we go on with the development of this issue if this is the course of action the Policy Board chooses.

This process wouldn't change the adaptive management sections of fishery management plans. There are certain actions that require addenda or full amendments to make those changes take effect, and this process wouldn't take that. This would mostly affect annual specification-setting processes and those type final actions for the year.

This would take a change to the charter and actually to the Rules and Regulations of the Commission. It does not affect the Robert's Rules of Order process on revisiting issues within the same meeting.

It's just down the road at subsequent meetings a proposal to allow the commission to go back and fix things that at least two-thirds, if not all, the membership agrees was a wrong decision, but it prevents things from constantly being revisited and revisited by the management board. It's an idea of allowing the tool still to be there, but makes sure that it makes the process as efficient as possible.

CHAIRMAN NELSON: Thank you, Bob. Whatever general comments that you have at this particular time, I think a lot of it should focus on definitions of final actions. There's a list of what Bob has already suggested, but we would like to get other comments on that. Anyone have some comments? He has another item to go through. Bill.

MR. WILLIAM GOLDSBOROUGH: Thank you, Mr. Chairman, a question, really. What about a scenario in which new, very compelling information comes to light subsequent to a final action? Would that not, in a sense, wipe the slate clean and allow for reconsideration with a simple majority?

CHAIRMAN NELSON: I think that is something that we need to look at and consider.

I would think that if there was some compelling information that came forward after the commission has made a final action that really negated or would tend to negate what we had done or require reversal, that would be pretty evident to the members, and they would deal with it accordingly.

MR. CARVALHO: Thank you. In the second paragraph, it says the proposed exception is designed to provide the commission's mechanism to correct blatant areas while not slipping into the practice of constantly revisiting final actions.

If the idea is to correct a blatant error, wouldn't it acquire the two-thirds vote necessary? I mean, if it's a blatant error, why would we want to change the way we do it when a blatant error, everybody is going to vote to change a blatant error?

CHAIRMAN NELSON: I think, you know, that's the point. If you've got something that's very obvious that for whatever reason you recognize, gee, that's an error, I suspect you would find that was relatively easy to change.

Keep in mind we're combining these types of procedures with some of the others that we have talked about earlier to try to make sure that our system is clear as far as how it's going to be run, the responsibilities and accountabilities of individuals as commissioners, and that the overall process is transparent so everyone knows how it is going to be conducted and what's the guidelines by which they're going to conduct the meetings. Any other input? Bill, go ahead.

MR. GOLDSBOROUGH: A related question, Mr. Chairman, and perhaps a proposal -- and maybe this is just a simple matter of Robert's Rules. Under the commission's current procedures, what is needed in the way of a vote to pass a final action? Is it a majority of those present or a majority of board members?

MR. BEAL: A simple majority of those present, with a quorum present, obviously.

MR. GOLDSBOROUGH: That leads me to wonder, not to open a hornets nest, but the vote of the Dogfish Board in February was a vote with six yea's out of, I believe it was fifteen present or sixteen present -- there were a lot of abstentions.

MR. BEAL: Well, there was a quorum at the table and all the members at the table had the ability to vote. I think I misspoke earlier. I think that it's of the members that vote on an issue with a quorum present, it needs to be a majority of those votes.

In other words, if there were fifteen people in the room, two voted in favor and one voted against and everyone else abstained, the motion still would pass, and that's a similar situation that happened in dogfish.

MR. GOLDSBOROUGH: I'm noting that in the white paper in paragraph 2, I guess it's within the same meeting, if there is reconsideration, it's a simple majority of the members present; right?

I would seem to me that -- and this is where the suggestion comes in -- if we're going to reevaluate the charter on these points, that a simple majority of the members present would be required for any final action.

CHAIRMAN NELSON: Thanks, Bill, just a clarification. I think that we had determined that the charter would not need to be revisited because the languages at meetings are generally run according to the current edition, and the rules are very specific to it, and so we would have to adjust the rules to make any exception that we so felt was necessary. Anyone else? Anyone in the audience? Yes, Sonja.

MS. SONJA V. FORDHAM: Thank you, Mr. Chairman. Sonja Fordham, The Ocean Conservancy. At this meeting, there has been a concerted attempt to get some of the impressions and thoughts of the NGO community. So, in that vein, there has also been a lot of talk about transparency.

So, first, I would note that this is a surprise to me, and it would be nice for the public to know

when major changes like this are in the works. I will just give you my impression for your information, and I will note that in this white paper dogfish was brought up. That was not my idea.

But to the public and to me, this looks like the commission has had obviously some sort of difficulty with the dogfish vote, and yet at their meeting the only reaction was to raise the bar in order for the people trying to get the scientific advice implemented, raised that bar for any attempt to get that scientific advice implemented, and that's not complemented by any other action to address the problem.

So this is news to me. That's just how we would read it, is this is the only reaction is to raise the bar and make it more difficult for us to get the science forward. Thank you.

CHAIRMAN NELSON: Thank you, Sonya. Let me just make a comment to that. I think you have to look at the package of what the AOC is looking at as a whole to see how we're trying to address consistency throughout the commission process.

I think if you look at that, and, of course, depending on what the commission decides to do, there would be the opportunity to have consistency a little bit further clarified in the process for the future.

As far as the two-thirds and setting the bar higher, the two examples that we used, one was dogfish and the other was herring, in which a person requested to have something revisited that was basically a season-setting issue, a quota allocation issue, and the commission used the two-thirds approach and dealt with that issue accordingly.

We really don't want to revisit issues unnecessarily. If there is a major problem, this provides a mechanism to deal with that, and that's the intent. All right, Bob, are you ready for your next item?

**-- Discussion of "Rewards" for States Being More Conservative --**

MR. BEAL: The final issue is actually summarized on a separate sheet of paper. It's a memo from me to the Policy Board, dated August 15<sup>th</sup>, and the issue is the concept of rewarding states for being more conservative.

Following the Massachusetts appeal on black sea bass, a motion was passed by the Policy Board charging staff to go back and conduct a preliminary review of the technical merits and shortcomings of granting rewards for states being more conservative.

Staff has put this together. I actually solicited the input of the Summer Flounder, Scup, and Black Sea Bass Technical Committee since they were having a conference call last week, and I took advantage of that.

The first issue addressed here is state-share adjustments for previous actions. As you all are aware, a number of the commission management programs are based on some previous year's landings history, some base period, either one year or a series of years.

There's obviously concern over the years that are selected; but when these plans are developed, there is a rationale for selecting the years, either stock status or existing management programs, availability of data, et cetera.

However, there obviously is concern over the years picked for some species. There's two issues that most of the concern is founded on. One is the unreported landings. There's concerns that the database is incomplete and not all the fish that were landed are actually part of that database

The second issue is that states may have had regulations in place that are viewed as more conservative than the neighboring states, which prevented that state from landing what they could have landed if they had different regulations in place.

The first issue of unreported landings is difficult to deal with, if not impossible. Going back and putting together a database of landings that don't exist -- Massachusetts has introduced additional

data on scup, but they were able to piece together some records for that.

But, barring being able to go back to dealers or some other source of information and put together a record, it's more or less impossible to put together a record of what was landed if it's not already in the database.

The other issue is states having more conservative management measures. The problem there is kind of defining more conservative. If a state, for example, had unlimited access to a fishery while the majority of other states had limited access to a fishery, their landings would have been higher than the other states.

However, if that state had a larger size limit, that may offset some of the fact that they had unlimited entry. Putting together some sort of weighting system to balance out the database and make the database reflect all the differences in management programs that were in place during a historic period is really difficult.

So, in conclusion, the staff notes that only in an extraordinary situation should we try to go back and rebuild a dataset during a base period. It is what it is unless there is compelling evidence to go back and try to piece something together.

The second issue there is quota adjustments for future actions. The idea here is that if a state voluntarily implemented something that is more conservative than the ASMFC standards, should they receive some sort of reward, maybe a higher quota or a longer season or something along those lines.

The Summer Flounder Technical Committee commented on this and said that this concept does have merit. A lot of the discussion at the tech committee focused on black sea bass since that was the appeal that this was used for.

However, the tech committee noted that it takes a very detailed stock assessment to be able to do this. The black sea bass assessment is nowhere near able to put together what sort of rewards

should be given to a state for an increase in minimum size limit.

And doing something like this on a state-by-state basis is even more difficult. In other words, if the entire coast wanted to go up by two inches, then the partial recruitment vector shifts and the biological reference points shift.

The tech folks are able to determine a quota, but if one state wants to do it while the other states remain unchanged, differing biological reference points for different states becomes pretty complicated.

The tech committee noted that it could be done, but the assessment needs to be a lot farther along than what it is right now for sea bass.

The other issue on the paper, the last one there, is coordination with other management institutions. Most of the fishery management programs that have quotas and state-by-state management programs are with the Mid-Atlantic Council right now for the commission.

So, if the commission were to reward a state for having a higher minimum size, for example, then the overall commission quota or states quota would be higher than that of the federal government, and you end up in a situation that we've been in before with different federal and state quotas.

You then end up with a difficult situation between federal and state permit holders. That's the quick summary of the staff's preliminary review, and I can answer any questions if you would like, Mr. Chairman.

CHAIRMAN NELSON: Questions for Bob? Okay, Gil.

MR. POPE: Thank you. Bob, I seem to remember in Massachusetts, I guess it was four or five years ago, there was some pro-conservation credit given to Massachusetts for being at one fish, 28, instead of two fish, 28, when it came to, was it the eight-plus situation? I think that is what it was.

So, it has been done. Are we trying to do it here so that it becomes a policy that we either can do it or can't do it or are we going to continue to leave it up to a particular board or a policy board to decide on a case-by-case basis? Thank you.

MR. BEAL: This issue focused a lot on commercial regulations and quota-managed species. The striped bass, as you said, is the state being more conservative than the standard while the other states were being required to increase their level of restrictions?

So, they're similar actions, and it probably, like you said, needs to be decided on an issue-by-issue basis. There's two issues here. One is moving backwards in time, which is the historic landings dataset; and the other, the striped bass example is kind of an existing regulation moving forward in time, which the tech committee did note has some merit.

If the technical information is there to justify a state getting something for being more conservative, the situation has merit. It's just we need to consider if this impacts federal management programs or other management programs. I mean, there's definitely a potential to do it. It just depends on the technical information.

CHAIRMAN NELSON: Gil, go ahead.

MR. POPE: The only reason I ask that is because one of the concerns was is that this would preclude a state going ahead and doing what it thinks is the best thing to do for itself or for its own fisheries because of, say, a history of something, when it got ahead of the curve in, say, tautog or winter flounder or something like that, which was actually good for the fishery, but what ended up happening was the commission later on came back and said, well, we don't have the data and so on and so on.

So, there was really no help there, and I would like to see a little consideration for something like this or figuring out some formula for it, because what it does is it does allow a state to have the ease of mind of going ahead and doing what it knows is best for the fisheries resource

and not have fear later on down the line of being zapped for it. Thank you.

CHAIRMAN NELSON: Thank you. Dave.

MR. BORDEN: Just a follow up on Gil's comment, because I was the one that raised it at the Sea Bass Board meeting. I mean, the context for the discussion was Massachusetts had appealed for an increase in quota.

What I offered at that time was that I acknowledged that their regulations are more restrictive than those required by the commission, and we asked the technical committee to evaluate whether or not it was technically feasible to establish a reward system, and so the issue got referred.

Now, I think the response from the technical people is very helpful on this. They're saying, yes, if you've got a quality assessment, it is feasible, but that would raise a whole series of policy questions about when you could do it, how you could do it and so forth, and then how we would meld that in with the federal regulations.

I just view this response really as a first step in a process to not necessarily do this, but at least explore the possibility of doing this.

CHAIRMAN NELSON: Thanks, Dave. I have Paul and then Gordon and Eric.

MR. DIODATI: I just want to clarify, Mr. Chairman, because I know it's easy to confuse, since Massachusetts is so conservative minded in so many of these fisheries, we always take a lot less than we're allocated, it wasn't black sea bass or scup.

In this case it was striped bass. In the case of striped bass, we weren't rewarded for being more conservative. It was more a case of not being punished for taking one fish at 28, because we were developing a new addendum that required us to maintain a status quo regulation.

At that point we were at one fish while other states were at two, so we weren't punished for remaining at one fish. We were allowed to go to

the two, but we still didn't do that. We stayed at the one.

I think that the other case that we were overly conservative, again in striped bass, was we requested more quota in our commercial fishery because instead of 28 inches, we take them at 34. We take a larger fish and we're looking for a conservation equivalency, but I think we passed on that one as well. Thank you.

CHAIRMAN NELSON: Thank you, Paul. Gordon.

MR. COLVIN: Thank you. Paul's point just addressed one of the comments I was going to make. The other is that there is a complicated issue that can sometimes arise when we start talking about the size limit differentials.

This played itself out historically in summer flounder in a way that ultimately some of us saw a proposal that was made disapproved, and I kind of want to put this out just for folks to think and for staff to be aware of if we go any further with this.

It's a perception of availability, almost. The issue related to the fact that certain states had raised the size limit before other states, and other states raised the size limit later in history when it became necessary or compulsory to do so.

But, some states had those size limits in place long beforehand, 14 inches I think in the case of fluke, and some states, including New York and perhaps some of the other northern states, adopted those size limits a long time ago, certainly in New York's case even before the ASMFC's original 1981 management plan was in place.

When it was suggested that perhaps some kind of a retrospective or post facto adjustment factor, you could call it a reward, would be in order for that sort of thing, one of the rebuttal arguments that ultimately I guess was influential, because the proposal was rejected, was that it's a lot easier for you guys up north to increase your size limit because more large fish are available to your fishery up north.

So, it's not simply a matter of empirically calculating this stuff. There also comes into play this perception that what may appear to be something that a state did out of the goodness of its heart and generosity being its own reward, I guess isn't enough here.

But, it may not have resulted in the same price to the fishery that it would have someplace else, and that's a hard thing to calculate, but it definitely came to play in the fluke thing.

You can bet if we ever get into it with sea bass, it's going to come into play on that in the discussion, and who knows what all else. It's just an issue, and it historically has governed on our action in at least one important instance.

CHAIRMAN NELSON: Thank you, Gordon. Eric.

MR. SMITH: I welcome this review, but I'm happy it says it's a preliminary review because I'm more discouraged by it, and I find it more discouraging than I wish it would be.

The fact is if we don't solve this problem, no state is going to want to adopt measures that are more restrictive than the plan. They just won't and, therefore, we have to work harder, I think, to find a way to — even if it's in a managerial useful instead of a purely empirical way, we have to find a way to reconcile this. I would urge that we go back to it and make another iteration and try maybe a different approach than a technical committee.

I would out the point about unreported landings being very difficult to address, we actually have an example of success that happened with Connecticut about ten years ago with the first fluke quota system.

After the fact, it became apparent there were problems in the landings, and the system worked well. The commission established a small working group to come up with a prorating system using the history of landings in adjoining states to create an arithmetic approach to solve the problem, if you will, and it became an amendment and it got passed by the commission and the council. It can be done.

I take the point that you have to have a clearcut reason of what the flaw was so that you know what you're trying to fix, I understand that, but I wouldn't be so discouraged as to say — I wouldn't dispense with that approach too quickly.

The other one that kind of intrigued me is the quota adjustment for minimum lengths, and the technical committee's view that you could only do this if a full year's age class of fish had been the change; therefore, the size limit would have to be very large.

I guess I question that, just in a logical sense, that there doesn't seem to be any reason that you have to equate it to a full year of growth of a fish. You know, if it's half of the year's growth, it's half of the credit.

I mean, scientists do that all the time. They prorate things, and I would suggest that maybe that's the kind of thing we have to put the thinking cap on more, because I'll now conclude with my original point.

If we don't solve this problem somehow, we will always all simply inch up as close to the line as possible. We won't dare go over it with more conservative values for fear that it will harm us later on. I don't think that's something we should do routinely either. Thanks.

CHAIRMAN NELSON: Vito.

MR. VITO CALOMO: Thank you, Mr. Chairman. Listening to Eric Smith and Gil Pope, I agree with them a hundred percent. I sit on the state fisheries commission for Massachusetts and so does Bill Adler.

I will speak for myself only that we have listened to our directors for years, especially this director to my right, about being a little more conservative and working to bring back the fish at a faster mode, bigger sizes, less fish, and was convincing to me for years.

Lately, I feel, just as Eric has explained, and I won't reiterate this, I will pull the cinch as close as possible now and convince my fellow

members of the commission to also do this, because we're not being rewarded.

I think it's a disadvantage to our state of Massachusetts. The black sea bass is one of them that I can clearly state, and I'm very discouraged about that because Eric, like myself, believes that if we feel we should probably go above and beyond to where we should be, then in a time when it comes close to it, that we should at least have an equal opportunity to share in the biomass of the stock. Thank you.

CHAIRMAN NELSON: All right, Tom and then I'll have a comment.

MR. FOTE: I was just sitting here thinking about a former North Carolina state director that put a 5-1/2 inch mesh in place on summer flounder years ago, before anybody else did and was in out in front, and caught a lot of heat and flack over that and is now the head of the National Marine Fisheries Service.

States have done that historically and they still continue to do that. New Jersey and Delaware are doing it with horseshoe crabs, putting in stricter regulations than other states because they feel it's necessary.

I don't think that stops it from happening. There's a lot of places where you go back and look at paybacks and when do you start looking at it and when do you start doing it, and that was the whole debate, when we first did the striped bass plan back in '88, with who was being more conservative in the '50's and the '60's and the '70's, and it opens up an extreme can of worms.

Yet, I'm not sure how to deal with it. I'm not sure how. You start going back to fishermen and saying you're not going to get rewarded for doing the right thing, but I think fishermen realize what the right thing is a lot of times, and they say go ahead and do it, and they're getting more conservation minded as it goes along.

I'm just sitting here thinking about it and it's a tough situation to deal with, because we've turned this down numerous times in the years past. New Jersey has been turned down

numerous times when we've brought other factors up, and we've always agreed to it. You know, what is done in the past is done in the past and let's start out.

Also, as Gordon pointed out, when you look at what is actually being caught, sometimes it's easy to put regulations in when you have no fish at that size limit. So, it doesn't make any difference when you have a 16-inch size limit and other states, when they put a 12-inch size limit in, it makes a big reduction in that state's catch, and that has happened on weakfish and things like that.

So that really had a full impact, where states that put in a 16 inch weren't catching any fish. There was no fish up there, so it really didn't make any difference what size limit you put in effect. I think all that has to be looked at when you start doing that type of a pay-back scheme.

CHAIRMAN NELSON: Okay, which brings us to the point. The staff has taken a look at this issue. They have concluded it's only in exceptional situations could they really start getting into this. I heard pro and con, I think, already on the argument. What do you want to do? David.

MR. BORDEN: I think, Mr. Chairman, there's actually another issue that staff has got to look at, and that is which of the plans is the quality of the stock assessment so high that you could do this, and I can't answer that question.

But, clearly, with a lot of our stock assessments, we don't have adequate information to do this, so it wouldn't even apply in the case of quite a few of the plans.

CHAIRMAN NELSON: All right, I think we need some direction. David has provided a suggestion. I've got the comment here and I can tell you which ones aren't, and that might be most of them, I suppose. Do you want the staff to spend more time looking at that suggestion?

MR. BORDEN: Well, my answer to that would be, yes, and the reason I think was articulated very well by Eric Smith. I mean, there are

drawbacks to doing this, but there's also a very positive side in terms of providing a positive inducement for states to be more conservative.

And even if you implement this totally in a prospective manner and forget about -- what has happened in the past has happened in the past, but going ahead, if you were to set up a system that rewarded states for being more conservative, then in fact some states would do that.

I won't belabor the point, but there was a time where the state of Rhode Island, out of eight major fishery management plans -- I think out of ten major fishery management plans, eight of our sets of regulations were much more conservative than the plan, and at this point our regulations are consistent with the plan. I think if you want to encourage us to go to the former mode, there has to be an inducement to do that.

CHAIRMAN NELSON: Thank you, David. Pres.

MR. PATE: David, then the answer to this may be to use this information prospectively for each one of the individual plans. If we go back and look at the quality of information that we have on the existing plans and the existing stock status information, we're probably going to find that most, if not all, are inadequate to make the determinations that the technical committees have identified as being so difficult.

If we keep this as a part of consideration, as a point of consideration when we're developing the plans and do it prospectively, it may be easier to account for these more conservative measures in the future when we're making allocation decisions or division of quota.

My recommendation would be to forward this on to each one of the management boards and let them use this information in the context of plan amendments for the future.

CHAIRMAN NELSON: All right, do I see concurrence with that suggestion? I don't see anyone saying no. We'll forward that on to the various boards and ask them to take that into

consideration in the developing of any of the addendums or amendments associated with the plans. George.

MR. LAPOINTE: Should we not take this along with the other AOC documents and stew on it until October to make sure that there might be other changes people see when they spend more time with it? I mean, we're not moving on any of the other ones.

CHAIRMAN NELSON: Well, the others are white papers that the staff is developing, and this was a report that was requested of the staff, and this is as much as they feel they can do.

MR. LAPOINTE: I know, but a fair amount of discussion has gone into it and it strikes that white paper for a preliminary discussion, it would benefit from the same time of letting it stew a little bit before we move with it.

CHAIRMAN NELSON: All right, that's fine, we'll do that. Again, provide additional input to the staff by October 15th. In this particular case, I think the staff can pull it together and forward this then to the committees for consideration or to the boards for consideration.

MR. PATE: Mr. Chairman, that concludes the AOC Committee report.

CHAIRMAN NELSON: And I applaud you, Pres, for doing such an outstanding job with your staff. Thank you very much. I'll give you a ten-minute break. Thank you.

(Whereupon, a recess was taken.)

#### **-- Review of Striped Bass Amendments 5 and 6 --**

CHAIRMAN NELSON: Okay, we're back on the agenda. We have a request to the staff to have a clarification summary of the Striped Bass Amendment 6 versus Amendment 5, and Bob is going to give that.

MR. BEAL: Thank you, Mr. Chairman. Each of you was mailed a two-sided table and then a five- or six- or eight-page document was stapled

to that table. If you don't have it, we have additional copies available, so just raise your hand and we can get those around to you.

The table that I'm going to go over real quickly was put together in response to actually I think a question from Jack Travelstead that mentioned there were some uncertainties about what are the differences between Amendment 5 and Amendment 6.

Megan Gamble put together I think a really good summary of what was included in Amendment 5 and what is included in Amendment 6. The issues are listed down the left-hand side. I don't think I'm going to go through each and every one of the cells in this table.

There are a few that are of note and the board has had discussions on them. The first one is spring recreational fishery on migratory fish. Under Amendment 5, the jurisdictions could implement a recreational fishery on migratory striped bass, but the proposals must be reviewed by the technical committee, and under Amendment 6 there are no mandatory or recommended management measures on this issue.

However, the plan review team and technical committee still have to review and approve, and the board has to sign off on all management proposals. So in effect, it's a similar situation to what we had in Amendment 5.

The second issue is fishing during spawning on spawning grounds. Amendment 5 strongly discouraged this practice. Amendment 6 recommends jurisdictions prohibit fishing on spawning grounds during spawning seasons. So, again, it's a similar situation on the spawning grounds.

There was a perception that Amendment 5 prohibited fishing on spawning grounds during spawning season, but it was just a strong recommendation or a strong discouragement from doing that.

The issues of circle hooks, survey of inland fishermen, commercial tagging, and the EEZ

issue were not mentioned in Amendment 5. However, Amendment 6 does have recommendations on those issues.

The EEZ issue was a contentious one at the management board, and there is a recommendation, as you all know, to the Secretary of Commerce on that. On the back of this sheet, there are the new fishing mortality rates and targets.

The biomass target and threshold, there was not one in Amendment 5, but under Amendment 6 there is a spawning stock biomass target and threshold that has been established.

The planning horizon for Amendment 6 is three years when it was annual for Amendment 5. The management area under Amendment 5 was coastal areas; and then producer areas, which are the Hudson River, Delaware Bay, Chesapeake Bay, and Albemarle/Roanoke River.

Under Amendment 6 the coastal migratory stock includes coast and estuaries of all jurisdictions from Maine through North Carolina, and there's also the Albemarle, Roanoke, and Chesapeake Bay management area.

The alternate management programs are similar. They are permissible under both plans and similar. Recreational size limit and creel limits, there are some changes. Two at 28 is the coastal standard. Twenty at one fish is the standard in the producer areas, and the producer areas modified those -- or the Chesapeake Bay modified that based on the overall quota for the Bay.

Under Amendment 6, two at 28 is the coastal standard size still; 18-inch minimum size for the Chesapeake Bay and Albemarle/ Roanoke River. And given this smaller minimum size than the 20- inch standard, the fishing mortality rate is reduced to F equals 0.27.

The commercial bag limits, size limits, and quotas varied. In Amendment 5 and Amendment 6, they both have the same provisions as the recreational fishery, the size limit regimes, anyway. Under Amendment 6, I

think you all are aware that the quota was increased to represent a hundred percent of the reference period in the '70's, and that's for the coastal commercial fisheries.

So, that's a quick summary of how the two fishery management plans have changed. John, do you want me to keep going on to the second part of this?

CHAIRMAN NELSON: All right, any questions on the table? Gil.

MR. POPE: Thank you very much, one quick question on the back side there. Is there a change from 28/20 to 28/18 now? Is that a permanent change, or was there no more 28/20?

MR. BEAL: 28/20 is still the standard, but Amendment 6 specifically spells out 28/18, and the 18-inch minimum size is with the provision that the Chesapeake Bay and the Albemarle/Roanoke would decrease their fishing mortality targets, so the standard is still 20/28. However, this plan specifically spells out the impacts of decreasing by two inches in those two areas.

CHAIRMAN NELSON: Tom.

MR. FOTE: Looking at the table, size limit regime as the recreational fishery is talking about the commercial, and that's not the same. Delaware Bay is not the same. It's a 20-inch fishery in the commercial fishery while it's a 28-inch recreational fishery.

MR. BEAL: That's true, that exception was made by the management board for the shad gillnet bycatch, for the commercial fishery in the Delaware Bay.

MR. FOTE: It's for the commercial fishery in the Delaware Bay?

MR. BEAL: Yes.

CHAIRMAN NELSON: Okay, why don't you move on.

MR. BEAL: The second part of this document that was mailed out to you or just handed out to you is a summary in response to a request from a member of the public to summarize the removal of the term "producer areas" from Amendment 6.

This document goes through a history basically from the December meeting in 2002 through final approval of the amendment. Again, this was put together by Megan Gamble, and I think it does a real good job of summarizing the actions and the activities that took place during the final approval of Amendment 6.

On the top of page 1, or a little ways down, there is the motion that was passed at the December 19th meeting that describes the changes in commercial quotas along the coastal fishery with Delaware maintaining its current commercial quota, and the coastal recreational fisheries will be maintained at the level authorized in Amendment, which is two fish at 28 inches, and the current Chesapeake Bay fishing mortality will not exceed 0.27.

As I said earlier, this 0.27 is associated with the 18-inch minimum size. There was a lot of discussion on this motion and a lot of perception of what this motion meant.

This motion is silent on the treatment of the fisheries that are referred to as the producer areas. It spells out the fishing mortality rate for the Chesapeake Bay, but it's silent on Delaware River and Delaware Bay and the Hudson River Fishery or minimum size limits and/or fishing mortality rates for those areas.

There also was a perception that this motion contained a reference to status quo, but there is no reference to status quo. Status quo was discussed quite a bit in the advisory panel recommendations and as well as the public comment that was received by the commission.

There was board discussion during this December 19th meeting that clarified the intent of this motion. As we get farther into this, there is an excerpt of the minutes from the December

19th meeting, that I'll go into in a minute, that captures this discussion.

This paper on page 1, the last full paragraph goes on to describe Delaware's commercial fishery and the reason that they were exempted from the '72 to '79 base period, and it describes what their quota would have been if they did implement the '72 to '79 base period quota.

The further discussion at the board meeting, the December 2002 meeting clarifies the intent of the motion. It was to eliminate the distinction between producer and coastal areas.

Amendment 6 creates three separate management regimes: one for the Chesapeake Bay, one for the Albemarle/Roanoke stock, and the third for the coastal fisheries. The coastal fisheries acts as a catchall for the ocean fisheries as well as the rivers and bays, excluding Chesapeake Bay and Albemarle/Roanoke.

Again, there was extensive discussion at the board meeting and direction to staff on how to update the document for the February management board meeting, and part of that discussion was the elimination of the producer area determination that is included throughout Amendment 5.

In February, and again in June, the board revisited the elimination of the size limit in the Lower Delaware Bay and the Hudson River.

There was a motion made on this. However, the board did not change the draft of the amendment that was presented to them at the February or June meeting on the Delaware size limit issue and the producer area issue.

Then there was some discussion during the business session, when the document was approved, regarding potential ways to go back and modify Amendment 6 if that was the course that the board chose to take.

If you flip over to page 3, there's a rather lengthy comment by Mr. Colvin that is taken from the record of the December 19th meeting. If you go down to I think the fifth or sixth

paragraph, it says, "We're managing the Chesapeake Bay fishery one way, using one set of tools, and we're managing the Albemarle/Roanoke fishery another way, using another set of tools, and all other fisheries, whether they're up the Delaware River, the Hudson River, the Kennebec River or anywhere along the coast are being managed under another set of rules."

Gordon goes on to explain that it hits him like a ton of bricks what the motion that I mentioned earlier in the document, what it really means to Delaware Bay, Upper Delaware River, and the Hudson River.

The document has another excerpt on page 20 of the final Amendment 6 document, which describes the management units for the Albemarle/Roanoke area, the Chesapeake Bay area. Then the document also goes on to include all the motions that were passed at the December 19th meeting of the management board, as well as the February 23rd meeting of the management board.

So this is, again, a pretty detailed summary of how we got to where we are with Amendment 6. I can answer any questions if you would like. I think this is what is included in the record.

CHAIRMAN NELSON: Thank you, Bob. Questions? Jack.

MR. TRAVELSTEAD: It's not a question, I just want to thank the staff for putting this together. It was my request at the last meeting that they do this and they, in my opinion, have done an excellent job.

It's very thorough and it certainly clears up the questions that were in my mind, specifically with respect to the issue around eliminating producer areas referenced in Amendment 6. I appreciate the work they've done, and it certainly has cleared up all of the questions that I had. Thank you.

CHAIRMAN NELSON: Thank you, the staff appreciates that, Jack. Roy.

MR. MILLER: Thank you, Mr. Chairman. I would like to reference the top of page 2, Bob, if I may. The sentence that says, "Based on the board's discussion and direction to staff, the term "producer area" was eliminated from the final version of Amendment 6."

I don't recall that discussion. I do recall my colleague from New York making a statement to that effect, and I believe it was in reference to his staff. My recollection is not that it was a direction to ASMFC staff to eliminate the term "producer area" from the plan; and although I have great respect for my colleague from New York, I'm not sure that was his intent at the time was to direct ASMFC staff to eliminate the term "producer area" from Amendment 6. I would like to hear some clarification of that. Thank you.

MR. BEAL: I think, Roy, if you look at the third paragraph from the bottom where Gordon mentioned removing "producer area" from the document, staff took that to mean take it out of the final version of Amendment 6.

Modifications were made, obviously, to the document between December 19th and the February board meeting with the intent that the board would review that document in February and determine if those were the appropriate modifications or not.

So whenever the staff is modifying a document from a draft version to a final version of an amendment, there's a series of changes and that's the rationale for going back to the management board and determining is this what you folks wanted to see and did staff take the right direction and make the right interpretations of the discussions at the board meeting. The document was represented in February for clarification if necessary.

CHAIRMAN NELSON: Tom.

MR. FOTE: I appreciate you putting Gordon's statement, and I wish you would have put my statement in right below that, which is right after Gordon makes it statement and it says, "Gordon says it more eloquently than I can. I support

everything he just said. We can either address this soon or later."

"I mean, we need to manage it. As Gordon pointed out, there are three separate reasons or actually four because we have two other separate commercial quotas."

But somehow the next sentence got lost, "I do not know we can't do this tonight. We can't do it under Amendment 6, but it really needs to be done. I think that it should be done as soon as we finish with Amendment 6. It should be our number one priority, and we should move from there to basically let that happen."

At that time I made the statement, nobody corrected me on the statement, and nobody said I was wrong on my statement because that is the way I interpreted when I left that meeting, because about ten minutes later because of flights I got on a plane.

I asked if there were further discussion on this thing in the minutes and have looked through these minutes extensively and have found -- this is under December 19 -- I've found no other discussion on this after I left the meeting.

CHAIRMAN NELSON: Any other comments, questions? Bruce.

MR. FREEMAN: Thank you, Mr. Chairman. There's a letter that all of you should have from the state of New Jersey. It's actually signed on behalf of our commissioner relative to this issue, and the issue that we're referring to is primarily the protection of the spawning areas.

One of the underpinnings of the original plan that went back into the '70's, mid-70's and '80's was the protection of the spawning areas. That was the one thing we all determined was absolutely necessary.

We do know that striped bass are confined to a few areas where they do spawn in various coastal systems, and we also have shown that since we know those areas, we can concentrate our fishing effort on those and do great damage to the stock.

So one of the underpinnings of the original FMP was to protect these areas, and, quite frankly, we find that casual discussion that occurred during the debate that went on for some time would essentially eliminate protection of those areas, we think is a flaw, and we don't interpret that way at all.

As a result of the action taken to essentially allow no protection -- I just want to refer to the section in the plan, and this is on page 43 of the plan under Spawning Area Closures. This is 5.3.2, the statement is "Consideration should be given to the prohibition of fishing on the spawning grounds during the spawning season."

Our interpretation is that once a jurisdiction gives consideration, it can do what it wants. It could have a directed fishery if it so desires. We do not interpret this that it has to be approved by the technical committee or the board. The way it's written is very, very different than the way it was in the original plan.

We find this, quite frankly, very disturbing and think an action should be taken by the commission to essentially correct this interpretation. We don't believe there was a conscious action made by the board to essentially allow directed fisheries or any other type of fisheries in spawning areas during the spawning period.

I just want to make those few comments. I essentially serve at the pleasure of Marty McHugh. Most of you don't know Marty, but he has recently taken over as the Director of the Division of New Jersey Fish and Wildlife and Marty has come down to this meeting to emphasize the concern that New Jersey has over this particular issue.

I would like to introduce you to Marty, sitting to my right, but I would have liked to introduce him under much more favorable conditions. But, let me turn this over to Marty and have him just address the board as well. Thank you.

CHAIRMAN NELSON: All right, thank you, Bruce. Welcome, Marty.

MR. MARTIN J. MCHUGH: Thanks. As Bruce said, I would have liked to come under other circumstances, just to come and be a part of the proceedings, but I appreciate the opportunity nonetheless.

This issue is obviously very serious for New Jersey. The governor's office is very concerned about it. After reading all that has gone on, and I'm coming up to speed on a lot of past history here, it seems to me even just from the discussion, the short discussion that we've had here, that there was somewhat of a question in a lot of people's mind about what they were voting on with respect to this amendment.

I think somebody over there raised that they had a question in their mind. The effort to interpret or to reinterpret what was voted on is a concern, and it's a concern from the standpoint that as the votes were made, not everyone was really on the same page as to what they thought they were voting on.

So at the same time, it also seems that there was action taken that didn't have complete input from all those that were interested in this particular issue.

So, what New Jersey is asking at a minimum is that Amendment 6 be reopened, the process can allow for proper input and that we can have some more discussion on this important issue for our state as well as for the rest of the coast.

As Bruce outlined in this letter, which I have given a hard copy to John today, we have some severe concerns about the protection of these areas and also what it's going to do to New Jersey's fishery as well. Do you want to add to that? I knew Tom was going to add to that.

MR. FOTE: I just was addressing Bob, and that's why I didn't make other comments at the time because I was basically going to comment on the paper that we had discussed, but I also have taken the time to go over the decision document for Amendment 6.

I also took real time, and I have it with me, the powerpoint presentation that we went out to public hearings, and nowhere in this decision document and nowhere in the powerpoint presentation does it mention the removal of the producing areas.

That is what we went out with public hearings, and we do a public process to go through and get input. There was no discussion from the advisory committee to do away with producing areas. I didn't hear it, no advisory report on that came forward.

When we make a serious change of policy on how we manage fisheries, it should be done through the public process so everybody understands what changes are being made, that the public knows that it can comment and write written comments. By the time this was enacted, it was too late. It had been done.

You know, if this was the only example we've had in the last year and a half, it wouldn't have been as bad, but it was the second example. We went out on a weakfish proposal where we changed the amendment on weakfish, and it basically was told to us a couple of reasons why we were doing this, and we went through the public hearing process to do this.

Right before we voted on the amendment, after we completed the public hearing process, it basically says, well, the real reason we do it, we just discovered why were doing this because the old tables we got designed back in '94 or '96 -- I'm getting old, I can't remember the dates right off the top of my head -- '94 as Gil is pointing out to me.

It basically said that we had to do a 32 percent reduction and the tables only did an 18 percent reduction. I understand that's being fair and equitable. All the states will take now a 32 percent reduction including New Jersey.

But the final table that came out didn't do a 32 percent reduction across the board. Some states, as a matter of a fact, wound up with an increase instead of reduction, and the only states that wound up were the states that were at 14 and 14.

If you were at 12 inches, the old table at 18 percent said you could catch four fish. The new table says you can catch seven fish. So, explain to me where that is a 32 percent reduction. As a matter of a fact, explain to me where it's an 18 percent reduction. It's actually less than that.

When you compound these two things over a short period of time, it makes the states feel that they're being discriminatory and being treated unfairly, and that's the impression that is going around New Jersey, and that's something that we have to deal with. Thank you for the time.

CHAIRMAN NELSON: Thank you very much. Before I get to the other folks that wanted to speak, let me just say we asked the staff to provide a summary document to review the records and to try to deal with any clarifications that were necessary for the passing of the six years in the making of Amendment 6.

They have done that. The intent, I believe, is for -- they have made the presentation to us. My intent would be that we would send this document over to the striped bass board for any further discussion that they might want to have on any particular issue associated with I think what New Jersey has outlined, and also any clarification of the record.

It's up to that board to then come back to us in the annual work plan to ask for any additional work to deal with any particular aspect of Amendment 6. So, having said that, A.C.

MR. CARPENTER: I'll pass based on your brief comments.

CHAIRMAN NELSON: Okay, Paul.

MR. DIODATI: Thank you, Mr. Chairman. I was just getting a little bit lost about where we were and what we were actually trying to accomplish.

But, looking at the letter, I'm trying to understand the linkage between protecting the spawning areas and increasing New Jersey's harvest by 33 percent. What is the linkage between the spawning area and your harvest,

and what is it that — you know, let's get right to it and explain what you want the board to do.

CHAIRMAN NELSON: Actually, I think as far as getting right to it, it's something that New Jersey has brought before the commission. The rightful place for the discussion of getting right to it is at the striped bass board meeting.

I believe, although I cannot say for sure, that we are having one scheduled for December, but I believe that's the case at the annual meeting and that would be the appropriate place for a discussion associated with if you're going to do anything further in regard to an addendum to Amendment 6, which I see that there was some level of interest in doing something like that expressed by that board. David.

MR. BORDEN: I was just going to go on the record and agree with your suggestion -- I think that's appropriate -- and just ask is the meeting going to be scheduled for December; is that the intent of the staff at this point?

CHAIRMAN NELSON: Yes.

MR. BORDEN: Okay, there is another issue that I was going to raise -- and I think the appropriate time to raise it is now -- is one of the items that we had agreed to discuss at a subsequent board meeting was this issue of a single-size standard, which we decided to pull out of Amendment 6. I would ask that item be added to the December agenda of the board.

CHAIRMAN NELSON: Okay, David, it's on there as far as staff is concerned. We're not directing them. The striped bass board probably will have that on the agenda. Is this the striped bass board meeting or --

MR. FOTE: No, I'm just asking if you're going to send this question to the --

CHAIRMAN NELSON: Clarification for?

MR. FOTE: Yes.

CHAIRMAN NELSON: Go ahead, Tom.

MR. FOTE: Basically, when we send this document to the striped bass board, would you include my comments that were made right after Gordon's basically so that will be included in the record there, because that's the record in the minutes.

CHAIRMAN NELSON: I think certainly we would make the entire record available to the striped bass board, if they don't already have it. I don't want to say that we're going to pull out any particular aspects. The staff has put together a report. They note what you are also interested in having provided, and I'm sure that will be provided. A.C., did you have a question or comment?

MR. CARPENTER: With regard to the comment of adding the single-size limit, it seems to me that issue was resolved in Motions 10 and 11 at the January 23rd meeting, copies of which the staff has included in this. I don't think that needs to be put back on the agenda.

CHAIRMAN NELSON: Let me just say we are not deciding here what would be on the agenda. We got a suggestion that they would like to see that. I think it's up to the board and the staff to have developed an agenda.

I believe that the chair and staff will be working together. I would suggest that if there are any other comments as far as what you would like to have the staff talk to the chairman of the striped bass board about, you should send that to staff so that they can have that discussion and they can decide what would be appropriate to have on the agenda. George.

MR. LAPOINTE: I think Lew Flagg thought he got away clean from this striped bass meeting, but I suspect he is going through involuntary spasms at this moment.

CHAIRMAN NELSON: Any other clarifications? Any one from the public want to make a comment? Tony.

MR. TONY BOGAN: Thank you, Mr. Chairman. My name is Tony Bogan. I just wanted to only comment on the document that

was provided by technical staff. First and foremost, I wanted to thank both the Policy Board and the technical staff for doing just that, putting together this report.

You made a commitment back in June. We hadn't gotten satisfaction from the striped bass management board, and the Policy Board really stepped up to the table and provided what they said they were going to provide.

Just specifically in the context of trying to get the striped bass management board together and comment on this document that was handed out, I just have a few concerns with some of the conclusions that they came up with.

The fact that they reference decisions that were made and clarifications that were made based on board discussion where there is only a reference to a single board member making a single comment; whereas, there are comments in that very same record from the December meeting from four different board members that are contrary to the conclusion that was in there.

I was prepared to go through those things, but I don't want to belabor the topic. Nevertheless, we have some serious issues with now this document, because there's a reference strictly from, as Mr. Miller brought up before, only Gordon Colvin; and, again, this takes nothing away from Gordon Colvin.

He makes his statement and he has a right to, but it was a single reference to a single comment from one commissioner used as a basis for justification.

Then there is also a reference to another page in the December minutes, page 30, that was supposed to have clarified the removal of the other former producing areas and being lumped into the coast, and that's a single, two-sentence comment from Mr. Jensen.

Nevertheless, from pages 12 through 19 of the December minutes, there are comments from Mr. Diodati and several others -- and I don't mean to single out Mr. Diodati. He's just the only name that is popping to mind without

flipping through it -- that are specifically saying that the conclusion in this document that the status quo vote or preference by the public and the board initially was confused with the status quo allocation, and that was kind of the clarification for where status quo came from and that it had nothing to do with the mortality and the management measures, that it was in the context of allocation; whereas, the comments that I just mentioned on the pages far before the discussion that is listed in here referenced nothing about allocation and specifically referenced status quo from four different commissioners as related directly to mortality and management measures.

They even go into discussion about that they do not believe that status quo meant that they would have to go back to their states -- and Mr. Pope was another one that had a comment. I remembered another name -- that they would not want to go back for states that had not fully implemented Amendment 5, vote for status quo management measures, and then not be allowed to take advantage of that implementation, which producer areas came into that very topic.

So that was the gist of it; and, again, I don't want to belabor the topic, so if that lends any direction to what direction we're going to take, any clarification rather, direction that we're going to take at the striped bass management board meeting, that was really my intent at this point. Thank you again.

CHAIRMAN NELSON: Thank you very much. Gerry.

MR. CARVALHO: Thank you, Mr. Chairman. For clarity of the record, I think that the minutes should show that the motion that Dave was making reference to was a move to establish a single, biologically based standard-sized reference point. Repeatedly, we've heard this referred to as a standard size.

This is not an attempt to establish a standard size for all states. It's an attempt to use the reference point to be standard so that it doesn't mislead the public.

I've heard people from the public say that there are some states attempting to make us the same size as them. That's not our attempt. It's the measurements reference point that we use from a biological standpoint, and it's important that clarity is made.

CHAIRMAN NELSON: All right, thank you very much for that clarification. And, again, I believe that some of the discussions we've had really are appropriate for that board, and I look forward to hearing them at that time. Michael, come on up.

MR. MICHAEL DOEBLEY: Thank you, Mr. Chairman, Michael Doebley, Recreational Fishing Alliance. Since I came down and sat through all this meeting today, I've been wanting to make a comment, and I might as well get in on the record so anglers know that we participated here. I wanted to again kind of reemphasize the problem.

Over the past two years, RFA has made a very concerted effort to develop a coastwide caucus of all of our affiliates, of our chapters, and to be very active in the RFA process. I don't bring it often up, but just a quick reminder.

Members of this caucus include the Massachusetts Striped Bass Association, the Northeast Charter Captains, Rhode Island Salt Water Anglers, Connecticut Surf Casters, Connecticut Captains, New York Fish and Trade Tackle Association, Delaware Captains, Claymont Anglers, the Maryland Saltwater Sport Fishing Association, Peninsula Anglers, and the Piedmont Offshore Club in North Carolina.

We go to these great lengths to develop these consensus positions, and one of the topics of discussion certainly was the producer area status going into Amendment 6, a lot of discussion, arguments, and education of each other on the various socio-economic factors and traditions of the various aspects of the fishery along the coast.

We do this because we really believe that the ASMFC process is the best process for managing fisheries in the country, and we tell

our members constantly to be involved and go the meetings, testify, be involved in the advisory panel process, anything that they can do to make this process work better.

So, they're concerned. The whole caucus was concerned there was a breakdown in the process here of how producer area status was moved. Not the end result of it. If the decision is made, a decision is made, and that's fine. We're not always happy with it, but you go with it.

There seems to have been a misstep, and we don't think that a decision was made here. There was an action taken and it seems to me that it's trying to be justified now. We appreciate the opportunity to just kind of highlight that we too on a coastwide basis are concerned about this.

This isn't being driven by members in any states. It's a process-driven concern, and we very strongly encourage that this be taken up in December on the agenda, fully vetted and discussed so that it can be resolved to everyone's satisfaction. Thank you.

CHAIRMAN NELSON: All right, thank you, Mike. The next item on the agenda is the Habitat Committee Report. Bill.

#### **-- Habitat Committee Report --**

MR. GOLDSBOROUGH: Thank you, Mr. Chairman. The Habitat Committee met this past Monday, and I have four items to share with you from that meeting, one of which includes a recommendation for possible action by the board.

The first has to do with living shorelines. You may recall from the June meeting that I reported to you then that the Habitat Committee, at its spring meeting, had considered this matter initially, had an initial discussion, and was evaluating how to further deliberate what we might do with respect to this habitat tool, if you will.

What we decided to do was at this meeting this week to invite in some speakers to get some

more information about it, which I'll share with you now.

We had two speakers, one from the Maryland Department of Natural Resources, Kevin Greene, who is part of a program there building prototype and demonstration living shorelines projects. Then we also had Tracy Scrabble from the North Carolina Coastal Federation, who has background in both the private and the public sector with respect to both regulatory and the design and construction of living shorelines.

What they shared with us was what they are and why they're important. For the benefit of those who might not have been here in June, in a nutshell what living shorelines are is it's kind of a term of art that has come to the fore in the last couple of years to describe a variety of different forms of non-structural shoreline stabilization.

It's an approach that attempts to restore or mimic natural shoreline habitats in a way that would stabilize shorelines that otherwise were exposed to erosion. And, obviously, what this means is something that would be a net gain with respect to habitat relative to the more traditional alternatives of hardened shorelines with bulkheads or riprap.

So, obviously, from our standpoint and the commission's standpoint, this is a valuable tool to look into. We then had a discussion, after hearing from the two speakers, regarding what next steps we might undertake.

We decided to draft a document that would be sort of an educational, promotional document with regulators as the target audience, in other words, those who regulate shoreline stabilization.

I guess there are two major things that we hope to convey to that audience in that document, the first being what is the science behind living shorelines; and in the process, draw some comparisons with the more traditional hardened shoreline approach.

The second is to highlight examples of good state and regulatory programs that currently

utilize living shorelines. So the point is, as I said, to educate and promote the possible use of this alternative that has a net benefit for habitat. I would be happy to entertain any questions on that before moving on to the second item, Mr. Chairman.

CHAIRMAN NELSON: Any questions for Bill? It looks like you're all set, Bill. Paul has a question.

MR. DIODATI: Who are some of the states that are utilizing that approach?

MR. GOLDSBOROUGH: Of course, that is what we hope to elucidate in the document, but I can tell you that the state of Maryland and the state of North Carolina are two, because we heard from them. I understand there are others as well.

The second item, Mr. Chairman -- and this is the one where the committee is making a recommendation to the board -- has to do with Asian oysters. You will recall that last year, I think it was at the spring meeting, the commission hosted a workshop on the possible use of Asian oysters in Chesapeake Bay, and the potential implications for other coastal states.

In a nutshell, I think it's fair to see that the primary finding or result of that workshop was the consensus view that any subsequent major action should take its direction from the study that was underway at the time by the National Academies of Science.

That study has now been completed. You may have heard a few weeks ago there was a press conference and a release of the study. The committee felt it should follow up on that earlier conclusion.

We asked a staff member from the National Research Council, which conducted this study under the Academy, to kind of give us a presentation and describe for us the findings of the study.

Three major points were made by that staff person, Dr. Ken Wydel. The first was that with

respect to Asian oysters and their possible use, particularly in a reproductive form in coastal waters, that there are many unanswered questions, and I think it's fair to say too many unanswered questions at this time.

The second major point was the description of the conclusion of the study with respect to which of three scenarios that were placed before it would be advisable for implementation. Those three optional scenarios were, first, no use of non-natives, in other words, continuing with the traditional native oyster.

The second would be some use of triploid or sterile Asian oysters in aquaculture or other ways; and a third would be an introduction of diploid or reproductive Asian oysters in the coastal waters. The study concluded that the second option was the preferred option for the time being.

It specified that it was recommending the interim action of using triploid, or sterile, Asian oysters under an aquaculture or a controlled culture approach with biosecurity measures in place, so that more could be learned about the oyster and its possible further utilization while at the same time more work was undertaken to try and restore the native oyster in Chesapeake Bay so more could be learned about those prospects. That was the recommendation.

The third optional scenario of introduction of reproductive Asian oysters was essentially rejected by the NAS study for the time being because of lack of information to be able to predict the consequences.

We also learned that an environmental impact statement is going to be undertaken with the Corps of Engineers as the lead to evaluate the impacts of an anticipated action or proposal for wider use of the Asian oyster in Chesapeake Bay.

The Habitat Committee decided to make a recommendation to this board that the commission write a letter to the Corps of Engineers as part of that EIS process.

We are recommending three different points be made in that letter. The first is that thorough attention be given to the habitat-related questions that are raised by the study so that they are fully evaluated and we know as much as we can in terms of being able to project impacts on aquatic habitat from whatever action was proposed.

The second is that the interim step of utilizing triploid Asian oysters be prosecuted according to a research standard; and by that, the committee meant that any triploid oysters that be used be certified triploids individually.

This is a standard that had been used by research by the Virginia and North Carolina academic institutions doing research. I will note that it is not the standard being used by some aquaculture trials currently underway or proposed to be underway.

Then the third point that the committee recommends be included in a letter is that the EIS should fully evaluate the alternatives with the native oysters.

That is the recommendation, Mr. Chairman, and I would be happy to elaborate on any of that.

CHAIRMAN NELSON: Thank you, Bill. Any comment on the recommendation? Go ahead, Jack.

MR. TRAVELSTEAD: That was a motion, correct?

MR. GOLDSBOROUGH: I would be happy to put it in the form of a motion if that's necessary, but it's a recommendation.

CHAIRMAN NELSON: It's a recommendation.

MR. TRAVELSTEAD: First of all, let me encourage all of the board members to get a copy of the NAS study report. I think the written document will not be available until December, but it is available at the National Academy of Science Website. It's about a two or three hundred page document.

The one concern I have with the recommendation was the second point that the experiments that are going forward to determine triploid status of individual animals in the experiment, that's virtually impossible to do at the level of the current experiments that have already been approved. That's my second point.

The experiment of the Virginia Seafood Council has already been approved by the federal agencies and by the state agencies and is about to proceed. I think the recommendation to make changes relative to that is too late unless your recommendation is for some other future studies. I couldn't tell from your conversation whether that was the case or not.

But, I mean, Virginia, just within the next few weeks will be putting overboard one million triploid animals, and they'll stay overboard until next June, the end of June. They have been through a process that detects diploids among the triploid animals, but it is a flow cytometry method that is not capable of looking at individual animals.

In order to do that, you have to grow the animal up to a certain size and do some amount of invasive procedure, which would be virtually impossible to do for a million animals. I can't support that recommendation going forward from here.

CHAIRMAN NELSON: Thank you, Jack. Howard.

MR. HOWARD KING: Thank you, Mr. Chairman. Maryland is also cooperating with the University of Maryland to begin three scientific trials using triploid area cantus. So Maryland at this point I don't think could support this motion at this time.

I would recommend that this motion be tabled until the board has an opportunity to see the report and to further review what the options are.

CHAIRMAN NELSON: Well, all right, Bill, do you want to respond to that? Since it's not a motion, we would have to have a motion to table this.

MR. GOLDSBOROUGH: Yes, please. The committee considered the technology available that Jack described and learned that the standard that can be met with that technique is triploid to a 99.9 percent assurance; and thus, one in a thousand animals would likely be diploid, or reproductive; and when you're going to the scale of a million, that would be a thousand out of a million.

It was simply thinking in terms of those numbers that led some committee members to be concerned about that prospect and led to this recommendation or this part of the recommendation.

Now having said that, the committee did not discuss the Virginia project that Jack has referred to, so the recommendation was not considered in that light of the project.

I will also add that I think, as I hear what Jack and Howard say, is that they're not opposed to the overall recommendation for a letter from this committee, but they're opposed to that one component which has to do with holding any interim work with triploids to that research standard. I would seek their clarification.

CHAIRMAN NELSON: Let me get a response from Jack.

MR. TRAVELSTEAD: That's right, that's where the concern lies, but let me offer you some more information. Both the federal permit and the state permit that allow this project to go forward contain numerous protocol requirements for this experiment.

Many of them are related to minimizing the risk associated with the possibility that a diploid animal might be present among those million animals.

What Bill told you about one in thousand possibly being diploid is correct, but that risk is minimized by all of the other protocols that are required for that experiment to go forward, one of which is that the animals must come out of the water before the end of next June, which would be their first opportunity to spawn. So

even if there are diploids there, they're going to be out of the water before they ever produce gametes.

CHAIRMAN NELSON: Thank you, Jack. Other comments? All right, Tom.

MR. FOTE: I was able to leave the winter flounder meeting for a while to basically catch the tail end of this presentation of the Habitat Committee since they were both going on at the same time.

Some of the states that basically were there had their points of concern about, you know, we look at invasive species up and down and what has happened is small time experiments like -- I was watching Nova last night with the algae that is going all over the Mediterranean.

We wanted to make sure that things like that don't happen. One of the conditions, when we did talk about Virginia, because I remember it came up in discussion, was also the fact that if you pull them out before a certain period of time before they spawn, that could be acceptable and do that to make sure that thousand in a million wouldn't basically go out and spawn.

Because, whatever happens in the Chesapeake Bay will wind up coming through the Delaware Canal and up into New Jersey sooner or later, and that's the concerns. New Jersey has been pretty specific right now about now doing this, and I think there's other states like Delaware has made the same decision.

So, our concern is that we don't wind up with an experiment that winds up in our states without us considering the experiment. That's why I can support these recommendations; because without these recommendations, if they stayed in the water longer, they could spawn and they could wind up in the wild.

CHAIRMAN NELSON: Okay, George.

MR. LAPOINTE: I share a lot of the concerns about non-native species. My comment is one more of process. Doesn't the MSC usually deal with the introduction of non-native species and

not the Habitat Committee? It just strikes me that is something, if this process moves forward, we might want to clarify.

CHAIRMAN NELSON: I don't have a good answer. As a former staffer, I think you have a better sense than I on that.

MR. LAPOINTE: I think it was actually post staff time, but that was just my recollection.

CHAIRMAN NELSON: Bill, go ahead.

MR. GOLDSBOROUGH: Just one point with respect to George's question. I believe as we think through the possible implications for other coastal states of an introduction like this, virtually all of them fall under the category of some kind of habitat impact; and given that, we felt we should take up the topic.

CHAIRMAN NELSON: Is there a timing necessity to deal with this DEIS or is this something that can be dealt with in the December meeting?

MR. GOLDSBOROUGH: Well, I don't know about the December meeting. There certainly was an urgency on Monday; and as I've just learned from Jack today, that urgency may be somewhat relaxed. There already has been movement on an EIS and a scoping meeting for that was planned for September. Now that may be off and Jack perhaps can elaborate; but given something that I just learned today with respect to problems with the Corps authorization and funding -- Jack.

MR. TRAVELSTEAD: Several months ago the states of Maryland and Virginia and actually North Carolina was involved in those discussions, and a number of federal agencies agreed that the next step that needs to be taken on this big issue is the preparation of an environmental impact statement.

That may take as long, some say as long as five to six years to do. We're hoping it takes a lot less than that, more on the order of a year and a half to two years. But, everyone has said no additional research or experiments on this

animal in Chesapeake Bay will go forward until that EIS is completed.

We learned today that there's going to be very likely a delay in the starting of that EIS scoping process, perhaps closer to the end of this year. We were actually hoping to start the scoping process in the next ten days or so. So in that sense, yes, there is a little bit of time to work this out.

But while I have the microphone, let me just raise one additional concern. It bothers me that the Habitat Committee, having listened to perhaps -- I wasn't there -- an hour's worth of presentation, maybe, is willing to come forward with recommendations that are contrary to a premier group at the National Academy of Sciences who spent many, many months working on this.

The top scientists in the country and the world were involved in this, and they have come forward with a series of recommendations on how to conduct triploid aquaculture of this animal in the Chesapeake Bay, and the recommendation relative to determining triploid is not what our Habitat Committee is recommending.

Virginia has complied with every single recommendation that you find in that National Academy of Science study. They have produced a list of protocols that they believe are necessary to go forward, and we have complied with those.

And now the Habitat Committee, having spent an hour on this subject, has decided to come up with something even more stringent, and that bothers me. And no one sitting around this table, other than perhaps Howard and I, have even read the NAS study.

CHAIRMAN NELSON: Thank you, Jack. Perhaps the best thing to do, since we don't have anything before us, is for a draft to be circulated to our staff. You've heard some of the concerns and perhaps some of remedies that might have addressed some of the concerns that you, the Habitat Committee, might have had.

Why don't you draft a letter based on that type of input, and we will circulate it amongst the commissioners. We will have a better timeline as far as what needs to be done and when we would have to act on that letter, and we would act on it in a timely fashion as necessary. Is that agreeable with everybody? Okay, thank you. Go ahead, Bill.

MR. GOLDSBOROUGH: Thank you, Mr. Chairman. Yes, we will do that. And just so everybody is clear, the concern voiced here has only to do with that one item, and the other recommendations of the committee are, as I understand it, acceptable to those around the table.

And just for clarity on the one point of contention, that was, in the deliberation, less a matter of science and more a matter of how much risk the individual members of the committee were comfortable with taking on from the standpoint of their state.

We did have members from up and down the coast who have very different socio-economic situations and therefore a different comfort level with respect to risk, and that's why we ended up with a more risk-averse recommendation on that point.

But having said that, the committee is perfectly comfortable stepping back from that somewhat to draft a letter that would be broadly acceptable.

CHAIRMAN NELSON: Thank you, Bill. Do you have more on your report then? Howard, did you have another comment?

MR. KING: Last comment. My comment is more total concerning the timing of this. It's premature, Bill. The EIS, when it is begun, will include cooperation from participating federal agencies and it will be inclusive.

ASMFC, the states of New Jersey, Delaware, everyone else will have public input during the development of this EIS, so I just think it's premature and the timing is just not right. Thank you.

CHAIRMAN NELSON: Okay, and we'll take all that into consideration for this letter. Go ahead, Bill.

MR. GOLDSBOROUGH: Thank you, Mr. Chairman. The next item I have to report is the status of the development of habitat sections for FMPs, three to mention.

The first is winter flounder, which is underway, and we understand that there is great interest amongst board members on various habitat issues with respect to winter flounder, so we're cognizant of that.

The second is menhaden. That is largely complete, but it still needs the development of the recommendations section, and it is our intent to await the stock assessment peer review in early October before developing the recommendations for the menhaden habitat section.

The third is the diadromous fish habitat source document, which, of course, includes all of the anadromous species, plus American eel, and that is ongoing.

I reported to you in June we have a good contractor writer, Karen Greene, and there are several sub-authors who work with her and provide the technical expertise. We are set back a little bit in that our alosid sub-author, John Carmichael, has recently been stolen, as was mentioned earlier, by the South Atlantic Board, from the state of New Carolina who had previously stolen him from the commission who had previously stolen him from the state of Maryland, and that has set back the process a little bit.

CHAIRMAN NELSON: Thank you. Any questions on who stole what?

MR. LAPOINTE: I will note for the record that when the commission got him, he was a free agent.

CHAIRMAN NELSON: Okay. We do wish John luck and maybe he'll return sometime. Go ahead, Bill.

MR. GOLDSBOROUGH: The fourth item has to do with artificial reefs, and I believe Carrie Selberg is going to address the board on that.

CHAIRMAN NELSON: Carrie.

MS. CARRIE SELBERG: On the briefing CD was the artificial reef committee's materials guidelines. This originally was a Gulf States Marine Fisheries Commission document that they produced several years ago.

They were interested in updating that document and asked the Atlantic States Marine Fisheries Commission Artificial Reef Committee if they would be interested in participating in the update.

The two committees jointly have been working on this update for the past about two years. They have finished, and the document right now, the Artificial Reef Committee considers complete in its content.

The Gulf States Marine Fisheries Commission is intending to use an editor to go through the document, because it was written by so many different people, for consistency and editorial mistakes.

But for right now, that document has gone through the Habitat Committee, and the Habitat Committee and the Artificial Reef Committee have forwarded this on to you, asking for your approval of this document today.

CHAIRMAN NELSON: Bill.

MR. ADLER: Thank you, Mr. Chairman. This was the 4,000 page document on everything that is in the ocean, which I did read. I had no idea we had so much debris in the ocean, a few boats or a few planes and refrigerators, but I had no idea that we had half the Navy, half the Army, and half the Air Force down there. But, that was quite extensive and it was very enlightening to me about how many pieces of things we have out there and more coming. Thank you.

MS. SELBERG: I think the Artificial Reef Committee was trying to be inclusive --

MR. ADLER: You were.

MS. SELBERG: -- with all of their collective experiences with every material that has ever been used for an artificial reef in any state over the past many years.

CHAIRMAN NELSON: Let me ask the question. Has everyone had a chance to read what was sent to them and they're comfortable with -- Carrie.

MS. SELBERG: I would like to note that for those of you who have artificial reef programs, you have an artificial reef program coordinator who sits on the Artificial Reef Committee, and most of you also have Habitat Committee members.

So, those Artificial Reef Committee members are intimately involved with the document, and the Habitat Committee members not to the extent of the Artificial Reef Committee members, but they also have been made aware of this document. So for those of you who have had an opportunity to talk to your staff members, perhaps they could fill you in on the details.

CHAIRMAN NELSON: Carrie, what was the timeline that's needed to provide this document or our input to the Gulf?

MS. SELBERG: Gulf States Marine Fisheries Commission. We are hoping for approval of this document in the near future. Because of the nature of the grant funding at the Gulf States Marine Fisheries Commission, they're trying to get this document edited and printed by the end of the year.

I could suggest a date by when commissioners could provide any additional feedback after they've had an opportunity to go over it further with their staffs, if that is helpful.

CHAIRMAN NELSON: Try the date.

MS. SELBERG: How about we say October 1st.

CHAIRMAN NELSON: Anyone object to having provided feedback back to Carrie by October 1<sup>st</sup>; and anyone dissenting on wishing to have it sent over, certainly note that so that we can then follow up on it as necessary.

If there are no dissenters, then we will be happy to send it along. Okay, October 1st for that one. Bill, anything else? All right, very good.

This brings us to our Item 7, and I do note that we are running a little bit behind, but I know that you don't mind that. Item 7 is the National Marine Fisheries Service reports.

**-- NMFS Report – Striped Bass Harvest in EEZ Issue --**

MS. LANGE: Thank you, Mr. Chairman. Realizing that we are running a little behind, I'll try to go as quickly as possible. The first issue I wanted to update everyone on was the status of our activity on the recommendation from the commission on opening the EEZ to striped bass harvest.

We had an advanced notice of proposed rulemaking, which is basically an opportunity for constituents, states, all stakeholders to provide comments and provide us with data, observations, information that will help us make a decision on whether or not we should go forward with rulemaking, which would initiate the EIS process and the whole review.

The ANPR opened in late July and closed August 20th. We got a lot of comments, stacks and stacks, as most states are aware of the comment period issue. We got only a few substantive comments.

There were a lot of opinions like we don't want commercial fisheries to increase, we don't want commercial fisheries at all, we don't want the EEZ to open because we don't think it's right.

But aside from a half or dozen or so specific comments, we didn't get any information indicating that we really shouldn't go forward with it or any significant additional information to say that we should.

So what we decided to do was reopen the comment period. It opened up yesterday, the 26<sup>th</sup>, Tuesday, and it will close on September 25th. Staff has just handed out a copy of the press release associated with that and a copy of the ANPR, the actual Federal Register Notice.

The Federal Register Notice is essentially the same as what went out a month ago. What we have included in there is a specification that we're looking for information; not just opinions or open comments, but really information to help us form our decision on the issue.

I want to thank those members here and constituents who did provide us with substantive information and hope that others will do the same. And, again, we're asking for information on that.

CHAIRMAN NELSON: Anne, that's a good time to take a break for me to ask something. Anne, you were going to go on to a couple of other items, I think?

MS. LANGE: Yes. The next step in the process, once the comment period closes -- we don't know what is going to happen until the comment period does close as far as what types of information we'll get, but on the assumption that there is no fatal flaw identified during that ANPR process, the next step would be the initiation of scoping meetings for preparation of an EIS.

I would like the states to consider whether or not they would like scoping meetings in their states and to think about the possibility of where and when that might occur so that come the end of September, when we find out if we're going forward, where we might want to start setting the meetings up. Are there any questions?

CHAIRMAN NELSON: Go ahead, Bruce.

MR. FREEMAN: Thank you. Essentially, Anne, what you're indicating is you're seeking comments on possible management measures and issues that the Service should consider relative to the opening of the EEZ.

The Service has gone through this a number of years ago, and I think it would be very helpful, if you haven't done so, would be provide the commissioners with issues that were raised at these meetings, both pro and con.

Then we could look at that and add any other issues that we believe need to be raised or addressed in the environmental impact statement. It would be very helpful. Could that be done?

MS. LANGE: Certainly. Again, that would be the next step. Right now what we're looking for in this ANPR is information to help us make the decision on whether or not we should go forward.

We've received the recommendation from the commission and what we need to know is are there any pieces of information out there that would lead us to decide immediately that, no, we don't want to pursue this; or, yes, it does warrant further investigation and then on through to the environmental impact statement.

If we do move forward, then what we would do is set up scoping meetings, we would have scoping documents and included in that would be the issues associated with past management, past actions that we did or didn't take, including what happened relative to the attempted opening in 1996 I believe it was. Is that what you're asking for?

MR. FREEMAN: Yes.

MS. LANGE: We will definitely do that.

CHAIRMAN NELSON: Tom.

MR. FOTE: I just thank the National Marine Fisheries Service for reopening the comment period, and we have discussed some better ways of communication.

I think there was a little breakdown of communications here, and people don't really always read the Fish News and things like that, and we'll find some better means of getting the

information out that there is a comment period going on. Thank you.

MS. LANGE: Thank you, Tom, and I appreciate that. I slipped up. I assumed it was a press release and it wasn't. But, again, this was just the very first step and we'll have many, many opportunities throughout the next year or more.

CHAIRMAN NELSON: Ritchie.

MR. RITCHIE WHITE: That was my question is if you go forward with the scoping meetings, what will the process be time wise after that?

MS. LANGE: Well, the first thing, again, that we would do is have scoping meetings in as many states as want or as many multiple meetings, getting public input on suggestions for alternatives that we should be evaluating, what came from the commission is a specific 28-inch limit, and state laws that apply to their own fishermen, we would request input on that alternative.

Other alternatives potentially are the use of circle hooks. I mean, whatever people in the public or the states want to suggest, and that would be what would be evaluated in the EIS process.

We would hope to have the scoping meetings and that type of thing done by the end of the year and to finish an EIS by July, and then we would go through the process where it's published, comment period, proposed rule stage, comment period, and then final EIS.

So all of those take time and it depends on the amount of comment and the amount of public hearings that we hold and are requested to hold.

CHAIRMAN NELSON: Okay, any other questions for Anne on this subject? Okay, Anne, go ahead.

MS. LANGE: Okay, the next topic was the coastal shark, and Karyl Brewster-Geisz from our Highly Migratory Species Division is here.

She has a handout I believe and also has a short update.

CHAIRMAN NELSON: Okay, go ahead. Thank you.

**-- Update on Coastal Shark Management --**

MS. KARYL BREWSTER-GEISZ: Thank you, Mr. Chairman. Once again, I'm Karyl Brewster-Geisz. I'm from NMFS Highly Migratory Species Management Division. We have released a proposed rule and Draft Amendment 1 to the Highly Migratory Species Fisheries Management Plan, and this is a rather large document.

It's based on our 2002 large coastal and small coastal stock assessments. We hope to have a final plan in place by January 1, 2004. That's just a few months from now. And because it so large and we are a little bit behind time, I am just going to run down some of the few aspects of the rule. I am available for any questions you might have.

We are revising the large coastal shark rebuilding plan to 27 years. We are revising the commercial quotas and the basis for how we come up with them for both large coastal and small coastal sharks.

We are proposing to set up regional quotas. This would split the quota from the Atlantic, Caribbean Sea, and Gulf of Mexico into three different regions: Gulf of Mexico; what we would call the South Atlantic, which would be anything south of North Carolina; and the North Atlantic, which would be North Carolina up through Maine.

We are revising the recreational bag limit and size limits and also establishing authorized gear types. We are proposing to establish criteria to add or remove prohibited species from that management unit.

We are proposing to ban drift gillnet and require that gillnet fishermen use strike net gear only. That affects six vessels in North Florida/Georgia line.

We are proposing a large time area closure from January through July for shark bottom longline fishermen. This time area closure is off the coast of Virginia, North Carolina, and South Carolina.

We are proposing several requirements for bycatch reduction equipment, such as line cutters, dip nets, de-hooking devices. We are revising EFH for five separate species and we are also --some of you know we issue exempted fishing permits for people wishing to collect sharks for display.

We are now revising the name from exempted fishing permits to display permits. I do know that Atlantic States is working with us to come up with a database for that.

The comment period for this rule ends on September 30th. We have six different public hearings, which were in your handout. The first one was last night.

We also announced today that we are having an advisory panel meeting on September 30th here in Silver Spring. We would welcome any comments that the commission might have and ask that you go back to your states and ask for comments and provide them to us.

CHAIRMAN NELSON: All right, thank you, Carol. Questions for Carol? Dave.

MR. CUPKA: I'm sorry, Carol, what did you say the date was for that AP meeting?

MS. BREWSTER-GEISZ: The AP meeting is September 30<sup>th</sup>, so the last day of the comment period.

CHAIRMAN NELSON: Anyone else? Okay, very thorough. Thank you. David, did you want to jump in here?

MR. BORDEN: Yes, thanks, Mr. Chairman. We had a rare and unusual event yesterday where a meeting actually ended before it was anticipated, and we had 25 minutes available.

As a result of that, I thought it would be beneficial to ask the states in the southern zone, the eight states in the southern dogfish zone, including the great southern state of Rhode Island, to caucus on the issue of dogfish management.

There has been a lot of interest on the part of constituents to adjust the quota, and I think everybody around the table understands that northern states agreed to a 50 percent quota cut.

I would just quickly note this was not a meeting as a committee, and what I would like to do is just report on the results. The group got together actually in the corner over here and never sat down and had an exchange of views on two questions that I posed to them.

One is do the states want to cut the quota by 50 percent, and we kind of went around and solicited views on that. Then the second question was if we did that, how would we distribute the available resource among the states so that individual states would have some kind of access to it.

The result of the first question was that several of the states could not commit to that quota cut and wanted an opportunity to go back and discuss that issue with their constituents, which they basically agreed to do over the next couple of weeks.

There was no action on that. The second one was whether or not the states would, if in fact we agreed to that cut, that whether or not the states would like some particular type of sharing arrangement similar to that which was implemented by the northern states.

Five of the states basically indicated that they would maintain their existing regulations, and three of the states, Rhode Island, Virginia, and North Carolina, expressed interest in working out some kind of sharing arrangement for the balance, and that's the status of it.

There was no action taken and none was contemplated. It was simply an exchange of

views, and I'll be happy to answer any questions.

CHAIRMAN NELSON: Any questions for Dave? Okay, Anne.

MS. LANGE: Thank you, Mr. Chairman. I just have one question as to whether or not the trip limit issue was discussed by the states in your discussion yesterday?

MR. BORDEN: Not really, Anne. As you know, I think the current plan allows up to a 7,000 pound trip limit; and since we hadn't had any kind of consensus on the subject of a sharing arrangement, it was kind of premature to discuss that.

CHAIRMAN NELSON: Anne.

MS. LANGE: I just wanted to note the National Marine Fisheries Service is very hopeful that the states will come together to reduce quota, but we still also are concerned about the trip limits, 7,000 pound trip limits that do result in a directed fishery and hope that some consideration will be given to drop that to the 600 pound trip limits.

CHAIRMAN NELSON: Go ahead, Dave.

MR. BORDEN: The one issue which was discussed in that regard is that if we can work out this sharing arrangement -- and I'll just express my own view, and it's consistent with what I've said before -- I would like to work out a system in the state of Rhode Island where we actually look at the distribution of dogfish in state waters and try to map any kind of liberalization of our current regulations, which we've been at 300 and 600, to coincide with the period where the highest discards are taking place.

In other words, try to convert dead discards to landings, and I've been very consistent on that. I know there is interest in other states in doing exactly the same type of thing, but the only way you make that work is you have to have some kind of allocation that then each one of the state

agencies has assurance that somebody else isn't going to preclude that.

So, by working out the sharing arrangement, it essentially puts you in a position where you can be guaranteed some access to the resource, and then you can set your regulations to coincide with the periods of highest discards and convert those dead discards to landings.

CHAIRMAN NELSON: Eric, did you have a comment?

MR. SMITH: Very quickly. David did a masterful job yesterday. I just wanted to remind him, and in response to Anne's question of the five states that did not express a willingness to participate in this so-called sharing discussion, those five states have either adopted the 300/600 limits or they've closed their fisheries.

CHAIRMAN NELSON: All right, and I thank you all for that type of discussion, and again, in referencing my letter to you all updating you on what we were doing in the northern tier. Was there anything else, Dave, that you wanted to bring up under this item? Okay, Anne, your next item.

#### **-- Weakfish Rule Making Update --**

MS. LANGE: Thank you, Mr. Chairman. There were two other issues. One was the status of weakfish rulemaking, and that relates to the recommendation from the commission to increase the bycatch allocation from 150 to 300 pounds. That rule is basically ready to go final. We're just waiting for the 90-day CZM period to end.

However, there was one issue that came up, and I think the commission really needs to address it as we get the potential for more recommendations to implement complementary regulations in the EEZ.

That's the issue of how we should be addressing *de minimis* states. As you're probably all aware,

the state of Massachusetts had requested and been approved for *de minimis* status.

But, based on the way we have implemented regulations, including how they were recommended to us, was that any state that is declared *de minimis* cannot have commercial landings, and I think there should be some other way of addressing that.

I think it should be explored by this board or some combination of boards because it's not just weakfish that it's an issue for; in other words, how we should implement *de minimis* status in the EEZ.

CHAIRMAN NELSON: Anne, thank you. Let me get any comments on that particular point. Before I go on to your last one, I was negligent. I didn't go to the audience for anyone who wanted to make any comments on the shark issue.

So if I could go back to that right now, I would appreciate the board's indulgence. Anyone want to make a comment on the reports on the shark? Go ahead, Sonja.

MS. FORDHAM: Big sharks or little sharks?

CHAIRMAN NELSON: Whatever.

MS. FORDHAM: Well, I had my hand up to speak about what Dave Borden was talking about on dogfish; is that okay? As far as bigger sharks, I am happy to see that National Marine Fisheries Service is here, and would just urge you to work together to protect shark habitat for the larger sharks.

In terms of the dogfish discussions that were just reported on, again, in the interest of the strategic plan and the expressed desire to increase transparency, I'm a little taken aback again, because I have been around for the last two days, and I had no idea that there were these discussions going on about dogfish agreements.

We would thank those states that have reduced their trip limits. I would like to echo the concerns of the National Marine Fisheries

Service and reiterate our serious concern about the high trip limit that's an order of magnitude higher than the technical advice that allows the targeted fishing of mature females, which is the primary problem with this fishery.

As you know, there was a recent stock assessment done for this population, the first peer-reviewed SARC event in five years, and that news was extremely troubling to a lot of people.

Basically, the stock is doing worse than we thought, and in addition to seven years of recruitment failure, because of the reduction of females to the fishery, we also have now a low survivorship of those pups that are being produced, which spells real disaster for the stock.

We would like to request the Policy Board to direct the Dogfish Board to have a meeting to address this new information on the stock status for spiny dogfish.

We understand that your technical team has already looked at this information through the SARC process because they're plugged in there. They've already been part of that and we understand their constraints. We do understand that the boards have met by phone before.

We think this is a resource emergency and that the states could do a lot to prevent collapse of this population, and we would urge your consideration of such a motion and action through having a board meeting as soon as possible. Thank you.

CHAIRMAN NELSON: Okay, thank you, Sonja. I would point out I think what the states are doing in the southern tier are responding to my letter that I sent to all of them providing them with the information of what was agreed upon in the northern tier based on the more recent information from the SARC, and asking them to also consider a reduction in their take of their allocation.

I appreciate them taking the time to look at that issue and give us an update on where they're at.

I think the status, if I am correct, is that the SARC report is going to our technical committee, recognizing that some of them probably have already either sat on the SARC or were familiar with it.

I think it has got to go to our technical committee and then they would be providing us with an update and we do have a scheduled meeting in December. Are that any changes?

MR. BEAL: The Monitoring Committee, which is the Mid-Atlantic Council's group, and our technical committee will be getting together this fall to make recommendations on next year's specifications and quotas and trip limits for dogfish. The schedule is for the Dogfish Board to meet in December to set the specifications for the following year.

CHAIRMAN NELSON: Any other comments on sharks or dogfish? All right, Anne.

#### **-- Whelk Fisheries Issues --**

MS. LANGE: Thank you, Mr. Chairman. The last issue relates to the whelk fishery, the pot fishery in particular. I received a request for our Protected Resource Office related to concerns over sea turtle entanglement, both loggerhead and leatherback sea turtles, associated with the whelk pot fishery.

There's also the concerns about potential competition between turtles and us in the whelk fishery related to mollusks, which are included in the diet of the sea turtles.

NMFS and VIMS are conducting research on pot gear to help reduce entanglements and they're also looking for information -- actually, our Protected Resource Office would like information from the states to help identify the scope of the problem.

In other words, there isn't very much information related to the whelk fishery, the overall catch, and also the number of participants with that particular gear, and what we're looking for is information from those states that have whelk pot fisheries.

The issue is whether or not there is some sort of management that should be looked into in the future. I think Tina or Laura was going to try to talk with people as far as getting information from states. I'm just raising the issue.

CHAIRMAN NELSON: All right, any questions for Anne? Bruce.

MR. FREEMAN: Anne, what type of information are you looking for?

MS. LANGE: Well, the first item is to find out the scope of the potential problem, how many fishermen are fishing for whelk overall, especially with pots, in what states, in what areas, what seasons, the amount of harvest that is seen.

There's no commission plan and there's no federal plan, and I don't know if there are state management plans for the whelk fishery, and that's part of the problem.

There's no readily available information to identify the scope of how many pots are out there where the turtles might be encountering them; and also, again, the concern about the removal of whelks, which are forage for turtles.

MR. FREEMAN: The question concerning the turtles, it simply has to do with the lines for the buoys? It doesn't have to do with the pots themselves, does it?

MS. LANGE: My understanding is it's primarily the buoy lines and the bridle, which I'm assuming is associated with that.

MR. FREEMAN: Okay, because the pots that are used in our area are open pots. I mean, there's nothing other than a whelk. There's very little you're going to find in them because they're open at the top and things can get in and out. It's just that they have a hard time getting out.

MS. LANGE: My understanding is there have been several. In the past couple of years, there have been half a dozen or more turtles in, I think it was New Jersey, Maryland, and Massachusetts

waters and the Chesapeake Bay that have been found entangled in whelk pot warp.

MR. FREEMAN: Okay, so it's the warps. Thank you.

CHAIRMAN NELSON: Any other questions for Anne? Anne, you're all set? Thank you. Is there any other business to come before the Policy Board?

MR. ADLER: Motion to adjourn.

**-- Other Business, Adjourn --**

CHAIRMAN NELSON: Seeing none, we have the motion to adjourn and we're in total consensus. Thank you very much. We are adjourned.

(Whereupon, the meeting was adjourned 6:35 o'clock p.m., August 27, 2003.)

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