

**PROCEEDINGS OF THE
ATLANTIC STATES MARINE FISHERIES COMMISSION
ISFMP POLICY BOARD**

The Langham Hotel
Boston, Massachusetts
November 9, 2011

Approved February 8, 2012

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2. **Approval of Proceedings of August, 2011** by Consent (Page 1).
3. **Move to adjourn** by consent (Page 14).

ISFMP/BUSINESS ATTENDANCE

Board Members

Terry Stockwell, ME, proxy for P. Keliher (AA)	Roy Miller, DE (GA)
Douglas Grout (AA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Dennis Abbott, NH proxy for Rep Watters (LA)	David Saveikis, DE (AA)
Ritchie White, NH (GA)	William Goldsborough, MD (GA)
Paul Diodati, MA (AA)	Tom O'Connell, MD (AA)
William Adler, MA (GA)	Steve Bowman, VA (AA)
Bob Ballou, RI (AA)	Jack Travelstead, VA Administrative Proxy
Rick Bellavance, RI, proxy for Rep. Martin (LA)	Louis Daniel, NC (AA)
David Simpson, CT (AA)	Willard Cole, NC (GA)
Lance Stewart, CT (GA)	Mike Johnson, NC, proxy for Rep. Wainwright (LA)
Rep. Craig Miner, CT (LA)	John Frampton, SC (AA)
James Gilmore, NY (AA)	Malcolm Rhodes, SC (GA)
Pat Augustine, NY (GA)	Robert Boyles, Jr., SC (LA)
Byron Young, NY, proxy for Sen. Johnson (LA)	John Duren, GA (GA)
Tom McCloy, NJ, proxy for D. Chanda (AA)	Spud Woodward, GA (AA)
Tom Fote, NJ (GA)	Aaron Podey, FL, proxy for J. McCawley (AA)
Adam Nowalsky, NJ, proxy for Asm. Albano (LA)	A.C. Carpenter, PRFC
Leroy Young, PA, proxy for J. Arway (AA)	Jaime Geiger, USFWS
Loren Lustig, PA (GA)	Steve Meyers, NOAA

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

Ex-Officio Members

Vince O'Shea	Toni Kerns
Danielle Chesky	Mark Robson
Bob Beal	

Guests

Joe Grist, VMRC	Stewart Michels, DE DFW
Rob O'Reilly, VMRC	Mary Griffin MA DFG
Rick Robins, MAFMC	Gordon Colvin, NOAA
Peter Burns, NMFS	Russ Allen, NJ DFW
Mike Armstrong, MA DMF	Chip Lynch, NOAA
Patrick Geer, GA DNR	Wilson Laney, US FWS
Duane Harris, SAFMC	Michelle Duval, NC DMF
Peter Himchak, NJ DFW	

Marine Fisheries Commission convened in the Wilson Ballroom of the Langham Hotel, Boston, Massachusetts, November 10, 2011, and was called to order at 3:20 o'clock p.m. by Chairman Paul Diodati.

CALL TO ORDER

CHAIRMAN PAUL DIODATI: Welcome, everybody, and we will begin this afternoon's session of the policy board. Before I start, I'm going to ask Bob to go over some agenda changes that we're making. We're going to relocate a couple of things on this agenda.

MR. ROBERT E. BEAL: Everyone should have just received a packet of information. The cover should be a new ISFMP Policy Board Agenda, and even that is going to be updated here. Since the policy board obviously did not meet yesterday and in the interest of time and everyone's fatigue level, what we're going to do is Item Number 4 on this agenda, which is the scup issue, is going to be pushed to be pushed to the end of this agenda.

Items Number 7, 8 and 9 will be pushed off until the February meeting. None of those are time-sensitive and the policy board can tackle those in a couple of months. Item Number 10, which is a distribution of the written reports, all the pages behind this agenda and the packet of information you just received are the written reports from those committees from meetings that took place either earlier in the week or prior to this meeting.

You can read through those and if there are any questions on those, let me know and we can go from there. There are a couple of other agenda items that will be added and they're all very brief. The Law Enforcement Committee would like approval for a letter. The River Herring Management Board recommended a letter be sent regarding the Endangered Species Act. Rich Robins, the chairman of the Mid-Atlantic Council, is here to talk about the Mid-Atlantic Council's Visioning Process. With that, Paul, do you want me to jump into Agenda Item Number 5?

APPROVAL OF AGENDA

CHAIRMAN DIODATI: Do any board members want to make any other changes to this agenda? I think that's going to shorten it and move things along very quickly. With that, we have an approval of this agenda.

APPROVAL OF PROCEEDINGS

CHAIRMAN DIODATI: We also need an approval of the proceedings from our August meeting. Without objection, we'll consider those proceedings approved.

PUBLIC COMMENT

Certainly, if there is any public comment, we'll take that now. It's mostly commissioners and staff members here, but is there anyone in the audience desiring to offer any public comment at this time? Seeing none, we'll continue to move on.

ASMFC COMMENT ON AMERICAN EEL ESA 90-DAY FINDING

MR. BEAL: Agenda Item Number 5 deals with American Eel ESA 90-day finding. This is really almost the exact same position that the river herring board was in this morning. Kim Damon-Randall went through a pretty lengthy presentation on the ESA process and what the 90-day finding means, but it just indicates that there was a petition filed regarding American eel, filed by the Council for Endangered Species Act Reliability.

They would like consideration for American eel under the Endangered Species Act. The Fish and Wildlife Service has looked through that and agreed that there is enough information there that warrants moving forward with a review of the stock status for American eel. This 90-day finding is out. There is a public comment period that goes through November 28th.

I would suggest if the policy board approves this, we could send a letter off to the Fish and Wildlife Service indicating that ASMFC is working on a stock assessment. That assessment will be finalized and presented to the management boards at the May meeting. Once that is approved and presented in public, we can send that off to the U.S. Fish and Wildlife Service for their consideration as they move forward with their status review under the Endangered Species Act for American eel. That is just a recommendation on how to move forward during this public comment period.

CHAIRMAN DIODATI: That sounds wonderful. Any questions for Bob on that? Bill.

MR. WILLIAM A. ADLER: So, in other words, Bob, it's somewhat similar to the letter that was going to go out not supporting but simply saying that you're working on something and that's all. I mean, you're not pushing for it.

MR. BEAL: Right, the letter will not take a position for or against the listing. It will just indicate that there is a stock assessment that the commission is doing and we hope that they consider that information as they move forward.

ASMFC COMMENT ON ATLANTIC STURGEON ESA PROPOSED REGULATION

Agenda Item Number 6 is again an ESA listing for Atlantic sturgeon. The public comment period for this ends November 29th, so we have a few weeks to work on this as well. This is a proposed regulation for the Gulf of Maine distinct population segment for Atlantic sturgeon. There is some specific wording in there and potentially specific rules to implement a finding of threatened for that DPS.

Again here as a proposal to move forward, I would say that the staff can work with the Gulf of Maine states, Maine, New Hampshire, and Massachusetts, to come up with some language and wording that those states are comfortable with submitting. Once we have those three states that are potentially affected by this, we can circulate that draft letter around to the entire policy board and make sure that there aren't any concerns with that wording, and then we can submit that letter by the November 29th deadline to the National Marine Fisheries Service.

MR. STEVE MEYERS: Mr. Chairman, again, sir, I must abstain.

POLICY BOARD COMMENT ON LAW ENFORCEMENT COMMITTEE LETTER

MR. BEAL: Is everyone comfortable with that approach? The Law Enforcement Committee met earlier this week. There is a written summary of their meeting. However, they did indicate that they would like to send one letter off, and I think Vince can probably provide the best summary of the action that they requesting from the policy board.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, just as a reminder, we have had a position that if the commission is going to send letters out on behalf of boards that we run that by the policy board,

so that's why this issue is coming before you. During the Law Enforcement Committee meeting earlier this week, they got an update that the Department of Commerce has not filled a number of vacancies in the NOAA General Counsel's Office relative to the attorneys who handle the cases that are being written by both the National Marine Fisheries Service Office of Enforcement as well as the U.S. Coast Guard and as well as the states in their joint enforcement agreements.

The concern around the table was that this is an important issue that speaks to the effectiveness of enforcement, and the Law Enforcement Committee would like the commission to weigh in with the Department of Commerce about the importance of this and the dependence of enforcement is part of the management plan. My suggestion would be that the board authorize me to work with the Law Enforcement Committee and the recommendation and draft a letter and sent it on behalf of the commission. Thank you.

CHAIRMAN DIODATI: I'll take some comment on this, but I guess I have a question first. I'm not sure who was at the committee meeting so I'll address it to you, Vince, as you might know the answer. I think we're familiar with the U.S. Inspector General Review of the law enforcement procedures at the National Marine Fisheries Service and with the finding that at least in the northeast region that there was probably a little bit heavy weighting on the prosecutor side and not enough on the field side of enforcement. Is this at all related to any of that? If it is, can you just connect the dots for us?

EXECUTIVE DIRECTOR O'SHEA: Well, I think it is in the sense that the northeast prosecutors are gone. The issue is not necessarily in the northeast but even in other areas have enough enforcement attorneys to process the cases. There has been a whole range of responses from the Office of Enforcement to the IG reports, including standardizing penalties, prioritization of enforcement and use of the asset forfeiture fund.

All of those things have been reported out by NOAA and they're available on the NOAA Website. If anybody is interested in those, between Mark Robson and myself we can get those follow-up actions out. It is related to the extent that they need, frankly, new attorneys, and they need to fill those positions. It is not a NOAA decision. It's over in the Department of Commerce. Thank you.

CHAIRMAN DIODATI: Yes, I certainly support the letter going out, but I would like to see it. It has been hotly charged political issue in the northeast. Does anyone have any questions about this? Is there support around the room for the letter? I'm seeing a lot of nodding, Vince, so thank you. Bob.

RIVER HERRING ENDANGERED SPECIES ACT

MR. BEAL: The last letter that is being requested approval for the policy board is the River Herring Endangered Species Act. This is just as I mentioned earlier for American eel. Malcolm Rhodes is the chair of the board this morning and they passed a motion requesting that the policy board approve submission of a letter to the National Marine Fisheries Service indicating that we were willing to provide technical information and not support or speak against listing, but provide technical information as the status review goes forward for river herring. That's a request of the policy board as well.

CHAIRMAN DIODATI: Unless the hands go up – Bill, do you have a question?

MR. ADLER: No, do you need a motion?

CHAIRMAN DIODATI: No, if there is no opposition and if I'm not going to see any hands go up, we're going to consider that a done deal. Rick, I hope we're not moving too fast, but you're welcome to come up at this point and please take your time and don't let my fast pace – just take your time.

PRESENTATION BY MAFMC CHAIRMAN RICK ROBINS

MR. RICK ROBINS: I will be brief. Before I begin, I would like to congratulate you and Louis Daniel on your new roles as leadership of the commission and say that I very much look forward to working with you all to build on our past success. We enjoy a very close relationship with this commission at the Mid-Atlantic Council and look forward to continuing to make progress in managing these fisheries that are so important to the region.

I appreciate the opportunity to be with you today and sitting here with my Virginia colleagues. The seat is not quite as hot today as it was yesterday, but I look forward to just providing a very brief presentation on the council's visioning and strategic planning initiative. Just to provide a little bit of context for the

impetus for this, we're reflecting on where we've been, we're looking at where we are today and working together with this commission we've rebuilt most of the stocks that we're responsible for managing.

The rebuilding process itself, though, has taken decades and it has been a very difficult period of time. In the course of that there has been a lot of disengagement. People have dropped out of the process. A lot of constituents that may have participated in the process a number of years ago were disappointed with the outcomes during rebuilding.

They saw the process as being relatively inflexible and unresponsive to public input, and so there has been some disenchantment with the process itself and we want to address that head-on. We're at a pivotal point now in our history. Moving forward we want to look at desired outcomes for the management of our fisheries now that many of them are rebuilt.

We want to look at comprehensively at the management measures that we have in place with the stakeholders to see what they view as being effective and what they think is ineffective and how we can improve the processes by which we manage our fisheries, how we can better improve public input and participation and also to discuss goals that go beyond the biological; in other words, not just rebuilding stocks but really getting into some of the broader objectives.

We feel that we have a lot more flexibility now that we are rebuilt to be responsive to that type of input and consider those types of objectives. The first phase is a visioning initiative, and here we're trying to develop a comprehensive stakeholder-driven vision for the management of our fisheries, and we would use that to refine our management programs.

The second phase would be strategic planning where we develop a strategic plan to implement the vision. This is what you get when you hire consultants. This is the roadmap. We have actually had a very significant engagement with Touchstone at this point. They have been helping facilitate this project. Our staff is heavily involved as well, but we have had a lot of support from them.

This lays out the timeline. Most notably we're in the data collection process right now and will be probably through February of next year. At that point we'll move on into the planning process, we'll hash out the vision, revise it with additional

stakeholder input through the council process and then come out with the development of a strategic plan hopefully by the end of this year. This is an ambitious timeline at this point.

So right now we're in the data gathering mode, and the primary mechanism there is an online survey. If you go to the Mid-Atlantic Council Website, mafmc.org, you can click on the visioning link and there is an online survey. There is a general survey, but there are also species-specific surveys that you can go in and take; so if a stakeholder wants to weigh in on summer flounder and how they're managed, they can do that as one example.

We hope to get a thousand responses. I believe our staff has already reached out to all the state agencies and state commissions, but we would very much appreciate leveraging those opportunities so that we can get as much input as possible. The other mechanism that we're using was advised by our advisory panel, and that is to have small group meetings.

We're doing this primarily right now with the commercial industry. We're going up and down the coast and working with local co-hosts so we get a commercial fisherman or a dealer to co-host the meeting. We've had two of those this week and they've gotten off to a very good start. They're small meetings; they're round table type meetings around the kitchen table or at a fish dock, and this is allowing for very candid input directly from the stakeholders into the process.

This is just the beginning, but we'll we doing this with the commercial industry, we'll be doing it with the recreational industry and also the NGO community. The communication of the project is going to be critical to its success. We are using a broad range of methods to do it. We kicked it off at the Working Waterfront Festival in New Bedford.

I did a lot of radio interview up there that day to get it started and met with Mayor Lang. Then we exhibited at the Working Waterfront Festival for two days. We're also doing a lot of outreach through the council staff and council members. We just sent out a permit holder letter to all the

commercial permit holders. We're getting a number of media stories out there on the project.

The next steps, again, are to try to conclude the data collection by February of 2012; and then as we move into the rest of next year, go ahead and develop the

draft vision, revise that with stakeholder input and then develop a strategic plan. That's it. Again, I appreciate the opportunity to provide a quick update on that, and I would be glad to answer any questions.

CHAIRMAN DIODATI: Thanks for coming today, Rick, and we enjoy the close relationship we have with you. You're always available at these meetings. There are going to be some questions about this, I'm sure. Go ahead, Dave.

MR. DAVID SIMPSON: I do appreciate the opportunity to provide input to the Mid being in Southern New England. Last week I got an e-mail – I think it was from Mary – about a single meeting for recreational input that was to be in Baltimore. I guess it was to serve folks from Massachusetts all the way to North Carolina – six or seven issues, looking for six or seven names for Connecticut folks.

I suggested that even though travel expenses would be paid, it would be a tall order for me to find six or seven people who could fly down to Baltimore for the day, take a day off work and so forth, so I suggested that perhaps a meeting in Rhode Island that Massachusetts, Rhode Island and Connecticut anglers could more likely get to in hour or hour and a half and do something in an evening in an informal setting such as you described earlier.

It appears at this point – I did just get a response back from Andy Loftus describing that this is one large meeting, but I think the opportunity ultimately for Southern New England to provide comment in that more informal and geographically closer would be a good thing for the program.

MR. ROBINS: Dave, I appreciate that, and just in summary that is a structured workshop that is being held in Maryland. We have reached out to Southern New England participants to try to get that type of participation in that workshop. But going beyond that, we are totally open to that idea and plan to do a lot of outreach in Southern New England to get that input. Like I said, we started the project in New Bedford and plan to build on that and get commercial and recreational input throughout the region. I'll have our staff follow up with you about how we might set up some smaller meetings for that. I appreciate it.

CHAIRMAN DIODATI: Anymore questions for Rick? I guess I have one. Rick, I know you attend meetings with the other seven councils around the country. Is there another council as successful in

terms of preventing overfishing as the Mid; do you know?

MR. ROBINS: I think, Paul, now that we've made a lot of progress around the country in ending overfishing; so I think if you look at the scorecard, so to speak, overfishing around the country by all the councils has been effectively addressed. I think all the councils now are at the point that they're implementing their ACLs and AMs. Once those are in place, I think overfishing will have largely been prevented around the country.

CHAIRMAN DIODATI: I agree, but it's an interesting story with the Mid that it seems that the highest priority standard of MSA is achievable, but it comes with a pretty high cost. It looks like you've disengaged a lot of your stakeholders in order to achieve that.

MR. ROBINS: I would agree that has been one of the consequences of the process, but I think the Mid is somewhat unique in terms of the status now of our stocks in that most are rebuilt. If you look at the portfolio of managed stocks, about 90 percent of them are rebuilt, at least the ones for which we have reference points. But, again, we are addressing these consequences directly through this project, and so I really hope that we can make some significant progress in terms of how we're engaging the public.

DISCUSSION OF SUMMER FLOUNDER, SCUP AND BLACK SEA BASS RECOMMENDATION

CHAIRMAN DIODATI: I look forward to watch it unfold. Any questions for Rick; is that it? Well, thanks, Rick. We're on Item Number 4, and I guess we're going to start with Toni giving a brief framework of the discussion for us.

MS. TONI KERNS: I will briefly go through some of the slides that I went through for the Summer Flounder, Scup and Black Sea Bass Board. For background for those of you that were not at the fluke board meeting, the scup recreational regulations are approved in December of each year, so for the scup regulations for this year they were approved last December. In September Connecticut requested an emergency conference call to extend the 2011 scup recreational season based on projections that neither the recreational harvest limit nor the commercial quota would be reached in 2011.

The commission leadership deemed the request was not an emergency and therefore no call was held. Later in September the states of Connecticut, Rhode Island, and New York extended their 2011 scup recreational seasons beyond the approved dates. The PRT was asked to review these actions. I'm going to skip over some of these slides.

The closure dates for the three states in the private mode was to be on September 27th and the for-hire mode was to be on October 12th. The new measures for all three states extended the season to December 31st. I'm just going to skip through to the conclusions that the PRT found. The PRT found that the total TAL for scup would likely not be exceeded in 2011.

There would likely be an underage in the recreational harvest limit of approximately 2.5 million pounds, and the commercial quota underage would likely be at least a minimum of 1.6 million pounds. The scup stock is currently rebuilt; and if the total allowable landings is not exceeded, then the stock status would not be appreciably changed from those previously projected relative to the current biological reference points. The PRT found that the three states' regulations are not consistent with those approved by the board so therefore are not consistent with the FMP. That's all I have. If anyone has questions, I can give more details.

CHAIRMAN DIODATI: Questions for Toni? Okay, what about the motion that was made at the management board; do we have that? Yes, I think it would be appropriate; do you want to read it?

MR. BEAL: I'll go ahead and read it. This motion was passed by the Summer Flounder, Scup and Black Sea Bass Management Board on Tuesday of this week. The motion is to move that the ISFMP Policy Board determine the appropriate response to actions taken by Rhode Island, Connecticut and New York for their scup recreational fisheries.

This recommendation is based on the plan review team's findings that Rhode Island, Connecticut and New York have implemented regulations that are not consistent with the FMP. The plan review team has also stated that regulations are not likely to result in the recreational harvest limit or the overall scup total allowable landings to be exceeded.

There are no provisions in the FMP or Charter authorizing states or a group of states to unilaterally liberalize their regulations or transfer quota between commercial and recreational sectors. This action

taken by these three states has implications that extend beyond scup management and should be addressed by the policy board.

CHAIRMAN DIODATI: Okay, we actually had a pretty lengthy discussion at the executive committee meeting early this morning, but now here we are at the full policy board and there is an issue before the board. Interestingly enough, it's not a non-compliance issue. The policy board did not find the three states to be out of compliance although they weren't following the terms and conditions of the FMP.

In my view it seems that our process has a hole or a gray area in it in terms of addressing this sort of situation. I would like to first give any of the three states an opportunity to address it. Although a couple of them spoke at length about it this morning, I'll give you an opportunity to do that again. Then I'll try to summarize some of the thoughts I had after this morning's discussion. I'll also go to Robert or Vince at some point if they want to address any issues that I leave hanging out there. Dave, did you want to go first?

MR. SIMPSON: Mr. Chair, I just want to be clear for the record that the action that we ultimately did take would have been permitted under the commission's emergency rulemaking authority. I requested twice that a conference call be scheduled so that I could speak to the management board and put the proposal I had put together before the board.

Under our rules the management board is the only group that can authorize emergency action or deny it. I thought I had developed sufficient justification to make a case, but, of course, that would have been up to the management board to agree or disagree with me. Taking emergency action requires a two-thirds majority, so I certainly knew that I had an uphill battle in convincing my partners that this was an appropriate action to take.

I want to be clear that emergency actions – any action can be taken by the board. It doesn't have to be consistent with the current FMP. It doesn't have to concern itself with current allocation ratios. Anything could be done under an emergency action provided it meets certain criteria, but it does have to be approved by two-thirds of the management board membership. That is whether or not they're present on the call, I still need eight out of twelve for approval.

When I was denied the second time, in a point-by-point letter I ended by saying that I urge the commission leadership to consult with our very important partners at NOAA Fisheries because they are the science experts and they are the cops on the beat, so to speak, and they would be the ones who would have to take action if there were non-compliance.

I did point out that I thought there were much bigger implications than scup management here, and clearly there are. They go way beyond the particular issue of extending the scup season for a couple of weeks because by now scup have left our waters and it really is no longer an issue. That's the fuller context.

Certainly, I would not have been inclined to pursue suspension of the closed season, and I can be pretty sure that I can say that our government would not have pursued it if we had been told by the management board we hear your concern, we don't agree, you'll have to wait until next year. I think it would have ended at that. Thank you.

CHAIRMAN DIODATI: Any questions of Dave? Seeing none, Jim, did you want to say anything?

MR. JAMES GILMORE: Mr. Chairman, I'll just add a couple of things. When we first started down this path, I think in terms of Toni's presentation, I think the first request did come from just one state and that was Connecticut, but then the other three states involved was this made the request, so we had multiple states that were on the same sheet of music in terms of what was going on with this.

I think the decision made by the leadership under the current rules – and we talked about it this morning – were correct. Based upon what we have in our rules, regulations and the Compact, it was the correct decision, but that put us in a bit of a dilemma because we suddenly had an issue of a significant resource available in an economically poor time that we couldn't make available to our fishermen., so that maybe got into the spirit of what the commission is about.

And then on a local front, from my perspective, there were also problems between the Compact, the regulations and our local state law. There are requirements in my state that if this situation occurs is that when we have a healthy fishery we have to make that available to both our recreational and industry concerns.

I got a great deal of input from the party and charterboat industry, so that was another factor that weighted into the decision. The other part of the dilemma, too, was we looked at – and we didn't take this lightly, I think. The four states got together and had a lot of discussions both on the phone and by e-mail, and it looked at what would happen in terms of the overall impact.

Again, based upon the significant underharvest in the resource, we didn't think we'd come anywhere close to having any issue in terms of exceeding a quota. And then you looked at, well, if you played this out and you get into ACFCMA, there wasn't anything there in terms of shutting a fishery down because ACFCMA has language that talks about a two-point standard.

First off, did you violate the plan and, secondly, were you out of compliance with the plan; and, secondly is there harm to the fishery, and so in that respect that standard wouldn't even be met. We seemed to have had, as Paul said, this gray area, these holes in this thing where we really needed to or wanted to do something that we thought was the right thing to do in terms of our current status of fishery, the current economic climate, and so we proceeded with the action we took. Again, we knew a dilemma would be created in terms of the commission because of the rules that we have, so I think we need to talk about that more. Thank you.

CHAIRMAN DIODATI: I don't mean to put any of you three states on any pressure here, but I just feel it's important to give you all an opportunity to address it, so, Bob, if you want to.

MR. ROBERT BALLOU: Mr. Chairman, I do appreciate the opportunity and I certainly want to, first of all, echo just about everything that has been said just now by Dave and Jim. But just to add to it, this was an incredibly difficult issue for us, and I don't want anyone here in this room to think that this issue was taken lightly.

There is, I know certainly know on our part and I think I speak for the others, tremendous respect for the process. We were faced with a real dilemma. We were faced with a situation where we had clear evidence of a surplus resource that was going to be left unharvested, and this happened to be a resource that was of particular importance to what I would call an underrepresented portion of the population, and I'll call it the guy on the rocks, fishing for some food for his family.

There did not appear to be any rational basis whatsoever to close the recreational scup fishery as has been previously specified on the date given that there was an ample supply of public resource remaining available to be harvested by the public. We were affording the public access to their resource in a way that would have absolutely no impact on the resource, that would clearly, as Toni's presentation indicated – and I'm glad it was confirmed – still have us fall well below the target.

It just seemed to say to that guy on the rock, no, we cannot extend the season and the reason is because we said so, because the bureaucracy of our process is such that we cannot be nimble, we do not have an adaptive management ability here was a very difficult one. And then, of course, you can imagine the additional challenge of two other states with neighboring state waters moving forward and the position that would have put us in had we not gone forward in concurrence.

So, it was a very difficult exercise but I think the outcome speaks loudly to the fact that it was the right thing to do. We wished we had reached that outcome via a process that fits with the ASMFC guidelines. We sought that and were unfortunately – but for reasons that I do understand – not afforded the meeting; and that is to say it was not an emergency, and I really think that's an important point.

It was not an emergency, but it was an urgency. It was an urgent issue to the extent that we represent the stewards of the resource and that we have an obligation to not only protect the resource but make it available to the public when it is available. So, I recognize how difficult this is for all us here to work through, but I would hope that in this new age of managing for success that we can find a way to look at this issue as a learning experience and something that we can hopefully work through so that in the future we are not faced with such a difficult dilemma as we were. Thank you.

CHAIRMAN DIODATI: Okay, does anyone else want to weigh in, ask questions, have a comment before I try to frame up my thoughts from this morning? Tom.

MR. THOMAS FOTE: I forget, it was last night because everything gets – after such a long week, it gets tied into each other, but we were talking about the old striped bass board when I first came to this commission. The old striped bass board consisted of five members because Mr. Jones at that time, who was chairman of the commission, decided that only

five members were necessary, so it was five states that would be represented.

It didn't give the other states an opportunity to talk because you weren't even allowed to bring questions from the audience. When I came on the commission, I basically said this is not the process that I think it should be. It should be an open and transparent process. As the years progressed and we went to the Atlantic Coast Conservation Act, there were some us that demanded that certain things happen, that it becomes all commissioners and not just the state directors, that all commissioners become part of the process and that we work transparently, that we put advisors.

We have accomplished that over the years. One of the things we also decided is that we will work together. It's a compact of states and we need to basically communicate with each other. When I first read the e-mail, I was a little furious because I didn't know the background behind it. After I had been thinking about this for a long period of time – because, you know, I wouldn't put 20 years or 21 years into the commission on and off if I didn't believe in the process and what we do.

I mean, I've learned not to get as personal as I was years ago and I basically understand my losses and my gains and sometimes you win and sometimes you lose, but it's all a good process because we talk things out, and it's a democratic process. I've noticed a change in guidelines. Yes, we have become very rules-oriented because we want to make sure we don't have loopholes, but sometimes the rules get carried away and put up a wall on how we operate, and it doesn't make that collegial atmosphere that we need to be, because this is 15 states working together. This is 45 commissioners working together.

If I receive a petition from any state to ask me should I do something, I should give that serious credence. And is it an emergency action; well, I would say for those party and charterboats that are barely holding on or the tackle stores that counted on that extra money, that's an emergency action as far as their pocketbooks are concerned.

It might not be an emergency action as we qualify it under the Atlantic States Marine Fisheries Commission, but when they can go – what is the difference between them going bust or not, it is an emergency action on them, and we're supposed to, under the Compact, take those economic considerations into effect.

We need to come up with a process whereas that states that feel that they really need to do something like this, it is an opportunity for the board to meet and discuss it. If the number of boards – and it could be New Jersey was maybe part of that delegation. Luckily, because the four northern states have been very kind to New Jersey over the scup thing, they let us go for a full season while they cut their season short.

I understand that, but we could have been part of that and would have come to you. And if New Jersey would have come and you said no at a full board meeting, I would have been unhappy, but I would have accepted it because it was a democratic process to go through. I don't think we need to put really steps in front of – we've done that with changing the guidelines and truthfully I am not overly engaged when we change all the rules and regulations.

I should be because I found out I've gotten burned, especially on – I won't go back to weakfish, but I think about it because I didn't specify everything in the weakfish amendment that I put in and I've learned my lesson. You've got to be specific. We need to address the states to keep them happy because the only way this commission is going to work if we all feel that we're a part of the system and do it.

If I was those three states, I might have been tempted to do the same thing because I felt that I was abused and I didn't get my fair day in court and I didn't go through the democratic process. But we shouldn't have to do that; there should be some steps and guidelines where those three states could have – or four states could have come to us and the board should have been – the executive director and the chairman has the right to look at it, but then if I was chairman – and I know I'll never be – but if I was chairman I would have said I really need to poll the rest of the board and see if they would have done that. I think we need to set up a guideline like that so this does not happen again, because we have a proper democratic process in place and everybody will respect that.

CHAIRMAN DIODATI: Thank you, Tom. I'm going to go to Mr. Adler and then Robert.

MR. ADLER: Mr. Chairman, I took a word from what Bob had said, "not emergency but urgent", and I think that some entity here at the commission ought to look into whether it is a charter change or what; and if it doesn't fall under your emergency action definition, then maybe we could – the commission

could also have an urgent action thing, which would have allowed such a meeting as what those three states had requested and still fall in under the thing.

So, I think that there has got to be some place there – maybe it’s called the “urgent action” as opposed to the “emergency action” rule that would have allowed this type of thing. You know, we think of emergency as, oh, we have to emergency cut something. Well, how about an emergency that does something that doesn’t cut something? Maybe it’s urgent instead of emergency, but I think that some group of this commission ought to draw up something that probably ought to go to the executive committee and the policy board for a possible addition to our Compact.

CHAIRMAN DIODATI: As long as it’s not insurgency. Robert.

MR. ROBERT H. BOYLES, JR.: Mr. Chairman, with apologies to my colleagues on the executive committee, many of you heard this this morning, but I think it’s important for the rest of the commission to first and foremost let me stake claim to the decision to not authorize the meeting.

I was elected to serve as your chair. The rules and regulations state that the chair is responsible for approving these requests, and so I own this and let me put my name on it, let me be clear about that. Secondly, I want to go back to something that my colleague from New Jersey said. I would like to point out a couple of things, Tom, that you said, “all working together”, “transparency”, “accountability”, “cooperation”, “inclusiveness”, all things, Tom, I think that are elements at least specifically if not words specifically found in our strategic plan.

I think its things that we all adhere to. When I was presented with the request, you’re confronted with the difficult circumstances that our colleagues in Connecticut and Rhode Island and New York were facing. The Scup Board had met six weeks earlier as part of the August meeting week. What you’re left with is the relief that the Scup Board was seeking was the authority to have a meeting so that they could take an action, and that action would have resulted in what I consider to be a change of policy.

That change of policy is that the commission would have for the first time acted for an emergency and the emergency was defined as the fish have been left in the water. Staff had informed me that since 2001 there had been four uses of emergency action, twice

with northern shrimp, once with American lobster, and once with black sea bass.

Had this action been authorized by the Scup Board – because I think as Dave points out there was a two-thirds vote required to take this action – action by that Scup Board would have resulted in a new policy for the commission, and that new policy would be when there is fish left in the water we can go down the road and call this an emergency.

The critical thing I believe that I think we all need to keep in mind is that policy would have been set by the Scup Board. Our colleagues from Florida, Georgia, and North Carolina – excuse me, South Carolina, New Hampshire and Maine would not have been able to participate in that discussion. That policy would have led us into a realm of precedence, and I think that’s something that the full commission needs to be engaged in; not one state, not three states, not a board, but the commission.

I think it’s important that we go back, Tom, to the things that you pointed out. We all work together for transparency, accountability, cooperation and inclusiveness, so I think it’s important for the policy board to understand why I as your chairman respectfully and with difficulty denied the request to me. Thanks.

CHAIRMAN DIODATI: Thank you, Robert, and I’ll go to Dave again.

MR. SIMPSON: I had intended to make this comment after Bob’s comments and certainly I feel it’s even more important after what Robert said. I appreciate the difficult situation that I put you in to make a call, but in fact when the ISFMP Charter was written and emergency regulation- making language was drafted it seems that it was drafted with great care and it’s very specific that an emergency action can be taken by a management board or section that would either authorize or require an emergency action that is not covered by the FMP, so it’s crystal clear in our Charter, which is what we all agree to, that any board may, at their discretion, two-thirds majority, authorize, allow or require, restrict – that’s our policy.

I do know that – as I said at the Scup Board, it has almost become comical in government trying to adapt to the very fast-paced change of fisheries management. The Connecticut state law was changed to define an emergency from, as most of yours say, imminent threat to life or property, which the governor used during our recent nor’easter

snowstorm that left homes without power for two weeks and roads demolished and so forth, but it has been modified since ACFCMA to say “or whenever a fishery management plan requires it or allows it”.

So in this context of emergency, it is one thing when a governor declares an emergency, it’s very something very different when a president declares we have a state of emergency. When a fisheries management group declares an emergency, I would say that’s a small e and not a large E.

I think you see we very often look to our larger partner at NOAA Fisheries for guidance and example, and I see there more and more the use of emergency authority to authorize as much as they do to restrict, because one of the justifications for emergency action is to address objectives of fishery management plans, and chief among those objectives in the Scup Management Plan is to achieve optimum yield.

I’m using a modern term than when the plan was written, so it’s clearly well within the bounds of an emergency action. It’s the responsibility of the board and I will submit it is the policy of this commission as drafted in the Charter to allow emergency action either to authorize or restrict. Thank you.

CHAIRMAN DIODATI: Thank you, Dave. Mr. Vice-Chair.

DR. LOUIS DANIEL: Well, this is a tough issue and what is done is done. I think Robert makes an extraordinarily compelling case, and he made a decision on a policy issue for this commission, and I support him in that decision. I don’t know how I would have made the decision.

I would have had think long and hard about it like he did; but certainly the justification, Robert shouldn’t beat himself up. We’re going to all have to make big decisions in time, so, Robert, I think you did a fine job of making your decision and I think you can lay it out very well. We keep talking about there was no harm, there was no foul here, we didn’t catch the fish or we weren’t going to catch the fish.

I think Bob this morning made a great – we had a great discussion this morning on the issue. I’m sympathetic with the issues that they bring up, but, again, we’re going to go home now and people are going to say, “Well, can’t we extend our season? It’s not going to hurt the stock; we’re not going to be overfishing.”

North Carolina has left 800,000 pounds of striped bass on the table in the last five years. It’s not going to hurt the stock if I let them catch a few more fish. Now, we’ve expressly said no rollover just like we expressly said there is a specific date that we’re going to close the scup fishery. It makes me nervous and I think we need to move forward and figure out a way to address these issues when they come up and make it clear that you can’t just go out of compliance with a plan because you want to and because it was not a foul.

I don’t think that’s ever been intent. I understand the economic consequences of this. There are always economic consequences, but it’s a policy issue, number one, and I support Robert for his decision, but, number two, it’s a precedent that is alarming to me of what the impacts could be in the future.

CHAIRMAN DIODATI: Jaime Geiger.

DR. JAIME GEIGER: Mr. Chairman, I certainly agree, it’s not only a policy issue but it also is a process issue. Mr. Chairman, it sounds like this morning you and members of the executive committee had a very good and robust discussion; that this sounds like it was vetted out very carefully and very completely. Of course, many of us were not privy to that.

I certainly would appreciate your thoughts. As you indicated, you had some observations. As sort of an ombudsman precipitating and presiding over this, I would be very interested in your thoughts and your suggestions and your observations as part of that process. Thank you, Mr. Chairman.

CHAIRMAN DIODATI: And I’ll provide those, Jaime, and thanks for asking. I just want to make sure that all members of the policy board have an opportunity to express whatever it is on their mind on this important issue. Doug.

MR. DOUGLAS GROUT: Well, mine might just be a lead into that. I was going to suggest it seems like there are two issues that need to be addressed here or would be good to be addressed. One is to have an examination of our policies on calling emergency meetings and emergency actions. Let’s take a close at it to see if there is – given that as this particular circumstance came up, if it’s something that we need to look at and address and accommodate or maybe not; maybe we don’t.

The other thing is to the Scup Board is a suggestion to look at it from the perspective of how can you

change your management plan so that you can adapt to these kinds of situations where you may not – after setting certain specifications may not be coming even close to hitting optimum yield, and you clearly would be well within your ACL to make adjustments.

We have a couple of species, herring and shrimp, where we get together quite often, much more than I like, to try and adapt to that, either cutting back when we need to or relaxing our regulations when it's appropriate so that they can fully utilize the total allowable catch. I think there are two mechanisms right here.

Paul may have some ideas on number one and certainly the Scup Board could discuss it or we would be glad to offer our help up here in the northeast and giving you some idea on how you might be able to fully optimize your ACLs now.

MR. JOHN DUREN: I've never been a part of this management board or involved with scup management at all, so I'm sitting here with my mind totally unencumbered with any history or background. It would seem to me that we should look at the fishery management plan for scup, and I think it doesn't deal with underages or overages, but many of our plans do deal with underage and overage.

Many of plans do, as Doug was talking about, do have adaptive management provisions written into them. If this one didn't, as someone who has never been involved it before, but just looking at what is in the plan, I would say, well, they probably didn't overlook that stuff, they probably deliberately didn't put it in, and so I think an underage ought to be allowed under the plan, and the fact there was one wouldn't have been an emergency in my point of view.

MR. ADAM NOWALSKY: Mr. Chairman, I appreciate the opportunity to provide some brief comments on the issue. We heard that the policy under an emergency action has been that leaving fish in the water does not constitute an emergency. Mr. Gilmore made some comments earlier today whereby he looked at this issue as leaving the fishermen out of the water, and I think that's a fair question that we have to ask ourselves is whether or not that constitutes an emergency given the political, economic climate that we have with regards to jobs, revenue that fishing generates and all the other benefits from it.

I think that we've got to look forward in fisheries management. We heard a presentation a little while ago from efforts that the Mid-Atlantic is undertaking to reengage people, and I think that is one of the things that we have to focus on here is finding ways to keep people in the fishery, keep them at the table and keep them involved.

While from a process perspective I may not agree with what took place from it being perhaps the right thing to do given the current time, I find myself supportive of the action that these states took in this issue. With regards to it being a scup-only issue, I would argue that this really applies to a lot more than just scup, and really this is something that was particular to the recreational sector.

This wasn't a commercial action whereby most of our plans do have flexibility to increase trip limits or provide other actions. The real failing that we have here is any flexibility in recreational management. Recreational fishing is held their feet to the fire by MRFSS at some point in time to be taken over by MRIP where we don't know what the results of the estimates are going to be, and then we treat them as whole numbers.

These whole numbers have been used every year in the past to cause us to change our recreational measures every year, and in almost every case they result in a significant reduction; in the case of black sea bass, closures of the fishery. I think that as we look forward, which is what we have to do. Certainly that failure to learn from history are doomed to repeat it, but I think we have to look forward and moving forward how are we as a commission going to manage our recreational fisheries, give the flexibility to ourselves as managers so that we can keep people fishing, to realize optimum yield of these fisheries and provide the greatest amount of economic good that we can do.

I heard this week that we are all politically accountable in one way or the other, and that is to our constituents, and this was something that certainly benefited the constituents, and we need to find ways to do that. I look forward to hearing and expanding of the ideas that I had heard this morning upon being allowed to sit in on the executive committee meeting. I look forward to seeing those items put to use for the betterment of all.

CHAIRMAN DIODATI: Okay, I think I've given everyone ample opportunity to air their feelings on this topic, so I'm going to try to bring this to a resolution. First I'll talk a little bit about this

morning's meeting, but I want you to know that I have an employee, someone who works for me that is a former commissioner of ASMFC.

In fact, he is a former administrative representative from a New England state. He was a chairman of this group, a Hart Award recipient, and a former chairman of the New England Fisheries Management Council. I rely on this gentleman from time to time. When issues like this come up, I'll ask him has this happened before because he has got that good institutional knowledge.

We had that discussion about this issue and he was very concerned about it and says I should be very concerned about it; it has never happened before. There is no provision as this motion lays out – there is no provision in our policies, our charter, our regulations that accommodates this sort of process and action that has taken place. We do need fix it.

At the meeting this morning I think it was clear from everyone at the executive committee in attendance that they were very supportive of our chairman's decision not to allow the meeting and for many reasons. He articulated some of them this afternoon. That's number one; we're very supportive of that.

At the same time I think there are many of us – certainly the Commonwealth of Massachusetts has gone out of compliance in the past and others in the room representing your various states have done that and perhaps some of you will in the future. I can guarantee you every time that you take that step against the tide, you are going to feel that you were absolutely justified in doing it because it's a big step.

In this case the step taken has no consequence because the conservation risk that we use to judge the sanction for going out of compliance in a sense doesn't exist. Given that, we can't afford to have the water so crowded with people in the future that we won't be able to navigate anymore. In trying to resolve this, there are three areas.

Certainly, I know that these three states – because I spoke to them before they took the action and I told them that I was sympathetic, I understand that there is a surplus of fish, I understood the information. I understood that their fisheries would benefit by it, but I recognized that we didn't have a process to accommodate it, but I was sympathetic. I think we need to address that; how do we make sure that members of various boards are getting what they consider at least a fair hearing to air the proposals that they have.

Now, we can argue that we do that every time we take a public information document out to public hearings and when we come back into rooms like this in species boards, we have good lengthy discussions and we make tough decisions. We take those decisions to a policy board to ratify them. Is this a second or third bite at the apple?

It may be, but if that needs to be part of our process, then maybe that will happen. There are rules and regulations in our handbook. There are definitions that we have been talking about, whether it's an emergency action or not, and there is a potential for sanctions different than what we typically deal with non-compliance when a conservation measure has seriously been violated.

But there might be potential need for sanctions to raise the bar so that when the state feels that they're certainly in the right, that there is a certain bar that they're going to have to think about before we go forward. I think we're not prepared today to decide how to address the rules, the definitions or potential sanctions, but I think a subcommittee is in order, and I'll ask for volunteers to day to that subcommittee.

I would like certainly staff to work with them. Certainly our executive director and I think Bob Beal could provide valuable input. As a terms of reference, I think we're talking about our current rules and regulations for holding meetings. That seems to be something that perhaps it's appropriate.

I think that the subcommittee can look at that and report back to the policy board their thoughts on that, if they want to make recommendations for changing or modifying the rules and regulations in that regard. If you do have an opportunity to propose an emergency action, what does that constitute? Employment benefits are certainly important in today's political climate; no one doubts that.

The conservation rule exists by law for many of us. I know that I have emergency authority at home to work immediately outside of the administrative process, but there is a conservation requirement necessary for that. I think we all understand that. Whether or not we need sanctions, new sanctions that a member of our organization will have to address if they go out of compliance, after following the process, whatever it may be in the future, if they go out of compliance, yet they failed to trigger any conservation risk.

That's how I see this playing out. If I've left anything out there, I don't know if anyone that was in

attendance this morning that wants to add anything to that; I think that's about it. Any volunteers? Dave, I would love that; Adam; Jim; Bill – I think that's a fine group right there. I guess it will be something like a white paper, which we've done in the past, but I hope to see recommendations; either the rules are fine as is and this is why we believe they were; this is how they work; or perhaps the rules could be modified in such a way. Now, Doug point out – go ahead.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: I'm wondering, Mr. Chairman, if you meant Bill Cole?

CHAIRMAN DIODATI: Yes.

EXECUTIVE DIRECTOR O'SHEA: So that would include everybody that is on the – the members you have named are on the Scup Board. There is nobody not on the Scup Board.

CHAIRMAN DIODATI: John, okay. Craig.

REPRESENTATIVE CRAIG A. MINER: Mr. Chairman, for those that may not have an interest in serving on the committee, if there was some process by which they might offer comment or suggestions to those who are, that might kind of fill out some of the places that you'd want people to at least participate even if they don't want to sit on the committee.

CHAIRMAN DIODATI: I'm going to rely on the committee members to reach out to other members of the policy board to get input. Bill Cole.

MR. BILL COLE: Let me ask, if I may, Vince a question. Vince, were you implying that if you're not on the Scup Board you shouldn't participate in this, because I view this as more than a Scup Board issue.

EXECUTIVE DIRECTOR O'SHEA: You just made my point.

CHAIRMAN DIODATI: Yes, we're looking for people other than members of the Scup Board, and now I think we have a few. Let's raise your hands again.

EXECUTIVE DIRECTOR O'SHEA: One of your charges is to look at the regulations and the regulations don't reside within the policy board. The regulations reside in the full commission and apply to all 15 states.

CHAIRMAN DIODATI: That's right, and that is why this is a policy activity. Who are the current members of the subcommittee again: Mr. Cole, Dave

Simpson, Jim Gilmore, Adam and John Duren. Are we satisfied with that makeup or would you like to expand it more? Are you recommending expanding it more? Any other volunteers? Dennis Abbott is not here.

MR. GROUT: I'll volunteer him if you want.

CHAIRMAN DIODATI: You know, Dennis, is actually chair of our Legislative Committee or co-chair of that. That might be an appropriate person to add to the list, and I think Dennis would be very interested in this topic.

MR. GROUT: I'll e-mail him right now.

CHAIRMAN DIODATI: So let's add Dennis Abbott to the list. As far as a timeline, I think the next time we meet is in February, but this is an important issue. If you have something to report in February, that would be terrific, but your feet are not to the fire on providing the final draft in February.

OTHER BUSINESS

That's it for that topic. Anything else on that? Seeing nothing else, does anyone have any other business to come before the policy board? Yes, Tom. MR. FOTE: I'm just reaffirming the dates and location for next year. I also want to say it was really nice. My wife really enjoyed the fact that when she came to Massachusetts in the middle of November, she had warmer weather than when she went to Charleston, South Carolina, last year. It was nice to have 70 degree weather besides all the other enjoyments that we have got here in Massachusetts. I also wanted to know the dates exactly for Philadelphia.

CHAIRMAN DIODATI: The dates for Philadelphia?

EXECUTIVE DIRECTOR O'SHEA: We haven't signed the contract yet, and I think I'd feel more comfortable giving the date once we sign the contract. We're looking at the second or last week in October right now, but we haven't signed a contract yet.

CHAIRMAN DIODATI: There has been concern about Election Day, of course, and we missed that for some, and so that will be something.

EXECUTIVE DIRECTOR: And quite frankly the delay is there was discussion about Managing our Nation's Fisheries III being scheduled in the second

to the second to last week in October that potentially would have conflicted with the commission meeting. That meeting date was not either set or moved out of October 2012 until I think Tuesday or Wednesday of this week. That's why we haven't signed a contract on the hotel. Thank you.

CHAIRMAN DIODATI: Okay, in closing I just want to thank you all for the kind words that I've received. You all had a pretty good time this week, I guess, and I'm glad that you did. We really enjoyed ourselves in preparing the meeting this year. I want to thank Laura and the ASMFC family for all the work. It's easy, really; they really provide a lot of help.

ADJOURNMENT

So with that, if there is a motion to adjourn, this will be the end of the 70th annual meeting of ASMFC. Okay, so moved, thank you.

(Whereupon, the meeting was adjourned at 4:25 o'clock p.m., November 10, 2011.)