

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

**March 10, 2004**

**Radisson Hotel**  
**Alexandria, Virginia**

## ATTENDANCE

### Board Members

Lew Flagg Proxy for 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  
Lance Stewart, Connecticut Gov. Apte.  
Fred Frillici, Proxy for George Gunther, CT  
Gordon Colvin, New York DEC  
Pat Augustine, New York Gov. Apte.  
Brian Culhane, proxy for Sen. Johnson (NY)

Bruce Freeman, New Jersey DFG&W  
Tom Fote, New Jersey Gov. Apte.  
Ed Goldman, Proxy for Robert Smith, NJ  
Dick Snyder, Proxy for Dennis Guise, PA  
Roy Miller, Delaware DFW  
Pete Jensen, Maryland DNR  
Bill Goldsborough, Maryland Gov. Apte.  
Russell Dize, Proxy for Richard Colburn, MD  
A.C. Carpenter, PRFC  
Jack Travelstead, Virginia MRC  
Catherine Davenport, Virginia Gov. Apte.  
Kelly Place, proxy for Sen. Chichester, (VA)  
Preston Pate,, North Carolina, DMF  
Damon Tatem, North Carolina Gov. Apte.  
David Cupka, South Carolina Gov. Apte.  
Robert Boyles, South Carolina Leg. Comm.  
Spud Woodward, Proxy for Susan Shipman, GA  
John Duren, Proxy for Ralph Balkcom, GA  
Gil McRae, Florida MRI  
Anne Lange, NMFS  
Bill Cole, USFWS

### ASMFC Staff

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

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

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## Summary of Motions

March 10, 2004

**Move to accept minutes from December 18, 2003.**

*Motion made by Mr. Augustine; Second by Mr. P. White. Motion Carries*

**On behalf of the American Eel Management Board, I move that the ISFMP Policy Board endorse the American Eel Management Board's motion to express to FWS and NMFS to undertake an evaluation of the appropriateness of DPS listing for at least the Lake Ontario/St. Lawrence, Lake Champlain and Richelieu River.**

*Motion by Mr. Travelstead. Motion carries without objection.*

The ISFMP Policy Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Suite of the Radisson Hotel, Alexandria, Virginia, on Wednesday, March 10, 2004, and was called to order at 11:14 o'clock, a.m., by Chairman John I. Nelson.

**-- Welcome; Introductions --**

CHAIRMAN JOHN I. NELSON: Okay, will everybody take their seats, please. We're going to start the Policy Board meeting. Let me welcome everybody to the Policy Board meeting.

I have another item that I wanted to take care of at this time, and could you come up here and help me, Tina, please. I think I need Vince also. Since the mike is down here, I'm going to sit here while I read this ten-year recognition for Tina. Is it a surprise?

MS. TINA L. BERGER: Yes.

CHAIRMAN NELSON: She's a little pink and, therefore, she is surprised, so nice going to the staff:

The Atlantic States Marine Fisheries Commission gratefully presents to Tina L. Berger this certificate of appreciation in recognition of ten years of dedicated service to the commission as public affairs and research specialist.

As the commission's first public affairs and research specialist, Tina has tirelessly promoted the commission's message. Her creativity and commitment have resulted in an expanded fisheries focus, a responsive press release process and an attractive and informative ASMFC Web page.

Tina has also assisted ACCSP reach out to the stakeholders during its initial stages, as it ensured protected species concerns are incorporated into the fisheries management actions.

Through her hard work and dedication, Tina has truly helped advance the commission's vision of

healthy, self-sustaining populations of Atlantic Coast fish species by the year 2015. Thank you and congratulations, Tina. (Standing Ovation)

**-- Approval of the Agenda --**

Next we have the approval of the agenda. I do have some modifications under other business. We have a number of items that have been handed out, one of which will be a request for some additional funding.

We'll get to that under other business. We have a SAW/SARC proposal revise process. We will do that under other business. Gerry Carvalho has submitted a letter to the commission, and I will address that under other business. Is there anything else? Jack.

MR. JACK TRAVELSTEAD: Mr. Chairman, there was a motion made at the American Eel Board that had to do with the board requesting the Service look into a listing of the American eel in the Northeast Region under the Endangered Species Act.

I would like to get the endorsement of the Policy Board for that motion, so that the letter requesting comes from the full commission rather than just the management board, if we could add that under new business.

CHAIRMAN NELSON: Okay, I'll add that under the other business also. Any other adjustments to the agenda? All right, seeing none, as modified we'll proceed.

**-- Approval of the Proceedings --**

The next item is the approval of proceedings from the December 18, 2003, board meeting. Pat, so moved, I take it?

MR. PATRICK AUGUSTINE: So moved, Mr. Chairman.

MR. PATTEN D. WHITE: Second.

CHAIRMAN NELSON: Thank you very much, Pat. Any objections? Seeing no objections, they are approved.

**-- Public Comment --**

At this time, we will take public comment on items that are not on the agenda, keeping in mind that we will also take public comment on items on the agenda as they come up. Is there anyone that would like to speak at this time? Okay, seeing none, we'll move right along.

The first item that staff is going to go over with us is the review of the developing white paper on consistency. Bob is going to give us an update on how they've been doing as far as that goes.

**-- Review of Consistency White Paper --**

MR. ROBERT E. BEAL: Thank you, Mr. Chairman. As John mentioned, this still is a work-in-progress document. It was handed out at the beginning of this meeting so, obviously, you guys haven't had much time to look at it. It's just a front and a half of the back of a page as it stands right now.

There is a working group put together by the Policy Board that consists of Paul Diodati, Gil Pope and Eric Smith. I have had some interaction with those folks, and they have supplied some comments to me, and I have incorporated those into the document as it stands right now.

The idea I think at this meeting is to review some of the ideas that the working group is considering, further discussions and fleshing out of potential areas where there may be concerns that ASMFC process is not consistent.

The idea or the discussion for this board meeting is to -- if there are additional areas that you would like to see the working group explore or if some of these areas you don't feel are necessary for further consideration, we can take them off the list at this meeting.

Chairman Nelson has made it clear that he wants to have this document finished when his term is finished at the annual meeting. We have another nine months or so to work on this; however, it is going to -- some of the issues in here are pretty

large issues, and to fully flesh out ways to address potential inconsistencies may take a little while.

With that, I'll just run quickly through the document, and if there are any questions or comments, we can handle those at the end. The first issue that's included in the document is the conduct of board chairs.

This has been brought up in the context of meeting facilitation versus promotion of state interests. As we all saw earlier, Mr. Freeman stepped down as chair in order to be able to promote his state interests, which is fine and consistent with the process.

There are just some concerns that board chairs have, in the past, kind of straddled the meeting facilitation and promoting their state perspective on an issue, straddled that line.

The document does note that there is some upcoming training this afternoon and tomorrow morning that may help address this issue, and we may to revisit this issue after those workshops have been held and Policy Board members have had time to formulate an opinion on the status of this issue.

The second issue is a presentation and a review of technical information. This issue has been brought up based on the fact that some folks on different species management boards have brought forward technical information or information that can be either looked at technically or as a policy decision.

The working group has brought up the concern that the process for bringing this information forward and reviewing it may not be handled consistently all the time within the commission process.

The guidance document does exist for the functioning of the technical groups, technical committees, stock assessment committees, and the like, and their reporting back to the management board is very clearly spelled out.

However, there is some gray area when a management board member brings forward

scientific information or additional data that has not been reviewed by a technical committee and asks that the board use that in their deliberations and considerations on an issue.

The third issue that has been brought up is standards for a peer review. As you all are aware, there are different external peer reviews that ASMFC assessments can go through. There is a SAW/SARC, which we'll discuss later. There is the commission external peer review. There is the new SEDAR process in the Southeast.

Concern was brought up that these groups don't necessarily handle all stock assessment peer reviews consistently, either within their own process or as you compare different peer review venues.

In other words, a stock assessment may pass a commission external peer review, but if that same assessment went to the SAW/SARC, depending on the makeup of that panel, that the peer review may not withstand the review of the SAW/SARC panel that week.

There are also some concerns that within the same peer review process data, the requirements and standards that the data has been held to has been inconsistent within different specie assessments. The recommendation here is potentially develop goals that can kind of level the playing field for accepting or rejecting assessments.

The third issue is conservation equivalency. The concern has been raised that the management boards and different species management plans handle conservation equivalency somewhat differently.

This issue is currently being addressed by a management and science working group. The intent is to have the document ready for management and science committee review and Policy Board review in May, so I think this one is probably -- I think there is a plan in place to address that issue.

The final issue is the link between the

assessment quality and the management program. Some of the management programs that the commission has in place right now, a concern has been raised that the management program is inconsistent with the quality and data availability that comes out of the stock assessment.

In other words, the example that has been brought up is some of our quota-managed species, the assessment is not sufficient to establish annual quotas for these species, and there is concern that there is a disconnect between the availability of the stock assessment and the accuracy of the information coming out of the assessment and the needs of the management program that has been established by ASMFC.

So, like I said, those are the five issues that have been brought up to date. If there are additional ones, we could put them on our list, or if any of these folks feel it can be taken off, we can definitely strike some of these, if that's the will of the board.

CHAIRMAN NELSON: Thank you, Bob. Also, I'd like to thank the committee, the working group, Paul and Gil and Eric for helping getting this going. Are there any questions or any comments at this particular time?

**-- Review of Appeal Process White Paper --**

Okay, seeing none, again, we would like you to take a look at these initial thoughts, provide any feedback that you can to Bob. He will discuss it with the working group, and we will bring back another iteration at the May meeting. I appreciate people giving some thought to this.

It is probably going to make things go a lot easier for us in the future for a lot of different items. All right, I think the next item is the appeals process white paper and Bob, again, will go through that. Thank you.

MR. BEAL: Okay, thank you, Mr. Chairman. Again, this document was handed out at the beginning of the meeting, so you haven't had a

lot of time to step through it. I have a PowerPoint presentation put together, so I'll go through the proposals that are included in this document.

If you will recall at the December meeting of the Policy Board, the decision was made to retain the Policy Board as the group that will hear appeals from the states; so based on that decision we went back, updated the document, and put together a formal set of proposals for consideration by the Policy Board today.

The current ISFMP Charter has very limited guidance as far as how the appeals process should work. It essentially says that any state that is aggrieved by a management board decision has the ability to appeal to the Policy Board.

The intent is not to change that language, the intent is to put together clarifications on how exactly the process works. Once a state has submitted an appeal to the commission, how the Policy Board and subsequent management boards will address the appeal.

One of the issues that has been brought up that's not included in your document -- as I updated it last night, I forgot to include this -- was, as I mentioned earlier the current charter includes the language that any state can appeal to the Policy Board.

So the question is what is the definition of a "state"? When the current charter was written, only the administrative commissioners from the states sat on the management board, so the question is who should be able to bring an appeal forward to the Policy Board? Should it be an individual commissioner? Should it come through the state caucus? How exactly should it work?

The AOC has reviewed this document, and that's something I should have mentioned up front -- these recommendations come out of the AOC. The recommendation proposes that the state caucus determines if an appeal will be made to the Policy Board.

If one individual would like to make an appeal, they need to work with the other commissioners from their state to determine if the majority of the state delegation feels that the issue is worthy of an appeal, and they could forward their request for an appeal to the Policy Board.

The next issue in the document is the appeal criteria. This sets up sort of the guidelines and the sideboards on what issues can or cannot be appealed by a state. Currently, the way the document is written and the recommendation is three different issues could be appealed or three different types of issues could be appealed.

The first is a failure to follow the process. I think that's fairly self-explanatory. The commission has a series of processes set up, and if some step was missed or something was done inconsistent with the commission process, an appeal can be brought forward.

The second issue is incomplete, inaccurate or incorrect application of technical information. Obviously, all the board decisions are based on data presented usually coming through the technical committee. If a state feels that this was done correctly, or the wrong data was used or was analyzed incorrectly, an appeal can be brought forward on that basis.

The third issue is historic landings periods not adequately addressed. A number of our management programs -- most of our management programs have some sort of basis on historic landings or historic period that handles allocation or additional -- it forms the basis for some of the decisions that are included in the fishery management plan. That's the third criteria that would support an appeal coming forward from a state and being heard by the Policy Board.

The document also includes appeals or types of appeals that would not be considered to meet the guidelines of an appeal and not be heard by the Policy Board. Those are emergency actions, out of compliance -- and emergency actions are on this list due to their limited nature.

In other words, they're only valid for 180 days

unless the board extends it, so that the limited term of an emergency action justifies it being on this list. Out of compliance findings are on this list because there already are additional layers in the ISFMP Charter that allows essentially all non-compliance findings to be appealed.

The management board first has to make a determination of non-compliance; then the Policy Board makes the same determination. Then it goes through the third step where the full commission makes the same determination prior to sending a letter to the Secretaries of Commerce and Interior.

That process already has a number of layers or review built in, and it was listed here as something that cannot be appealed to the Policy Board. The next are changes to the Charter, FMP amendment/addenda approval. Once an FMP, an amendment or an addendum is approved, it is a final document, so to go back and just say we should not have approved that document is not a valid appeal.

If an appeal comes forward that says we would like to request a change to that document, that change would say a state is unhappy with element X within an amendment or an addenda, and they would bring forward an appeal and say we would like not to reconsider the decision to approve that document, but we would like to initiate an addendum or some other management document to afford a change to the approved FMP.

So, once a document is published, the idea is not to go back and change what has been published. It is to set up a process where we can make a new decision on the same issue through a new public process.

The third are monitoring requirements that are included in the fishery management plans. The next issue is the appeal initiation. This is essentially what happens when the commission receives a letter for an appeal. The states must submit appeal justification in writing 45 days prior to a scheduled meeting.

The chair, vice chair and previous chair would

review the appeal request and make a determination whether it does or does not meet the appeal criteria that I just presented. If this does meet the qualifying criteria, the Policy Board would be notified of the receipt of an appeal.

Following the determination that an appeal does meet the guidelines, the chair, vice chair and past chair may elect to establish a fact-finding committee. This group may or may not be included in the process depending on the nature of the appeal.

If there is an additional technical analysis or data compilation or some other activity that must occur, the chair, vice chair and past chair have the ability to put together a group to deal with that issue, and this group would be made up of folks with technical expertise on the issue.

The next issue is the Policy Board meeting. This meeting would be convened at a scheduled ASFMFC meeting week. Depending on the timing and the timing necessary to compile all the documentation needed by the Policy Board, this may or may not be at the Policy Board immediately following the receipt of the appeal from a state.

During this Policy Board meeting, the commission chair would serve as the facilitator for the meeting unless, obviously, the state that the chair represents is also the state that has submitted the appeal, in which case the executive director would serve as the facilitator for the meeting.

The ISFMP director would present the background of essentially how we got to where we are, what events took place to lead the management board to a decision. The presentation by the ISFMP director would not be biased, wouldn't be judgmental on whether the appeal is or is not an appropriate decision. It's just kind of a history of how we got to where we are.

Then at this meeting, the appealing state would have the ability to present their rationale and recommend a desired change that they would

like to see, and then the final action would be the Policy Board decides on the appeal.

The appeal results or what will come out an appeal, following the Policy Board's decision, a summary of the board's findings will be put together; and then if any changes are recommended by the Policy Board, that species board would go back and address this charge at its next meeting.

One of the concerns that is presented in the paper is the considerations to prevent abuse. The appeals process obviously is not intended to modify the current management board process that we have right now.

It's not intended to kind of buy a state some time and allow them to go a different avenue to explore different management options that the board may or may not have considered. One of the ways to deal with this is that the appellant agrees with all the findings or agrees that the findings of the Policy Board will be binding and the changes will be made.

The third thing to prevent states from using the appeals process to delay their implementation is that all states must be in compliance with all the measures included in the species management plan that is being appealed by the state.

One issue that needs to be considered is the appeal chain reaction. This is highlighted in the document. There is not a specific recommendation other than when the Policy Board is considering an appeal, they should also consider what kind of fallout will take place.

In other words, a lot of our management programs have state-by-state quotas and those sorts of issues included in the management program. If one state receives a larger share of the available quota, obviously, that means that a state or another group of states has a smaller share to fish on.

So there is concern that initiating an appeal that's granted to one state may just result in triggering a series of appeals from the remaining states. So that's a consideration for the Policy

Board and for the management board if anything is referred back to them.

The appeals schedule that is presented here is within 15 working days after the receipt of the appeal, a decision will be made by the chair, vice chair and previous chair whether or not the appeal meets the criteria.

In the document, it's written, "if the appeal is valid." That's not to mean that whether or not the appeal should be granted and the change should be made. It's just is it valid and should it move forward with respect to the guidelines and the criteria that I spelled out earlier.

Following that, if the appeal does meet the guidelines and criteria, a Policy Board meeting will be scheduled. The state and the staff will have 15 days to put together the background documents necessary to support the appeal.

The staff will put together the kind of history of how we got to where we are, and the state will need to put together any documents supporting their decision or spelling out why they think a change should be made.

What is not included here is the optional fact-finding committee; and it's noted in the document that if the chair, vice chair and past chair want to put together the fact-finding group, the schedule will have to be adjusted to allow that group enough time to do whatever is asked of them.

Prior to the Policy Board meeting, all the background information will be sent out at least 15 days before the meeting. Following the Policy Board meeting, again, 15 days, we'll put together a summary of findings and it will be distributed to the members of the Policy Board.

So those are the suggestions included in the document right now. I can try to answer any questions. Again, these have been reviewed by the AOC, and this is the course that they're recommending.

CHAIRMAN NELSON: Okay, thank you, Bob. Okay, let me get any clarifications and

questions. I had Gil first.

MR. GIL POPE: Thank you, Mr. Chairman. First of all, appeals criteria and initiation, you have three and then you have ones that cannot be appealed. Is that already written somewhere or is this just for us to review and to approve it as such, or who made these decisions as to how that was going to go?

MR. BEAL: The only decision that has been made so far is that the Policy Board will be the body that hears appeals. All the other information and language included in this document is a proposal for the Policy Board to consider today, so the criteria for and against valid or, yes, valid appeals are draft and are proposed for consideration.

MR. POPE: Follow up on that, if it's okay, Mr. Chairman. On the out-of-compliance findings, this can be appealed but through a separate established process. One of the reasons that I think in the very beginning when they were talking about the white paper was that was one of the main things.

We had a lot of out of compliance going on, and everybody was very concerned about it. We found out that there wasn't really an appeals process that was attached to that. In other words, it went from one board to another board to another board and then so on.

Between each one, there wasn't really very much of a difference as to who was voting. In other words, it went from one board that was essentially like the next board, and the vote was almost the same. So in between the processes, it didn't seem like there was a lot going on, so I would like to see that explored, if at all possible, a little in greater detail, that one particular point. Thank you very much.

CHAIRMAN NELSON: Okay, Gil, you're talking about looking at the out-of-compliance process. That's what you were referring to?

MR. POPE: Yes, having a little bit more of an appeals process in between each one of the segments, so we're having it looked at a little bit

differently by -- rather than having a board of 15 commissioners that vote one way, and then it goes to a board and they're the exact same group of commissioners sitting there at the next board, and they vote exactly the same way.

It really isn't an appeals in between. It's just a process that has already been established. That's what was one of the problems that I thought was to be addressed with this is that there was a little bit more in-house, maybe a smaller appeals group, or that it was going to go through some other series. That was my understanding in the beginning as to why this paper was started in the first place.

CHAIRMAN NELSON: Thank you. Yes, just a clarification, this appeals process really does relate to not an out-of-compliance situation. This relates to a state feeling that there is something that they are aggrieved by and feel they have to have an appeal.

There is an appeal option in our Charter, but it was not necessarily as fleshed out as we felt it should be, and this is the attempt to start fleshing that out so there is a formalized process available for a state to follow, so they know how to follow it, and the rest of the members also know what is expected of them.

It really is a different situation than the out-of-compliance situation, but we'll see if we can take a look at that, also. Vince, did you want to add to the text here before I go with the rest of this? Okay, go ahead.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thank you, Mr. Chairman. This is in response to your call for questions or clarifications. On Page 3 on the time line, and I know why this happened, but it referred to 15 days and then you referred in the verbal brief to 15 working days.

I think it would be helpful if we could just hit those four dates there and say which ones we meant, "working days" or do we mean "working days" for all four. Thank you, Mr. Chairman.

CHAIRMAN NELSON: Yes, as you can imagine, this is a dynamic document, and I just

pointed it out to Bob this morning about what is a working day versus a day. Every day is a working day for him, so he didn't really catch up on that.

But under Number 1, it would be 15 working days. Number 3 would be working days. Number 4 is just days. That means that everyone should just read it as soon as they get it. And then the summary under Number 5 would be working days, also. Now, obviously, that's open to people's evaluation and suggestions. I had Tom next.

MR. THOMAS FOTE: A couple of points. One is on the criteria, 1, 2 and 3, I think we should be looking at -- and one of the things, when you go from a management board to the Policy Board, there are some fresh eyes sometimes that comes into play.

Some of the boards only have six member states or five member states. Some of them have 12. Some of them have all 14. But one of the reasons you appeal here is to get an unbiased opinion from a state that has no vested interest in here.

I think we should be -- one of the criteria we don't have to use because we don't follow National Standards is being fair and equitable. If a state fears that it hasn't been treated fairly and equitable, this is at least -- you might get turned down, but at least it gives you an opportunity to basically come some place to basically talk about it.

Some of the states that are non-biased have an opportunity to look at it and then basically do it. I think that's should be included in part of the appeals process, because, otherwise, the only other place you have to do something like that is to go sue, if you don't feel that you've been treated fairly and equitable.

At least, we can straighten it out in the commission and try and work it through. I think that should be part of the process, and I think it's one of the reasons I supported the appeals process is that.

I also support what Gil says, because I remember the discussion about having how do you appeal non-compliances, and we were going to handle that, because one of the topics of discussion that we went over, Gil, a long time ago and that was how to do that.

The other thing I was looking through here is the 45 days. I understand you'd hike that 45 days, and sometimes the meeting is finished, but it also takes a while, I find, for the state directors to actually meet with the -- especially if they're proxies -- with the director of the state and get the three commissioners together to write a letter.

I understand you want to get it as far in advance as possible, but I think 45 days might be -- I'm just thinking about we're meeting next May 27<sup>th</sup> so if we were going to write a letter, the letter would have to go in sometime in the middle of April.

Maybe 30 days is more realistic, just because of the process of going on with state agencies being directed in so many places or being that Mid-Atlantic Council and New England Council, it's just hard to get people together to do that.

I wouldn't want to -- or at least allow some flexibility to make a decision on there. But the 45 just seems to be -- because it also depends on when we schedule meetings, too. Those are the comments I'm looking at.

CHAIRMAN NELSON: Okay, thank you, Tom. Paul.

MR. PAUL DIODATI: Thank you, Mr. Chairman. I think staff and everyone who worked on this did a good job, and I'll provide written comments at a later date. I just wanted to make some comments and questions right now.

Under the criteria that do not apply for appeal, it says "approval of FMP, amendment, addenda." I just want to know what the intent there is, given that at the previous board meeting we adopted management measures that would go into an addendum, and then we adopted the

addendum.

If that addendum was to be appealed, does that mean that you can't appeal those management measures that are included there because you do it all in one meeting very often?

MR. BEAL: I think the commission gets -- let's go back. The Horseshoe Crab Board approved a series of changes through an addendum. In order to be consistent with commission process, you'd need to initiate another addendum and make some changes if you wanted to alter some of the state quotas, for example, on horseshoe crabs.

So the idea is a state, just process-wise, it's very cumbersome if the commission has a published document that says the states are going to do x, y and z, and that's called Addendum III.

If the Policy Board or a management board comes back and appeals that decision and wants to make changes to Addendum III, and now Addendum III, the New Jersey quota for horseshoe crabs, for example, is no longer 150,000, it's 130,000. So we've got two Addendum III documents bouncing around out there that say different things.

The idea is that we wouldn't go back and change Addendum III, we'd initiate Addendum IV and alter a quota, or whatever it is. So the idea is we're not altering an existing document, we're putting together a subsequent document that alters the previous document.

So it's not precluding revisiting a management decision in an amendment, an FMP or an addendum. We're not actually modifying that specific document, we're putting together a new document.

MR. DIODATI: Okay, I think that item might need a little clarification. What I think, however, is a fatal flaw here is in the statements to prevent abuse of the process, where it suggests that a state agrees that the finding of the appeals will be binding, I don't think you can ask a state to forfeit its ultimate right to bring forth a formal legal action against the commission.

So if that's the intent, I think that's a flaw in this document. I think the appeals process is there to prevent that sort of a result, and it gives the state an opportunity or an alternative to that kind of an action, but I don't think that we can preclude a state from doing that.

CHAIRMAN NELSON: Thank you, Paul. Dave.

MR. DAVID V.D. BORDEN: Yes, thank you, Mr. Chairman, two points. I'll go back to Tom Fote's point on the number of days. I can understand why someone would want to have 45 days to appeal, but it seems to me that these are fairly extraordinary types of circumstances; and if they are extraordinary, then I think what you really want to do is to have a shorter appeals period, because there's a certain amount of urgency that is associated with the event.

In other words, a state, any state around this table is going to feel so disadvantaged by a particular board action that they demand an immediate remedy for that. I think we should give some consideration to having a shorter appeal period.

Three commissioners from a state certainly can get together and say, within, I would think a maximum of three weeks, and decide whether or not they want to appeal. The second point, if I understand this correctly, is it's incumbent upon the state that is filing the appeal to adopt the regulations that they're appealing; is that correct, Bob? They have to be in compliance with all of the regs during the appeal process.

MR. BEAL: That's the way it's written now, yes.

MR. BORDEN: Okay, so I'm just thinking through this out loud. The state of Rhode Island wants to appeal an issue. We bring it back to the commission. That's going to take a number of weeks. It may take six or eight weeks to get on a formal agenda.

We have to adopt those regulations in the interim period. Then we go to the higher authority, and we file our appeal; and then at

that point the higher authority says, oh, we're going to do an amendment or an addendum, which is going to take another year or two years in the case of an amendment, and you've got to leave those regulations in place.

It seems to me that we ought to have like another step here, leave the Policy Board with the option of either committing to an addendum or an amendment or maintaining, for instance, the existing regulations for another year.

In other words, there needs to be more flexibility at that point rather than just saying to a state you've got to adopt it. Put yourself in the position of a state that has been disadvantaged, and you go to the Policy Board and they say, we agree with you, but you've got to leave those regulations in place for another year and a half until we file an addendum or an amendment. I don't think that's going to sell well at home with the constituents.

MR. BEAL: Well, on your last point, David, I don't think the intention is to -- once the Policy Board acts on an appeal, I don't think the intention is to require the states to keep those regulations necessarily in place until a subsequent amendment or addendum can be done.

I think the idea here is -- I think what you can understand, is for example, hypothetically, obviously, if Rhode Island wasn't satisfied with the minimum size limit for one of their recreational fisheries, and they didn't want to implement that, and they went through a lengthy appeals process, then you may be fishing on a smaller minimum size for a longer period of time.

That may or may not -- I'm not suggesting that's an intentional way of delaying an implementation, but the concept that the AOC discussed was one way of preventing a state from using the appeals process to buy them time to fish under a more advantageous management program was to require Rhode Island, in this example, to put in the minimum size limit that they weren't satisfied with.

But once the Policy Board took action, if their action was that Rhode Island could go back to the smaller size limit or whatever it is, I think all that can be encompassed in the Policy Board's decision.

It's just prior to initiating an appeal, states must be in compliance the way it's written now. Obviously, I'm not lobbying for or against this, just the logic that went into it.

MR. BORDEN: I'm not arguing against what is in the document. I'm arguing that the band of alternatives that the Policy Board has at the end of that period of time isn't quite broad enough. That's all.

CHAIRMAN NELSON: Okay, thank you, Dave. Pres had a couple of questions.

MR. PRESTON PATE JR.: It's a question for David to clarify the first point that you made, David, about the 45-day appeal period. I interpreted that as 45 days prior to a meeting to provide ample time for preparation of material to go to the ISFMP.

I think you're suggesting, though, that there be a deadline by which the appellate would have to file the appeal. That can be short or long. I might advocate medium to keep someone from rushing into a hasty decision and creating a lot of unnecessary work, but not so long that the trail would be cold by the time we had a chance to evaluate the appeal, so that's something we might want to look at more clarity on, also.

CHAIRMAN NELSON: If I could, along those lines, I think some of the discussion also was focused -- and, again, these are drafts so they're open to a lot of input, but the intent was not to receive a letter two weeks before a board meeting week, and the state expects to have that put on the agenda.

That really wouldn't provide enough time for an evaluation of the meeting qualifications and then having staff develop any paperwork that would be necessary for that. We've got to look at it both ways and see what good balance there is on that.

I think the other thing, Dave, just to take a look at and give more thought to if people need to, is talking about the adjustments or if an appeal is successful, for example, and you're going to make some adjustment in a quota, they would not take place until the following year based on this particular document.

In-season adjustments would not happen, so we need to look at all this and think about it and see what works best to keep this as a very smooth operation. Thank you, Dave. Roy Miller, and I've got Bruce afterwards.

MR. MILLER: Thank you. Very quickly, concerning Appeals Process Time line Number 5, it says "a summary of the appeals board meeting"; do we mean to say the "Policy Board" meeting since we are a priority defining the Policy Board as the appeals board?

CHAIRMAN NELSON: Yes.

MR. MILLER: I believe there's a word missing at the end of that line so that the meaning is not crystal clear to me. Distributed to the something or other is missing on my page, anyway.

CHAIRMAN NELSON: Okay, thanks, Roy, we'll take a look at that and see what needs to be done. Bruce.

MR. BRUCE FREEMAN: I had two questions, John. One was go back on Page 1 where you have the appeals criteria, in Number 2 the incomplete, inaccurate or incorrect application of technical information; I raise this issue relative to the discussion that we just had at the horseshoe crab where there have been a number of papers, fairly recent, particularly on issues dealing with populations of various species of shorebirds.

We heard a lot of people using those papers to convince people one way or the other, depending on who they were. It raises the question if anybody wants to delay the process or confuse the process, they may take advantage of this "incorrect application of technical information".

The issue I don't think would ever be resolved, because in some of these instances there is no absolute black and white. There are some gray areas. As we learn about things and as we investigate things, new papers are published or provided to us, and someone could argue, well, you never have all the necessary technical information.

I'm just wondering, Bob, or the committee how you see applying this to get us out of this issue of just appealing something on what may be just interpretation of technical information.

MR. BEAL: Thanks, Bruce. This is the opportunity for a state to bring forward an appeal if they feel that the data was used incorrectly or incomplete or inaccurate. However, there is the next step, which is the review of the chair, the vice chair and the previous chair to determine if what the state is indicating in their appeal is correct or not.

In other words, in my opinion, if a state says that -- you know, if the management board sets a management program based on a peer-reviewed stock assessment and sets a quota at x pounds and the state says that's the wrong quota, I'm not sure if the chair, vice chair and previous chair would have the opinion that the data was used incorrectly.

I think, in that instance, it's gone through our technical process. It's reviewed. It's the best science available. The board acted on that, so I'm not sure if the review group, the previous chairs and current chairs would agree that's a valid appeal or not.

I think, as you mentioned, there is a lot of room for interpretation about the use of data, but there is also the review process to determine if what the state is proposing is valid or not.

MR. FREEMAN: Well, as I understand it, it would have to be somewhat of a judgment call. I'm not criticizing that, because it's very difficult to specifically indicate what falls in and what falls outside of this appeal process, but it just raised a question.

Again, the horseshoe crab, there was a peer review committee that looked at a lot of technical information on the birds and then we heard people here testifying that it was incomplete and it wasn't adequate. It seems to be going around in circles on this.

Let me just raise another issue. On the next page, section on Page 2, the very top, these are issues not to be appealed. Number 1, I'm just curious, I can see in one instance perhaps that's a good idea. In another instance, I could see it could be a problem. This is not to be appealed; management measures established by emergency action.

Now on one hand, I see that emergency action would have to be taken very quickly, and sometimes it may only be a month or two. But I've seen other times with the commission we've taken emergency action for 180 days and then extend that 180 days and everyone agreed to it.

But, if for some reason, a jurisdiction had some concern, they would be compelled to put in an emergency action for over a year or nearly a year and not have any appeal process, and I'm just wondering if that's a good idea or not.

MR. BEAL: I think the idea here, Bruce, was that, as you mentioned, an emergency rule or an emergency action is only valid for 180 days and it requires the board to take action to extend it, so the charter already requires that the board go back and revisit that decision within 180 days if they want to extend it.

The other provision of extending an emergency action is there has to be an amendment or an addendum or an FMP being worked on in order to justify the extension. So, the idea is that there are a couple other layers of review and potential changes that could take place and -- again, that's just the proposal here.

MR. FREEMAN: Well, my recollection in the past is when we've had emergency action, I think everyone has agreed. I don't think there has been any dissention. I may be wrong but my recollection is there hasn't been.

So this issue hasn't come forward that there would be a need to do anything other than carry out the emergency action. But, I'm just thinking of a situation where there may be some dissention. There may be some value in a state having an appeals process to then have the board go back and look at the issue. I don't know, I'm just concerned over whether, in fact, there may be the need to have some appeal process during an emergency if extended beyond a certain period. That's my only point.

CHAIRMAN NELSON: Okay, thank you, Bruce. Again, these things are what we are looking for to get initial comments on and thoughts on. I've got a couple more people on the list here that I will get to, but because we ran a little bit late with the horseshoe crab, I want to just point out that what we want you to do is take a look at this, give yourself plenty of time to think about the processes that are listed here, and get your comments back to Bob.

I would say within 30 days, if you could get written comments back to Bob so that we could evaluate it, the AOC has time to look at it and come back with another iteration. So having said that, let me take the last couple, and then we'll move on to the next agenda item. Pete, you were next.

MR. W. PETE JENSEN: Several things occur to me, and I don't necessarily want to ask these to get a response today or even engage in a dialogue on the things that occurred to me, but just to let you know these are the things that occur to me.

First of all, I think there is a difference between things that come to the Policy Board initially and the things that don't come to the Policy Board. For example, I think it would be incumbent upon a state if an issue is coming to the Policy Board and they intend to appeal it, that they tell the Policy Board at that point they intend to appeal. That's sort of the early warning.

Secondly, it may be intended, but in the justification as to why it is being appealed, I

think it would be informative for everybody for the states to have to say how they are disadvantaged by the decision, and that may be intended.

The other is in the second paragraph, there is a statement that a state can petition for reconsideration, repeal or an altered decision, and so I think that has to be thought out specifically as to what it is they're appealing and it needs to be stated.

The other is I don't know what the interpretation of "where all other options have been exhausted", but I do think we do need to think about, for example, if a management board did or did not consider the issue that a state is appealing, then I think that's part of the consideration as to whether the Policy Board ought to take it up or to what degree they take it up.

I think Dave raised this point, but certainly an appeal ought to be launched within a specific period of time. There ought to be a defined time during which a state can lodge an appeal following a decision by a management board.

If I understand the way this is going to work, the Policy Board makes a decision, and then the management board is told to carry it out -- am I understanding that correctly -- or does the management board then respond back to the Policy Board saying whatever they want to say about it? But the way I read this is the Policy Board says we made a decision; it's binding; therefore, management board, do it.

CHAIRMAN NELSON: Yes, that's the intent if, indeed, the appeal is successful and the Policy Board finds that there was something that needs to be adjusted, that's the recommendation that would go back to the management board for them to incorporate into their discussions on how they're going to deal with this for the upcoming season. Okay, I had Gerry and I will take Lew.

MR. GERRY CARVALHO: Thank you, Mr. Chairman. I think I need 45 days to review this.

CHAIRMAN NELSON: Forty-five days?

MR. CARVALHO: Forty-five days.

CHAIRMAN NELSON: Forty-five days to do --

MR. CARVALHO: To look at this and make comments on it.

CHAIRMAN NELSON: Oh, I'm sorry, Gerry, you only get 30. Actually, 29 because you have to get the results in on the 30<sup>th</sup> day.

MR. CARVALHO: Are they working days or do they --

CHAIRMAN NELSON: Those are calendar days, by the way.

MR. CARVALHO: Under the appeal criteria, it's extremely limited. I mean, I can think of a number of other criteria that would justify an appeal. Suppose the commission operated outside the scope of its authority? Would that be reason to appeal?

I mean, there are a number of things. I hope we have sufficient opportunity to, and you said we would, comment on this and make suggestions. That's my concern. I agree with Tom and David and Pete on their concerns. Thank you.

CHAIRMAN NELSON: Okay, yes, this is to make you think and then write down your thoughts so that we can have that evaluation take place. Okay, Lew, last shot.

MR. LEWIS FLAGG: Thank you, Mr. Chairman. In response to one of the comments that Bruce made up and one of his concerns, under the appeal criteria and initiation, Item Number 2, it talks about incomplete application.

It might be more appropriate to rather than use the word "incomplete" to use "insufficient." I think that would perhaps capture the intent of that better, and I think it is a better term to use. Thank you.

CHAIRMAN NELSON: Thank you, Lew, for being brief. I did see two other people. Vince and then Dennis.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Mr. Chairman. I hope this is helpful in what you're trying to do here, but as board members look at this, on Page 2 on the ISFMP Policy Board meeting, on the last sentence there, I think there is a dynamic involving your previous decision to enact the two-thirds vote to amend or rescind a previous decision.

I don't want to open a debate here about it, but I just think as you review this, it would be appropriate for you all to think about the different dynamics here, about whether the appeals board should send directions back with a relaxation of that and then what the voting dynamics become because of how the appeal process may be structured. I'm just identifying that, Mr. Chairman, as a potential issue that I think folks ought to look at as they review this. Thank you, Mr. Chairman.

CHAIRMAN NELSON: Thank you, Vince. Okay, Dennis, go ahead.

MR. DENNIS ABBOTT: Yes, thank you, John, a quick one under the fact-finding committee. You want a committee of three persons and you'll always have a commission chair and vice chair, but it's entirely possible that you won't have a past chair for retirement reasons or whatever reasons. What would you have for an alternative to the third member of the board? We probably ought to think about that.

CHAIRMAN NELSON: God, you guys are pushing fast? I don't take it personal, but we'll look into that, too. Thank you. All right, again, we've had some good thoughts already on this, and this is intended to make you think about what is a reasonable but an effective process for the commission to have in place to deal with the unlikelihood of appeals.

Having said that, please do get your comments to Bob within the 30 days, if at all possible. If anyone is late on that, we'll just scratch an item from each day that the thing is late you'll lose one point. Bob will send a reminder out probably 15 days from now -- working days.

Next on the agenda is an update on the non-

native oyster activities. Lisa, you're going to do that.

#### **-- Update on Non-Native Oyster Activities --**

DR. LISA L. KLINE: Thank you, Mr. Chairman. As you recall, Pete Jensen provided an update to the Policy Board at the December meeting last year on a proposal that was submitted by Maryland and Virginia to the Army Corps of Engineers to conduct an EIS on the introduction of the Asian oyster into tidal waters of the states of Maryland and Virginia.

The Policy Board asked staff to work with Maryland, Virginia and PRFC to develop a proposal for how the commission could be involved in the development of the EIS; and within that proposal, also look at funding issues.

That proposal was drafted. It was reviewed by the three jurisdictions and also approved by the chair and vice chair of the Policy Board and was forwarded out to the full Policy Board. Most of this information was in your briefing materials. I'll briefly cover it.

The proposed ASFMC involvement in the process would be to reconstitute the Interstate Shellfish Transport Committee. That committee would provide technical input into the EIS. We would also provide periodic updates to the Policy Board at all of your meetings this year, as well as into next year. That information would, again, feed back into the process.

The NOAA Chesapeake Bay Office has offered the commission \$10,000. They've put in their request, and we're just waiting to get that money transferred. That money would support the meetings and the conference calls of the Interstate Shellfish Transport Committee.

A memo was sent out to the Policy Board asking for appointments to the Interstate Shellfish Transport Committee. So far I've only received one appointment, so I would encourage all the members of the Policy Board to definitely take a look at your states and forward any names directly to me.

Under the EIS there are a couple of committees that have been appointed and that we'll interact with. The first is the EIS Project Delivery Team. That's composed of the Army Corps of Engineers, Maryland, Virginia, PRFC, NOAA, Fish and Wildlife Service, and I've been asked to sit on that as well.

That team is going to be providing the oversight to the entire EIS process. Any comments from the Policy Board at all of your meetings, I will feed directly back into the discussions at the EIS Project Delivery Team.

There is also a Scientific Advisory Committee that has been appointed to support the EIS. That's composed of University of Maryland, VIMS, CBL and a couple of other technical groups. Our Interstate Shellfish Transport Committee will provide their input directly into the deliberations of the Scientific Advisory Panel, so the commission will have two avenues to provide input into the EIS.

Within your packet, there is a format for the EIS. You can take a look at that. It has not been approved. It is still being reviewed. If you have any comments, get those back to me, and I'll forward those to the Project Delivery Team.

There is also a schedule for completion of the EIS, and I will just briefly run through this. The notice of intent was published on January 5<sup>th</sup>. The public comment was open until the end of last month. The EIS Project Delivery Team will be addressing those public comments probably at a meeting in about two weeks.

The commission submitted just one brief comment, encouraging the Army Corps of Engineers to address any possible movements of the Asian oyster out of Chesapeake Bay waters into adjoining jurisdictions. But, again, we have the ability to feed other comments into the process, either through your comments today or throughout this entire process.

The Scientific Advisory Committee is going to be meeting on April 15<sup>th</sup>. One of the things that they're going to be reviewing is the proposal for risk assessment that is going to support the EIS.

Most likely, we will try to get the Interstate Shellfish Transport Committee to meet sometime right after that April 15<sup>th</sup> meeting, so that we can get our own technical input into the risk assessment. Again, I would encourage you to get your appointments to that committee to me as soon as possible.

There are a couple of research projects, and I'll cover those in a minute, that Maryland DNR is initiating. The initial results of that research will start coming in late fall this year, and that, again, will feed into the EIS process and support the risk assessments in particular.

The draft EIS should be ready early next year and open for public comment spring of 2005. It's anticipated that the final EIS would be ready spring-summer of 2005. Again, right now that's a draft schedule.

There may be some modifications as the process gets moving. The last document in your packet is a summary of eleven research projects that are being funded by Maryland DNR and also one or two by PRFC.

These cover an ecological risk assessment, an economic risk assessment, some population modeling work, some pathogen, disbursal, behavior, response research and also some research on competition between the eastern oyster and the Asian oyster, mainly in terms of habitat issues and reef capability.

I think that will address some of the issues that have been raised by the Habitat Committee last year. I will end there and ask if there are any comments or input that the Policy Board would like to provide, also, Pete, Jack and A.C., if you'd like to add anything.

CHAIRMAN NELSON: Okay, any questions? Pete.

MR. JENSEN: Well, I would reinforce Lisa's request to get people on the committee, because the way we've structured the research and the way we've structured the risk assessment, some of that preliminary data is going to be coming in within a matter of months, and it's going to be

incorporated into the first run of the risk assessment model.

Then that's going to be a key activity as we move through here, and that is as the data comes in and it gets put into the risk assessment, there are going to be indications of whether there is or is not a problem.

I think it's important that the Shellfish Committee be involved in that from the very beginning, so that the states are all very much aware of what is going on, because this is an accelerated schedule, no doubt about it.

The original impression of the researchers and the NAS study was that some of this research would take three to five years. Through the collaborative agreements we have with the university and the people involved in oyster research in the Bay, they have now agreed that most of the critical research can be done within a year in order to make the risk assessment to arrive at a threshold decision as to whether to go ahead or not.

CHAIRMAN NELSON: Thank you, Pete. Lisa, can you send a notice out to them again and remind everybody? I know you have to send it to me, too, so I do appreciate that. Any other questions? Go ahead, Bill.

MR. BILL GOLDSBOROUGH: Thank you, Mr. Chairman. I want to note that Lisa did mention there at the end the Habitat Committee's interest in this, and I appreciate that.

The committee has been involved along the way, including about a year and a half ago, I think it was, co-hosting with MSC the workshop on this topic. The committee does continue to be interested in the habitat implications of the issue so I guess, just to be clear, could we state for the record that it can be assumed the committee will continue to be involved in the same capacity it has been.

DR. KLINE: The intent would be to provide periodic updates to the Management and Science Committee and Habitat Committee, as well as

the Policy Board. We'll try to do that at every one of your meetings.

CHAIRMAN NELSON: Okay, any other comments, questions? All right, thank you, Lisa. The next item is the update on the artificial reef activities, and Carrie is going to do that.

#### **-- Update on Artificial Reef Activities --**

MS. CARRIE D. SELBERG: Thank you. I just wanted to update the Policy Board on our recent activities with the MARAD/Navy Artificial Reef Subcommittee. Just to review quickly how we got to where we are today, last year Navy and MARAD indicated that they were actively developing a program to use ships for artificial reefs.

MARAD at that time indicated that they would be taking the lead on a joint MARAD/Navy program and presented some of their initial thoughts on a program to the commission. In response, the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission sent letters to MARAD outlining what an ideal program would look like for our states who have artificial reef programs.

A couple of the highlights of that would be that it was a federally run program, that there would be a fair and equitable distribution system set up, that there would be federal cleanup standards developed by the EPA, and that title transfer would occur when ships were on the bottom.

We got a response back last year from MARAD, indicating that they wanted to work with the commissions, but at that time in their letter they did not agree to address many of those main points that we had put in our letters.

So since the last Policy Board update that I gave at the annual meeting, we have formed a MARAD Subcommittee of the Artificial Reef Committee, and it has representatives from Delaware, Virginia, South Carolina, Florida and Texas.

It is staffed by both the Atlantic States

Commission and the Gulf States Commission. We had a very productive meeting with MARAD and Navy in Washington, D.C., a couple of weeks ago. We are very appreciative of how candid both MARAD and Navy were on the status of their programs.

We did learn that there has been a considerable amount of work put into speeding up the permitting process, and that process is going well. However, we did learn that it appears that Navy and MARAD are no longer on the same page about their priorities and how they want to run their two different programs.

It appears that Navy is putting artificial reefing higher on their priority list than MARAD is. It appears that MARAD is going to be actively looking into scrapping, while Navy is very open to working with the commission on reefing proposals.

It also looked like Navy is going to be much more flexible on our title transfer issue. Many of the state programs feel very strongly that it would be best if title transfer of these ships happened once the ships were on the bottom.

Navy has indicated they are willing to work with us on this and they would like to talk further about the details. At this time MARAD is still insisting that title transfer occur up front, and that states take title responsibility prior to cleaning and prior to towing.

One last update we received from them is that the EPA has developed best management practices for cleaning up ships, but they have not been released yet, and it is unclear when they will be released.

So, our planned follow-up actions at this time are to write a letter to the EPA urging them to release the best management practices, and second is to draft a letter to Navy indicating what type of program we would like to see -- very similar to the letter that we sent to MARAD.

But because it appears that Navy and MARAD are no longer on the same page, we want to

communicate directly with Navy on what our state programs are looking for. Finally, we are setting up a meeting right now with Navy in May with our subcommittee and then with our full committees to develop a more detailed program.

It appears right now that MARAD will not be attending that meeting, but that Navy has committed to attending. So we are looking for any feedback the Policy Board has on the actions we've taken so far or the actions we have proposed for the next couple of months.

CHAIRMAN NELSON: Thank you, Carrie. Pres.

MR. PATE: Thank you, Carrie, that was a good update. Was there any indication from talking to those two agencies that their priorities might change to bring them in sync with each other? If there were, we would hope it would model the Navy's list and not MARADs, but if not I would certainly hope we could continue to work with Navy as the primary focus.

MS. SELBERG: In response to your question, the meeting was at a staff level, and it did seem to indicate that things could always change with pressure.

CHAIRMAN NELSON: Any other questions for Carrie? All right, thank you very much, Carrie. Fortunately, there is no Number 9, non-compliance recommendations. That brings us to our other business.

Vince has prepared a summary of proposed activities for additional funding, and why don't I have him update you on that request.

**-- Request for Additional Funding --**

EXECUTIVE DIRECTOR O'SHEA: Thank you, Mr. Chairman. Briefly as background, at least the last two years that I've been here on the commission, the commission has initiated an interaction with the Congress, seeking to expand funding for commission activities.

A strategy that we were proposing to use this

year would be to identify some specific items that would have broad application to both interest groups, states as well as the mission of the commission.

I sent an e-mail out to all commissioners shortly after the December meeting outlining that strategy, and I got responses back endorsing the strategy. I also solicited commissioners' comments for items that might fit into that category.

The idea was to limit the highlighted items to a fairly short list so that they would stand out. In response to comments we got from commissioners, I prepared a draft list. I sent that out and received comments from that.

What you see before you is really the proposed final version. It is meant to address concerns that are either high visibility or of interest to people we know who are significant players up on the Hill. Hopefully, these are items that each commissioner would be able to internalize, as it were, and communicate back to your own state delegations urging support.

The way this will work is Chairman Nelson will send a letter to Senator Judd Gregg, who chairs the Appropriations Committee on the Senate side, and Representative Wolfe from Virginia, who chairs Appropriations on the House side, seeking a \$2.0 million increase to ACFCMA and level funding for the other ASMFC programs.

This will be included as an attachment to that funding request. Last year we also had Congressman Gilchrest from Maryland and Congressman Tom Allen from Maine write what they call a "Dear Colleague" letter, which was basically a similar version to our letter of request that they had asked other House members to sign on to.

I think we got six or seven members to do that. I mean, ideally, in my view we should be able to get all of the members with coastal districts from Maine to Florida to be on that list and have an impact.

So, the purpose of this handout today, Mr.

Chairman, is to sort of update you all about what direction we're going here. We're asking for this money in such a way that it is carefully worded, that it gives a strong indication of how we would spend the money if we got it, but it doesn't exclusively limit us to these areas. It's more the idea of the ongoing work of the commission as well as additional focus on these areas.

In the e-mail that I sent out asking for comments, one comment that I made was if you have other things you think are higher priority or more saleable or more urgent, please let me know that and also tell me which one on this list you want to take off.

It's really I think a sort of zero sum game. That was the context. We had spiny dogfish on here, and that was suggested to address ongoing concerns from the NGO community and perhaps sympathy up on the Hill and interest by some Hill members to throw some money at us to address spiny dogfish problems.

So that's how spiny dogfish got on there in the first place is more a potential strategy by folks over on the Hill. I think on reflection and based on comments that we had, we could probably do more and better work on red drum. It would certainly include a wider clientele of states, Mr. Chairman. That's all I have. Thank you.

CHAIRMAN NELSON: Thank you, Vince. Any questions, comments for Vince? Dave and Pete

MR. BORDEN: Thank you, Mr. Chairman. I support the initiative. I think it's a good strategy to have in order to try to obtain additional funding from Congress. My only question is on the American lobster issue, it seems to be focused on the Long Island Sound Task Force findings, and could somebody clarify how broadly those apply to the other states?

In other words, we're not saying that any lobster funding is just going to be focused in Long Island Sound, as I understand it. It would be broader applications, but since I'm not in a position where I'm familiar with the Long Island

Sound Task Force findings, I'm not in a position to really judge the appropriateness of that first task. What are those findings, in a few words?

CHAIRMAN NELSON: Okay, it is intended to be more than just Long Island Sound Issue, and the language in the letter reflects that, Dave. However, I don't think the staff has had an opportunity to really update the modifications that are necessary under this particular component to reflect what is in the letter, but let me have Vince address that first for you.

MR. BORDEN: Let me just follow up before Vince's comments, because as long as it is broadly interpreted and lobster is on the list, I think that's appropriate. I don't need to know what those findings are as long as it's done in a broad context.

CHAIRMAN NELSON: The intent is that it was throughout its range, but certainly focusing on Long Island Sound and the problems that we've had in Southern New England and also the concern about the Gulf of Maine area. I think that answers it, so that's fine. Pete.

#### **-- Ocean Commission Report --**

MR. JENSEN: I had another subject. We received word the first of this week that the Ocean Commission report will be released April 22<sup>nd</sup>. I don't know if the rest of you area aware of that. However, as we all know, this will be submitted to the states for the governors to make comments within the 30-day period.

I think we ought to take the opportunity to try to coordinate our responses, because I think it's going to turn out to be a fairly important document that is going to impact our future on how we do things, and so we ought to pay attention and we ought to take up this opportunity.

CHAIRMAN NELSON: I think that's a very good point, Pete, and I can ask Vince to work with the states to come up with at least bullets that we are in agreement on as a response for the governors. Go ahead, Eric.

MR. SMITH: I'd like to add to that subject, if I may. We just became aware of this as well, and we've already had some discussions in the state that in our view it's probably not appropriate for the commission to take three years to develop their findings and give the governors 30 days to develop their recommendations and input.

Most states, the things that they cover in the Ocean Commission report are very broad. They're not dealt with by one division or one bureau in an agency. They're potentially more than a single cabinet level agency, and that kind of coordination often requires time to get those ideas together and then get the governor's policy people to agree on what they want to say.

Thirty days just isn't -- it has even been suggested to me it was almost an insult to the governors to be expected to turn around that quickly. I would suggest for everybody here as states, that you might want to consider the first response from the governor is to request a 90-day comment period. Thank you.

CHAIRMAN NELSON: Thank you, Eric. Any other comments? Okay, let's see if we can't get some bullets together, anyway, so that there can be a response, if necessary, within that 30-day period. Vince will coordinate that. If we can get a longer time frame, certainly, we would look for that also. I don't think we'll get three years, though, Eric.

MR. SMITH: No, I think 90 days is sufficient.

#### **-- Report on Changes to the SAW/SARC Process --**

CHAIRMAN NELSON: Okay, the next item under our other business is the proposed changes to the SAW/SARC process. Lisa, would you update us on that? Thank you.

DR. KLINE: Thank you, Mr. Chairman. There is a one-page handout that was put on your place, called "Proposed Changes to the SAW/SARC Process." I'll just hit the highlights. The NRCC has had ongoing discussions about modifying the SAW/SARC process, mainly to try to improve the credibility

of the process.

They're proposing to try this process for the June 2004 SARC with the species being sea scallops, black sea bass and bluefish. I'll just briefly go over the two phases and some of the changes that are proposed from the current process.

Phase 1 is a working group assessment workshop. This is very similar to what is currently being conducted with the SAW/SARC working groups getting together, reviewing the data, conducting the assessment.

The only change is that the participation in those workshops will be expanded to include state, federal, industry people and try to bring as many people to the table as possible to get very early buy-in into the assessment.

That phase is also very consistent with the commission's process, the data and assessment workshops and also the SEDAR process.

Phase 2 is a SARC review, and most of the changes are in this phase. Currently, the SARC panel is composed of a couple of experts that are delegated by the Center of Independent Experts through NMFS, usually about two that sit on the panel, federal assessment people, state people, university people as well as industry.

The proposed change would be to have three to four independent experts chosen by the Center for Independent Experts, the CIE. What this means is that the federal, state, industry participation would no longer be included on the SARC panel.

The other change here would be no management advice would be provided through the SARC any more. That would actually be delegated back to the management agencies. I'll hit that next.

Also, there would be no changes conducted to the assessment during the SARC review itself. Typically, if the panel comes up with some minor problems with the assessment, they'll ask the assessment people to go back, make those

changes on the spot, and try to fix the assessment right there during the meeting.

The proposed process would be now an approve or reject process. Those are about the major changes to the SARC review. This change is a little different from some of the discussions that are occurring within the commission through the Management and Science Committee to actually expand the membership on our external peer reviews. And also through the SEDAR, they're also having discussions about expanding their membership.

The last part of the process would be the management advice. Again, this would be not coming out of the SARC anymore. It would be delegated back to the management agencies. Within the commission, the SARC results would be forwarded directly to the management board and any other committees as chosen by the management board, and then it would be the board's responsibility to develop the specific management advice based on the SARC results.

I think what we're looking for here is some input from the board on these changes, as well as the proposal, to try this new process for the June 2004 SARC.

CHAIRMAN NELSON: Okay, thank you, Lisa. Questions, comments for Lisa. Actually, before I get to that, Lisa, the time frame for getting comments to you other than just today is on a short time frame, isn't it?

DR. KLINE: Yes, the NRCC is looking from the commission as soon as possible, so any comments that we can get right now would be great. Vince, early next week if people e-mail.

CHAIRMAN NELSON: Okay, why don't we take some time right now to see if we can get you some comments. The reason I say that is because let me announce it here now so that nobody worries about lunch or whatnot.

The afternoon schedule, an update for that, we are scheduled for the commissioner workshop, which I hope you all attend, because I think that's going to be very informative and helpful

to us in the future. It is scheduled to start at 1:30; we will actually start an hour after we end here.

The reason we are able to do that is the federal fishery discussion, the update on the federal fishery issues, is not going to take place that was at 4:00 o'clock, and we do not need to have a Business Session at 5:00 o'clock, so that will not take place.

So that gives us the time to spend on the workshop this afternoon, and that means you can also have about an hour for lunch. So, having said that, let me go to Eric over here and then we'll work our way right down.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman.

CHAIRMAN NELSON: I'm sorry, Vince has priority. Sorry, Eric.

EXECUTIVE DIRECTOR O'SHEA: Well, this might simplify and clarify things, what we need, Mr. Chairman. The Northeast Science Center would like to prototype this approach on the next SARC coming up, and the three species that it would be used for would be scallops, bluefish and black sea bass.

It's not likely that we're going to have a SARC on scup. The sort of time urgency here is if they go to this process, they need to get the Center for Independent Experts under contract, and they'd like to get a decision on that by the end of this week or early next week.

By the way, this has been outlined in some e-mails to the state directors already, but in my view the real question is are there objections to prototyping this in this spring and evaluating as opposed to do we have to buy-in to a final decision on this process forever? Thank you, Mr. Chairman.

CHAIRMAN NELSON: All right, those are good points, Vince, thank you very much. With those in mind, Eric.

MR. SMITH: Thank you. I have four points.

First, I agree wholeheartedly with the end of Phase 1. We need to improve buy-in to the assessment, and I think this is a constructive suggestion toward that end.

In Phase 2 I have three comments, and, actually, I think the idea, in my view, just suffers from a few too many words. But, they're substantive tone issues, so let me just suggest where I have my concern and read what I would say in response.

In the third sentence at the end of the fourth line, it says the "SARC panel will be". My view is that should be the SARC panel will be charged with reviewing the assessment model and then striking until "will provide advice", so it reads, "The SARC panel will be charged with reviewing the assessment model and will provide advice on the improvements to the assessment and stock assessment but will no longer provide management advice."

My point there is it always makes me a little queasy when an outside group rejects or approves as opposed to giving constructive suggestions on how the thing ought to operate, so that's Point Number 2.

Point Number 3 in that second phase, it says this phase will be different from the current SARC in the following respects: Panel membership will not include federal, state, university or industry representatives.

I started to scratch my head and say, well, who then? My view is what it really should be is panel membership will not include those federal, state, university or industry representatives from states or areas that are involved in the fisheries.

You might get a guy from Oklahoma, who is the best modeler the world has ever seen, and he couldn't care about scup in New England or the Mid-Atlantic, and you'd want to capture the value of that person, so that's Point 3.

Point 4 in the last sentence of that phase, I think it ought to read "This change is intended to increase the objectivity of the peer review process". In other words, strike "separation of

science and management”, which is a lightening rod that we don’t need to address here. Other than those ideas, though, I think this is a real good move in the right direction.

CHAIRMAN NELSON: Okay, thank you, Eric. Dave.

MR. BORDEN: Let me just make this very quick and say that I agree with Eric’s comments. I also agree with the general focus. I serve as the New England Council Chair on the NRCC, representing the council, and I really think it’s a refreshing step to look at this process and try to accomplish what all the parties are trying to accomplish.

They’re really trying to get independent reviews -- that’s the essence of it -- and more transparency. I think that only bodes well for the process.

CHAIRMAN NELSON: Thank you, Dave. David.

MR. DAVID CUPKA: Thank you. I just wanted to mention that some of these changes are similar to what we’ve done on the SEDAR process in the Southeast where we’ve increased the involvement in industry and other groups in the assessment process.

We also use representatives from the Center for Independent Experts, but during that review stage, we also allow other people to participate provided that they weren’t part of the data workshop or the assessment workshop.

In other words, we allow university or state people to be on the review portion, the third stage, provided they haven’t participated in two of the earlier workshops. Again, that just works more toward a completely independent review, and it has been quite successful, we think, in the South Atlantic and has resulted in a lot more buy-in from industry and has a lot more fisherman involvement in the process, too. It’s a positive step forward, I think.

CHAIRMAN NELSON: All right, thank you, David, glad to hear that. Lew.

MR. FLAGG: Thank you, Mr. Chairman. Under Phase 1, the second sentence about the various groups being able to participate in evaluating the data inputs to the model, does that include -- the thing that I’m interested in is that these participants have an opportunity to look at the raw data and the representativeness of that data in terms of sample size and frequency.

I think that’s something that this group should be charged to do. I don’t know whether that includes that in that particular sentence or not.

CHAIRMAN NELSON: Lisa.

DR. KLINE: Yes, the purpose of that workshop would be to fully review all the data and then also conduct the assessment.

CHAIRMAN NELSON: Okay, Bruce and then Vince.

MR. FREEMAN: The question I have concerns, I guess, Phase 1 and Phase 2 in that it appears that Phase 1 looks at primarily the inputs into the model and the collection of the specific empirical data and then conducts the modeling.

The second phase is essentially to just assess the model and reject or accept that. I’m just thinking relative to what happened in the recent herring situation where two models were used by two different nations and deficiencies were pointed out in both types of models relative to the input data.

I’m just curious how Phase 2 interfaces with Phase 1. I guess it does, but it’s not clear to me how it does that, and specifically relative to the inputs into the model. If you have a great model, it will work as long as you have the variables that are correct. If they’re not correct, I don’t care what model you use, you’re not going to get the right answer. How do they reconcile that difference?

CHAIRMAN NELSON: You’re not looking for an answer right now, Bruce?

MR. FREEMAN: Yes, I am. I thought you had it.

CHAIRMAN NELSON: Okay, they'll take that under advisement, Bruce. That's the answer. Lisa, go ahead.

DR. KLINE: My understanding is that a lot of the data review will be done in Phase 1, prior to the assessment, and that Phase 2 will focus more on the modeling activities itself, the models, at least, that's my understanding.

MR. FREEMAN: Will the people involved in Phase 2 be aware of all the concerns of the people in Phase 1?

DR. KLINE: Yes, the same documentation that's currently provided through the SARC process -- all the documentation of the data and the assessment will come out of Phase 1 and will be forwarded into Phase 2 for the review.

MR. FREEMAN: So, essentially, if there were deficiencies in data, then the people in Phase 2 could say these deficiencies are such you really shouldn't be using this model? Is that the idea?

DR. KLINE: Yes.

CHAIRMAN NELSON: Okay, thank you. Okay, Vince.

EXECUTIVE DIRECTOR O'SHEA: Two quick things. This one-page white paper that you have here is really a reader's digest version of a seven- or eight-page single-spaced document produced by Dr. Terry Smith.

I asked Dr. Kline to boil that down to a one-pager for you, so I'm getting a little nervous about picking apart the summary here. If you all are interested in seeing the detailed proposal, the rationale behind it, we'd be very happy to share that with you. It has been distributed just among the NRCC members, and the only reason I didn't share it with you all is because I know most of you already have six inches of paper. That's Point Number 1.

Point Number 2, for those that don't realize what is happening, a trend here, and one of the problems they're trying to get at is different groups are hiring their own scientists to do

analysis to come in with their own datasets.

At times that information is coming forward at the end of the stock assessment, at the end of the SARC, and the council or the commission is being potentially confronted with "scientific data" by professional scientists at the end of the pipeline.

The intent here is to include those groups and give them an opportunity to come in on the front end with that type of information and have a discussion among the other scientists in the stock assessment process and then take collectively both the, if you will, outside NGO, meaning it could be a recreational group, a commercial group or an environmental group, have all off that science peer reviewed by a totally independent group of experts.

That's not what we have right now with the blend of state scientists, university scientists, so that's part of the problem they're trying to get at. Again, we think the notion of prototyping it, looking at problems and then report out on it has merit. Thank you, Mr. Chairman.

CHAIRMAN NELSON: Okay, thank you, Vince. Again, if there are any additional thoughts or comments, please get those back to Lisa as quickly as possible, probably within a week, seven days, non-working. Thank you.

The next item on my agenda is Jack's request for the listing of the eels, and that motion is coming up on the board here.

#### **-- Motion Concerning Eels --**

MR. TRAVELSTEAD: Thank you, Mr. Chairman. This was a motion that was passed yesterday at the eel board -- or actually it's not exactly that motion.

You've already changed it so that the Policy Board here endorses the request to the Services for an evaluation of a listing of the American eel in the Northeast Region.

It was my thought, and in speaking to some of the members of the board, that it would be more

appropriate that this request come from the full commission rather than a management board level. The bottom line is you exhibit more power and influence with those groups than I do as a simple chairman of a management board, and I thought it would be more appropriate that the letter be signed by you rather than me, so that's the reason I'm offering it here today.

CHAIRMAN NELSON: I wonder if we could get that on the record that the Feds recognize that -- Does anyone object to that letter coming from myself to the federal entities for that purpose so listed?

Do we have to read it? Okay, it says on behalf of the American Eel Management Board, I move that the ISFMP Policy Board endorse the American Eel Management Board's motion to express to Fish and Wildlife Service and National Marine Fisheries Service to undertake an evaluation of appropriateness of Distinct Population Segment listing for at least Lake Ontario/St. Lawrence/Lake Champlain and Richelieu River.

Anyone object to me signing that letter to the Services? Seeing none, we will do it that way. Thank you, Jack.

**-- Letter From Gerald Carvalho --**

The last item on our agenda is I'd like to just bring to everybody's attention that I've received a request from Gerry Carvalho regarding Addendum IV on the Lobster Plan.

At this point, I'm just merely going to say that we have received the letter. It has several requests in it that we need to evaluate and respond back to Gerry. We will do that. We will circulate copies of the letter for whoever would like to have copies of it, and we will also circulate our response back.

It's looking at an appeal for and reconsideration of action taken back in December on certain issues, but until we've had a chance to evaluate that further, that's really what I wanted to let the Policy Board be aware of. Any questions? Gerry, do you want to say anything on that?

MR. CARVALHO: Yes, thank you, Mr. Chairman. I apologize for the lack of timeliness in getting the letter earlier to the board so that the board would have a copy of the letter to review.

I think it's important, and it raises some issues that involve all the states. Without summarizing what the letter requesting an appeal says, it involves issues of whether it's appropriate to take certain actions by the commission and whether, in this instance, we followed the process.

So, consideration of the points that I've raised are important, because it will reflect on how we operate and whether we take the same actions regarding other addendums and other actions. Thank you.

CHAIRMAN NELSON: Thank you, Gerry. That does conclude our agenda items. Is there anything else that needs to come before the Board? Seeing none, the meeting is adjourned.