

ATLANTIC STATES MARINE FISHERIES COMMISSION

BUSINESS SESSION

DoubleTree Hotel Crystal City

Arlington, Virginia

February 26, 2003

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MOTIONS

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Move that the Commission approve Amendment 6 of the Atlantic Striped Bass Interstate Fisheries Management Plan. Motion carried on Page 16.

The Business Session of the Atlantic States Marine Fisheries Commission convened in the Washington Room of the DoubleTree Hotel Crystal City, Arlington, Virginia, Wednesday, February 26, 2003, and was called to order at 4:35 o'clock p.m. by Executive Director John V. O'Shea.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: We will now convene the business session of the commission. I hereby call to order the Atlantic States Marine Fisheries Commission. Looking around the room, I note for the record that a quorum is present and staff will be taking attendance.

You have before you an agenda that was passed out before. One item that I have that's not on the agenda that I would intend to cover on other business is the Administrative Oversight Committee was scheduled to meet this week.

They weren't able to do that, but I would like to spend a minute or two just updating you on what the Administrative Oversight Committee was doing or intends to do, and that should just take a minute or two.

Having said that, are there any other changes or comments to the agenda?

MR. PATRICK AUGUSTINE: Move to accept the agenda, Mr. Chairman.

EXECUTIVE DIRECTOR O'SHEA: Is there any objections to accepting the agenda? Seeing none, the agenda is accepted.

The next item is to review and take action on the proceedings from our last meeting, which was on November 21, 2002. You have had a copy of those minutes and an opportunity to review them so a motion to accept. Mr. Augustine.

MR. AUGUSTINE: Motion to accept, Mr. Chairman.

EXECUTIVE DIRECTOR O'SHEA: Thank you. Second by Mr. White. Is there any objections to accepting the minutes? Seeing none, the minutes are accepted by consensus.

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The next item that we have is public comment. Is there anybody in the audience that wants to make public comment to the commission? Could you come forward please and state your name for the record.

MR. TONY BOGAN: Yes, I'm Tony Bogan from United Boatmen of New York and New Jersey. I don't know if this was going to be brought up in other business or not, but I just wanted to reference something that happened on Monday during the Striped Bass Amendment 6 meeting that took place.

And if you will forgive me for not having brought it up on Monday, but after the meeting was done, I was, believe it or not, actually caught at a loss for words, which I know is hard to believe, but that's why I wanted to bring this up.

Basically what happened, as a result of the Amendment 6 meeting that took place on Monday, was there was a substantive change made from Amendment 5 to Amendment 6 that was not actually addressed in the Amendment 6 process.

It was done basically through an act of omission as opposed to something that was addressed in the public information stage of Amendment 6.

It was not part of the PowerPoint presentations that were given during the public information stage. There was nothing directly referenced to this in Amendment 6, which is basically the removal of the producer area status.

There was a motion made at the December Rhode Island meeting to establish a standard point of reference, a coast-wide standard minimum size, and that motion was tabled. It was brought up again on Monday.

Basically, what has happened was both in December and now it was said that it should be

something that should be addressed perhaps in the first addendum to Amendment 6. It was never actually a motion that was voted upon to establish any specific reference point.

Nevertheless, through the act of omission, one was set. By removing through omission the producer area status, what happened was there was a coast-wide minimum size, a biological reference point of two fish at 28 inches, and then just several exceptions made to that reference point, which was for the Chesapeake, Albemarle and the Delaware Bay commercial fishery.

Based on the people that I have spoken to — and I'm sorry, I forgot to mention that I'm also here at the behest of RFA and the New York Fish Trade Tackle Association, as well. Their feelings all match with United Boatmen — that no one was made aware of the fact that there was going to be this substantive change, especially since it was not addressed in the public information stage.

The motion that was brought up in December and brought up here on Monday was basically after the public information stage was over, the public, you know, period for public comment.

And, again, since there was never anything officially approved establishing it, we were kind of curious how it was possible to establish a de facto coast-wide minimum size without having that addressed.

I don't know what the appropriate action would be to address this inadequacy in Amendment 6, but seeing as how Amendment 6 was basically approved, I don't know how you would address that.

I would appreciate if someone could tell me how we would address this, because I don't see how you could go forward if this specific and

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significant change, which affects more than one state, it actually affects a number of states, could be done without that being part of the Amendment 6 process. Thank you.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Mr. Bogan. All right, the next item on our agenda does say to take action on non-compliance, and I already explained that's not necessary at this meeting because there is no action to take in that regard.

That leaves us with Agenda Item 6, review and take action on FMP amendment/approval. I'd like to recognize Mr. Lew Flagg, chairman of the Striped Bass Board.

MR. LEWIS FLAGG: Thank you, Mr. Chairman. On behalf of the Striped Bass Board, I move that the commission approve Amendment 6 of the Atlantic Striped Bass Interstate Fisheries Management Plan.

EXECUTIVE DIRECTOR O'SHEA: Okay, thank you, Mr. Flagg. Since this is a motion from the chairman of the committee, it doesn't need a second. I have a question for staff.

We did have a letter that we received from the time that the board took its action until today from Congressman Pallone, and it was addressed to myself with copies to the Atlantic States Marine Fisheries Commission.

So at this time I would ask Megan to please distribute that copy to the commission. I see a couple of hands up, but out of respect for the congressman, before I take testimony, being as you're getting his letter right now, I'm going to pause for a few minutes so board members have time to carefully read his letter, if that would be all right. Does anybody object to that? Do you object to me giving time to read Congressman Pallone's letter, Tom?

MR. THOMAS FOTE: No, what I was going to say, could we read it into the record. That's all I was going to ask.

EXECUTIVE DIRECTOR O'SHEA: We'll give a copy to Joe and it will be included in the record. All right, I see heads up indicating that most of you have gotten through the letter.

(Whereupon, the following letter was submitted for inclusion in the record:

Dear Mr. O'Shea: I am writing to express my opposition to Amendment 6 to the Atlantic Striped Bass Management Plan, as offered by the Atlantic States Marine Fisheries Commission.

I alerted the ASMFC of my opposition to this amendment last week, based upon my opinion that the commercial quota for striped bass should not be increased. However, today's meeting of the ASMFC brought up several additional issues that strengthen my opposition to the new amendment.

Today the board clarified that the 28-inch minimum size for the commercial fishery would not apply to the Delaware Bay, in addition to the Chesapeake Bay and Albemarle Sound. Those areas have a 20-inch minimum size limit while the remainder of the fishermen under ASMFC's jurisdiction would be limited to the larger fish. Amendment 6 would also increase the recreational minimum size limit to 28 inches from the previous 20-inch limit in all of the producing areas except Chesapeake Bay and Albemarle Sound.

This decision makes the plan's size limits arbitrary, and it is my understanding that there is not a clear delineation of boundaries for these areas that would enjoy the smaller size limits.

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I urge you not to adopt an amendment that clearly discriminates against New Jersey's producing areas, among others.

The other new point of contention in this amendment is the inclusion of a decision to open the Exclusive Economic Zone, EEZ, to striped bass fishing.

This would allow fishing by all sectors, commercial recreational, party boats, in a zone that had been previously off limits to all striped bass fishing interests. I am concerned that the Atlantic Striped Bass Fishery would suffer under the compounded pressures of an increase in the commercial quota and the opening of the EEZ.

Striped bass constitutes an enormously important recreational fishery not only with New Jersey but also within the entire northern range of the ASMFC's jurisdiction and it is in our best interest to ensure the continued success of the population.

I urge you to retain the status quo by voting against Amendment 6. We do not know what the consequences of an increased commercial fishing quota will be.

The combined effects of increased commercial quotas and an expanded fishing area could undermine the great progress that has been made in restoring these stocks since the passage of Amendment 5. Sincerely, Frank Pallone, Jr., Member of Congress.)

EXECUTIVE DIRECTOR O'SHEA: The first person I had on my list was Mr. Diodati.

MR. PAUL DIODATI: Mr. Chairman, I was going to ask if you needed a second to the motion on the board, and you want to hold on that? I'm going to pass.

EXECUTIVE DIRECTOR O'SHEA: Thank you. Mr. Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I think we've had some sidebar conversations and you had indicated that you had responded to a previous letter to Mr. Pallone. I'm wondering are you at a point in time now where you have developed a response to this letter? If so, would you share it; and if not, then I'll turn it back to you to see what we're going to do.

It looks as though there are some questions in here that really need to be clarified. I'm not sure all the information that is in here is correct, at least as I understand Amendment 6, and whether we need clarification or not is the point I would like to get from the board.

EXECUTIVE DIRECTOR O'SHEA: First of all, to answer your first question, we have not answered the letter yet. We have taken action on one part of the letter and that was to bring it before this commission, and we have done that.

One of the things that Bob Beal and I have discussed would be to have the staff draw up a white paper set of points that capture some of the debate, as well as some of the rationale, for the decision that the board took on Amendment 6, sort of a generic paper, and that we would share that with the commissioners to assist you all in responding to inquiries that you might have from some of your constituents and stakeholders.

And along the same lines, I would anticipate notifying the congressman that we passed out his letter and that we would also include a copy of that white paper, which we have not yet distributed. That was my initial reaction on how to handle this letter.

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MR. AUGUSTINE: Thank you, Mr. Chairman. I think that would be an excellent approach so we would all be on the same page.

EXECUTIVE DIRECTOR O'SHEA: Mr. Diodati.

MR. DIODATI: I guess I'm disappointed, as I read this letter, because it seems that Mr. Pallone is concerned about the potential for increased exploitation in commercial fisheries and perhaps in areas that in the past were closed such as the EEZ, but, on the other hand, he's advocating for the harvest of more fish in his area of small size.

Is that my read; is that a correct read of this letter? Is he doing that all in one breath? I find that a disappointment and it's somewhat consistent with the kind of e-mails that I've been getting over the past few months.

EXECUTIVE DIRECTOR O'SHEA: Mr. Colvin.

MR. GORDON C. COLVIN: If I could, Mr. Chairman, I had a couple of questions that bear on all this. First of all, can I ask if the staff can tell me, if the commission does not adopt Amendment 6 at this time, what is the current management, I guess I should say, enforceable" or compliance" provision for management of striped bass for 2003?

MR. ROBERT E. BEAL: It probably should be a short answer since I don't think the commission will have an enforceable management program for striped bass. Addendum V very specifically stated that it was developed to manage striped bass in years 2000 and 2001 while Amendment 6 was being completed.

MR. COLVIN: Thank you. That's what I recall, but I wasn't 100 percent sure if there was

any kind of a fall-back. I guess not. The other question is a lot of the concern that has arisen, it's no secret, relates to the fact that folks didn't understand the implications of the selection of the preferred alternative with respect to size limits in areas like Delaware Bay, New York Harbor, the Hudson River, that used to be subject to lower minimum lengths under previous management programs that are replaced by Amendment 6.

I'm wondering, based on the actions that the board took at its meeting on Monday at, because I believe that the board did take action on an implementation schedule for the amendment, should it be adopted, and I'm wondering when the implementation schedule would make any changes in size limits in those areas a compliance requirement. I sort of recall that it wasn't until next year, but I want to just kind of sort that one out for the record.

MR. BEAL: Mr. Colvin, your recollection is correct. The proposed implementation schedule requires the states to provide proposals to the commission by May 1 with implementation on January 1, 2004.

There is also a provision by which a state, if there is some legislative process that would take longer than January 1 of 2004, there is a provision for the board to allow those states additional time to implement their management measures.

MR. COLVIN: I think we all have to have some sympathy for the concerns that have arisen with respect to people's perceptions on this.

Those of us who have been reading the minutes of our last board meeting will notice that yours truly didn't quite, 100 percent, realize the coverage of that until the meeting. I think my words were it just hit me like a ton of bricks.

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And while we had been discussing the need to increase size limits in the Hudson River producer area and while that certainly was discussed at the public hearings in New York, it does appear that not everyone was completely up to speed with all those ramifications.

I am wondering if there is a mechanism by which the commission can direct the board -- perhaps kicked off by the white paper process the Executive Director outlined -- to use the time that we have to attempt to reconcile the concerns that have arisen on this issue. Thank you.

MR. BEAL: Obviously, the full commission has the ability to task or direct the Striped Bass Management Board with anything that it sees appropriate in this situation.

I think the commission needs to carefully word any direction that it does provide to the Striped Bass Management Board so that there is a management program in place for 2003. But, obviously, staff will help in any way we can if that's the course the commission chooses.

EXECUTIVE DIRECTOR O'SHEA: I have Gil Pope and then Tom Fote.

MR. GIL POPE: Thank you, Mr. Chairman. With the board's permission, I'd like to get some kind of handle on exactly what kind of changes there will be in Delaware, if it's okay. If you could explain, will there be any changes in your regulations other than -- there won't be any commercial increase. However, could you quickly explain that to me, please?

EXECUTIVE DIRECTOR O'SHEA: To that point, Roy.

MR. ROY MILLER: To that point, we would not have to change our gillnet fisheries based upon the wording that was inserted into

Amendment 6; however, it would make a drastic change in our hook-and-line commercial fishery, which presently operates at a 20-inch minimum.

Since we cannot claim that has a bycatch problem, it is my presumption that our commercial hook-and-line fishery would have to go to 28 inches. That's my understanding. That's the short answer, Gil.

MR. POPE: If I could follow on that. It was my understanding that there were to be no changes, that it was strictly to be changes in commercial coastal regulations and so on, and that Delaware was to keep all of its present regulations.

That was my understanding of the intent, because we went over it a couple of times to try to get it right, and evidently maybe we didn't get it right. I don't particularly want to hold up Amendment 6 for that particular reason. Thank you.

EXECUTIVE DIRECTOR O'SHEA: Mr. Fote.

MR. FOTE: This has given me a lot of worry in the last two days. I've probably had about six hours sleep. And, basically, since this is so important and I don't want to ramble, I did write something out and I'd like to read it. It's two pages, but it's 16 font because I have a hard time reading once you get over 55 -- so I'll try to be brief.

To all the commissioners and members of the public, I've been attending Atlantic States Marine Fisheries Commission meetings for over 16 years.

I have worn many hats attending the ASMFC meetings over the years, from being a member of the public to a commissioner to a proxy for a commissioner to being a member of the public again, and now back as a commissioner.

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In those many years, I have seen many changes take place in the commission and take pride that I have played even a small part in those changes. Most of those changes have to do with making this a more open and public-friendly process.

The way it was done was allowing for more public participation and by more participation by the commissioners. These and other changes made me proud of being part of the best-run fisheries management system in place.

We might not be perfect, but I look at what we have accomplished and we're damned good. I may have not said this to the members of the commission, but on both the Ocean Commission and the PEW Commission I have said this and to a lot of the congressmen, using us as an example of what should be happening.

That does not mean that I have not been on occasion an outspoken critic of the management options being discussed at the ASMFC meeting and sometimes the decisions made. When I first came, I complained mostly that it was a closed process and did not allow for public process.

You do not hear me making those comments anymore. I still will point out when I think things are of real importance and do not properly review the public process and needs to go through the process. I try and point out when an option or regulations is unfair to any state.

I also argue when I feel that we make decisions on politics and not science or that they are inequitable. I have never been accused of being timid about expressing my opinions. I have always tried to be up front and straightforward in my discussion. You know where I am coming from and the reasons why.

The reason I have laid this out is because I think that is one of the most important issues that was

discussed ever at the Atlantic States Marine Fisheries Commission; the process the Atlantic States Marine Fisheries Commission does in amending a plan.

One of the reasons that the ASMFC works is because the states belonging to the compact treat each other fairly in the process that we deal within. We might do something that will affect one state more than another, or even differently than others, and this might not seem fair by that state, but the process we deal with each other and the way we handle these issues will be open and forthcoming.

The state will understand what has happened, how it will be affected. It will have an opportunity to bring it to their state for a public hearing and/or discussion. They will want to receive the comments of their citizens and bring forth the comments on these issues.

If the citizens of the state strongly disagree with this option, they may make their feelings known and be able to make a case why this should not happen. The state will then make a case to put before its arguments before the Atlantic States Marine Fisheries Commission.

As a body we will make our decisions after weighing all the information. The state and the citizens of that state might not win, but the process has been followed and the states that have citizens have had many bites at the apple.

So when I heard on Monday that the Delaware River and the Hudson River were no longer being considered producing area, did I miss something? I am bad at remembering names and phone numbers. I can never remember how to spell anything. It sometimes slips my mind about things I am supposed to do.

Having said that, for some strange reason I have

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a very good memory for what is said at meetings. I never did lose a bet with Jack Dunnigan when I said what happened a couple of years before this or that meeting, and Jack would say, no, you're wrong and we'd go back and review the minutes and I won every bet.

When I have reviewed the motions of the December meeting, I saw nothing unexpected was passed so maybe I felt that this happened after I left. When I asked questions from people around me on Monday, they could not explain this.

Did this happen in Amendment 6 before I went back on the Atlantic States Marine Fisheries Commission as a commissioner? I have no answers and could not find answers before the meeting finished.

I know that if the motion was on this and we went to a public hearing, I would have asked questions, heard some complaints from the Chesapeake Bay jurisdictions, the same complaints that the Chesapeake Bay jurisdictions hear from their citizens every time they raise the size limit, we talk about raising the size limit to 24 inches, and the bay is brought up.

Some of the questions that would have been brought up; would we not see if any fish if we raised it up to 28 inches? Will we get any fish up in the producing area? That question is always asked.

Do we do away with the spawning ground closures? That's a serious issue. When I asked the question of certain people, they said, "Well, we no longer have spawning area closures. According to Amendment 6, that has been taken out of there". Now I don't think any of us want to do that but that's what this plan says.

EXECUTIVE DIRECTOR O'SHEA: Tom, you

said you were going to just read it. I'm watching the time on this and I'd like to let you - - I mean, the deal I think we made is I'd let you read your two pages there. I'd like to hold you to that, please, so I can give other people a chance to speak.

MR. FOTE: Okay. Do we have a two-month closure in our bays and estuaries, because we've done that, especially when they first come in both ways? Those three questions and many more would have been asked at the public hearings.

We would have received comments and we would have brought those comments to the Atlantic States Marine Fisheries Commission. None of that has happened. In the two days of not sleeping worrying how long this would happen, I realized it was not.

What I found was a discussion in the document that had to have been discussed. I didn't write this paragraph down but I will explain it. When I went back and read the minutes of the meeting, I basically agree with what Gordon had said. I agreed 100 percent. I made a mistake.

Now if I would have been wide awake, there were two places that I would definitely have not said because according to the minutes Gordon was approving a 20-inch size limit along the coast, which is in the minutes, and the other thing which I would not have agreed on, that there was no changes -- that the jurisdictions of the Hudson River and the Delaware River were not different than the coast. We know they are.

We have spawning area closures in both of those areas. We have different size limits. And the one final question I put before this board, it says that under Amendment 6 that we will have to have -- we can put in place what was acceptable under Amendment 5 in our coastal management plan.

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Well, what I fish on along the ocean is a slot limit and another fish. That was approved under Amendment 5. Am I allowed to do that? Is it only in the bay areas that I have to change these rules? There's a whole bunch of questions there because that's what we approved under Amendment 5 for our coastal.

The other thing here is we have no bay fishery. We have a coastal fishery. This is not considered a producing area fishery; it's considered a coastal. So if I interpret that, that means the Delaware Bay and Raritan Bay are both coastal fisheries because we have never designated that as a producing area fishery. I'll leave it at that.

EXECUTIVE DIRECTOR O'SHEA: Thank you. Bruce Freeman.

MR. BRUCE FREEMAN: Thank you, Executive Director. I want to address some of the issues that Tom has, but I'm not going to go on as long. But, nevertheless, they are serious in my mind.

One, as Gordon has indicated, is the true understanding of what we did, and it wasn't until after we did it that it started to sink into me. The issue of essentially not addressing spawning areas in Addendum 6 I think is a shortcoming, and I should have recognized this earlier, but I did not.

I went back and looked at the plan. Relative to any of the spawning areas, there are sections in there that deal with water quality, with contaminants, in protecting those areas, but there is nothing to mention protecting those areas from fishing.

In the original plan that we adopted, the commission, and every amendment and addendum after that, through Amendment 5,

we've protected the spawning areas. That's one of the first actions that we've taken as a commission dealing with striped bass.

We recognize that this particular species is vulnerable because although it spends much of its life in brackish and saltwater, it returns to freshwater to spawn. And we know those areas. That's one of the shortcomings that we recognized early on.

And the first action we took, all the states, collectively, was to prohibit fishing in the spawning areas. Amendment 6 has no mention of that, so if we, New Jersey, do have spawning areas, we can have a directed fishery in those, and I think that is totally contrary to what we have been using and applying in our plans. And when this motion comes to a vote, we will have to oppose that vote. I'll just leave it at that. Thank you.

EXECUTIVE DIRECTOR O'SHEA: Thank you. Mr. Carvalho.

MR. GERALD CARVALHO: Thank you, Mr. Chairman. I think this problem reemphasizes our need to move ahead with the addendum process and establish a uniform size standard.

EXECUTIVE DIRECTOR O'SHEA: Mr. Colvin.

MR. COLVIN: One quick comment, Mr. Chairman. With respect to the comments that have been made about spawning area closures, I just want to make the record reflect precisely the status of Amendment 6 on that point.

Amendment 6 does not, as some of our earlier fishery management plan amendments did, specify mandatory regulatory closures in spawning areas; however, it does include this statement, and did all the way through the public

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review and comment process, at Section 5.3.2, Spawning Area Closures, "Consideration should be given to the prohibition of fishing on the spawning grounds during the spawning season." Thank you.

EXECUTIVE DIRECTOR O'SHEA: My understanding would be that there is nothing in the plan that would prohibit a state from taking action more restrictive than what is in the plan to protect those areas. That would be my understanding. Gil Pope.

MR. POPE: Thank you very much. We plan on doing exactly what was intended, two fish, 28, and the increase, and that's all we're going to do. If somebody feels that there is a problem with the plan, then later on I'm sure that it's going to be addressed and can be fixed.

We went ahead in good faith and we did a lot of work on this plan. It would be sad at the last minute to have a last-minute glitch here mess it up. So, Tom, for a second there I thought you were going to retire. Thank you.

EXECUTIVE DIRECTOR O'SHEA: Roy Miller.

MR. MILLER: Thank you. I just wanted to quickly state my intentions. On Monday I voted for Amendment 6 and I'm loath to reverse myself, but I've heard the comments of my colleague, Tom Fote, and I find myself in sympathy with those comments, by and large.

So what I would urge the board to do is to attempt to address this question, as Jerry suggested, of the uniform sizes, at least give it some consideration, give some consideration to this spawning ground issue as quickly as possible through the addendum process.

I don't want us to operate in a vacuum with no plan in effect for this coming fishing season so,

therefore, I am prepared to vote in favor of Amendment 6, with the hope that some of these issues that have given me heartburn over the last two board meetings, extreme heartburn, when I found at first -- and fortunately the board smiled upon my dilemma and gave Delaware some relief from the commercial 28-inch minimum size for our gillnet fishery.

I'm very appreciative of the board members who supported that effort. So in turn I'm willing to support Amendment 6 today with the hope that we can address some of the continuing inequities via the addendum process. Thank you.

EXECUTIVE DIRECTOR O'SHEA: Mr. White.

MR. G. RITCHIE WHITE: Thank you, Mr. Chairman, I would agree. There's a whole lot in this plan that I strongly oppose, but I'm going to vote in favor of it. I think the structure is proper, and I think there are issues that in the future hopefully we can rectify and help some of the states gain some back. I think we have to move forward.

EXECUTIVE DIRECTOR O'SHEA: I just would like to remind folks this has been a four-year process, that we held something close to 30 public hearings on this document, and we held two board meetings to work through the public decision document, including a single day to work through Amendment 6.

While I hear people saying they didn't read it until a few days ago or didn't pick the nuance out of it, I'm not sure at this point that's a rationale for us to take four years worth of work with a lot of good measures in here that are going to establish important tools to help manage this resource and put it behind us and move on.

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I'll also put another hat on, and I'm going to speak on behalf of your chairman, Mr. Nelson. We go through the budget process, and you've heard Susan Shipman say it during her reign and if John was here today, he would say the same thing, we didn't put any money in doing more work on striped bass.

We have other species that are in a lot worse shape than this species is, and we've got an action plan to address those issues. I just simply would like to remind you all of that as well. Mr. Diodati.

MR. DIODATI: It's my impression, at least, that it wasn't the intent of the board to restrict status quo activities. I don't think that was our intent. If it was, then I need to be made aware of that.

I'm willing to do whatever we need to do to make a correction to this. I guess I need to know does anyone oppose making a correction? And if no one opposes making a correction, why don't we just figure out how to do that so that we could salvage the work that has been done and move forward.

I think that the resource is large enough — we've already established that — so that no one should be aggrieved by this process. Everyone should leave the table today somewhat satisfied with what they've left with in terms of the striped bass. Why don't we just try to do that? I'm sure that New Jersey must have a suggestion on how to modify or make the appropriate change.

EXECUTIVE DIRECTOR O'SHEA: To that point, Mr. Fote.

MR. FOTE: To that point, what New Jersey would like to do is freeze our 2002 regulations. What does that mean; that we were allowed to go up to 375,000 pounds or something like that,

and we will stay at 225,000 pounds in our tag program.

We will keep all existing regulations in place. We will hopefully work fast in getting an addendum in place to basically address this.

One of my real concerns that's here is that maybe I didn't do my job. Maybe Bruce didn't do his job. Maybe the technical people didn't do our jobs because none of us picked this up.

And to go back and try to explain that to the state is putting us in really hot water, because it's all over the newspaper. I know that's not your problem but we look out for fellow commissioners like that.

The same thing is happening in Delaware and the same thing is happening in Pennsylvania. I guess you're right, Vince. It took four years, and part of that time I was not a commissioner. But, it's not an excuse but I guess I'm not that technical.

Gordon has had many years working where he worked in the agency where they basically wrote permits and everything else like that, so he looks at things very technical. I did read the amendment, so did our technical people, so did Tom McCloy and everything else.

They're professionals and none of them picked it up. It was a drastic mistake. And, as Gordon says, it was a bomb that hit him at this meeting. You also realize that if you look at the comments I made under that statement I said, yes, I agree with you, but also this cannot be done under Amendment 6, that it needs to be done under addendum. We can't do this.

Nobody said I was wrong. If somebody would have said right then and there I was wrong, then we would have been prepared for Monday.

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Then we would have had a discussion. But I came in flatfooted and I apologize. I'm looking for a way out that we can go back and look at it.

And we've done that for other commissioners and other states before when a mistake has been made that really would put them in a real bind, and we'll be in a bind when we go back. As I said, Congressman Pallone's aide was sitting there and the first thing he did was leave --

EXECUTIVE DIRECTOR O'SHEA: Tom, I'm just going to try to focus you. The specific question was what was your proposal to fix this?

MR. FOTE: Well, my proposal is what I think is allowed under the plan. Now, that's going to be another interpretation because we basically were approved under Amendment 5 for our coastal fishery. Our coastal fishery is right now.

So what I'm saying is we'll stay status quo at our coastal fishery as the existing 2002 regulations. We will not raise our commercial quota by the raise that everybody else is getting. We will stay status quo on everything that we had in 2002. So we will not take advantage of 100,000 pounds of commercial quota.

EXECUTIVE DIRECTOR O'SHEA: Mr. Colvin.

MR. COLVIN: Thank you, Mr. Chairman. This is difficult. We're getting into a level of detail that belongs before the Striped Bass Board. Unfortunately, the cart is in front of the horse because we haven't voted on this motion yet.

Assuming that the motion passes, I think that's where this dialogue has to go. What's encouraging is that I hear several members of the commission speaking in terms of positive approaches to solving the problem and resolving the concerns.

I think Mr. Diodati's suggestion was a good one. I think Mr. Fote's suggestion was a good one. I think they are very consistent with the idea that I put in earlier. I believe Mr. Carvalho and Mr. Pope have made reference to the board's decision already to proceed with an addendum that focuses on size limits.

I feel confident that if the commission adopts the amendment, based on the sentiments expressed in this discussion, that the Striped Bass Board will solve this problem. I really do, and I think the will exists around here to do so.

Just one more point and just addressing Mr. Fote's comments that he just made, going back to my early question to Bob, I don't believe that approval of Amendment 6 requires increases to size limits in the areas that are covered by the amendment this year, anyway.

I don't believe that they would be required, even assuming the board never took any action on this issue, until 2004. So, I think the suggestion is appreciated and it ought to be part of the discussion. But it may not ultimately prove necessary.

EXECUTIVE DIRECTOR O'SHEA: Now, I'm going to call on Mr. Pope.

MR. POPE: Thank you, very much. I have to totally agree with what Gordon says. I think that there's nothing here that can't be fixed. And as far as I'm concerned, if New Jersey wants to stay with status quo, whatever they want to do, that's fine.

The only thing that would bother me is that later on, that the one fish at 28 and one at 24, their slot, may have to be looked at again, which is one of the things that was mentioned, but that's minor. That's no reason to hold up Amendment 6. Thank you.

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EXECUTIVE DIRECTOR O'SHEA: Mr. Adler.

MR. WILLIAM A. ADLER: I think Gordon covered it. When are the provisions of this supposed to be implemented by; the first of the year, two thousand and what?

EXECUTIVE DIRECTOR O'SHEA: Four.

MR. ADLER: Four. You're talking about this year status quo, are you, Tom?

EXECUTIVE DIRECTOR O'SHEA: To that point.

MR. FOTE: To that point, we were going to stay at status quo. The problem is unless I have a commitment from them to go back, what's going to go into the paper, you passed it as is. There is no guarantee you're going to do anything, and that's what I'm going to get asked when I go back.

MR. ADLER: Oh, okay --

MR. FOTE: And that's what I'm saying.

MR. ADLER: -- but even under the system right now, while we fix it, your thought of this year won't be a problem in this thing because you could stay right where you want to go. If that's what you want to do, you could.

MR. FOTE: That was never the problem because we knew we were not going to pass it this year. My problem is going back. There are four reporters that want to talk to me, two television stations.

I've got to go there and say, presently, at this time, this has not been solved, and we have a reduction, and that's what will be in the newspapers; unless I can have a feeling of the board that they will address it and we could

basically say the board has realized there's a mistake, they will address it at the next management board meeting, and we can go back with something to tell them, because I have nothing to tell them except feelings, and they're not too happy with feelings, I'm sorry, especially after this just happened.

EXECUTIVE DIRECTOR O'SHEA: Well, I just hope perhaps they're not as technically adept at reading plans as we are and maybe they'll miss it. Are there any other comments? Mr. Travelstead.

MR. JACK TRAVELSTEAD: Does the commission have the ability here today to adopt Amendment 6 without provisions with respect to size limits in the so-called producer areas? Can we amend what the Striped Bass Board has sent us? Is it all or nothing kind of thing?

EXECUTIVE DIRECTOR O'SHEA: My understanding is this is a package. I discussed this with the chairman of the Striped Bass Board as well, and the intent was to put a package in -- the process is to put a package in front of the commission that has been recommended by the board and for the commission to vote it up or down -- unless you'd like to comment on it, Mr. Flagg.

MR. FLAGG: Yes, thank you, Mr. Chairman. I totally agree with the comments that Gordon made earlier. I think that the venue for these issues is back with the board. I'm very uncomfortable with having the full commission start to unravel some of the things that have been incorporated and voted on by majority vote of the members of the board.

I totally agree with Gordon that those issues need to be remanded back to the board for further consideration and for analysis. I think we too often thing about doing things without

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having technical committee advice and a full analysis to determine specifically what we've done, so I'm very concerned about that.

EXECUTIVE DIRECTOR O'SHEA: Mr. Cupka.

MR. DAVID CUPKA: Thank you, Mr. Chairman. We don't really have a dog in this fight, but sitting here listening to the comments from the state that are very involved in striped bass, it seems to me I've heard a number of commitments by other commissioners sitting around this table who have recognized there is a problem and who have made a commitment to go back and address this situation and to straighten it out as soon as they can. So, to Mr. Fote's comment, I'm hearing some of that commitment that he was anxious to hear.

EXECUTIVE DIRECTOR O'SHEA: A.C. Carpenter.

MR. A.C. CARPENTER: Thank you, Mr. Chairman. I'm not a member of the commission, but I am a member of the Striped Bass Management Board. I would like to give my support to the idea that the Striped Bass Board would reconsider this issue through an addendum process at the earliest possible opportunity.

EXECUTIVE DIRECTOR O'SHEA: I see nods from Fish and Wildlife Service, National Marine Fisheries Service, and I will assume that you agree with the statements just made by A.C. Carpenter. Thank you. Mr. Freeman.

MR. FREEMAN: So far as rectifying the problem, the fact that all of us will be able to continue with our existing regulations through this year does not negate the fact that unless this problem is corrected and corrected starting January 1, 2004, that you haven't solved anything.

EXECUTIVE DIRECTOR O'SHEA: Mr. Fote.

MR. FOTE: I still haven't had -- and this is the question I'm asking because this would solve my problem right now -- I still don't have an interpretation on whether I'm reading this plan right or wrong, because this is my coastal fishery, and I basically was approved under Amendment 5 to do that, am I still approved to do this under Amendment 5?

That's my coastal fishery. This is not fishing as a producing area, because we never got that designation. What it allowed us to do was take some of the savings because we never implemented the plan and do it and put it alongside. But it was always considered a coastal fishery. That's a question that could solve this problem right now.

EXECUTIVE DIRECTOR O'SHEA: Okay, Mr. Beal.

MR. BEAL: One of the discussions that we did have on Monday was with respect to the implementation plans and how would they be reviewed. I think Ritchie White asked the question specifically about New Jersey and Delaware slot limit of one fish, 24 to 28, and one over 28, how is that going to be reviewed.

I think the answer that was given at that time was that all states are going to have to provide evidence that their programs are equivalent for their coastal fishery with the two at 28-inch standard that's in the plan right now. So I think that still applies.

A lot of states have a lot of different regulations in place, some with sizes below 28 inches, and all those states are going to have to go back, provide evidence that those programs are equivalent with the two at 28 for technical review.

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MR. AUGUSTINE: Call the question, Mr. Chairman.

EXECUTIVE DIRECTOR O'SHEA: Okay, Mr. Augustine has called for the question. Do we have any public comment before we caucus? There's no need to caucus, really. You want to caucus, okay. Anthony Bogan, do you want to speak again? Okay.

MR. BOGAN: Thank you very much for letting me come up again and speak real quickly. Just to your point, Mr. Chairman, the point that that I was trying to make was not that nobody just picked it up, it was that there was the confusion of Amendment 5 measurements, status quo, people saying "no changes."

That's where the confusion was, was the fact that "status quo" would mean a state wouldn't have to raise their size limits eight inches, technically, because we could have been at a 20-inch fish, but we only chose to take a 24.

The point was, was that Amendment 6 was allowing us to liberalize the commercial, reestablish targets, and that was where the confusion was. It wasn't the fact that you worked for four years on it.

We just didn't understand. It was obviously the misconception of comparing status quo to Amendment 6. I just wanted to clarify that. Thank you very much.

EXECUTIVE DIRECTOR O'SHEA: Thank you. All right, states caucus.

(Whereupon, a caucus was held.)

EXECUTIVE DIRECTOR O'SHEA: In view of the discussion we've had on this, we will do a roll call vote and I will ask Mr. Beal to call the roll.

MR. BEAL: Thank you, Mr. Chairman. The state of Maine.

MAINE: No.

MR. BEAL: New Hampshire, not present. Massachusetts.

MASSACHUSETTS: Yes.

MR. BEAL: Rhode Island.

RHODE ISLAND: Yes.

MR. BEAL: Connecticut is not present. New York.

NEW YORK: Yes.

MR. BEAL: New Jersey.

NEW JERSEY: No.

MR. BEAL: Pennsylvania.

PENNSYLVANIA: No.

MR. BEAL: Delaware.

DELAWARE: Yes.

MR. BEAL: Maryland.

MARYLAND: Yes.

MR. BEAL: Virginia.

VIRGINIA: Yes.

MR. BEAL: North Carolina.

NORTH CAROLINA: Yes.

MR. BEAL: South Carolina.

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SOUTH CAROLINA: Yes.

MR. BEAL: Georgia is not present and Florida is not present. I have eight votes in favor and three votes opposed.

EXECUTIVE DIRECTOR O'SHEA: Thank you. The motion carries. Lew Flagg.

MR. FLAGG: Thank you, Mr. Chairman. I'd just like to explain briefly the reason for our no vote. It didn't have anything to do with the discussion that is being held here today. I'm a little reluctant as chairman to express some views and I've tried to keep those to myself, as I feel I should have.

But, basically, our concerns have been relative to the EEZ issue, which was one big issue for us. The commercial quota increases, we did feel that we could support the commercial quota increases, although many of our constituents had great problems with that.

But when it came to the EEZ issue and a potential for opening it, it was sort of the straw for us. I just wanted to explain that to the members here. It has nothing to do with previous discussion. Thank you.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Mr. Flagg. Okay, Mr. Fote, I guess all I would say, if you were trying to explain your no vote for New Jersey, I think we're aware of it.

MR. FOTE: No. I mean, you have just passed a motion that puts New Jersey and Pennsylvania and Delaware at a disadvantage, as stated, than any of the other states.

Understand that under this present, the states and the other producing areas were left at status quo. The Chesapeake Bay, Albemarle Sound and those areas -- because Gordon gave me a look

and I'm just explaining what I'm saying.

It also basically relaxed the commercial fishery and increased that by 42.8 percent, and you also basically exempted Delaware's commercial fishery.

The only people that are actually going to see less fish and more restrictions on this are the states of Delaware, New Jersey and Pennsylvania, until it's fixed, and hopefully this board will fix that. But presently, as it stands right now, that's what Amendment 6 did.

EXECUTIVE DIRECTOR O'SHEA: Thank you. There are some other items in Amendment 6 that you didn't mention that I think are really positive for the resource, but, yes, Eric.

MR. SCHWAAB: Just to that vote that just occurred, I would certainly recognize the legitimate concerns out of New Jersey and others, and it was my understanding, based upon the conversation that took place here, that the Striped Bass Board is going to immediately take this issue back up and we'll seek to address it in a timely fashion. And for that reason, I was comfortable in supporting the adoption of the amendment.

EXECUTIVE DIRECTOR O'SHEA: Thank you. The point I was going to make, before I recognized Mr. Fote, was to advise you all that we'll certainly task staff with getting to work on this because I know what a high concern it is for some of you.

The last two items on our agenda, I want to report to you is that the Administrative Oversight Committee had agreed to undertake a process to develop an appeals process. That was the result of a discussion that came out by the AOC members back in Williamsburg in November.

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While we were gearing up to begin that, the commission is in receipt of a letter from the state of Massachusetts wishing to appeal Black Sea Bass Board action. The current thinking right now with the chairman, Mr. Nelson, is that we may engage in some sort of parallel process; one, because of the time nature of the appeal to Massachusetts to deal with that; and then on a longer-term basis develop a more formalized appeal process within the commission.

We were to hold a conference call on this earlier this week, and I presume you would have been briefed on the results of that or at least been made aware of that situation, and that's why I'm taking the time today to tell you that is in play. The conference call couldn't take place because of a number of reasons. We'll be holding that in the next week or so and getting on with that, and we'll keep you informed.

The second issue is the AOC will also be reviewing our current five-year strategic plan with the intent at the June meeting of holding a workshop with commissioners to get you oriented towards the existing five-year strategic plan and look at how our environment has changed or projected to change for the next five years out and use products from that to incorporate them into an updated five-year plan, which we hope to have presented and approve to you all at the December meeting.

So that's our track line or timeline to deal with the strategic five-year strategic plan. I wanted to make you aware of that, as well.

Is there any more business to come before this commission? Mr. Flagg.

MR. FLAGG: Thank you, Mr. Chairman. I'd like to take this opportunity to thank the staff that worked on the Striped Bass Plan. They worked incredibly hard. This was a very, very

hard and contentious issue that we've dealt with.

Also, thanks to the law enforcement committee, the technical committee, the PDT that really did yeoman's work to get us where we are today. And make no mistake about it, there are many good things in the Amendment 6 to the Striped Bass Plan. Thank you.

EXECUTIVE DIRECTOR O'SHEA: Well, thank you for those comments, Lew, and also thank you for your leadership as chairman of that board. I thought you did a very commendable job and helped contribute to the quality of the product so thank you very much for that.

Is there any other business to come before this commission? I have a motion to adjourn from Mr. Augustine. We're adjourned. Thank you very much. Have a safe trip home. See you in June.

(Whereupon, the meeting adjourned at 5:35 o'clock p.m., February 26, 2003.)

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