

**PROCEEDINGS OF THE
ATLANTIC STATES MARINE FISHERIES COMMISSION
AMERICAN EEL MANAGEMENT BOARD**

**The Westin Alexandria
Alexandria, Virginia
May 3, 2016**

Approved August 4, 2016

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1. **Approval of Agenda by Consent** (Page 1).
2. **Approval of Proceedings of February, 2016** by Consent (Page 1).
3. **Main Motion: Move to initiate an addendum to reconsider the coastal cap and the state by state yellow eel allocation** (Page 12). Motion by James Gilmore; second by David Borden. Motion postponed.
4. **Motion to Postpone: Move to postpone until August meeting** (Page 14). Motion by Bill Adler; second by Martin Gary. Motion carried (Page 14).
5. **Move to create a working group to address the inequities of the coastal allocation of yellow eels, as well as revisit the glass eel quota** (Page 14). Motion by Patrick Keliher; second by Dave Borden. Motion failed (Page 16).
6. **Move to adjourn** by consent (Page 17).

ATTENDANCE

Board Members

Pat Keliher, ME (AA)	Loren Lustig, PA (GA)
Sen. Brian Langley, ME (LA)	Andy Shiels, PA, proxy for J. Arway (AA)
Terry Stockwell, ME, Administrative Proxy	David Saveikis, DE (AA)
Steve Train, ME (GA)	John Clark, DE, Administrative proxy (AA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)	Roy Miller, DE (GA)
Doug Grout, NH (AA)	Craig Pugh, DE, proxy for Rep. Carson (LA)
Cheri Patterson, NH, Administrative proxy	Bill Goldsborough, MD (GA)
G. Ritchie White, NH (GA)	Lynn Fegley, MD, proxy for D. Blazer (AA)
Sarah Ferrara, MA, proxy for Rep. Peake (LA)	Rob O'Reilly, VA, proxy for J. Bull (AA)
Dan McKiernan, MA, proxy for D. Pierce (AA)	Cathy Davenport, VA (GA)
William Adler, MA (GA)	Kyle Schick, VA, proxy for Sen. Stuart (LA)
Robert Ballou, RI, proxy for J. Coit (AA)	Rep. Bob Steinburg, NC (LA)
David Borden, RI (GA)	Michelle Duval, NC, proxy for B. Davis (AA)
Eric Reid, RI, proxy for Sen. Sosnowski (LA)	Doug Brady, NC (GA)
Dave Simpson, CT (AA)	Robert Boyles, Jr., SC (AA)
Emerson Hasbrouck, NY (GA)	Mel Bell, SC, proxy for M. Rhodes (GA)
James Gilmore, NY (AA)	Pat Geer, GA, proxy for Rep. Nimmer (LA)
Steve Heins, NY, Administrative proxy	Spud Woodward, GA (GA)
Mike Falk, NY, proxy for Sen. Boyle (LA)	Jim Estes, FL, proxy for J. McCawley (AA)
Adam Nowalsky, NJ, proxy for Asm. Andrzejczak (LA)	Mike Millard, USFWS
Russ Allen, NJ, proxy for D. Chanda (AA)	Chris Wright, NMFS
Tom Fote, NJ (GA)	Martin Gary, PRFC
J. Thomas Moore, PA, proxy for Rep. Vereb (LA)	

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

Ex-Officio Members

Jon Cornish, Law Enforcement Representative

Staff

Bob Beal	Ashton Harp
Toni Kerns	Kirby Rootes-Murdy
Mike Waine	

Guests

Derek Orner, NOAA	Gregg Waugh, SAFMC
Charles Lynch, NOAA	Stew Michels, DE DFW
Peter Burns, NMFS	Joe Cimino, VMRC
Mike Ruccio, NMFS	Wilson Laney, US FWS
Kelly Denit, NMFS	Corey Hinton, Passamaquoddy Tribe, ME
Alli Murphy, NMFS	Jack Travelstead, CCA
Nichola Meserve, MD DMF	Arnold Leo, E. Hampton, NY
Jeff Pierce, MEFA	David Bush, NC Fisheries Assn.
Abden Simmons, MEFA	Des Kahn, Fisheries Investigations

Proceedings of the American Eel Management Board Meeting
May 2016

The American Eel Management Board of the Atlantic States Marine Fisheries Commission convened in the Edison Ballroom of the Westin Hotel, Alexandria, Virginia, May 3, 2016, and was called to order at 4:26 o'clock p.m. by Chairman John Clark.

CALL TO ORDER

CHAIRMAN JOHN CLARK: Okay, will the Eel Board please be seated; we want to get this meeting started. All right the sooner we get started the sooner we move on to whatever it is that is coming next. Thank you all for coming. This is the American Eel Board. I'm John Clark, the Administrator Proxy for the fabulous first state, and let's move right into the agenda.

APPROVAL OF AGENDA

APPROVAL OF PROCEEDINGS

CHAIRMAN CLARK: Does anybody have any additions or changes to make to the agenda? Seeing none; proceedings from the November, 2015 meeting, does anybody have any changes to make to those? Seeing none; the agenda and proceedings are approved by consent.

PUBLIC COMMENT

CHAIRMAN CLARK: Our next item is public comment for issues that are not on the agenda. I've been told that Mr. Corey Hinton would like to address the Board, is he here? Oh yes, there he is. The public microphone is in the back there, Corey.

MR. MICHAEL-COREY F. HINTON: Hello, my name is Michael-Corey Hinton I am an attorney here on behalf of the Passamaquoddy Tribe of Maine. I would like to begin by expressing my thanks to Commissioner Keliher for the opportunity to speak here today, and to all of you for listening to my remarks.

This year for the Passamaquoddy tribe with regard to the glass eel fishery was one of what I would say is historical significance. This year the

tribe had an allocation of well over 1,000 pounds of quota; which we fulfilled several weeks ago. It was a very active fishery, and for the first year in several years I would say that this season went off largely without hitch.

For the first time in as long as I've participated in this fishery on behalf of the Passamaquoddy Tribe, we managed the fishery as a tribe pursuant to a memorandum of understanding with the state of Maine; something that the tribe had pursued for several years. I would say that this model of co-management worked extremely well this year; not without difficulties, there are issues that we need to address within our own community.

But on the whole, this was a season that went off with very little, if any, friction; as far as large issues go. The Passamaquoddy Tribe looks forward to building its presence with the ASMFC, and I understand that there will be a meeting in Bar Harbor at the end of this year; I believe that will be in November.

As you may or may not be aware, the island Bar Harbor is a place of great spiritual significance to the Wabanaki people includes the Passamaquoddy the Penobscot, the Micmac and the Maliseet. We are the four federally recognized tribal nations in the state of Maine, and Bar Harbor is our home. Bar Harbor is a place that for many years was viewed as a gathering place for Native Americans up and down the East Coast, so I feel it is very fitting that the November meeting will be in Bar Harbor. The Passamaquoddy Tribe looks forward to an opportunity to give a little bit more of a fullsome presentation about the historical significance of the American Eel to our people.

At that time the leadership of the tribe, we have two Chiefs and Vice-Chiefs from our two respective reservations. We'll look forward to an opportunity to address the Management Board in person. They send their regards for being unable to attend today; but there was a passing

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in our community. But on the whole I would just like to again say thank you to the Board and to Commissioner Keliher. This was a very successful year and we look forward to continuing to build on this into the future. Wilwni. (Algonquin Indian translation: thank you)

CHAIRMAN CLARK: Thank you, Mr. Hinton.

2017 STOCK ASSESSMENT FOR AMERICAN EEL

CHAIRMAN CLARK: Moving on to our next agenda item, Mike Waine will bring us up to date on the timing of the 2017 stock assessment for American eel.

MR. MICHAEL WAINE: Just to remind the Board, the last time we conducted a stock assessment was in 2012; that was a benchmark. The five-year trigger is 2017. In preparation of that five-year trigger, we got the American eel Technical Committee together on a conference call to look at all the various research priorities that came out of that 2012 assessment.

As we began to evaluate, basically conducting another assessment in 2017, we wanted to look at what progress had been made on those research recommendations from the last time we conducted the assessment. Ultimately we have identified some data gaps that we would like to try to close, and also identified some action items with the Technical Committee that they would like to work on in the interim.

Through that discussion they decided that it would likely make more sense to do a stock assessment update, as opposed to a full blown benchmark. The distinction there is, keeping the datasets the same and the modeling approach the same, and just updating everything through a terminal year, which would likely be 2016 for a 2017 update, as opposed to sort of reviewing all different modeling approaches for eels, and reconsidering all available datasets; which would be the benchmark version.

Because of the progress that has been made since 2012, they recommended the update assessment for 2017; and Assessment Science Committee reviewed that recommendation and approved what the Technical Committee had suggested. The Policy Board will review that later in the week when they consider the stock assessment schedule. But I just wanted to update the Management Board about that, as I think it had relevance to some of the discussions we were having on today's agenda.

CHAIRMAN CLARK: Are there any questions for Mike about the update?

MR. PATRICK C. KELIHER: Mike, I'm trying to understand what this might mean for future catch advice associated with the assessment. Would you expect catch advice to be different doing an update instead of a full benchmark?

MR. WAINE: With the update it is simply updating the data, and to remind the Board, American eel is a very data poor stock. We didn't have useable reference points that came out of the 2012 assessment; and so an update of the assessment would likely not yield useable reference points; therefore, I would expect that the advice that was provided to the Board, in terms of management, would be similar for a 2017 update as it was for a 2012 benchmark; because it is the function of an update, and we haven't changed the modeling approaches and haven't sort of reconsidered or closed some of those research data gaps that exist.

CHAIRMAN CLARK: Follow up, Pat.

MR. KELIHER: With the understanding that this is a very data poor fishery, would it not make more sense to look at potentially tasking the TC to try to determine what we should be trying to gather for additional data, and then do a full benchmark at a later date? I am thinking back to the long discussions that this Board had regarding catch advice.

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Frankly, at the end of the day, the catch advice for both yellow eels and glass eels was not based on the assessment; it was based on some uncertainties associated with a potential listing of American eel. It was based on, for glass eels, Maine's willingness to voluntarily put a 35 percent reduction in glass eel harvest on the Board.

The yellow eel allocation, which I know is going to be a topic later in this meeting, was pulled together by a workgroup; but then reworked in a very long meeting in Connecticut, where we finally ended up with something that we hoped would help. What I personally would like to see, Mr. Chairman, is the potential of having an addendum to address some of these quota issues; both for yellow eel and glass eel.

I am not putting that on the table, because I am looking for a major increase in glass eels back to anywhere near our 2011 or '12 years, as far as glass eel quota, but maybe trying to find a way for this Board to create stability for harvest for both yellow eel and glass eels; correct some of these issues, and then run them out for six or seven years. Have some stability in management. Have a full assessment done, and then come back with some catch advice to make corrections in the future.

CHAIRMAN CLARK: Mike, is it fair to say that being that this will be another turn of the DBSRA model, which is only working off of landings, and since landings have been fairly steady, it will probably show that we are still in a depleted state; as far as the eel stock goes?

MR. WAINE: Yes, I mean, it is hard to predict exactly what the results will show. I think a large part of the concern at the TC level was simply that we're just not in a position to conduct a benchmark and really reconsider everything, given the progress that has been made from the 2012 assessment, in terms of what kind of catch assessment approaches and datasets would be

needed, to ultimately get to the end goal of providing this Management Board catch advice.

That is something that I think the Technical Committee should really wrestle with; so they might provide a little bit more expectation, in terms of how far away that is. I will tell you that from the discussions we had at the TC level, at this point it would take considerable advancements to, I think, get to where the Board would be getting catch advice out of that assessment.

MR. KELIHER: I know the time is short here, and I don't want to abuse my time at the microphone here, Mr. Chairman. But I think from Maine's perspective, we were looking at a three-year consistent quota, with the hopes of having some additional information to base changes to this glass eel fishery in Maine; but potentially in other states, looking out at 2018 and 2019.

With the information presented by the outgoing Mr. Waine, maybe we should reconsider and look at some small adjustments across the board for yellow eel and glass eels with an addendum that makes the adjustments that have been brought up by Mid-Atlantic States.

CHAIRMAN CLARK: Do we have any other questions for Mike?

MR. ROB O'REILLY: Is this a good time to bring up the data that are going to be used for allocation? I realize New York is going to have some information for us in a little bit. But in particular, we were sort of all poised for a quota system to be enacted. We really didn't know. I think that might happen at some point.

It is sort of a detail, but I'm not really sure what data are available for allocation; and by that, I mean, I don't know which jurisdictions or states have submitted or been asked for harvest data, and which have been asked for landings data. There is a difference. For example, I think in the

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past a lot of the states beyond Delaware, perhaps, maybe had landings data.

We need to figure that that should be streamlined for everyone; so I'm requesting that at some point there be a look at the data sources, and make sure they are the same. Most of the ASMFC species are managed by landings. Clearly, there is some harvest data in that table that is ready for allocation purposes that Pat talked about. I think we need to decide what that should be.

If you look at Potomac River Fisheries Commission, that is probably the area where the Maryland landings data and the Virginia landings data could be attributed to Potomac River Fisheries Commission; with the remainder as landings, and all the other states would be landings as well. Again, it is sort of a detail here, but we can't reproduce that information through ACCSP, for example.

I know that when the data work compiled, there were some difficulties, because we were running pell-mell into Addendum III and then Addendum IV; and changes were made to the original dataset that ASMFC had tried to obtain. I just want to see if there are any reservations from anyone around the table to get a composite set of data of landings for yellow eel that are all symmetrical to landings information. If that is all right with everyone, I think that that will take maybe another look from ASMFC staff.

CHAIRMAN CLARK: Mike would like to respond to that.

MR. WAINE: Yes, thanks Rob, it is a good transition to what we're going to talk about next. Certainly, if this Management Board considers revisiting allocation, it would be useful for staff to confirm with all the states that the landings data that we are using to do that is in fact, the best available information from all of the states. As we move into the next agenda item, staff has noted that that is likely where the Board would

like us to end up; in terms of making sure those landings data are correct, if we revisit allocation.
CHAIRMAN CLARK: Yes, Rob.

MR. O'REILLY: Just as a follow up, so you can understand what I'm talking about. The data that we have in there is strictly from Virginia waters. That is what we have in that table that is going to be used for quotas. It doesn't include any harvest from any other area, except for Virginia waters. I have a pretty good hunch that that is not going to be the case for all the other states, so that is why I'm asking this question.

**DISCUSSION TO CONSIDER CHANGES TO
ADDENDUM IV, YELLOW EEL ALLOCATIONS**

CHAIRMAN CLARK: That is a good lead into our next topic, as Mike alluded to. This is one that has come up before, and it is a discussion to consider changes to Addendum IV, yellow eel allocations. As you recall, New York has brought this subject up, I believe, at least the previous meeting, and perhaps another meeting before that. You have something about that, Mike? First, Mike has something to say about it, and then we'll turn it over to Jim.

MR. WAINE: Trying to get my 15 minutes of fame here. I actually put together -- I took New York's proposal and just put it into a few slides. I told Jim that I would go through it, and if he had anything to add he could do so after I finished. This is a consideration of yellow eel commercial allocation.

On your supplemental materials you received a New York proposal that outlines some of the ideas they had for revisiting allocation. Just a little bit of background. Addendum IV implemented a coastwide cap of 907,671 pounds for the yellow eel commercial fishery starting in 2015. As a reminder, there are two management triggers.

That coastwide cap is currently -- it is not allocated; but there are triggers in the

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addendum that say if the quota is exceeded by 10 percent in a given year, or if the quota is exceeded by any amount in two consecutive years, then it triggers an automatic state-by-state allocation; and that state-by-state allocation is actually directly in Addendum IV.

To continue with the background, the commercial yellow eel allocation is one of the more confusing allocations that I think the commission has done here; in terms of it takes average landings from 2011 through 2013 and then assigns sort of a filtering procedure in which each state's minimum quota is at least fixed at 2,000 pounds.

Then the quota cannot exceed 2,000 pounds above the 2012 landings, and the minimum quota must be within 15 percent of 2010 landings. After all that procedure there is this leftover amount of quota that got divided equally to states that were negatively impacted by the filtering method. This is ultimately the allocation scenario that came out of the Allocation Working Group that worked many meetings on this, to arrive at this final allocation that made it into Addendum IV.

New York brought forward a proposal saying that they had incomplete landings during those allocation years, and that New York and other states now have several more years of accurate data. Remember that a lot of those calculations were based on landings that ended in 2013 or 2012, so there has been consecutive years since then with new data.

They highlight that ASMFC's operating principal is to use the most accurate data for management, and Addendum IV does not have a revisit allocation provision. They submitted a proposal to basically discuss these two topics, one, reconsider allocation and then two, consider a revisiting timeframe. These are the options that were in New York's proposal. First, reconsidering Addendum IV allocation, the first option is our status quo; what the working group

had come up with. Option B is allocation based off most recent three years of data, so that is through 2015. Option C is the most recent five years of data through 2015, and then Option D is an allocation based on the most recent five years as a partial percentage, and some other historical timeframe as the other partial, so basically a combination of timeframes there.

In the proposal, using the landings data that came from Addendum IV, updated through 2015, the state of New York has submitted what these various options would look like in terms of state-by-state quotas. Those were included, not only in the document that New York provided, but also on the slide as shown; so we can come back to those if the Board wishes. Then the other topic being considered is the allocation revisit timeframe.

Right now, the status quo is that there is no revisit timeframe in there, so that allocation that we talked about the working group coming up with didn't have a specific provision in the addendum to say, we will revisit this allocation in so many years after it's implemented, or after the addendum passed. New York is submitting a few options of Option B, revisit the allocation every three years, or Option C, revisit the allocation every five years.

This plays a little bit back to our Climate Change Workshop that we just had prior to this eel Board meeting. Ultimately, I'll sort of leave this slide up at the very end, and let Jim add some more info if he would like. Their recommendation was to circulate their proposal to the Board for review and discussion, with the potential to initiate an addendum at this meeting to address those issues that were in their proposal.

CHAIRMAN CLARK: Jim, do you want to add something to that before we put it out to the Board for discussion?

MR. JAMES J. GILMORE: Just a couple of comments, and Mike, thanks, that was a terrific

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summary. You did a really great job. We're going to very much miss you when you go on to bigger and better things. Just a couple of comments first off, and I think the most important thing that motivated New York to do this was, remember we go back a couple of meetings ago, and the landings that were coming in last year were looking like we were going to hit the cap.

We hit that cap; New York does not have a fishery any more. We only have a 15,000 pound quota. Again, mea culpa, we didn't have the landings data; but now we pretty much documented that we have a fishery that probably lands in the 40 to 50,000 pound range per year. Again, we hit that cap; New York's fishery is just shut down. There is no savior to that; because essentially, there are not transfers at that point. That is how we've survived, and we've actually gotten more accurate landings under this.

It is I guess fortuitous that we had this right after the climate change, because I actually saw things in there, and trust me, I had nothing to do with the climate change thing, and seeing things like we were going to use percentages of historic landings, whatever. Maybe great minds think alike, I am not sure.

But what we're really looking at doing is, if we follow from that climate change and the allocation part of what we're really going to have to get into; this is sort of a baby step. The bigger allocation issues on things like bluefish and summer flounder and menhaden and so on and so forth, are going to be a very big lift. This is pretty simple in some respects, because all we're looking at is the recent data. We're just going to take that most recent data and try to do just a tweak to that.

We did put down how that would change the individual states. Quite frankly, there is not a lot of flux in that. Most of the states stay pretty close. There is a couple that go down; some of

them go up. But again, I think this might be a good first step to just get at maybe talking about allocation; where it is like almost a four letter word, everybody gets crazy about it.

They understand the pain that everyone goes through, especially this, when they went through this, I was not on that work group, but I understand how difficult it was; and probably why everyone is probably reluctant to try to do this. But again, this is a simpler step to that. I think I'll leave it at that and maybe we can get some discussion on this, and then we'll see where we're going to go.

CHAIRMAN CLARK: Before I open it up to discussion, one thing that was not put up in this proposal and Pat Keliher brought up is, we could also think about the coastal cap. It was set very arbitrarily; I don't think Delaware has made any secret about it. We thought the cap was set too low. I would just, as part of our discussion; I think it is something we can consider also. With that, I will open the floor up for discussion.

MR. RUSS ALLEN: I don't even know where to start. I agree with your thought process on the quota itself. I think if we're going to change the allocation that the quota needs to come into question, also. Just one of Jim's options there, one of our numbers for New Jersey would put us out of compliance every year; so it put us over the quota every year. I don't think that is where we want to be when we do this. That is why we tried to do all the crazy things we did the last time through. It was a very good working group.

Rob made a good suggestion on making sure those landings data are correct, and I know the TC will do that. I think, maybe, we can start an addendum. I don't have a problem with that. But I think we need to have a working group together again to possibly vet out any of the options that come about. We, in New Jersey, have tried to make sure that our landings don't go up.

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That is what we've done over the last few years; and our fishermen thought we were kind of crazy last time. If I come back to them now with an addendum, where we actually go lower in quota for no reason, I don't think that will go over very well. I want to make sure everything is vetted out appropriately, to make sure we do this the right way. I'm willing to be a part of whatever we can work on, to do that even though it drove us crazy the last time.

DR. MICHELLE DUVAL: I think one of the differences between this conversation and the one that we just had during the Climate Change Workshop is that this is not something that is being considered due to a shift in distribution of climate change. I mean this is being considered due to data collection.

I feel Jim's pain, but landings of eels were not necessarily being required to be reported during that timeframe, but I feel like this conversation is a little bit different than the one we were engaged in a while ago. Honestly, I am certainly willing to go back and look at allocation; but it is probably not going to surprise anyone that when I look at these tables here, based on the most recent three years or the most recent five years, North Carolina takes a significant hit. I mean that is like a 60 percent reduction in allocation.

I sure can't go back to my constituents and say, oh yes, you know we just did this. To echo the words of Mr. Luisi, I think you know being creative in this process is what we need to do. Quite honestly, when I look at Option B and Option C, I mean we've exceeded that just in the past couple of years, and quite frankly in about 75 percent of the last 18 years.

That is pretty concerning to me. I would rather see something that is more of a combination approach, where you're looking at perhaps a combination of historic, as well as more recent landings. I know that doesn't speak to the problem that New York is trying to address. One of the other things that we've talked about in the

South Atlantic is looking at a common pool allocation that would be accessible.

We were talking about commercial and recreational sectors in the South Atlantic, but this could be something that would be accessible to any state, if they start coming up upon an allocation cap. I think those are my initial thoughts, and then I did have one question for Mike. In Addendum IV, we do have a transfer provision, correct; if a quota system goes into place?

MR. WAINE: That is a good question. John is telling me there was. Let me check that while the discussion continues. We obviously haven't triggered allocation, but let me look it up.

DR. DUVAL: Mr. Chairman, I guess, just in looking at it I see, looking at the final version of Addendum IV in evaluating. There are a couple paragraphs on transfers that if a state-by-state quota system is implemented, then any state or jurisdiction may request approval to transfer all or part of its annual quota. I guess I would urge us to consider transfers as a very important piece of any conversation about allocations, because that certainly has helped states and jurisdictions out in the past.

MR. O'REILLY: While you're looking for that, I seem to remember that when we had these discussions before, the 2,000 pounds for certain states that had not had very much landings; that the discussion was, well you will have something to transfer. There must be a transferability built in there somewhere; although I haven't looked for a while.

It does sound sort of painful. I don't want to arm wrestle with Pat again down there, not that we did before. I think it is worthwhile to take a look at this. I'm trying to remember everything that got us to this point, and it seems that we had Technical Committee advice that I thought would keep it about 10 percent below 2010. We didn't do that exactly.

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CHAIRMAN CLARK: It was 12 percent below the average for the reference period.

MR. O'REILLY: Thank you. We didn't do that exactly, but I agree with Russ that if we change allocation we change the cap. I still think, despite the fact that there was not a listing; we're still depleted from what I know. I can't imagine that the update is going to tell us anything different. It would be great if it was qualitative and could say, well you're not as depleted as you were through 2010; but that is not going to happen either. I'll support going ahead. I don't think it is going to have a big impact in Virginia. I suspect that when we take our harvest and make it landings that there is probably about an 8,000 pound difference right there. Hard to think how the final scheme will be, but it is going to take some effort again. I am very aware of Michelle's concern over taking a massive decrease. I'll support it.

MS. LYNN FEGLEY: I guess I agree that I don't have any fundamental problems with supporting and addendum, but the problem is that anytime you -- and we all know that when we consider allocation there are winners and losers. At a certain point you know, it is like best of seven. We're always going to be in this situation where somebody is going to sit in New York's seat and say, well this just is really a bad deal for us.

With the cap, I have to ask the question, and the whole thing sounds remarkably like menhaden to me; where we've gotten ourselves in a situation where we've allocated a quota, when we don't have very good harvest data in many cases. To me, that speaks to the broader question of what do we do?

Is there some kind of broader policy that we, as a Board, as a commission should consider when we start to talk about allocations with poor harvest data? As we're talking about the stock assessment update, we know that the current cap was arbitrarily set. For example, if that

update was done applying if every state applied a scalar to the degree they think their catch was underestimated, so let's say we all, or New York bumps up by 10 percent.

You bump up your catch and then you do your assessment update. Does it change the stock status? Is it worse? Is it better? If the stock status is insensitive to some magnitude of harvest; then maybe we should just consider changing the cap, and that leads me to my final question, which is, how much do you need, New York? How much do we need? How much would we have to go up to solve this problem in a painless way? Not that there is a painless way, but just food for thought.

MR. ROY W. MILLER: I debated whether to hold this point for later, but I decided to make it now, so it can be part of the thought process. In any allocation scenario, using three years or five years of the most recent data, one problem with that is our management of other species has impacted our eel harvest.

I'm referring specifically to our management of horseshoe crabs. If we look at the data, for instance for New Jersey and Delaware that we see between, oh, looking at 2006, 2007, and then years since then, the combined landings as shown in Table 2 dropped off appreciably. I suspect a lot of that could be to the non-availability of female horseshoe crabs as the primary bait for American eel.

Also, in the case of New Jersey, a total closure of their horseshoe crab harvest, and that had to impact their eel industry. We should, in my view, take perhaps a longer term view rather than the three or five most recent years. I just wanted to throw that out there for part of the thought process.

CHAIRMAN CLARK: These are some of the problems that came up when, of course, Addendum IV; the working group came up with the scheme that was put forth in Addendum IV.

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I will once again say, I think the easiest thing, in terms of administrative burden and given the health of the stock and the stability in the landings, I don't see a problem with increasing the cap. But that is my opinion. Any other people want to have an opinion here?

MR. DANIEL MCKIERNAN: I recall in the 1990s, Massachusetts sued in Federal Court about scup allocations of quota; due to an inadequate data collection. I believe we prevailed, but it was such a long time ago I am not quite sure how that was all resolved. But I know it was resolved at this Board.

I guess the question I have, is New York in a unique position or the most obvious position for having a legitimate fishery with clearly a lack of data? In other words, do they really stand out, and if they do, would it be palatable to simply increase their quota by the amount they requested, based on signed affidavits; and we just finish this and go home?

CHAIRMAN CLARK: Are you saying then, increase the cap by the amount that they need?

MR. MCKIERNAN: Yes.

MR. DAVID G. SIMPSON: Yes, really I think that would be the most expeditious thing to do. But to the point of data quality, I could certainly make arguments that ours has been less than perfect on eels. Since Jim is arguing that they've made great improvements in data collection on eels, I am interested in the specifics of what changed in their data collection procedures that led to improved data collection in the last two years.

CHAIRMAN CLARK: Are there any other comments? I'm sorry, Mike was sidebar with me. Do you want to just repeat that Dave?

MR. SIMPSON: Yes, it was a question to Jim.

MR. GILMORE: With your indulgence, Mr. Chairman. We had, it was more a voluntary issue back in 2010. The way we fixed it was twofold. First off, we required mandatory landings starting in 2010. That was essentially a legal way of doing it; but secondly, we did outreach to a lot of the fishermen, because in our state and in other states there was a sense that if they didn't report anything, actually if they reported it would hurt them.

We finally got them to the understanding that if we're going into quota management with allocations, it is the exact opposite. If you don't report it, it would hurt you. I think those two combinations of mandatory reporting and that outreach that we're trying to manage the fishery to what we actually need, not what you guys think that you should be telling us; I think got us to where the numbers we have now seem to be pretty accurate to what we think the fishery is.

MR. BOB BALLOU: Following up on Dave Simpson's line of questioning anyway. Jim, I also have a question regarding your understanding of the percentage of your landings that are silver eels coming from the Delaware weir fishery. Is that a major factor in what you're seeing in your total landings?

MR. GILMORE: We actually, when we did the silver eel fishery, we know part of that is yellow eel and we were doing some monitoring with that and those landings to try to determine how much is yellow versus silver eels. I don't know the answer to that but I can get that, Bob. Again, that is a relatively small amount of the fishery, and more because we reduced that down to nine permits from the 16 or 17 that were traditionally out there. Again, that is a relatively small part for our overall bait landings of yellow eels.

DR. DUVAL: Just looking at the table of states landings from Addendum IV over time, there is quite a bit of fluctuation, I think, from year to year within all of the states. It obviously complicates any reconsideration of allocations.

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Like Lynn said, someone is going to be sitting in a seat of losing. Right now, it is North Carolina under these proposals.

Those formulas are, like I said not surprisingly not acceptable to me, and I would prefer to see some additional flexibility if we plan to continue to walk down this road. But if there was some scalar that could be applied to New York's past harvest. If New York is pretty certain that this has been a somewhat stable fishery over the years, and there could be some scalar that was applied to past year's harvest.

Again, Mr. Chairman, this gets to your point about revisiting the catch cap, and then we might find that the problem might be solved. Again, if we choose to go down this road of an addendum and revisiting allocations, I would request that this go back to the Technical Committee as well. I mean certainly it might require a work group of the Board, but I would ask that it go back to the Technical Committee as well. I would again also ask that we consider the fact that there are quota transfers as well.

MR. O' REILLY: Virginia is right where Lynn and Michelle have placed us, not personally of course, but where the process placed us. I was on the record last meeting to indicate that somehow through the machinations of the three different pieces of Addendum IV, when it settled out we were at our low point, which was 2010. That is the 78,000 that you see up there, despite the fact in the last couple of years before 2015 we were up to 110/115,000 pounds.

Despite it all, I think we need some way to make sure that if this cap doesn't change and the trigger is pulled, New York is sitting in a precarious position. I think that is probably something that is the biggest issue here today with this particular proposal. How we do that, whether it is the suggestion to just bump New York up and bump the cap up.

That is certainly pretty straightforward. At the same time I have to tell you, Virginia is in a tough slot. We've been in a tough slot since this was adopted. Once we relook at the data I think that will help, at least in Virginia. I don't know who is wary of having landings data, but I suspect a lot of that is already landings data. Then the last thing to mention is, mentioning data gaps. I don't know what other states are doing, but I know we had to have a permit.

Everyone had to undergo the mandatory buyer reporting, harvester reporting, and then you've got self-marketers out there. These are folks who do the harvest; they find their own way to sell that eel. They have to be captured, as well. That is really taking mandatory reporting and going one step more, to make sure that you don't miss anybody.

CHAIRMAN CLARK: Well, sounds like we're in a bind of our own making here. There have been plenty of suggestions here, but it doesn't sound like we have anything that satisfies everybody. This is a possible action item. Would anybody care to move forward with an action on this item?

MR. GILMORE: Almost, so now we've got two options. I like Dave and Dan's suggestion to do the quick fix on this. But I don't know what number I would even ask for right now. I would have to go back and look at -- it is like Lynn's question; how much do we need? I know it is somewhere between 35 and 50. I don't know what that number is.

Then I don't know how easy or difficult that will be, arguing over what the amount I need is. That is one option. The other option was, and I was doing this a little on the fly or amending this on the fly. The other one would be to initiate an addendum. But after the discussion, do an addendum to do both things; increase the cap and revisit the allocation.

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I still like, as much as it's more work, Option B, because it sounds like from the discussion around the table and what Rob had said. Forgive me, Michelle, but I told Louis this. You guys won the lottery. That is why you don't take one year for a number, because you got the biggest harvest in 2010; but besides that outlier. It seems like maybe doing that would be a more sane way to do this, because I think more people would benefit from it. Just maybe what your opinion is before I offer a motion, Mr. Chairman.

CHAIRMAN CLARK: Well, I think I've been pretty clear that I think that as I said that we've gotten ourselves into a bind on this. Even if we did go to state-by-state allocations, I don't know about other states, but I know it would be a real bear to administer this in our state; and I'm sure that is the case in several others.

I've made no secret of it. When you look at the landings data that is presented in the addendum, if you didn't know anything else about this fishery, you would say wow that looks like a very sustainable fishery there. We're at about the same amount. I'm pretty sure with an assessment update, given the way the assessment worked; it will show the stock is still depleted; we'll still be in this situation.

I think that raising the cap would be the simplest fix to this, but I understand there is resistance to that; any other suggestions here?

MS. FEGLEY: Just looking at the table of landings quickly by eyeball. You look at the total landings between '98 and 2015. The range of landings has been, from what I can see, and if I'm wrong, I think we've gone from about 681,000 pounds to 1.2 million; I mean, that's the breadth. That is the range in all of those years. That is 400,000 pounds, is that about right, 500,000 pounds?

What my question for the Technical Committee would be, given what seems to be a fairly range of fluctuation, I say narrow without really understanding the impact on the stock. This is

not a one way trip up or down; I mean, this thing has just been sort of oscillating around a low level. If we're thinking about increasing the cap, you could set it somewhere near that maximum, a little bit less, and ask the Technical Committee what the implications would be.

CHAIRMAN CLARK: Yes, one of the things that I thought, looking at the same data, Lynn, was instead of going with an average if we went with the 75th percentile for that same reference period, because that would put us closer to what our higher levels were during those years. Just by doing that would bring us up to, if we just use the reference period, I figured about 980,000 pounds; which would probably take care of all these problems we see here, but anyhow, Jim.

MR. GILMORE: Let me try to move this along. Let me put a motion up and we'll see how it goes.
Move to initiate an addendum to reconsider the coastal cap and the commercial yellow eel state-by-state allocation.

CHAIRMAN CLARK: Dave Borden. Anybody want to address this motion? I had Russ up before. Any other people want to comment on this?

MR. ALLEN: I am not sure where I stand on this at this time, but I can say one thing. The working group spent a lot of time on that cap. The whole goal of that cap was to try to make it so we were close to what the Technical Committee was looking for. I think if we go back to the Technical Committee now with something that we want to raise the cap, they are not going to be real happy with that. Even though we think that is the easiest way to settle what we're trying to do. I mean, that was the whole point behind the machinations of trying to figure that out.

I mean, we're talking about raising the cap so New York can get about 25,000 pounds; yet there is going to be every other state. If you go to an addendum and take it out of every other state, every other state is going to want some more poundage; because we think that we're

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too low, anyway. Like I said, I am on the fence on this on moving forward as is. I think we can do better by having some meaningful discussions and coming back in August and maybe moving forward with something. But I don't think I'm ready to move forward at this time.

MR. KELIHER: I think to Russ's earlier point, and following along with that line of thinking, the way to move forward here may be to reconvene a working group to work through the details associated with these allocations. I would include the allocation of glass eels within those conversations.

MR. G. RITCHIE WHITE: Serving on the past working group with Russ, I agree with him to a large degree that I hate opening this can of worms, because it was a very difficult process to come up with what we have; and I hate to open that can of worms for the small amount that we need to fix New York. Having said that, if this passes, I hope that it goes to a working group prior to writing the addendum, but I guess I haven't decided whether I'm going to support it or not.

DR. DUVAL: I am on the fence. Like Russ, I was not part of that working group, obviously. But I also wanted to address Jim's previous comment about 2010 being an anomaly for North Carolina. I would disagree with that. I mean we have during that time series landings of 124,000 pounds, 118,000 pounds, 102,000 pounds, 169,000 pounds, 126,000 pounds. I would not say that 2010 was an anomaly.

I mean, certainly, it was a jackpot; I will definitely give you that. But I would not consider it an anomaly. Again, I'm on the fence. I'm more inclined to agree with Russ that perhaps coming back, having some time to discuss this and coming back in August with a better sense of how we might move forward to address New York's concerns might be my preference.

MR. SIMPSON: Can you remind me when it was that we got the determination on listing? Was it last September? Was it less than a year ago that we kind of went, whoo, we got away with that one? Now, we're going to talk about increasing the quota. I'm concerned about the optics of that. I don't have a lot of faith in the eel data and the landings.

It is a fishery that takes place for us anyway, sort of remote from our mainstream fishery, our data collection system, the characters that are in this fishery, lots of concerns. Boy, we spent a lot of time trying to work through this. I'm really reluctant to revisit so quickly before another assessment, and just after narrowly missing an endangered species listing. I don't think I can support this.

DR. MIKE MILLARD: I'll jump on the back of that comment. The ink is barely dry on the warranted decision for the listing. That shouldn't be seen as a green flag. I know after that came out someone asked me, well so what now? What next? What happens with American eels in terms of the ESA? My answer was, as I was told by the experts, it kind of goes off the radar under the ESA, unless there is a big shift or a significant shift in management.

I just put that on the record to remind folks. Another comment I have, it comes as no surprise I'm sure that the Service would not support an increase in the cap right now. As far as I know, and Mike, correct me if I'm wrong, the current advice from the TC is to reduce mortality on all life stages. To talk about increasing the cap, of course, flies in the face of that.

MR. WAINE: That is what I was side barring with John about earlier when he missed the question from Dave, was that I don't know what more the Board expects the Technical Committee to do with this. This went back and forth with the TC and the working group as multiple Board members have mentioned around the table.

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They made a recommendation that is below the current cap right now. I don't know what more the TC will be able to give this Board on this topic, and I just wanted to reiterate that point so they don't hate us going back and asking them to look at this again without having told the Board that they spent a lot of time on this. It is not likely that their recommendation would change, just because the Board is reconsidering the cap.

MR. DENNIS ABBOT: Looking at what New York wants that if we put round numbers on it and they're looking maybe for an increase of 30,000 pounds against a total catch of 900,000 pounds; by my quick calculations that is like about 2.7 percent. Then if you look at the catches over the period of time from 2010 to 2015 for each state, you see fluctuations running from 10 to 50 percent.

I don't think it is outrageous to just increase New York's number by some given amount versus going through the agony of an addendum. I go along with the thoughts that were brought up across the table from me. Let's just increase New York's number by a couple of percent and put it away.

MR. O'REILLY: Similar but different. I still think the transferability when we look at the last couple years or 2015 in particular; it is more that New York was about 38,000 pounds more than what the Addendum IV quota would be for New York. But there is obviously quota around. Transferability is the key here. It is not the first species that has been involved in that situation, whether it's summer flounder, bluefish, no matter what it is. I think that is the first step is for New York to avail itself of what's available, as long as that transferability is in there. Wait for the next step, I guess.

MR. McKIERNAN: I do plan to vote against the motion. Just to reiterate, I would support in August a motion to enhance the quota by 30,000 pounds or something close to that; with sound documentation by the state of New York that

that fishery has been operating during the critical time period.

MR. GILMORE: Maybe Dennis can help on this. That is fine. I think maybe that's the smartest thing to do right now, we can come back with a number for the August meeting. However, and would it be the easiest thing is just to table this motion until August, and then if we come back with it we can just dispense with the motion.

I don't know if I can table my own motion, but I'm not worried about that. But that would be my suggestion right now. Table it, and then we'll come up with a number and an alternate proposal for August. If that doesn't go, then we'll go back to this.

CHAIRMAN CLARK: Sounds like a good suggestion.

MR. BALLOU: I just want to make sure that if we do follow through in the way that has been suggested that we don't get ourselves caught up in a situation. I need to ask the question, does the addendum allow for the adjustments of state-by-state quota amounts through Board action versus through a change to the addendum?

MR. WAINE: I think the suggestion would be to have an addendum to fix it with whatever the poundage amount is that New York comes up with. It would still require an addendum; it just wouldn't be a full reconsider of something that took a lot of work to get to where we are now.

MR. WILLIAM A. ADLER: Would it be appropriate to make a motion to table this to the next meeting?

CHAIRMAN CLARK: Yes, I think that would be a good idea.

MR. ADLER: So moved.

CHAIRMAN CLARK: Do we have a second? Marty Gary. Do we want further discussion? Okay, no

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discussion at this point. In that case do we need to caucus or should we just vote on this? Are we ready? Any need to caucus? **Seeing none; is there any objection to this motion? Seeing none; then the motion is tabled until the August meeting.**

MR. DAVID BORDEN: I am not arguing about the motion, we supported it. I just want to make the point that I am sympathetic to New York's plight on this. But I would note that we have five states around the table that all have difficulties; that are talking about kind of core flaws in the original conceptual framework.

I think one of the things that we want to avoid doing is revisiting all of these problems multiple times. If we don't figure out a strategy to address these problems, every time we have this on the agenda, I guarantee you one of the states will be in here saying we really need an adjustment. I think there has got to be like a dual strategy. Maybe we reconsider this at the August meeting, but we've got to look at it in a different manner. Thank you.

CHAIRMAN CLARK: That's a great point, Dave, because as happened with the working group, it was really difficult to come up with anything that would make everybody happy, and as we see, that is still the case.

MR. KELIHER: Mr. Chairman I would like to make a motion. Move to create a working group to address the inequities in the coastal allocation of yellow eels, as well as revisit the quota related to the glass eel fishery.

CHAIRMAN CLARK: Do we have a second? Dave Borden second. Is there any discussion of the working group proposal?

MR. MCKIERNAN: I'm not sure you've got the motion correct. You talked about inequities, Pat and I don't see the word inequities up there.

CHAIRMAN CLARK: Just wait until the motion is up on the Board. Does that capture your motion, Pat?

MR. KELIHER: Yes, it does, Mr. Chairman.

MR. WHITE: What is the definition of inequities? In other words, are states going to come forward with what they feel is not correct; both in the glass eel and yellow eel fisheries?

CHAIRMAN CLARK: I'll refer that to the maker of the motion.

MR. KELIHER: My intent is to try to address, to open it up with a working group to visit all of the issues that have been brought up around the table here today.

MR. WHITE: States would then have the ability to express their inequities to this working group prior to it being formed. All the states could say what they want to see the working group discuss, yellow eels and glass eels.

CHAIRMAN CLARK: I would assume that the working group will end up looking at yes, the allocations of every state. Again, I don't understand how this can be done without reopening the whole process, but that is just the way I see it. Any other comments on this?

MR. MCKIERNAN: It sounds like Festivus, the Airing of Grievances.

CHAIRMAN CLARK: Eels and Festivus, it's a great combo. Any other comments?

MR. SPENCER: I don't know, we are just emboldened by the lack of action on the endangered species front. I suppose revisiting glass eel quota means that my partner representative Miner will get another opportunity to open a glass eel fishery in Connecticut. I mean that is what I am sure he will have in mind, very lucrative fishery and we certainly have the resource in our state. We'll be contemplating that if this passes.

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MR. ADAM NOWALSKY: Clarification on this. Addressing the inequities of the coastal allocation of yellow eels might include increasing the quota as a mechanism of achieving that; or are we talking about purely going back and looking at the allocations?

MR. KELIHER: Again, I've heard many different thoughts about how to address this for even increasing the quota specifically for New York to try to address it for, as Dave Borden said there is potentially five other states that have concerns, and it could include the intent of the options that were presented by Mike on behalf of New York earlier.

I think the idea is to have a working group. The working groups usually try to have as much flexibility to try to look at these issues as possible. We're short on time here today. The idea would be to try to have that conversation and bring back a more focused plan to this Board at the next meeting.

MR. THOMAS P. FOTE: I'm having a problem with the word inequities. It is not inequities that basically caused this problem; it was poor record keeping by the states. I am looking at that is not inequities, nobody basically did anything wrong. The states had poor records, and the allocation is off because of poor records, not because inequities were formed by the working group when they put together the quotas. I can't support it with the word inequities in there.

MR. LOREN W. LUSTIG: I don't see the word justification anywhere on the screen, but I would be very concerned that the working group also present a very solid justification for their recommendations from a conservation perspective. If that is inherent to their plan, I can support the working group.

CHAIRMAN CLARK: Any other comments?

MR. ABBOT: Yes, just quickly. I wasn't sleeping, but we just spent the last hour talking about

yellow eels and then I look at the Board and we're going to revisit essentially Maine's glass eel quota. To me the subject that we've been discussing is yellow eels. If we want to talk about glass eel quota, I think there should be a discussion amongst the Board for the need for that; prior to us putting it into a motion to have a working group go to work on it. I cannot support this motion.

CHAIRMAN CLARK: Are there any more comments or is it time to call the question? Seeing no more comments, why don't we take a minute's caucus and then we'll call the question. Okay, are we ready to call the question? **Those in favor of the motion, show so by raising your right hand. Those opposed, same sign; any null votes, any abstentions? Motion fails 2 to 15.**

MR. WHITE: Could we request New York to come back to us with a tighter figure on what they're looking for, and then the justification for that figure; if they could document how their record keeping did not allow them to have the proper quota. If there could be some proof of how that record keeping was inadequate. Then we could look at that in August, and then make a decision whether we want to go forward with a working group or try to solve just that or other quota issues.

CHAIRMAN CLARK: I think that clarifies pretty much. Jim, I think that is pretty much what you were planning to do, but that stated it very nicely. Are we finished with this issue? As of right now in August, we'll be coming back to this. We have the tabled motion, and Jim will be bringing much more information about New York's landings.

MR. GILMORE: Ritchie, my word and my good looks are not good enough?

MR. WHITE: That's a start.

**UPDATE ON NORTH CAROLINA'S
GLASS EEL AQUACULTURE PLAN**

CHAIRMAN CLARK: Now we'll move on to another item of business. If you all recall, back in the last meeting we approved North Carolina's glass eel aquaculture plan. Michelle has an update on that and I believe a request.

DR. DUVAL: This will be very quick, because I have a plane to catch. As the chairman noted, at the February Board meeting you all approved North Carolina's request for an aquaculture plan. That also required our state commission to provide a declaratory ruling to the applicant to allow him to possess undersized eels that were below the nine inch minimum size limit; harvested from within North Carolina.

He had a declaratory ruling to purchase glass eels from either South Carolina or Maine; but he did not have one from our commission. Unfortunately, he did not receive that until March 21st, or March 22nd actually; so he made his first attempts to fish on March 24th, which is mostly after the glass eel season or the glass eel run is over. He did set nets for three weeks of fishing. He did not harvest any glass eels during that time.

He set nets in two major sites in the southern part of the state, and then one set of sites in the central part of the state, creeks on the Neuse River. Mr. Allen did formally request us to submit another aquaculture plan by June 1st of this year, so this is just a heads up to the Board that we do plan on doing that. We'll have lots more exciting discussion in August. We would be asking the Board's indulgence that this be considered also a pilot project, just as the existing plan which you all approved in February was.

Given the fact that Mr. Allen really through no fault of his own, but really more through administrative issues, missed the pulse of glass eel harvest. If you recall the discussion around

the table was to provide the Technical Committee with information that they could use to help the applicant design a young-of-the-year survey in one of those systems. That is my update, Mr. Chairman and I will be happy to take any questions.

CHAIRMAN CLARK: Do we have any questions for Michelle on this item? Seeing none; Michelle, I assume then in the next meeting you would want an action item from the Board to approve this.

DR. DUVAL: Yes, Mr. Chairman, thank you.

ADJOURNMENT

CHAIRMAN CLARK: Is there any other business to come before the Board? Seeing none; I will entertain a motion to adjourn, and we have that so we are adjourned. Thank you.

(Whereupon the meeting was adjourned at 5:44 o'clock p.m. on May 3, 2016)