

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

**November 18, 2002
Williamsburg Lodge
Williamsburg, Virginia**

ATTENDANCE

Board Members

Joseph Fessenden, ME DMR BMP
Lewis Flagg, **Chair**, ME DMR
John Nelson, NH Marine Fisheries
Bill Adler, Massachusetts Gov. Appointee
Vito Calomo, proxy for Rep. Verga (MA)
David Pierce, MA DMF
Jerry Carvalho, proxy for Rep. Naughton (RI)
Najih Lazar, proxy for David Borden, RI DEM
Gil Pope, Rhode Island Gov. Appointee
Ernie Beckwith, CT Marine Fisheries Div.
G.L. Gunther, Senator (CT)
Lance Stewart, Connecticut Gov. Appointee
Pat Augustine, New York Gov. Appointee
Gordon Colvin, NY DEC
Brian Culhane, proxy for Senator Johnson (NY)
John DePersenaire, proxy for Assemblyman Smith (NJ)
Bruce Freeman, NJ DF&W

Tom Fote, New Jersey Gov. Appointee
Dick Snyder, PA Fish & Boat Commission
Roy Miller, DE DF&W
Pete Jensen, proxy for Delegate Guns (MD)
Eric Scwaab, MD DNR
A.C. Carpenter, PRFC
Ira Palmer, DC F&W Division
Jack Travelstead, VMRC
Melvin Shepard, proxy for Rep. Redwine (NC)
Preston Pate, NC DMF
David Cupka, South Carolina Gov. Appointee
John Miglarese, SC DNR Marine Resources
Susan Shipman, GA DNR Coastal Resources
Kathy Barco, Florida Gov. Appointee
Jed Brown, USFWS
Bill Cole, USFWS
Tom Meyer, NMFS

Ex-Officio Members

Patrick Geer, GA DNR, TC Chair

Laura Lee, ASMFC/RIDFW, SASC Chair

ASMFC Staff

Lydia Munger
Tina Berger

Bob Beal
Vince O'Shea

There may have been others in attendance who did not sign the attendance sheet.

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MOTIONS

- 1. Move to approve the information as presented by the District of Columbia to comply with the FMP, including the full implementation of its sampling program as outlined.**

Motion by Mr. Augustine, second by Ms. Shipman; motion carries.

- 2. Motion to approve the FMP Review (including *de minimis* recommendations).**

Motion by Mr. Cupka, second by Mr. Adler; motion carries.

- 3. Move that the Board defer Pennsylvania's compliance to the mandatory young-of-the-year survey until 2004, provided that Pennsylvania would actively try to implement the recommendations of the Technical Committee as outlined.**

Motion by Mr. Snyder, second by Mr. Palmer; motion carries.

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COMMISSION**

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The American Eel Management Board of the Atlantic States Marine Fisheries Commission convened in the Tidewater Room of the Williamsburg Lodge, Williamsburg, Virginia, November 18, 2002, and was called to order at 11:10 o'clock a.m. by Chairman Lewis Flagg.

WELCOME AND INTRODUCTIONS

CHAIRMAN LEWIS FLAGG: Can we please be seated so we can convene the American Eel Board. Good morning, all. This is the meeting of the American Eel Board. I want to call the meeting to order.

I note for the record that we do have a quorum to conduct this meeting, and I will ask the staff to take the attendance for the members that are currently present here.

BOARD CONSENT

You have received, in previous mailing, the record of the meeting that we held on October 17, 2001, the board meeting minutes, and are there any errors or omissions to those minutes?

MR. WILLIAM A. ADLER: I'll move, Mr. Chairman, they be accepted as printed.

CHAIRMAN FLAGG: We have a motion that they be accepted as printed by Bill Adler; seconded by John Nelson. Discussion? All those in favor, signify by saying aye; those opposed; abstentions. Hearing no opposition, the minutes are approved as written.

PUBLIC COMMENT

At this time we will offer an opportunity for the public to comment on any matters pertaining to American eel. Are there any members of the public here today that wish to provide public comment to

the board? We will offer the opportunity for additional comment as we proceed through the agenda. Seeing no hands for public comment, we will proceed with the next item.

I neglected to ask for approval of the agenda. You have an agenda before you. I would note that under the FMP review, we will be taking up a request from the District of Columbia for *de minimis* status; and other than that, are there other additions to the agenda? Yes, Pat Augustine.

MR. PAT AUGUSTINE: Move to accept, Mr. Chairman.

CHAIRMAN FLAGG: I'm sorry, Pat, I didn't hear you.

MR. AUGUSTINE: Move to accept the agenda as just corrected.

CHAIRMAN FLAGG: I think we're all set as long as there are no objections. Yes, we have a motion from Pat to accept the agenda. It is an action item. Is there a second to that? Vito Calomo seconds. All those in favor, signify by saying aye; those opposed. Hearing none, the agenda is accepted.

The next item is the plan review team report and I will turn that over to Lydia.

**PRT REPORT: STATUS OF STATE
COMPLIANCE**

MS. MUNGER: For the plan review team report on the status of state compliance, there is one particular issue I would like to draw to your attention, and that is the District of Columbia did not implement a Young of the Year Survey in 2001.

The plan review team recommends that the Eel Management Board take action on this issue. A handout should be coming around at some point with D.C.'s compliance report.

On that, I would like to specifically draw your attention to the back of the cover letter and page 4, which is where D.C. notes that they did not complete the Young of the Year Survey in 2001.

CHAIRMAN FLAGG: Thank you, Lydia. I would also draw your attention to the fact that the agenda says we're going until 1:00 p.m., but we are due to adjourn at 12:00 noon, so we need to move along fairly expeditiously.

The status of state compliance; that's the presentation that we've had and we need to have some discussion about the District of Columbia. Ira, do you have any comment you would like to make relative to the District of Columbia report?

MR. IRA PALMER: Good morning. Basically it's pretty much the age-old story in terms of not being able to conduct the Young of the Year Study, basically funding and staff.

There are some other issues that the District is dealing with in reference to eel, and it has to do with our location on the Potomac River, being that we are over 25 and maybe 30 miles from the salt influence of the Chesapeake Bay.

As a result of that and the fact that there is no direct funding for eel management for the District, we haven't been able to actually conduct the Young of the Year Survey.

We have been moving towards obtaining the equipment necessary, the traps, and we have been doing some in-stream netting in 2002. We will have some information in 2002, and hopefully as we move into 2003, be more prepared to actually collect Young of the Year Surveys in the District.

So it's basically taken us some time to be in a position, both staff-wise as well as identifying funding. Some of the funding that we have obtained from the commission, which we were doing a lot of work on striped bass, we are shifting to some of the other species now, American shad and other shads, the river herring, and we are going to also use some to work on the eels in 2004.

So in 2002 we will have some information, in 2003 we will have more, and then in '04 we look to have something more substantial in place in order to accurately identify or determine the Young of the Year in the district.

You know, we only have two streams that we feel that would be, I guess, productive in terms of young of the year eels and those we will — I mean, Rock Creek and Watts Branch are the two that should prove some response.

But we're really talking small numbers, less than a hundred probably, but it's hard to tell right now. We're only getting a few in 2002. And as I said, as we obtain the other equipment to try to do this, we will hopefully have more information in the future.

CHAIRMAN FLAGG: Thank you, Ira. Questions of Ira? Clearly, where the Young of the Year Survey wasn't accomplished, and it's a mandatory requirement of the FMP, there is a non-compliance issue associated with this.

I know that we have exempted some states in the past from the early parts of the Young of the Year Survey, but what is the pleasure of the board with respect to the D.C. issue? Yes, A.C.

MR. A.C. CARPENTER: Thank you, Mr. Chairman. We are conducting a Young of the Year Survey. We've done it for three years now in the lower river.

I recall that we started doing it on both sides of the river and were unable to find any eels at all on the Maryland side of the shore in the areas we selected, and we now are sampling two sites on the Potomac, on the Virginia shore.

The numbers that we're seeing are very low; and if we're having as much difficulty a hundred miles downstream from the District, I really doubt that a Young of the Year Index in the District is going to be any meaningful number.

Actually, after looking at three years worth of data, I've decided we're going to give it two more years before we're going to ask for an exemption because we're so far inland from the coast. We are still being funded and we have it set up. I just throw that into the mix to let us know.

CHAIRMAN FLAGG: Thank you, A.C.

MR. PATRICK GEER: A.C., I ran that program for you until very recently. The numbers on all our sites, in Virginia as well as the Potomac, were down substantially this year.

The first year, our catches were relatively high and have been going downhill since, so the numbers are declining as far as the state of Virginia declining on the whole in this Young of the Year Survey.

CHAIRMAN FLAGG: Thank you. Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. In view of Ira's presentation and what the plans are for the near future and in view of the fact that he's getting some funding from ASMFC to conduct whatever survey information he can and what A.C. has added to the conversation relative to

what he is catching or seeing a hundred miles down downstream, it seems that it's time for a motion to accept this proposal from Ira; and if it's in order, I would like to do so.

CHAIRMAN FLAGG: I think that goes a little bit beyond -- well, it does include the plans for the survey for this coming year. I think though the issue at hand is what do we do relative to what has happened in the 2002 Spring Survey. Yes, Pat.

MR. AUGUSTINE: Well, Mr. Chairman, it's obvious nothing has happened, and we surely can't go back three or six months or go back to January 1 of this year, unless they're going to fabricate some numbers to do what we're asking them to do.

Are we going to find them non-compliant if they have nothing to support? That's kind of ludicrous at this point in time. It would seem to me that there is a good faith effort in the information that has been presented, and what Dr. Palmer suggests we do, they're going to do.

So I think to go back and readdress that concern is water over the dam and something we can't fix at this point in time. Are we going to slap them on the hand or on the wrist? I don't think it's appropriate at this point in time. I think we should move on with the motion.

CHAIRMAN FLAGG: Okay, Pat, I'll accept a motion from you if you would like to make one.

MR. AUGUSTINE: Yes, the motion would read that we accept the information that has been presented by the District relative to their action plan to comply with the American Eel FMP for future dates as presented, and I guess that would cover all the way to 2004.

CHAIRMAN FLAGG: We have a motion going up.

MR. AUGUSTINE: And, Mr. Chairman, if someone would like to wordsmith that, it would be fine.

MS. SUSAN SHIPMAN: I was going to second it with the clarification, Pat, that it's our expectation that the sampling program outlined by the District be fully implemented.

MR. AUGUSTINE: Yes, that was my expectation because he did sign off it and did make the --

CHAIRMAN FLAGG: Do we have a second to the perfected motion?

MS. SHIPMAN: I second it.

CHAIRMAN FLAGG: Second from Susan Shipman. Okay, we have a motion on the floor. Pete.

MR. W. PETE JENSEN: Well, this is somewhat reflective of the discussion we had in the Tautog Board, and it looks like this is going to be coming up in a lot of areas, and it is what do you do with these sort of minor non-compliances.

Certainly, the motion is based on common sense, but I suspect that this discussion is also going to continue when we get to Pennsylvania.

I'm going to suggest that commission staff actively investigate the possibility of a charter amendment to allow us to handle these kind of situations much easier than doing an addendum, which is the conclusion we had in tautog, and I suspect technically that would be the conclusion here. We certainly don't want to do that for all of these minor changes.

CHAIRMAN FLAGG: Susan.

MS. SHIPMAN: Pete, I agree with you, and I think this entire topic will come up under the discussion of compliance efficiency. I think this is one of the things we need to look at as we do a major reform, if you will, on compliance efficiency.

CHAIRMAN FLAGG: Is there further discussion of the motion from the board? If there is no further discussion, we'll give about five seconds to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN FLAGG: Would you like me to read that motion into the record? Have we had adequate time to caucus? Everybody ready for the vote? You see the motion on the board. All those in favor, signify by raising your right hand; those opposed, same sign; abstentions; null votes. The motion carries. The next item that we have is the FMP review.

PRT REPORT: FMP REVIEW

MS. MUNGER: The main thing I would like to point out for the FMP review is we have six states that have previously been declared *de minimis* and continue to meet *de minimis* requirements.

Those states are New Hampshire, Massachusetts, Pennsylvania, South Carolina, Georgia, and Florida and the District of Columbia has requested *de minimis* status. They do qualify based on the fact that they do not have a commercial fishery in the District of Columbia.

CHAIRMAN FLAGG: Are there any questions from the board? What I would like to do is if we could have a motion to approve the FMP review, which includes the six states and the D.C. for *de minimis* status -- if we could have a motion to approve the FMP review, that will reflect the fact that we have approved those states for *de minimis* status.

A motion by Dave Cupka, a second by Bill Adler. Is there discussion of the motion? Let's take five seconds to caucus among the states and jurisdictions.

(Whereupon, a caucus was held.)

CHAIRMAN FLAGG: Are we ready to vote? All those in favor of the motion to accept the FMP review with the understanding that the seven states that request *de minimis* status will continue to have that the following year, all those in favor, signify by raising your right hand; those opposed, same sign; abstentions; null votes. The motion carries.

REVIEW PENNSYLVANIA REQUEST FOR EXEMPTION FROM THE ANNUAL YOY ABUNDANCE SURVEY

The next item on the agenda is the review of the Pennsylvania request for indefinite exemption from the annual Young of the Year Abundance Survey, and we do have to take action on this.

I would like to take this opportunity -- I know Dick Snyder is here and would like to make some comments; and following that, then we'll have the technical committee recommendation. Dick.

MR. DICK SNYDER: Thank you, Lew. I would like to beg the board's indulgence to hear me out on sort of a comprehensive set of comments,

especially based on the minutes from last fall's meeting.

Pennsylvania has no coastal habitat. We do have eels that come up through the lower Delaware system. The lower Delaware and Pennsylvania is tidal for quite a ways up past Philadelphia.

No American eels really pass the Conowingo Fish Lift, based on the annual samplings there lately, and so I am limiting my comments mostly to the Delaware system.

We really don't have a tidal freshwater interface. We're some thirty miles upstream from what we would call a real interface. We have no commercial fishery for eel in Pennsylvania. In fact, we don't have any commercial fishing for anything that would fall under Atlantic States Marine Fisheries Commission fisheries review.

We don't permit eel pots, we don't permit trapping for eel. We have a 50 eel daily creel limit, we have a six-inch minimum length limit for harvesting little eels for bait. It's my gut feeling we have an insignificant recreational fishery, but we've not documented that.

But right now, this year, we just finished a multi-jurisdictional assessment of use and harvest on the main stem Delaware from Wilmington upriver up to the confluence of the west branch and we'll have those results early in 2003.

For the 2000 sampling, reflecting the spirit of the technical committee, we went out with our law enforcement officers and our area fisheries manager to dip net quite a few tributaries to the lower Delaware to get a handle on where do we have glass eels, to try to get a feeling of where we might want to sample with them.

We limited our search primarily to those small tributaries downstream of the Philadelphia International Airport. For those of you that have flown in and out, you know what we're looking at.

We wanted to be as close to the lower Delaware as we could be to increase our chance to finding glass eels that would fit in the protocol that the technical committee talked about. Staff found one tributary, called Long Hook Creek, downstream of the airport.

But it's so open and so visible we felt active sampling with dip nets would be the way to go pending the tides and hours of darkness and so forth.

So we worked in the vicinity just downstream of tidal gates where we would have some instream barrier to work against, and we found a few eels and we did do a sampling in 2000.

We had an exemption in 2001, but this year we tried to work with volunteers, as we were encouraged to do, knowing this was sort of an imposition on us. Bear in mind that our management area down there is larger than some of your jurisdictions.

We're a little bit understaffed for this kind of activity, given our same guys handle all the warm water, cool water fish, as well as trout.

We doubled the effort, even though it was with volunteers, and some of those were federal employees. But even then, the rigors of sampling couldn't always be met with volunteers, but we doubled the effort.

We still kept with the nighttime sampling and we go no elvers in about twelve nights of sampling, bearing in mind the tides and hours of darkness, weeknights, weekends, and so forth.

So I come before you asking for an exemption; not so much that we don't have the staff nor the money to go out and work on eels, but the demands on other species, including those of higher interest to Atlantic States, just makes us wonder about this.

No board has really backed off on creating sampling. We seem to want more and more. We're trying to look at getting the most use of out of our time, and we felt the American Eel Young of the Year Survey, given our questionable habitat, is one that we could afford to back off on if we're granted an exemption.

I wish I had been in on the technical committee's October conference call. Believe me, if that message had shown up on my PC, I would have been a part of it. Otherwise, I wouldn't be here today kind of thing.

But because I wasn't on it and they did not have the benefit of our situation, I appreciate the spirit that Pat and staff formulated the response they'll report on later. But in that sense, we're just trying to be frugal and do what's best for the species under our charge.

We would look forward to an exemption and I'll make a motion when it's time to do that, Lew. Thank you.

CHAIRMAN FLAGG: Thank you, Dick. At this time, I would like to have the technical committee recommendation and then we'll have some discussion from the board.

MR. GEER: I'm Patrick Geer, I'm the new technical chairman of the committee. As Dick said, the committee met by conference call, again for the third straight year, to discuss our business, but primarily our business ended up being the issue with the Pennsylvania survey.

The technical committee stands by what it has said in the past, that at this point we feel that the burden of proof should fall back to the states that this survey is not warranted in their jurisdictions.

With the limited sampling that Pennsylvania has done at this point, we don't feel that they have provided enough proof for that. Their catch rates exceed some of the other states. The dipnets are not the best way to go.

I've e-mailed Dick about this. I tried to do it that way, and it is a nightmare trying to sample at night. He has faced, and Pennsylvania has faced all the problems that every other state has faced; limited budgets, limited manpower, and where to sample.

I had the daunting task, when I worked in Virginia, to do both the Virginia jurisdiction as well as the Potomac River Fisheries Commission. We searched the entire state for places to go and it took us weeks to find any place that may be conducive to eel recruitment.

That is the difficult task, trying to find those areas, and it's very difficult. The technical committee has said they would help. From last year's minutes at the board meeting, it said that we would provide help. We were never contacted.

You have contacted me this year and we would be more than willing to help you or any other state. But the technical committee stands by its previous vote that we will not allow any state to have a permanent exemption from the survey at this point.

CHAIRMAN FLAGG: Thank you, Pat. Comments from the board? Yes, Pete.

MR. JENSEN: Is there a motion?

CHAIRMAN FLAGG: No, there is none right now. I guess I should entertain a motion at this

point and then we can have some discussion on that. Dick.

MR. SNYDER: I move that Pennsylvania be exempt from the mandatory Young of the Year American Eel Survey.

CHAIRMAN FLAGG: Is there a second to that motion? Ira seconds the motion, so we have a motion on the floor to exempt Pennsylvania. Yes, Pete.

MR. JENSEN: Well, the reason I wanted a motion is I think it's better to talk about deferring compliance rather than exempting compliance; and so if Pennsylvania was amenable to that maybe minor, but I think important point, if we could defer compliance until 2004, like we did with D.C., while we work out the process on how we're going to handle these kind of issues, that would be acceptable to me.

MR. SNYDER: That's acceptable to me. Thank you, Pete.

MR. PALMER: And me.

CHAIRMAN FLAGG: We have a perfected motion, then, to defer compliance. Yes, Pat.

MR. GEER: One of the things that the technical committee has been saying for a few years, we realize in the long term not every single state is going to have to do the survey, but there is so little known about the recruitment of glass eels and young of the year eels to the systems that we felt that if every state gave us a concerted effort -- we threw the number of three to five years -- then after that time we can review the information we have and decide what states need to be doing the survey.

At this point, we have 14, 15 jurisdictions that are really doing a great job. If you look at these compliance reports, they are going out there and doing this with very limited budgets.

The staff that are working on it, the technical committee has just done an outstanding job working on this project and they've put the effort in.

We just feel that if every jurisdiction gives us a concerted effort for, I'll say as little as three years, we should be able to decide what jurisdictions must do the survey and which ones could be deferred or even exempt.

CHAIRMAN FLAGG: Thank you, Pat. I would like to just reiterate to the board members that when this plan was developed in 1999, it was clearly evident that there were many deficiencies in the data in terms of the commercial landings, what was going on in this fishery, and the whole foundation of the plan rested on trying to improve the database and trying to initiate some preliminary studies to get some information on the status of the stock. I think Pat's comments are well taken. Are there other comments? Tom Fote and then Dave Cupka.

MR. TOM FOTE: I guess my concern is we're seeing a drop in Virginia and other states of what is going on. That means we're seeing the results of what happened seventeen years ago because that's the cycle of these.

So it's actually eighteen and so I'm trying to correspond to that when the glass eel fishery started. We're seeing the results of what happened because of the glass eel fishery. If we don't do any monitoring, it's going to take -- this is a long process.

I mean, it's not when they come in, so it's seventeen years from one point to the other. How are we going to know if the stock is actually expanding or coming back again? That's my question to Pat.

MR. GEER: Could you say that second part again; I didn't hear?

MR. FOTE: Well, I mean, if we're not doing the monitoring, we're really not going to know that the status of the -- whether it's just having a bad couple of years and that's my concern.

I think we're on a downward cycle when it comes to eels and it looks like we're at that point of where are we going to be and it's going to take -- there's a long lag time between what's the young of the year at that year is seventeen years from the spawner of that because of the way that species does.

MR. GEER: In Virginia -- that's what you mentioned, Virginia, the age structure -- it does get that old, but in general it's usually less than seven years, the age structure that we've seen at the Virginia Institute of Marine Science.

That research, Steve Ellings did an aging study that should be published by next year. That's the average, and it varies by system as well. If we don't do this survey, we will not know if it's a recruitment

problem, an overfishing problem. A lot of this stems from work that was originally done in Canada with people like Martin Castagway. He postulated several things, habitat loss, pollution, overfishing, and recruitment failure.

Recruitment failure in the way of shifts in the Gulf Stream can affect larvae from getting back to the coast. We just don't know what that process is right now; and without this survey, you're right, we just won't have any information at all.

CHAIRMAN FLAGG: David.

MR. DAVID CUPKA: Thank you, Mr. Chairman. I was just going to say I'm a little more comfortable with the amended motion. Obviously, the technical committee has made an offer to work with Pennsylvania to try and develop a survey, and it would be a little different if they make a concerted effort to try and do that and then come back to us at a later date and say, well, you know, we've looked at it and it's just not feasible.

I think it's too important just to drop, and if the technical committee, or at least certain members of it are willing to work with Pennsylvania and see if we can't fulfill the requirements of a survey, then I would feel much better at a later date considering some other action if we need to.

CHAIRMAN FLAGG: Pat Augustine.

MR. AUGUSTINE: A technical committee question. Are there many or several contiguous areas or districts that are either close to each other or abutting to each other that are not reporting?

It sounds to me as though part of your statement says that we're getting excellent cooperation from many of the districts on the Year of the Young, and on the other hand we've got only limited areas, if you will, Pennsylvania and the D.C. area, that really haven't come up the measure of reporting.

So is there a real big gap somewhere that we really have no data so that we have a very model picture? It sounds like we have a relatively clear picture except two of these extensions are a little off. So if you could respond to that, I would appreciate it.

MR. GEER: As far as D.C. is concerned, parts of the Potomac, it may be able to be served by another jurisdiction. Pennsylvania -- first of all Delaware is sampling very close to the coast, I think

on the Indian River I believe that is and so they're not sampling Delaware at all.

Not knowing Pennsylvania that well, I would probably suggest the Susquehanna would be a better choice to try to sample on. I don't know that much about the state, but it's the largest tributary feeding the Chesapeake Bay.

We do have pretty good information on the Chesapeake Bay, but it's very variable from system to system, from year to year. A site that was excellent one year, the next year pretty much caught nothing.

And it's very variable and the timing of it is also very variable, and that's where the sample design is very important. The site selection and the sample design is crucial to this. You could be in the right place, but at the wrong time and you miss everything.

Some states are having -- their eel run is only a week long. In Virginia, some of the sites we had in Virginia, the run lasted from February to June. We had to finally quit. We just couldn't do it anymore.

But it seems that the closer the states are to the Atlantic Ocean, the run seems to be much shorter. It's a lot of yields coming in over a short timeframe, but as they disperse up into the tributaries, it seems to be much more protracted. I could show some graphs later if you want to see them on that.

MR. AUGUSTINE: A follow-up question if I may, Mr. Chairman. What kind of support would Pennsylvania need from the technical committee? Would it be in the identification of specific locations or would it be in the matter of actually helping you perform the survey?

MR. SNYDER: Pat, I think with the offer that Pat's committee has made, including Julie Weeder and others, show us what young of year elver habitat looks like. Maybe we're missing the boat; I don't think so.

In terms of the monetary and the staff, that's really not the issue. It just diverts us from something else. We're going to have a get together before the first of the year, I hope, regardless of this motion, go down and look at streams, kick around a while, and just see what's what, and there may come some realization that we're okay.

CHAIRMAN FLAGG: Gil Pope.

MR. GIL POPE: Thank you very much. Also, with exemptions, shouldn't it be time certain in some way; and if you do find out that it's not useful to have those surveys done every year, that you have an exemption for say a three-year period or a two-year horizon or something like that, maybe that would go along to more what Pete was talking about.

CHAIRMAN FLAGG: I think that --

MR. POPE: I mean, not just this particular one, but I mean in general when a state asks for exemptions in this fashion.

CHAIRMAN FLAGG: Roy.

MR. ROY MILLER: Lew, I just wanted to follow up on a comment made by Pat, and I just quickly looked where the New Jersey sampling site is and it's Patcong Creek, which is I assume on the Atlantic coast and not a Delaware River drainage system.

So in the absence of Pennsylvania's survey, there would be no other stream being surveyed in the Delaware estuary. Pennsylvania would be the only Delaware estuary surveyed because the state of Delaware, as you correctly pointed out, is on Indian River, which is one of our small coastal bays.

CHAIRMAN FLAGG: Thank you, Roy. Susan.

MS. SHIPMAN: A couple of things. I think the motion is in order. You'll recall one of the major components of a compliance determination is that the failure of the state to implement that has jeopardized the conservation of the stock.

I think we would real hard pressed to sit here today and say that their failure to do a Young of the Year Survey has jeopardized the conservation of eels. I think it would put us all to a lot of unnecessary work and time that would be for naught, and I don't think it would get very far past Paul Perra's door, and we know the workload involved with the Service in a compliance issue.

I think, with regard to the motion, I would feel comfortable if it said something to the effect "provided that Pennsylvania would actively try to implement the recommendations of the technical committee".

They're on the memorandum from the technical committee, and I assume, Dick, you all have looked

at that; and if that would be agreeable to Pennsylvania, I would like to amend the motion to that effect.

CHAIRMAN FLAGG: Is that agreeable to you, Dick? Then why don't we just have that as a friendly amendment?

MS. SHIPMAN: That's fine.

MR. SNYDER: That's fine.

CHAIRMAN FLAGG: Thank you. Other comments? Pat.

MR. GEER: This is somewhat unrelated, but it's all going to tie in at the end, so just bear with me. Our technical committee, we made a management plan in 1999 and basically said go out and do it.

We have not met face to face since, and that's a concern of all the technical committees. We're trying to do conference calls and in a lot of cases the conference calls are falling very short. It's difficult to do. You know, you're only talking about one to two hours on the phone.

We need to have a face-to-face meeting to deal with our business, to have a workshop so that we can have all the states get on the same page, make sure we're all doing the survey the same way; because, after three years, I can tell you I've talked to a few of the people doing these surveys.

They're going off in tangents now. They think they're doing it correctly, but a few of the states are doing it a little bit differently. We saw that on the Potomac River. We thought we were doing the survey in an identical manner and we were doing it slightly different.

So we're requesting that we can get money for next year so that we can have a meeting to provide a workshop, to go over our sampling design with all the states, let them discuss their three years of information they have now, also to potentially talk about relicensing issues with dams, hydroelectric dams -- that's being brought up -- and eel passages as far as that's concerned.

The recommendation was that we could do it in the state of Pennsylvania; have the meeting in Pennsylvania so we would have, if you want to call us experts, eel experts in the state of Pennsylvania where we could try to all work with them together.

CHAIRMAN FLAGG: Thank you. Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. That sounds like it might be an action that the staff might want to review for next year's budget to see if in fact we could set up a workshop. It sounds like a very doable thing and a very important thing to do. With that having been said, I would like to call the question.

CHAIRMAN FLAGG: We've had a request to call the question, but are there any other comments about this motion, other issues that haven't yet been addressed? If not, why don't we take five seconds to caucus.

For the record, I will read this perfected motion. It says move that the board defers Pennsylvania's compliance to the mandatory Young of the Year Survey until 2004, provided that Pennsylvania would actively try to implement the recommendations of the technical committee as outlined.

(Whereupon, a caucus was held.)

CHAIRMAN FLAGG: Are we all set to vote? Everybody has caucused? Roy, did you want to make a comment?

MR. MILLER: I'm not sure I understand what the motion is implying. If they're deferred until 2004 from the Young of the Year Survey, then what else would they be actively doing in the interim?

MS. SHIPMAN: My understanding of the motion was we're not deferring them from doing the Young of the Year. We're saying for 2003, they need to work to implement the measures, or the recommendations of the technical committee to get it done.

We're deferring this board taking an action on whether or not they're in compliance. That's the way I interpreted it and I could be misreading that.

CHAIRMAN FLAGG: That was my understanding also.

MR. GEER: I guess it would be basically the way 2000 was on this survey. 2000 was a voluntary year to get every state — you didn't need to do it, but it was recommended you do it so that you had all your ducks in a row and that you can do the survey, so maybe that's what we're suggesting here.

CHAIRMAN FLAGG: I believe it is. Any other questions about the clarity of the motion? Has everybody had a chance to caucus with their states? If so, all those in favor, signify by raising your right hand; those opposed, same sign; abstentions; null votes. The motion carries.

The next agenda item is the discussion of the stock assessment, and I will ask Laura Lee to provide a report from the stock assessment subcommittee.

DISCUSSION OF STOCK ASSESSMENT

MS. LAURA LEE: Thank you, Lew. For those of you who don't know me, I'm Laura Lee. I'm the current Chair of the American Eel Stock Assessment Subcommittee. We met in July of this year in Rhode Island. We talked about a number of issues.

One important thing to note is that the stock assessment benchmark for eel is 2004, and the subcommittee and I believe the technical committee agreed that we won't have a quantitative assessment ready for 2004.

We focused on discussion of biological reference points, developing something in the interim based on the information that we do have and using the precautionary approach as outlined by ICES.

We discussed the possibility of this workshop that Pat just mentioned and hopefully even have a manual for each state to refer to to see what the other states are doing and see when the eels are starting to come up so they can think about putting out their survey gear.

We talked about the standardization of reporting for the Young of the Year Survey in the annual compliance report. I also wanted to note that two scientists from Canada came to our meeting. They found their own funding, given that we were not able to provide them funding, and we're very grateful to them for that. I will take any questions.

CHAIRMAN FLAGG: Are there any questions of Laura concerning the stock assessment subcommittee? Report on attendance at the ICES meeting, Laura, do you have anything you wish to report to us on that?

REPORT ON ATTENDANCE AT ICES

MS. LEE: Actually, Najih Lazar and I both were able to attend the ICES meeting. I want to remind everyone that the ICES is for European eel. There was one American eel ICES meeting; and as far as I understand, there are no plans to have another ICES meeting for American eel.

Given our budget constraints and Canada's constraints, it's been brought up that possibly we should turn to ICES to act as an umbrella for American eel for the U.S. and Canada.

CHAIRMAN FLAGG: Yes, Bruce.

MR. BRUCE FREEMAN: Has it been definitely established that there is a separate species, European eel versus North American eel? I thought that issue was still contentious?

MR. GEER: Exactly, it depends on who you talk to. Most of the work that was done was done in the 1930's, and it was based on larval distribution. I don't know if there has been any genetic work done to determine if there was a difference, I don't know that for sure, but there is a debate that goes on about that, yes.

CHAIRMAN FLAGG: I know there had been studies done some years ago. There was a lot of work done on vertebral counts, too, I believe, and there is a distinct difference between North American and European strain. They can be separated out fairly readily. Bruce.

MR. FREEMAN: My understanding of this issue is that the European eel simply takes longer to drift in the ocean and the vertebral counts will increase, and that really isn't a suitable designator of these particular species or two species.

I think the difficulty that most people have is there seems to be one breeding location, one spawning location, and if that's true, it's hard to believe that eels come from Europe and breed in that area, or spawn in that area, and the progeny only occur in Europe, and there is another group that spawns in the same area but their progeny only goes to North America. It just seems improbable. My understanding of the process is it simply may take two or three years for those eels to drift before they actually come in to land. For some reason, that initiates the final development when they reach coastal areas.

But the literature I've read indicates there is a considerable debate whether in fact they're distinct species or whether in fact one is just an older individual of the common spawning area.

MR. GEER: It's longer distance to travel. I mean, the eels are getting on the Saunders Eel Ladder in the St. Lawrence River are five to six years old already, and that's what they have been using for years because that's the first time they see them.

So basically what they do is they just subtract five and that's where they get their year class from. If you can answer where they spawn, that's the million dollar question. That's on our list of research needs that will never, ever be met.

I mean, it's just — you would need millions of dollars even to attempt it because it's all open ocean water. Most of the work that was done, it's done on larval studies looking at different — you know, that's how they determine where the spawning areas were for both species was looking at larval and the size of the larvae from different areas. Most of that work is pretty old.

OTHER BUSINESS

CHAIRMAN FLAGG: Other comments? Other Business, the only comments I had relative to American eel is that I wanted to commend the technical committee and the various states.

I've read all the state submissions and there is a lot of information that's been provided, and they've really done a tremendous amount of work to get things moving relative to collecting more comprehensive data on the American eel resource throughout the U.S. range. I think they really deserve a lot of credit for taking the initiative to do the work that's been done.

I guess the only other item I would mention is whether or not the board -- and I have not looked at the budget for next year in terms of the ability of this board or the technical committee to meet, but as was mentioned earlier by the technical committee chair, they've had little opportunity to meet and there are a lot of things that do need to be done. I'm wondering if the board wants to take any position relative to the priority that eels should have this following year. Susan and then Tom Fote.

MS. SHIPMAN: Well, I'll give you a preview. I think everybody should have gotten the action plan. The commissioners should have when

you checked in, and you'll see it's pretty much continuation level for many of the species.

We've got to get some species basically done and off the platter before we move some other things up to a higher priority, so right now eel is pretty much continuation low-level funded.

Bob, the vice-chairman and I were just caucusing back there in the back, recognizing that certainly we hear the technical committees loud and clear. It's just we have continuation level resources.

There is a possibility during one of the pilot technical committee weeks, which you'll recall that's kind of a new process we're going to go through and have a number of the technical committees meet during the same week -- Bob is going to look over that list and see if we have some overlap with those same individuals, and it may be we may be able to get the eel committee together during that meeting week because we would have some of the same people there.

Another option is for states to anti up the travel resources through either their Atlantic Coastal Act funding or whatever to help send their member to the technical committee meeting if they are not on some of those other technical committees already planned to meet.

But right now it is continuation level funded at a low level, as are other species as well. We will be working through that I think Wednesday. We have a work session I believe from 11:00 to 1:00 to work through the action plan.

So if this board does want to elevate that with regard to the dedication of fiscal resources, I would ask you to look through that and see what you're going to bump down because it's a no-net increase, basically.

CHAIRMAN FLAGG: Thank you, Susan. Tom Fote.

MR. FOTE: We started the real push on the eel plan was because of the glass eel fishery and there was talk about federal listing of CITES and everything else. Well, since the price has dropped, that fishery has basically disappeared, but the bay fishery on eels has basically expanded more and more each year.

Some of the crews fish on eels basically of certain areas being closed because of PCB contamination in the sanctuary, but it was a very important fishery and

still is in New Jersey and other states, commercially both for bait and for food.

And we know so little about it, I'm always in fear that we basically shouldn't backslide. We should try and get as much information as possible within the parameters of the plan. Because there is not a crisis at this time because and we're not doing CITES and we're not looking at those kinds of lists, we're kind of putting it on the back burner.

Maybe the Fish and Wildlife Service, because they were so interested in the CITES listing of that, will help us with some of the monies to hold a special meeting on it.

CHAIRMAN FLAGG: Thank you, Tom. Gordon.

MR. COLVIN: I have a question and then a follow up to the discussion that we're having. The question, which I will direct to the staff and the technical committee, is have we begun to think in terms of reaching out to the Great Lakes Fisheries Commission and/or their constituent members from Canada and the United States with respect to seeking to develop a jointly cooperative management program, given the extraordinary and growing level of concern about American eels in the Great Lakes and St. Lawrence drain basins?

MR. GEER: That's a good point. I don't think we've reached out to the Great Lakes Region, but we do have several people from the Department of Fisheries and Oceans in Canada that have sat on our technical committee, Brian Jessup, who just recently retired.

David Cairns sits on it now. We are involved with the people who are working on the St. Lawrence River pretty extensively. But that's a very good point, we could get involved with them as well in the Great Lakes.

MR. COLVIN: Mr. Chairman, I would recommend that we initiate some feelers to the Great Lakes Fisheries Commission, and as I indicated, to some of the constituent members, to ascertain whether, given that there is already ongoing cooperation, there is any desire to collaborate more fully.

This may or may not create some additional partnership opportunities, including funding and technical support that would provide valuable to everyone. I think that it would.

Related to that, I wanted to just point out to the board members that there is another opportunity out there that some of us may be able to take advantage of. Most states are now in the process of developing grant applications and proposals for funding under the so-called State Wildlife Grant Program, which is a supplement to the traditional federal aid to fisheries and wildlife programs administered by the Fish and Wildlife Service.

The State Wildlife Grant Program is specifically targeted towards state activities to address the needs of species in greatest conservation needs, and those are the specific words from the statute and the Service's guidance.

In New York we are presently engaged in the early stages of identifying the candidate species in greatest conservation need that will be the subject of the planning document we're required to develop, as well as the various implementation activities subject to that plan.

I can tell you that the staff team that is working on this has identified American eel preliminarily as one of the high- priority candidates for work under the State Wildlife Grant Program.

The program focuses on all wild animals, not just traditional wildlife; in fact, probably not likely traditional wildlife, but more likely various kinds of fauna that have not been addressed adequately historically by the tradition fisheries and conservation management programs.

I don't know if Bill wants to add anything to this, but my suggestion to the members of the board is that if they are not part of the State Wildlife or SWIG process in their states, that they go get a headlock on those that are and try to address issues like this, and certainly horseshoe crabs and some other programs of concern to us as commission members that line up very well with the underlying purposes of the State Wildlife Grant Program. Thank you.

CHAIRMAN FLAGG: Thank you, Gordon. In regards to your suggestion about contacting the Great Lakes Fisheries Commission, if there are no objections from any of the board members, I will direct staff and the technical committee to make those contacts to see if there may be some opportunities for collaboration with that entity. Are there other comments? Yes, Pat.

MR. GEER: As far as funding is concerned, the technical committee, just by consensus we

figured it would probably cost between \$20,000 and \$25,000 to run the survey each year. That's a liberal amount, and it can be done for much less if the site is close to your office and you can do it during the day versus night and things like that, but just to give you an idea what kind of money we're looking at. It's a small grant.

CHAIRMAN FLAGG: Are there other items of business before the board? Yes, Wilson.

DR. WILSON LANEY: Lew, not an item of business, but just an item of information for the board. The National Marine Fisheries Service, Fish and Wildlife Service, North Carolina Wildlife Resources Commission, and North Carolina Division of Marine Fisheries and the Virginia Department of Game and Inland Fisheries have all been involved in intensive negotiations and continue to be involved with Dominion Generation with regard to settling the fish passage issues on the Roanoke River, specifically over the Roanoke Rapids Dam and the Lake Gaston Dam.

I wish I could report to you that those have been successful and we are going to pass American eels up the river, but I can't say that yet. My attorneys won't let me say that yet, but I will tell you that we are very, very, very close.

We have another conference call yet this afternoon. So hopefully at the next meeting of this board, I will be able to come back and report to you that we have achieved a settlement agreement for that, and that we will be passing American eels back up the Roanoke River, where none have been since they all died out after Carr Reservoir was built in 1952.

But it is a huge watershed, 9,666 square miles, and much of it has no eels whatsoever, so we're looking forward to putting them back upstream. Thanks.

CHAIRMAN FLAGG: Thank you, Wilson, and that reminds me that I did offer to allow some additional public comment as we were going through the various items, which I didn't do, but are there other members of the public that would like to make any comment at this time?

Hearing none, is there any other business to come before the board? If not, I'll entertain a motion to adjourn. We have a motion to adjourn. Okay, we stand adjourned.

(Whereupon, the committee was adjourned at 12:10 o'clock p.m., November 18, 2002.)