

**PROCEEDINGS OF THE  
ATLANTIC STATES MARINE FISHERIES COMMISSION  
BUSINESS SESSION**

**Crown Plaza Old Town  
Alexandria, Virginia  
May 7, 2009**

**Approved August 20, 2009**

## TABLE OF CONTENTS

|  |          |
|--|----------|
| <b>Call to Order .....</b>   | <b>1</b> |
| <b>Approval of Agenda.....</b>   | <b>1</b> |
| <b>Approval of Proceedings .....</b>   | <b>1</b> |
| <b>Public Comment.....</b>   | <b>1</b> |
| <b>Interim Review of the 2009 Action Plan Accomplishments.....</b>   | <b>1</b> |
| <b>Review and Consideration of Approval of Amendment 2 to the Shad and River Herring<br/>Fishery Management Plan .....</b> | <b>1</b> |
| <b>Discussion of the ASMFC Leadership Nomination Process .....</b>   | <b>1</b> |
| <b>Other Business.....</b>   | <b>4</b> |
| <b>Adjourn.....</b>  | <b>5</b> |

## INDEX OF MOTIONS

1. **Approval of Agenda** by consent (Page 1).
2. **Approval of Proceedings of February 2, 2009** by consent (Page 1).
3. **Move to approve Amendment 2 to the Shad & River Herring Fishery Management Plan** (Page 1). Motion made on behalf of the Shad and River Herring Management Board by Paul Diodati. Motion passes (Page 1).
4. **Adjourn by consent** (Page 5).

## **ATTENDANCE**

### **Board Members**

|  |  |
|--|--|
| George Lapointe, ME (AA)                       | Leroy Young, PA, proxy for D. Austen (AA)          |
| Pat White, ME (GA)                             | Roy Miller, DE, proxy for P. Emory (AA)            |
| Douglas Grout (AA)                             | Bernie Pankowski, DE, proxy for Sen. Venables (LA) |
| Paul Diodati, MA (AA)                          | Tom O'Connell, MD (AA)                             |
| William Adler, MA (GA)                         | Jack Travelstead, VA, proxy for S. Bowman (AA)     |
| Mark Gibson, RI (AA)                           | Willard Cole, NC (GA)                              |
| David Simpson, CT (AA)                         | John Frampton, SC (AA)                             |
| James Gilmore, NY (AA)                         | Robert Boyles, Jr., SC (LA)                        |
| Pat Augustine, NY (GA)                         | Spud Woodward, GA (AA)                             |
| Brian Culhane, NY, proxy for Sen. Johnson (LA) | Jessica McCawley, FL (AA)                          |
| Peter Himchak, NJ, proxy for D. Chanda (AA)    | Bill Orndorf, FL (GA)                              |
| Tom Fote, NJ (GA)                              |  |

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

### **Ex-Officio Members**

#### **Staff**

Vince O'Shea  
Bob Beal

Toni Kerns  
Pat Campfield

#### **Guests**

Steve Meyers, NMFS

A.C. Carpenter, PRFC

The Business Session of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, May 7, 2009, and was called to order at 11:10 o'clock a.m. by Chairman George D. Lapointe.

### **CALL TO ORDER**

CHAIRMAN GEORGE D. LEPOINTE: We will start the business meeting. I have one addition under other business, and that is transition of legislative commissioners.

### **APPROVAL OF AGENDA**

With that addition, are there other additions to this agenda? Seeing none, we will consider it accepted.

### **APPROVAL OF PROCEEDINGS**

We have the proceedings from the February meeting. Are there any changes to those proceedings? Is there any opposition to their acceptance? Seeing none, they are accepted.

### **PUBLIC COMMENT**

The next agenda topic is public comment. This is the time on the agenda for members of the public to comment on issues not on the agenda. Are there any members of the public who would like to speak at this time? Seeing none, we will go to Agenda Topic 4, the interim review of the 2009 Action Plan accomplishments.

### **INTERIM REVIEW OF THE 2009 ACTION PLAN ACCOMPLISHMENTS**

MR. ROBERT E. BEAL: As we have done every year for a number of years, the Commission has pulled together an interim review of where we stand with respect to all the action items in the Annual Action Plan. That was e-mailed to all the members of the Commission on April 30<sup>th</sup>, I believe. There may be some hard copies in the back as well.

Generally, it just goes task by task through the Action Plan and updates the commissioners on where we stand with respect to all those tasks in the Action Plan. I think the take-home message is generally all the projects are on track on to be completed this year. I can't think of any off the top of my head that have been derailed by resources or lack of interest by the

commissioners or anything else. Everything, as far as I can tell, is on track to be completed this calendar year. That is the update. If there are specific questions, obviously the staff can try to answer those.

CHAIRMAN LAPOINTE: Thanks, Bob; questions for Bob? Seeing none, thank you very much. The next agenda topic is to review and consider the approval of Amendment 2 to the Shad and River Herring Fishery Management Plan. I will turn this over to Paul Diodati.

### **REVIEW AND CONSIDERATION OF APPROVAL OF AMENDMENT 2 TO THE SHAD AND RIVER HERRING FISHERY MANAGEMENT PLAN**

MR. PAUL DIODATI: The Shad and River Herring Board met yesterday and made this motion to approve Amendment 2 for the Shad and River Herring Plan. It is to move to recommend, on behalf of the Shad and River Herring Management Board, that the full Commission approve Amendment 2 to the Shad and River Herring Fishery Management Plan.

CHAIRMAN LAPOINTE: Thank you, Paul. That is a committee motion so it does not require a second. Is there any discussion on the motion? Are we ready to take action? All those in favor raise your hand, 14 in favor; any opposed, 1 in opposition; any abstentions, no abstentions; any null votes. Fourteen for, one against, no abstentions, no null votes. Congratulations to the Shad and River Herring Board.

### **DISCUSSION OF THE ASMFC LEADERSHIP NOMINATION PROCESS**

The next agenda topic is a discussion of the ASMFC Leadership Nomination Process. You will recall at the last meeting I said I would ask a group of folks to get together to look at our nomination's process to see if we need to consider changes that may be made to make it as relevant as possible for the Commission.

A group of folks met earlier this week and Bob is going to report on that. We have a piece of paper that was handed out that is titled "Report of the ASMFC Leadership Nomination Process Working Group".

MR. BEAL: The document was just handed out along with the new agenda. George provided the background, but the individuals that met on Monday

evening were Jack Travelstead, Spud Woodward, Brian Culhane, Roy Miller, Ritchie White and Louis Daniel. I think the majority of those folks are still here and they can provide more detail when I've finished providing the summary.

Overall, the working group felt that the nomination's process has worked well in the past. However, it could probably benefit from a few modifications for the future. The working group indicated that there was a concern that the Nomination Committee and the structure that we currently have put a lot of responsibility on the three individuals that were on the Nominating Committee.

In the past those folks have narrowed down all the potential options and brought forward just one recommendation for the Commission Chair and the Commission Vice-Chair, and they felt that was a lot of responsibility for three individuals. Obviously, they discussed it with the commissioners and brought forward nominations. However, they felt that may not be the best way to go in the future.

It would be more appropriate to bring possibly a larger slate of potential commissioners or potential leaders for the commission forward. The overall goal of this group was to provide some additional structure to the nomination process but still maintain enough flexibility so that the Commission ended up with the best possible leadership.

There were four issues that were discussed and are listed here on the white paper. The first issue was term limits. Under the Compact now the Commission annually elects the chair and vice-chair, but the tradition has been for those individuals to serve for two years. The working group recommended that practice remain in place, that the leaders of the Commission serve two-year terms.

The working group also realized this may not be possible all the time due to retirements and changes in commissioner status and those types of things. They recommended if necessary that the term could be extended or shortened to accommodate the circumstances with the individuals that are in leadership positions.

The group also wanted to note that if an individual is elected as vice-chair of the Commission, it is really a four-year commitment because they have two years as vice-chair and then four years as chair of the Commission – two years; two years as vice-chair and two years as chair. That is what I meant to say.

There was also the issue that the tradition has been for regional rotation of leadership. It has been South Atlantic, Mid-Atlantic and Northeast rotation when possible of commissioners. The working group felt that this should be continued, if possible. In the past folks have worked pretty hard to make sure that there is regional rotations within the leadership.

The group noted that this practice could be altered if it results in better leadership coming up at the end of that process; so, if the best candidate to be the leader of the Commission, if two of those are from the same region or if that region has recently served, that's okay for that to happen.

The membership of the Nominating Committee, the working group felt that maintaining the current three-member Nomination Committee is fine, and the Chair of the Commission, when assigning those folks, should strive to have one representative from the north, one from the south and one from the mid-Atlantic.

The final issue that they talked about was the role of each member of the Nominating Committee, and there is a list of tasks that those individuals would have. First they would contact all the commissioners within their region and determine an interest in being nominated for chair or vice-chair and also solicit other nominations for individuals that could be chair or vice-chair of the Commission.

Then once they had a list compiled of all the individuals that may be interested in serving, they will talk to all the commissioners and talk to the individuals that were recommended as potential leaders of the Commission and gauge their interest. From those discussions, they will pull together a list of potential nominees and bring that forward to the Commission.

This working group would then prepare a ballot for the Commission, distribute that to all the commissioners at the Business Session, and the elections usually occur at the annual meeting. Then following that, they would simply tally the votes and report the results of that election out to the Commission.

The largest change would be that more than one nomination for each position, chair and vice-chair, may be brought forward and then the Commission would decide who would be elected to the leadership position by a vote at the Business Session.

CHAIRMAN LAPOINTE: Thank you, Bob. First, my thanks to that group for getting together on Monday evening to address this issue, which is an important one. Questions for Bob or to members of that group. Pat White.

MR. PATTEN D. WHITE: I just would like to hear a brief discussion on the practice of selecting one from south, mid-Atlantic and north to accommodate when possible but not at the expense of electing the most appropriate leader. I can see where that could be a confusion at some time. Is that the best way to address it? Are we addressing that as best as possible at this time?

CHAIRMAN LAPOINTE: Jack, could you respond.

MR. JACK TRAVELSTEAD: Well, I think when the committee was discussing this, it was more or less a desire and not a mandate. The reality is you may have no one from a particular region who is interested in being nominated. Everybody might fall into one region. What we were ultimately looking for was let's have the best leader we can get regardless of where they're from, but if we can maintain some semblance of the tradition of alternating regions, then that would be a good thing and not a bad thing.

CHAIRMAN LAPOINTE: Thank you, Jack. Pat, any follow up or was that okay?

MR. P. WHITE: Well, I'm really happy with that; and if we had a vice-chair and a chair all voted in from Florida, as long as the Commission has no problem with that, I think that is great.

CHAIRMAN LAPOINTE: Thank you. Other questions or comments? Doug.

MR. DOUGLAS GROUT: Just a question concerning the role of each member, when we get down to preparing ballots, are we talking about a secret ballot now? And, two, are we talking about say there are three nominees, is it most votes wins or does a particular nominee, to become a vice-chair, have to get a majority of the votes; is there any clarification on that?

MR. TRAVELSTEAD: The committee did talk about whether the ballot should be secret or not, and I think everyone agreed that it would be a closed, written, secret ballot. The votes would be tallied by the members of the Nominating Committee and announced to the group. I think we all assumed it would be a simple majority.

We did talk about what would happen if there was a tie vote. I think we came to the conclusion there was you just keep having votes until someone changes their mind and you have one of individuals ending up with a majority.

CHAIRMAN LAPOINTE: It strikes me that the council process, they know how to do this, where they have a ballot and if there is a clear winner, that person is moved ahead. If there is a tie, you then go to another ballot, and so we could emulate that process. My experience, obviously, is most recently with the New England Council. Questions or comments? Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: I'm sorry, Mr. Chairman, I did have a question. Was it one state one vote?

CHAIRMAN LAPOINTE: That is how we operate; is it not, one state one vote?

MR. TRAVELSTEAD: My impression has been it's everyone is voting, but that's an excellent question. We didn't talk about that in the committee.

MR. ROY MILLER: I kind of like the idea in this particular case of everyone voting, Mr. Chairman.

MR. WILLARD COLE: Mr. Chairman, I look at this very simply this way. The commissioners are electing our leadership and not the states.

MR. BRIAN CULHANE: We elect a chairman at the full Commission meeting. At the full Commission meeting, we each vote individually; don't we? We don't vote as a state delegation; do we?

MR. THOMAS FOTE: The only place that the commissions had a chance to vote in the nineties was basically at a – legislators and governor's appointee was at a full Commission, and it was a caucus vote. Remember the one election – and Gordon and I were just talking about it – when we nominated Senator Owen Johnson to be chairman and wound up in seven tie votes because some states would vote no and some states were voting yes, and it was tied between the yeses and the no's.

It has always been a full Commission vote. The Commission vote is a caucus vote. When you vote on a plan, it was always a caucus vote. I don't think that has changed. Maybe I missed something one of the times I wasn't on as a governor's appointee, but it has always been a caucus vote. I think when we do plans or anything else it is always a caucus vote at the

full Commission; so just for consistency it should be a state vote; one state one vote.

MR. PATRICK AUGUSTINE: Mr. Chairman, I agree with what Bill Cole said. This is a case where you don't have to agree with your counterparts from your state. Each vote should have as much weight as the other. In this case if Jim and Brian don't want a particular candidate and I do, I have lost my opportunity. We are individuals. We are selected to represent a certain body, so I would go one vote per commissioners and not per state.

MR. P. WHITE: I agree.

MR. FOTE: Then if we do that, make it clearly stated it is only for elections only because the other part needs to be a caucus vote of the full Commission. The only reason I was doing it is saying it should be done for consistency. When we do a plan approval at the full Commission or anything else like that, it should be a caucus vote.

MR. PAUL DIODATI: I think I sort of lost track of the exact issue, but isn't this well described in the Compact as far as the votes and so forth?

EXECUTIVE DIRECTOR O'SHEA: Well, voting is one state one vote.

MR. DIODATI: Yes, that was my understanding so I don't see how we can alter that. That is how it is done

EXECUTIVE DIRECTOR O'SHEA: You asked me whether it is in the Compact. It is in the regulations.

CHAIRMAN LAPOINTE: It is in the regulations.

MR. AUGUSTINE: Clarification; it is in the Compact or in the regulations, or both?

CHAIRMAN LAPOINTE: Vince said it was in the regulations, but we have to follow –

MR. AUGUSTINE: So if we wanted to change it, what would we have to do, Mr. Chairman?

CHAIRMAN LAPOINTE: We would have to change the regulations, I guess. Before we make a decision, we should think about this some more and operate by the regulations. If we, in fact, in the future think that's a change that needs to be made, we should give it more consideration than we're giving it right now and some more background material. That is just my sense right now. Bill Adler.

MR. WILLIAM A. ADLER: Mr. Chairman, with regard to the chairmanship and the vice-chairmanship, are those two separate votes or is the vice-chair the one that gets the second most votes or how do we do that, two separate votes or what?

CHAIRMAN LAPOINTE: We have always done two separate votes, so my sense is that we would continue with that. Are there other comments? Again, I want to thank the group getting together. Is it the sense of the Commission that this is a good way to go and we will operate under these guidelines? Any opposition? Great, thanks again to the group for meeting on that issue.

### OTHER BUSINESS

The next agenda topic is other business and I said we would add one issue and that is the transition of legislative commissioners. We had an issue that has arisen in the last little while about the status of legislative commissioners following elections. I asked Toni to put the language up from the Compact.

It is under Article III. It says, "The second shall be a member of the legislature of such state designed by the said commission or committee on interstate cooperation of each state; or if there be none," et cetera, et cetera, but importantly the language we're going to discuss is "the second shall be a member of the legislature."

We had an issue that has come up about people continuing as legislative commissioners or proxies of legislative commissioners when they are no longer standing legislators. It has been our practice that commissioners would serve until they were replaced, but in the case of this language in the Compact, again that has come up recently, it says they shall be a member of the legislature.

So if somebody is out of the legislature they are no longer eligible to be a commissioner the read of this is; and therefore if they had a proxy that person would be a proxy for somebody who is no longer a member of the Commission. Again, this has come up recently. We talked to our attorney about it, and so the recommendation is that we make a formal change and notify the states that to be the legislative commissioner you have to be a member of the legislature.

So the change would occur if somebody changes legislative status, the status would change on the date of seating of the newly elected legislature. In the state of Maine elections are the first Thursday in November. The new legislators are seated about a



month later, and so the formal change in status of a sitting legislator to former legislator and therefore no longer being eligible to be a commissioner would occur on that date. Is that an accurate reflection of what we discussed this morning? So this would be a formal change in commission process. Tom Fote.

MR. FOTE: That covers when elections happen, but when people resign or people pass away, how is that handled? Is that handled differently?

CHAIRMAN LAPOINTE: That's a good question. It wouldn't be handled differently except the date upon which the change occurred.

MR. FOTE: Because like in the present situation in New Jersey, the legislator basically resigned to take another job and that person now there is nobody in that spot at all on the commission and it probably will not be the person that even replaces – it was not the person that replaced him serving. It was a woman that replaced him, so it is not that legislator that will be taking over the commission job. I don't know how you deal with that.

CHAIRMAN LAPOINTE: My sense is in that case – well, the mechanics of making the change would be written up by staff and distributed to all the commissioners. It would be included in the Commissioner Manual and on the briefing CDs. In the case of resignation I would think that we would want the state to notify the commission of the change in status so that we would know that officially. But, again, with the termination of their being a sitting legislator, they wouldn't be a commissioner anymore. Vince, did you have something to add?

EXECUTIVE DIRECTOR O'SHEA: Yes, I think the date of the resignation is in effect would be a clear date.

MR. P. WHITE: Mr. Chairman, is this a change in the process or just a clarification of what the Compact reads?

CHAIRMAN LAPOINTE: This is a change in our past practice. Our practice has been to let people sit as commissioners until they are replaced, and this change is specific to legislative commissioners because of that language in the Compact. Do we need a formal motion to make this change? Vince is saying no; so with that conversation, unless there is opposition, we will notify the states of the change, and it will be our operating procedure from here forward.

## ADJOURN

That is the last agenda item before the business session so the business session stands adjourned. One more thing – I want to give my thanks to staff for all their hard work for the week. We're busy, which means they're twice busy, and so I just want to personally thank all the staff members for their hard work and good spirits through the course of the week.

(Whereupon, the meeting was adjourned at 11:35 o'clock a.m., May 7, 2009.)