

**PROCEEDINGS**  
**of the**  
**ATLANTIC STATES MARINE FISHERIES COMMISSION**  
**INTERSTATE FISHERIES MANAGEMENT PROGRAM**  
**POLICY BOARD**

**August 18, 2005**

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

Approved November 3, 2005

## ATTENDANCE

### Board Members

George Lapointe, Maine DMR	Ed Goldman, Proxy for Robert Smith, NJ
Patten White, Maine Gov. Apte.	Eugene Kray, proxy for Curt Shroeder, PA
John Nelson, New Hampshire F&G	Craig Shirey, Proxy for Roy Miller, DE
Ritchie White, New Hampshire Gov. Apte.	Bernard Pankowski, proxy for Robert Venables
Dennis Abbott, proxy for Mary Ann Blanchard, NH	Howard King, Maryland DNR
Paul Diodati, Massachusetts DMF	A.C. Carpenter, PRFC
Bill Alder, Massachusetts Gov. Apte.	Jack Travelstead, Virginia MRC
Mark Gibson, Rhode Island DEM	Kelly Place, proxy for John Chichester, VA
Eric Smith, Connecticut DMR	Preston Pate, North Carolina, DMF
Lance Stewart, Connecticut Gov. Apte.	Damon Tatem, North Carolina Gov. Apte.
Gordon Colvin, New York DEC	John Frampton, South Carolina DNR
Pat Augustine, New York Gov. Apte.	Robert Boyles, Jr. South Carolina Leg. Comm.
Brian Culhane, Proxy for Owen Johnson, NY	John Duren, Georgia Gov. Apte.
Bruce Freeman, New Jersey DFG&W	David Perkins, USFWS
Erling Berg, New Jersey Gov. Apte.	Anne Lange, NMFS

### ASMFC Staff

Ruth Christiansen	Lydia Munger
Bob Beal	Brad Spear
Tina Berger	Nancy Wallace
Vince O'Shea	Mike Howard
Julie Nygard	Toni Kerns
Vince O'Shea	

## TABLE OF CONTENTS

Welcome; Introductions.....	5
Approval of Agenda.....	5
Approval of Proceedings from May 12, 2005 Meeting.....	5
Public Comment.....	5
Review Recommendation of Non-Compliance Findings.....	6
Discuss White Paper on MRAG Report.....	10
Presentation on ESA Timeline and Potential Impacts for Red Knot Listing.....	16
Presentation on NOAA Marine Protected Area Program .....	22
Non-Native Oyster Update.....	28
Update on Additional ACFCMA Funds Spending Plan.....	29
Habitat Committee Report.....	31
Other Business; Adjourn.....	36

## Summary of Motions

August 18, 2005

**Move that the Board recommend to the Commission that the State of Connecticut be found out of compliance with Addendum III to Amendment 3 to the American Lobster FMP in that it has failed to implement and enforce the gauge increase from 3 ¼” to 3 9/32” in Area 6 by July 1, 2005. This measure is required to ensure that the F<sub>10%</sub> targets of the plan are achieved and to maintain effective cooperative management of the lobster resource. In order to come back into compliance, Connecticut must increase the Area 6 gauge size to 3 9/32”.**

*Motion made by Mr. P. White on behalf of the American Lobster Management Board. Motion carries (11 in favor, 2 abstentions, 1 null vote)*

**Move that the Board recommend to the Commission that the Commonwealth of Massachusetts be found out of compliance with Addendum III to Amendment 3 to the American Lobster FMP in that it has failed to implement and enforce the gauge increase from 3 3/8” to 3 13/32” in Outer Cape Cod by July 1, 2005. This measure is required to ensure that the F<sub>10%</sub> targets of the plan are achieved and to maintain effective cooperative management of the lobster resource. In order to come back into compliance, the Commonwealth must increase the Outer Cape Cod gauge size to 3 13/32”.**

*Motion made by Mr. Lapointe; Motion carries (10 in favor, 1 opposed, 5 abstentions, 1 null vote)*

**Motion to postpone to the ASMFC Annual Meeting.**

*Motion made by Mr. Diodati, second by Mr. Carpenter. Motion fails (4 in favor, 10 opposed, 3 abstentions).*

**Move to forward the response to the MRAG Report on ASMFC Stock Assessment Development Process to the Stock Assessment Committee.**

*Motion made by Mr. Nelson, second by Mr. Augustine. Motion carries.*

The meeting of the ISFMP Policy Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Radisson Hotel Old Towne, Alexandria, Virginia, on Thursday, August 18, 2005, and was called to order at 1:15 o'clock, p.m., by Chairman Preston Pate Jr.

**--Welcome; Introductions --**

CHAIRMAN PRESTON PATE, JR.: Good afternoon. I hope everyone enjoyed lunch. Thanks to the staff, hotel and commission for setting it up. Very tasty. Welcome to the ISFMP Policy Board. There have been updates to the agenda passed out.

I think we can move through this fairly efficiently and expeditiously and get everyone underway with their afternoon travel back home. In way of introductions, Gene Kray, I understand that you have a new delegate from the state of Pennsylvania. Do you want to do the honors?

DR. EUGENE KRAY: Yes, thank you, Mr. Chairman. I'd like to introduce to all of the commissioners Mr. Leroy Young who is the Chief of the Division of Fisheries Management within the Bureau of Fisheries for the Pennsylvania Fish and Boat Commission. His first meeting; hopefully not his last. (Applause)

CHAIRMAN PATE: Welcome, Leroy. The trust test will be whether or not you come back for the next one. (Laughter) Don't be intimidated by the shenanigans that go on around here.

**-- Approval of Agenda --**

Everyone has seen the agenda. Any changes to the agenda that are necessary? **Without objection, then, we'll consider the agenda approved.**

**-- Approval of Proceedings --**

The minutes from the last Policy Board meeting have been available to you for review. Any comments or recommendations for changes to

the minutes? **Seeing none, without objection we'll consider the minutes approved.**

**-- Public Comment --**

Public comment period on the agenda is standard procedure for us. Anyone in the public? Yes, ma'am. If you will come up to the mike right in front of you please. Identify yourself for the record.

MS. CAROLINE KENNEDY: Good afternoon. My name is Caroline Kennedy. I work with Defenders of Wildlife here in Washington, D.C. I am also speaking today on behalf of the American Bird Conservancy and New Jersey Audubon Society regarding the red knot and horseshoe crabs.

I will be brief because I believe it is well-known through our group's communications with the governors of your states, the commission, the National Marine Fisheries Service, the Secretaries of the Departments of Commerce and Interiors and members of Congress that we believe a moratorium on the landing of horseshoe crabs is necessary in the Mid-Atlantic states and that this moratorium must be in place by next season.

Efforts to date such as temporary closures, limits and sanctuaries have not achieved their desired results of increasing the number of crabs. As you may have heard, the most recent count of red knots on their winter grounds in Tierra del Fuego is approximately 17,000 birds. This is a serious drop in the number of birds from the previous count.

According to scientists, extinction of this bird is projected to occur at or near 2010. We are pleased that you will be briefed later today by the U.S Fish and Wildlife Service on the red knot and will learn more details about the dire status of this remarkable bird.

Our review of the research conducted to date is that it has been thorough and the results compelling and support the need for a moratorium. On behalf of our 5,000-plus members and the millions of others who want to

restore the Delaware Bay's once spectacular shorebird and horseshoe crab populations I urge you to take all necessary actions to ensure that a moratorium is in place by next season. Thank you.

CHAIRMAN PATE: Thank you, Ms. Kennedy. Anyone else from the public wish to speak? Okay, then we'll move to the first business item on the agenda, review recommendations of non-compliance findings.

**-- Consideration of Non-Compliance Recommendations --**

MR. ROBERT E. BEAL: There has been two recommendations for non-compliance findings. Both of those came from the American Lobster Management Board. I think we have -- Toni, if you can just scroll up we can put the motions on the screen and I think Pat White will speak to those motions.

CHAIRMAN PATE: Joe, do you need that motion read?

MR. PATTEN D. WHITE: I'm happy to read it, Mr. Chairman, when it's stabilized. **On behalf of the American Lobster Board I would move that the Board recommend to the Commission that the state of Connecticut be found out of compliance with Addendum III to the Amendment 3 to the American Lobster Federal Management Plan, Fisheries Management Plan, that it has failed to implement and enforce the gauge increase from 3-1/4 to 3-9/32 in Area 6 by July 1<sup>st</sup>, 2005.**

**This measure is required to ensure that the F-10 targets of the plan are achieved and to maintain effective cooperative management of the lobster resource. In order to come back into compliance Connecticut must increase the Area 6 gauge size to 3-9/32.**

CHAIRMAN PATE: Okay, thank you, Pat. Any comments or discussion on the motion? Is everybody ready to vote? Need to caucus? Gordon.

MR. GORDON C. COLVIN: I just want to raise one question to get it onto the record and I'll direct my question to Mr. Beal. Mr. Beal, I understand that this requirement, as indicated, flows from Addendum III and was listed in Addendum III initially as a requirement to be in place by July 1, 2004, "if necessary" based on the next lobster stock assessment.

At our Annual Meeting in December 2003 a motion was passed to defer that date from July 1, 2004, to July 1, 2005, still, "if necessary" based on the next lobster stock assessment. The next lobster stock assessment has not occurred and would the staff state for the record the basis for the Board's determination as to why the requirement is a compliance requirement at this time based on the "as necessary" language and its application by the Board.

MR. BEAL: Sure. As all the members of the Lobster Management Board are aware there has been numerous discussions on whether or not, what the status of the "if necessary" clause is. Those, as Gordon mentioned, those discussions culminated at the Annual Meeting in New York in 2003 with the series of motions that deferred the action in Area 6 until 2005.

Originally when the Lobster Conservation Management Team proposals were put together all the "if necessary" clauses were deemed at that time to be necessary to meet the F-10 percent rebuilding goal within the plan.

And there are some, you know, considerable discussion on the record to support that. And the "if necessary" based on the subsequent stock assessment essentially was -- how do I phrase this -- if the new assessment said that we were ahead of where we thought we would be the "if necessary" clauses would not be necessary.

The subsequent stock assessment has not been completed to date for review by the Board so all the "if necessary" clauses at this point are deemed necessary to meet the F-10 percent egg rebuilding target as determined by the technical committee.

MR. COLVIN: Thank you.

CHAIRMAN PATE: Any further questions/comment on the motion? Eric.

MR. ERIC SMITH: Just for the record, I somewhat disagree with how Bob characterized that prior to December of 2003. The way I would characterize it, leaving that part aside, in December of '03 we very deliberately moved, we gave Area 6 a one-year extension until July of 2005.

And we debated the question very carefully of whether "if necessary" would still apply in that motion and we decided not to. That's, I think, what Mr. Colvin is getting at. And I agree with that point, that the substance of the issue was that if July 1<sup>st</sup>, 2005, became hard and fast that's the date regardless of the assessment, regardless of "if necessary" and with that understanding my position the other day is consistent with what it is now. I have no objection to the motion. Thank you.

CHAIRMAN PATE: Okay, are we ready to vote? Do we need a caucus? Short. All in favor of the motion signify by raising your right hand; all opposed; null votes; abstentions. I have eleven in favor, one null vote, three abstentions. The motion passes. Thank you.

MR. WHITE: I have one more motion, Mr. Chairman.

CHAIRMAN PATE: Okay, go ahead, Mr. Chair.

**MR. WHITE: Again on behalf of the Lobster Management Board I would move that the Board recommend to the Commission that the commonwealth of Massachusetts be found out of compliance with Addendum III to the Amendment 3 to the American Lobster Fisheries Management Plan in that it has failed to implement and enforce the gauge increase from 3-3/8 to 3-13/32 in the Outer Cape Cod by July 1<sup>st</sup>, 2005.**

**This measure is required to ensure that the F-10 targets of the plan are achieved and to maintain effective cooperative management of the lobster resource. In order to come**

**back into compliance the commonwealth must increase the Outer Cape Cod gauge size to 3-13/32.**

CHAIRMAN PATE: Thank you, Pat. Any comments or questions on the motion? Paul.

MR. PAUL DIODATI: I'd like to — I'm not going to speak specifically against this motion but I'd like to speak in defense of the commonwealth and maybe offer a different approach for the board to consider, Mr. Chair.

The way, you know the way we interpreted the "if necessary" clause — and I'm not going to stretch this out but it was obviously different than the way staff has expressed their opinion of what it was but, you know, we viewed that in light of a new stock assessment coming out in a matter of weeks that the if necessary clause is best applied to the newest information and not information that goes back to 1997 which the 2003 action was relying on.

You know in my view it makes me more credible in my state, especially in the Outer Cape Cod area which has already implemented a very stringent effort control plan limited to 77 fishermen with individual trap allocations.

This measure is a measure on top of that and I admit that it's certainly in one of the prior addendums but at the same time the commonwealth has been dealing with Area 2 which is adjacent to this area so these are two of the four areas that I have to deal with.

And the Area 2 gauge increase has been delayed until Addendum VII could be passed or at least gone to public hearing and a decision is made. In my view given the "if necessary" clauses and the way we interpreted them, given the number of areas we have in the commonwealth, given that Addendum VII is going out to public hearing and we'll make a decision on that for Area 2 in November, it makes much greater sense for me to delay any action in the Outer Cape Cod Area until November when Addendum VII is agreed upon and the new stock assessment is in hand.

So I'm hoping that the board could agree that that's a sensible way to administer the fishery and deal with our constituents in Massachusetts on this particular issue. We're the only ones who fish in the Outer Cape. We don't share that area with other states.

I'm working very closely with those fishermen. I meet with them on a fairly regular basis. We had a meeting about two weeks ago to go over the status of their fishery. So I'm hoping that we can just postpone this until the November board meeting.

CHAIRMAN PATE: Paul, did that similar discussion take place during the Lobster Board meeting yesterday?

MR. DIODATI: I wasn't at that board meeting but I was in and out. Perhaps the chair or someone else who was there could speak on that. I'm not sure if this specific discussion was laid out the way I have laid it out. But that is the nature of this.

CHAIRMAN PATE: Pat can you speak to that, please.

MR. WHITE: It wasn't laid out the way Paul has laid it out. That's sort of off in a different direction. Mr. Adler made protests on questioning the direction that it was going on the "if necessary" clause and was, you know, very concerned about that but it wasn't the same direction that Paul is alluding to now.

CHAIRMAN PATE: Bill.

MR. WILLIAM A. ADLER: And Dan did mention from the state's perspective about having the different gauges that are -- he said it is better not to have three different gauges in the coastal waters at the same time, you know. So he did bring that up.

And I think I did mention, also, that our Marine Fisheries Commission has voted to move ahead with this but they did include after the next stock assessment, of course, which could have been right now anyway.

But the commission did vote to approve the gauge increases but with the "if necessary" so there was action taken to move ahead. And the Outer Cape fishermen do understand. It's not like they said just stop it and kill it.

They understand it's in the plan and they were the ones that put it in so it's not that. I don't know, Mr. Chairman, if you want me to bring this up under this particular second, I have a process problem but do you want me to wait until this is resolved?

CHAIRMAN PATE: Yes, let's do that.

MR. ADLER: Thank you.

CHAIRMAN PATE: Gordon.

MR. COLVIN: I appreciate Bill mentioning that in fact what we're dealing with here is a gauge increase that is part of the approved Outer Cape Management Plan brought forward by the LCMT for that area and the commonwealth and approved by the board as part of Addendum III.

The situation with respect to the deadline and the relationship to "if necessary" following a stock assessment and the timing of the stock assessment is virtually no different for the Outer Cape than it is for any of the other "if necessary" in Addendum III, including the one we just voted on.

So, to me it's a cut and dried issue. If we're going to maintain a level playing field and an equitable process we should not send one message to the lobstermen in the states who manage the Area 6 fishery and exist within it and a completely different message to those in Outer Cape. It just isn't right. Either it's necessary and it's a deadline and we're past it or we're not.

CHAIRMAN PATE: Okay, thank you, Gordon. Any more comments on the motion? Paul, absent a motion to the contrary we'll move forward with. A.C.

MR. A.C. CARPENTER: Thankfully I'm not a member of the Lobster Board but if I understand



what Paul was saying there is an adjacent area that will go to -- is it the new size limit? as soon as the administrative process acts. Is that what I'm kind of understanding?

MR. DIODATI: Yes, we have an adjacent area that I believe the board also this week, rather than directed increase in the gauge size in that adjacent area that would be consistent with this schedule, is delaying that until Addendum VII which is going out to public hearing between now and we're coming back in November to approve it to determine if an effort control plan in that area will be satisfactory to meet the resource conditions in that area.

And so they may not have a gauge increase in that area at this point. Meanwhile we've already implemented an effort control plan which is the same one that is going out to public hearing for Area 2 in the Outer Cape but because this gauge increase was already in a prior addendum going back to 2003 or so I'm expected to move forward with this one.

So, there is a couple of inconsistencies. Although I recognize that there is process but I think the way to work within our process and to work out the inconsistencies would be to just delay any action until November and let this play itself out.

That would certainly help me a great deal given that, again, the Outer Cape is not shared by several others states. We only have Massachusetts fishermen in the Outer Cape. The Rhode Island and Massachusetts area is prosecuted collectively in Area 2 and we're working together there.

I think this is unlike the situation in Area 6 where one state legislatively had already made the move and the other state had not. I think that there is a difference there. **So I'd like to make a, you know, a substitute motion to postpone this action until the commission's November meeting. If I can get a second on that, that would be great.**

CHAIRMAN PATE: Okay, Paul has made a motion to postpone until a date certain. Is there

a second for that? A.C. Carpenter. And as noted in the earlier board meeting a motion to postpone is debatable only to the extent on the time to which it will be postponed.

But I had Pat -- before the motion was made I had Pat White and Gordon cued up for comment so if you can do that on the previous motion or to clarify some points quickly, Pat, that will be acceptable.

MR. WHITE: I just think the situation that A.C. is referring to is a little bit different between the two areas because what Area 2 had to do, they met their requirements for their rebuilding schedule. And their gauge increase and the subsequent gauge increase were not part of their rebuilding schedule which it was in the Outer Cape and the Area 6 rebuilding program.

CHAIRMAN PATE: Okay. Gordon, to that same point.

MR. COLVIN: Pat made my point. There is a substantive difference with respect to the Area 2 and Outer Cape situations with respect to compliance with the underlying requirements of the management plan.

CHAIRMAN PATE: Thank you. Are there any comments relative to the date to which the motion will be postponed? Seeing none, I'll call for the vote on that. Need to caucus? All in favor of the motion please signify by raising your right hand; all opposed; null votes; abstentions.

I counted four in favor; eleven opposed; no nulls; three abstentions. The motion fails, bringing us back to the main motion which is the compliance finding. Pat Augustine.

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

CHAIRMAN PATE: Call the question. All in favor of the motion, or do you need to caucus any? No. All in favor of the motion, please signify by raising your right hand; opposed, like sign; null votes --

MR. SMITH: How can A.C. be a null?

CHAIRMAN PATE: How can you be null?  
(Laughter)

MR. SMITH: Who does he not agree with?

MR. DIODATI: I don't know but I really appreciate it. (Laughter)

CHAIRMAN PATE: Have you got another little voice inside your head we need to talk about?

MR. CARPENTER: I've got about four voices in there on this issue but that's all right.

CHAIRMAN PATE: Okay, abstentions.

MR. GEORGE LAPOINTE: South Carolina voted twice, didn't they?

CHAIRMAN PATE: I don't know. Did South Carolina vote twice?

MR. BEAL: John Duren is from Georgia.  
(Laughter)

MR. JOHN FRAMPTON: You're getting Georgia mixed up with us.

CHAIRMAN PATE: Yes, he did. I didn't. Okay, I have ten in favor of the motion; one opposed; one null vote; and five abstentions. The motion passes. Thank you. That is all of the compliance issues that we have to deal with today for this session. That will come back up again in the business meeting following the Policy Board.

**-- Review White Paper on Response to the MRAG Report --**

The next item on the agenda is a review of the discussion of the white paper response to the MRAG report on the stock assessment development process. You're going to lead that, Bob Beal?

MR. BEAL: Yes, thank you, Mr. Chairman. At the beginning of the meeting each of you were

handed a draft response to the MRAG report so all of you should have that in front of you. I'm going to give a quick background and then what I'll be doing is just essentially going quickly through Section Number 5 which is the summary and conclusion section of that document.

As you all will remember, MRAG Americas was contracted by the commission to look at our stock assessment process and see if there are ways to improve it and this was brought on by not achieving some of the deadlines that we had as far as completing stock assessments in time for scheduled peer reviews.

The MRAG group, the way they conducted their study was they reviewed our guidance documents, our technical guidance documents, our peer review process, and all that.

And they interviewed a series of technical committee members, stock assessment committee members, and commission staff to just get a flavor for what is going on with the stock assessment process at the commission and some of the problems and some potential improvements.

The study was conducted in spring 2005. The findings were reported back to this Policy Board at the last meeting in May 2005. I think you all remember Dr. Andy Rosenberg came and gave a very lengthy and thorough presentation on this document or on their findings.

As I said earlier I'll just quickly present the initial staff response today. The majority of that work was done by Dr. Carmella Cuomo as visiting scientist in July. Patrick Kilduff, Joe Grist and myself also contributed a little bit to the document as well.

So, what we're asking the Policy Board to do today is not approve the draft staff response. What we're asking is that this group approve it to be forwarded to the stock assessment committee for their input and then what we'll do is when we get their input we'll work that into the document and then we'll bring the document back to the Policy Board at the Annual Meeting

for approval at that time.

So, this is sort of an interim review. We probably don't need to worry about all of the real particular details, just conceptually are we going in the right direction.

And since this was just handed out to everyone at the beginning of the meeting so I know you haven't had a lot of time to spend looking through it, if you do have any comments following the meeting that you don't think of as I go through it or as we discuss it you can send those in.

Probably Joe Grist would probably be the best person to compile those, compile the comments and work them into the document prior to it going go the stock assessment committee at the end of September.

MR. LAPOINTE: When should comments be in to Joe?

MR. BEAL: Two weeks from today, whatever that is.

MR. LAPOINTE: Two weeks. Good.

MR. BEAL: I don't have my calendar here. So I'll just briefly run through it. The staff, there is essentially four areas that the staff, the response focuses on, on changes to our process, and they're divided up into data inadequacies, data submission, model selection and effective meeting and workshops.

As far as data inadequacies go, what we're proposing is to put together a species-specific database for each of the species that the commission manages. We'll work with staff as well as partners and we'll pool together the existing scientific and ecological information for each of our species and it will just serve as a background database that can be mined by any of the technical groups that are considering working on or that are working on stock assessments for these species.

Now the second proposal is to develop a university scholar's program and this is a

program that will pull in master's level students or senior undergraduate students. You know there is a big body of labor out there that can come to the commission relatively inexpensively.

And we can probably tap into that group to do a lot of background work and a lot of legwork to get to provide a lot of the background information for the stock assessments that we have. The next would be to develop a database that compiles the relevant environmental data for all these stock assessments.

So, this background document or that background information will be able to be pulled together, again supporting the stock assessment and hopefully cutting down on the background work that each of the technical committees will have to do as they get their assessment underway.

And they can focus on compiling the data, the fishery-dependent and independent data as well as running the models and tuning the models as best they can.

And the final proposal under data inadequacies would be to develop a series of training workshops for the preparation of data and that will feed into the stock assessment models.

The next general heading is data submission. The MRAG report raised a number of concerns about the timeliness of data submission and the fact that it was late quite often. And there was also concern was raised by some of the interviewees that they weren't aware of the timeline and didn't know exactly when the commission or when the process needed certain pieces of information.

So the proposals, I guess there are seven different proposals under that heading. The first one is a standard practice of delivering a timeline to the Management Board so what we'll do is, you know, spell out the timeline for the stock assessment development, present that to the Management Board for that species and have them agree that that is the timeline.

Have it, you know, in front of everyone so everyone knows what the timeline we're working on and everyone can go back and talk with their technical staff and make them aware of what is going on.

The second step would be between 18 and 24 months prior to an assessment, prior to the deadline for an assessment to be complete, the timeline will be distributed to all the members of the technical committee and it will be very formal.

These folks will have a couple of weeks to comment on the timeline and they can, if they feel that there is any piece of this timeline that is just too restrictive or they don't have time to complete it they will notify the, you know, staff and we can rework the timeline if necessary.

The next step would be a completion, a timeline completion spreadsheet. It's more or less a status document which will, you know, as we go through development of the assessment we will keep a running tally of where we are as far as the completion of the document and where we stand with respect to meeting the deadline of submission to a peer review.

We will also, the next step would be collection of data and compilation of the raw-in process data on a CD for distribution to the group. The next would be collection of annual data. We'll collect the data on an annual basis and that will feed into the multi-year assessments.

What this will prevent is the technical groups from having to go back if there are, you know, five years between assessments, and compile five years worth of data all at the same time and that's kind of a lengthy -- in the past, anyway, that has been cited as a time consuming issue and a lengthy process in preparation for assessments. So we'll try to keep kind of a running database of all the annual data for each of the species.

Again, the next is a warehousing issue, that the commission is proposing to put together a secure database with all the data, the raw and processed data for, in support of the stock assessment.

And the final issue under data submission is that there will be a formal criteria established for data set removal. In other words the technical committees obviously go through kind of a data review process.

Some of the data is adequate; some of it is not. But we will try to put together a formal criteria through the technical committee process as to what data should be included in the assessment once it's put together. So those are the data submission issues.

The next series of issues is based on model selection. The first two recommendations focus on multi-species. We'll continue the development of the multi-species VPA and submit that to peer review. Hopefully that will be completed by the end of this calendar year. It should go through the SARC process in December or late November.

The second would be to continue the multi-species spatial dynamic modeling work that is going on through the University of Miami. And the third item under model selection would be a series of workshops, training courses and workshops, to provide background to state scientists, state biologists, on model selection and based on the current data that is out there.

The final grouping of recommendations falls under the effective meetings and workshop heading. And this is, the first one is use of the stock assessment specialists. This is, as you all are aware the commission has hired a stock assessment specialist, Joe Grist, to help out with the technical committees with their work.

And he will be assigned to work with the technical committees and help them in their efforts to meet the timelines that we need to have to complete the peer review of the assessment.

The second would be more of a meeting management issue and that is at the beginning of the meeting the facilitator, most likely the tech committee chair, will reiterate the mandates that all the participants have, what the goals of the meeting are and make sure it's spelled out very

well as to what the intent and what this group needs to do before they can wrap up the meeting.

The third one is a formal recognition program. There has been, during the course of the interviews that the MRAG group did there was, you know one of the recommended solutions or a recommended approach is to motivating people to get more involved with ASMFC stock assessments is a recognition program. And we're proposing to do that here.

You know obviously the commission relies on the state and federal scientists to complete their assessment and all their technical work, so these folks should be recognized for their efforts as they complete the stock assessments. And we'll develop a certificate of recognition to those groups.

The third is holding meetings in a place where we have access to the data. In the past we've had meetings at hotels, places like this where we just couldn't get to the raw data if somebody was unable or for whatever reason just didn't bring a data set that at some point they realized they needed to complete the assessment.

We'll try to have meetings at either the offices of state agencies or federal agencies or other places we can access the data fairly easily.

And the final recommendation is leadership courses, providing commission staff, technical committee and stock assessment members with leadership courses: how to run a meeting, how to effectively get groups together and have them produce the products that they need to produce in the time that they have allotted and meet the deadlines for the peer reviews that we have coming up.

So, that's a very quick summary of the document. Again, you know I just focused on the conclusions and the summary and conclusion. There is other discussions in there on approvals -- I mean on improvements that could be made to the process and I can answer any questions if you have any at this time.

CHAIRMAN PATE: Okay, Bob, will you say again what happens after the technical committee reviews.

MR. BEAL: For this document?

CHAIRMAN PATE: Yes.

MR. BEAL: Okay, the intent is if the Policy Board thinks we're heading in the right direction it will be forwarded to the stock assessment committee at the end of September. We'll re-work the document with their comments and bring it back to the Policy Board for final approval at the Annual Meeting. Any changes to our process that are included in this document will then be implemented after the Annual Meeting.

CHAIRMAN PATE: All right, thank you. I said tech committee and meant stock assessment committee. Any questions? A whole bunch. Mark.

MR. MARK GIBSON: Thanks. You say in Item G of the data submission there is going to be development of objective and quantitative criteria for data set ruled by individual species technical committee members so that's a prospective, something that is going to happen.

But I note in the text that the Striped Bass Technical Committee is already grappling with this and presumably have utilized some rules for the assessment that they just completed in 2005.

Is there an intent for what the Striped Bass Technical Committee developed to be, you know, used generically by all the technical committees? Or are there going to be different standards? Or is the technical committee for striped bass somehow going to update their procedures you know pending this development?

And the reason it's important is, many of you may be aware, the assessment you will see for striped bass, the answer is going to be dependent on which abundance indices went into the VPA and we will need a very clear statement from that technical committee report, a very clear statement as to what went in and how it was

chosen.

But I'm just, in addition to that, wondering how these processes are going to be reconciled down the road, you know, with this prospective process that you're going to develop versus what the Striped Bass TC has already done.

MR. BEAL: Well, I think the striped bass model is something that can be applied to the other technical committees. I don't think necessarily they're exact criteria have to be used, Mark. I think each technical committee is going to have to modify that.

And some data sets or some species have more data where the technical committee can probably be a little bit more selective than they can in some other species so I think it's going to have to be done on a case-by-case basis.

And those sorts of questions are also, you know, things that we can bring forward to the stock assessment committee and get their feedback on what they would recommend as far as moving that forward.

CHAIRMAN PATE: George, do you have a comment to that point?

MR. LAPOINTE: Yes, just I think that's the right approach. If we've got an assessment coming out this fall, this new process won't be approved until the Annual Meeting and then that work will be done prospectively.

And it strikes me that the model that is used by the Striped Bass Committee should be considered in the context of this discussion with all the other issues they have but that the two would run on separate tracks.

CHAIRMAN PATE: Anne Lange.

MS. ANNE LANGE: Thank you, Pres. I guess my question relates to where ACCSP falls into this. There doesn't seem to be any recognition that we've got this overall dataset that we're -- we're not there yet but we're moving in that direction.

Is that going to be a key input to this at some point or? I mean I think one document should support -- if we as partners in ACCSP have a goal of making ACCSP at some point our major data source there should be some linkage in our commission document I think.

CHAIRMAN PATE: Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Yes, Thanks, Mr. Chairman. I think, you know without trying to put world hunger in here I think we have -- some real process issues came out in the MRAG report.

And I think ultimately ACCSP will be part of the solution in the future but I think this board needs to and we need to focus on processes that are going on right now and look to improve them and feed the data as it improves into it. But I think we have lower hanging fruit available to us right now with the suggestions that are outlined before you. Thank you.

CHAIRMAN PATE: Thank you. Gene.

DR. KRAY: Bob, in your recommendations here you talk about the different models and you talk about the multi-species model. I seem to recall that at our last meeting when Doug gave his report we couldn't get into it because we wouldn't have time. And I thought we were going to address that at this meeting. Do we know when we're going to be able to spend more time on the multi-species model that was developed by our MNS Committee?

MR. BEAL: The multi-species VPA model which is one of the models that is being explored will be peer reviewed at the fall SARC which will be I think the last week of November-first week of December this year.

So the final peer review information won't be available to this group until, you know our February meeting week will be the first time it can be presented. But if you remember I guess it was at the May meeting there was a discussion about the implementation plan for multi-species management.

Once we get the answer out of the SARC as far as the multi-species VPA, what are we going to do with it, and the intention was to bring, to put together some more background information, bring that forward at the Annual Meeting and have a discussion at the Policy Board as to what, you know once we get an answer what are we going to do with it. So that will be at the Annual Meeting.

CHAIRMAN PATE: Eric.

MR. SMITH: Thank you. I appreciate the summary, Bob, the overview. And I saw this on the agenda on the CD a few weeks ago and I was hoping we would get the report in the mail to see it ahead of time.

Not having had that done — and I understand the workloads -- Mr. Chairman, is it your intention that perhaps we refer this to the Management and Science Committee and get the technical people to look at this in more detail and report back at the Annual Meeting?

I would like the time to spend with my staff to look at it and say, you guys deal with the data all the time in the stock assessments. You know, how does this fit with what you think ought to be done.

CHAIRMAN PATE: The intent is to send it to the stock assessment committee for that review.

MR. SMITH: Okay, thank you.

CHAIRMAN PATE: Any more comments, questions?

MR. LAPOINTE: Importantly from the context of Eric's question we've got a couple weeks, Vince said, to have that sit-down with our staff because I'm going to do the same thing. And then we can feed that to the commission so that will help, hopefully some useful comments going to the commission and hopefully giving us some comfort in the process when we vote on it at the Annual Meeting.

CHAIRMAN PATE: Vince.

EXECUTIVE DIRECTOR O'SHEA: Yes, Mr. Chairman. In response to the timing of you-all getting this, that was my decision, quite frankly. By the time we got it done knowing the other issues you all had on your plate I didn't think it was fair to direct your attention, given the other higher priority items you had for this meeting.

And the thought was handing it out now and giving you time afterwards would probably be a better use of your time. So I didn't expect anybody to really have to read this prior to this meeting. And I'll be the one that will admit I made that decision. Thank you.

MR. SMITH: Mr. Chairman, just briefly, I was not being critical in any way.

EXECUTIVE DIRECTOR O'SHEA: Didn't take it that way.

MR. SMITH: Okay, thank you.

CHAIRMAN PATE: Any more questions? John.

MR. JOHN I. NELSON, JR.: Not really a question, Mr. Chairman, just a point. I noted in one of the sections, under 3.2.2, that it did talk about the data and the recognition of the ACCSP program being one of the mechanisms for the primary mechanism, really, to serve as an efficient source of streamlining that data flow.

So I think you know it looks to me like an awful lot of the components of change are incorporated in the report and I thought Andy had done a great job last time. So having said that, **Mr. Chairman, I'll make the motion if you would like to forward this to the stock assessment committee for their consideration.**

CHAIRMAN PATE: Motion and seconded by Pat Augustine. Is there any objection to the motion? Seeing none, then we'll approve the motion and forward this report to the stock assessment committee. Thank you, John.

**-- ESA Timeline and Impacts Presentation --**

The next item on the agenda is a presentation by

Annette Scherer — I hope I got your name right, Annette — from the U.S. Fish and Wildlife Service on the ESA petition for red knots. Brad, do you have a comment?

MR. BRADDOCK J. SPEAR: If I may, Mr. Chairman, just quickly preface this agenda item. The red knot population this past year saw another bad year and there has been a renewed interest, a public interest, in preserving the population.

The commission received outside pressure from several NGOs and also Congress, several members of Congress. Some of that pressure was for the Horseshoe Crab Board to take action and the agenda had already been set for this meeting week so there was no time allowed or no time available for the Horseshoe Crab Board to meet.

But we felt that this issue was important and that we would like to bring this issue in front of the board members. We felt that the Policy Board would be a good venue for that. So I asked Annette to come and speak to the board about the listing process of the red knot because since I guess in the past couple of months it has been petitioned for listing under the ESA and this may or may not have implications for the Horseshoe Crab Management Board.

But just thought it would be of interest of the board to just become a little more educated on the listing process and potential impacts if the species is listed. Annette was kind enough to drive down from New Jersey today to address the board.

She has brought some handouts. And she is only able to speak about the process and the timeline of listing. Because the petition review is ongoing she is not able to comment specifically about the red knot listing and any outcomes. But she has a presentation for you as well and I think will be able to answer questions.

CHAIRMAN PATE: Okay, thank you very much, Brad. Annette, welcome.

MS. ANNETTE SCHERER: Okay, I want to

thank you for giving me this opportunity to come and talk to you today and the process is a little complicated and I'll try to go through it as quickly and give you the streamlined version because it's also a little boring. But it might be easier if you hold questions until I'm through anyway because hopefully I'll be answering some of your questions as I go along.

The purpose of the Endangered Species Act is to conserve endangered and threatened species and the ecosystems on which they depend. And I thought I would sort of start off by reminding everyone of some of the key terms.

There are a lot of different state and federal endangered species acts and I wanted to go over the definition of what we mean when we say "endangered" or "threatened" or "critical habitat."

So an endangered species is any species in danger of extinction throughout all or a significant part of its range. A threatened species is any species likely to become endangered in the foreseeable future. And critical habitat is the specific geographic area with physical and biological features essential to conservation of a listed species.

A species can be identified for listing under the ESA in one of two ways. The service can either propose a species itself. We may identify a species just because we have become concerned or we've become aware of a decline.

Or we can be petitioned to list a species under the ESA. And in the case of the red knot we had already started a status assessment and then subsequently we've also received three petitions now.

The outcome of both the internal service review and the petition process is the same. And as you can see on the flowchart, the second blue box is where the Fish and Wildlife Service starts. And we are near the end of that status review period.

One of the differences is when we do the status review ourselves we don't have any twelve-month criteria. We can take as long as is



needed. When a petition is received it actually starts several steps above that but nonetheless the outcome is the same.

And if we determine that a species listing is warranted the species will become a candidate for listing under the ESA. The species is then given a listing priority number and listing actions are processed based on this priority number.

In the case of the red knot the highest listing priority number that we can give the species is a Listing Priority 3. And that's because it's a subspecies, it's not a full species.

Candidate species that warrant listing but are precluded because of higher priority listing activities are placed on a candidate species list and we have programs to conserve and recover those species while they are awaiting ESA protection.

And quite often we have pre-listing recovery activities that can take place and those actions sometimes can preclude the need to ever move a species actually onto the list.

There are five factors that are considered in determining whether a species is endangered or threatened: present or threatened destruction; modification or curtailment of the species range or habitat; overuse for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and other natural or manmade factors affecting the continued existence of the species.

Okay, once a species has, we've gotten to the point where we've determined that we should move forward and that listing is warranted the first step is to publish a proposed rule in the federal register.

Typically a peer review process will be started at this point in time. In the case of the red knot because of the interest in this species and because of the amount of work that is already going on with this species a lot of the peer review is already taking place and some of it

already has through the Shorebird Technical Committee that reports to the Horseshoe Crab Technical Committee.

And also we will also be asking for some peer review of some of the documents that we are preparing. But in general we have one year to respond to public comment and propose a final rule. If new information is provided during the public comment period, which is usually a 60-day comment period, then the Fish and Wildlife Service can decide to withdraw the rule or we can extend the process for up to six months.

Listing, under the normal listing process listing becomes effective 30 days following publication of the final rule. Now as many of you are aware we have been asked to emergency list the red knot. The ESA does not provide for petitions for emergency listing. It is just a straight petition process to list a species.

But our policy is that we review all petitions that we receive to determine if an emergency condition exists. We can also determine a need for emergency listing as a result of our internal candidate assessment process.

I need a drink of water before I read this one. It's a little bit of a mouthful. This first line here is straight out of our guidance for what constitutes or what meets the threshold for emergency listing.

For emergency listing the immediacy of the threat must be so great to a significant proportion of the total population that routine listing is not sufficient to prevent large losses that may result in extinction. Emergency listing prevents extinction by affording immediate protection while normal rulemaking proceeds.

One of the other big differences between an emergency listing versus a normal listing is that the emergency listing becomes effective immediately upon publication in the Federal Register, not after a final rule but immediately. And that listing is good for a period of 240 days.

Now during this 240 days we still need to go through with our normal listing process. That is

prepare a proposed rule, respond to public comment, and then prepare a final rule. And we have to have this finished by the end of the 240 days.

Now we have been working on a status assessment. We've been funding activities or we've been involved with red knot assessment and conservation activities since the late 1990s. In July of 2004 we contracted the New Jersey Endangered and Non-Game Species Program to compile all available scientific information on the red knot.

That assessment is going to include all red knot biological information on the breeding, wintering and migration stopover areas, address the five factors that we need to consider in determining whether a species should be listed, and to describe the conservation actions being undertaken to protect the species and its habitat.

The original due date for this assessment was December of 2004. We have granted the state several extensions and we finally got it yesterday afternoon. And it took me an hour and a half to print it and I finally got it off the printer at 3:30 yesterday so I really can't comment on that assessment because I haven't had a chance to look at it.

But the work is not the work of the New Jersey Endangered and Non-Game Species Program. Over 40 biologists from federal and state agencies, conservation organizations, academic institutions in the U.S. Canada, South American, Europe and Australia contributed information on the status of the species.

Now that we have the document it's going to undergo internal Fish and Wildlife Service review and that will be by staff from our Endangered Species branch, Migratory Birds and Fisheries. I will be compiling those comments and I will then submit those comments back to the state and have them prepare a final report.

Now we can either adopt that final report as our own report on the status of the species or we can take that report and other available information

and prepare our own status assessment. And at this point in time we really haven't had a chance to go through the document so we have no idea which way we'll go on that.

The status assessment will undergo independent peer review and the Shorebird Technical Committee will be given an opportunity to review and comment. Following peer review the document will be made available to the public.

We have received three petitions, as I mentioned. The first was from the Northeast Pennsylvania Audubon Society. That was submitted in August of last year. We reviewed it. It did not demonstrate an emergency situation. We didn't have funding to process it this last fiscal year.

We are limited on working on listing actions unless we get a specific allocation. Each region in the Fish and Wildlife Service gets a specific amount of money to work on listing actions and we have to work on listing actions in priority order and petition findings have to come out of that listing budget.

So we have prepared a draft petition finding on that first petition and it is now under review in our Washington office. The two additional petitions that were filed: one was by the American Bird Conservancy, Defenders of Wildlife and other national and regional conservation groups. We received that the last week in July along with a notice of intent to sue if we did not emergency list the species.

We also received a petition from Delaware River Keeper and some regional and local conservation groups. We received that the first week in August. Both of those petitions right now are under review to determine if they present new information that demonstrates that an emergency exists.

If it is not an emergency, due to lack of funding most likely those petitions are not going to be processed at least until the next fiscal year. So this is probably what most people are most interested in hearing and that is what happens if

the red knot is listed: full protection of the ESA will go into effect.

And I think the areas of particular interest to the ASMFC would be our Section 7 requirements which would require consultation with the Fish and Wildlife Service on any federal action that may affect the red knot or its habitat.

And the second would be prohibition on take of listed species. Section 7 requires federal agencies to conduct programs to conserve endangered and threatened species. And it also requires those federal agencies to ensure that actions authorized, funded, or carried out are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat.

If an agency action may affect a listed species or critical habitat the agency must initiate consultation with the Fish and Wildlife Service. Private individuals can be affected when their action needs a federal permit or funding. And some examples would be dredging projects, beach nourishment projects or Army Corps of Engineer-issued permits.

Okay, there also would be a prohibition against take of red knot. And this is really where the horseshoe crab issue comes in. "Take" means: harass, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in these activities. "Harm" includes habitat destruction that kills or injures listed species.

Harvest of horseshoe crabs could be take if food supply, that would be horseshoe crab eggs, are depleted to a degree that red knots cannot attain weight gain needed to complete migration and arrive on breeding grounds in great condition.

And I want to stress that this is an "if" — if the food supply is depleted. If the birds are making body weight and they're in good condition then there is no adverse effect and there is no harm.

So, I want to, I know there has been some speculation about whether or not the service would immediately ask for a moratorium on horseshoe crab harvest. We don't have that sort

of information at this point in time to support that.

It is an "if." If the birds are not making weight gain then obviously that would be a harm and we would need to seek some sort of remedy for that. If they are making weight gain then there is no take.

Liability for take would apply to harvesters and the states and others that regulate the harvest. Now what we would need to do if we think that there is a take situation is we would work with the states to develop a program to eliminate that take.

And if there is take but the take is not so severe that it would jeopardize the continued existence of the red knot states or individuals could apply for an incidental take permit so some harvest could still occur.

The Fish and Wildlife Service issues incidental take permits under Section 10.A.1.b provided an approved habitat conservation plan is developed. Habitat conservation plans are tools for conserving listed, proposed, and candidate species while providing for activities that will not appreciably reduce the likelihood of survival and recovery of the species in the wild.

Incidental take may also be authorized through formal Section 7 consultation on a federal agency action. And permits would also be required of the people who are doing research on the species. They would be required to apply for a scientific collecting permit and we would need to look at their projects and make sure that their projects would be something that would lead to the conservation of the species.

The other thing that would happen if the species is listed is that we would start to develop, within a year we start working on a recovery plan for the species. Now these plans are developed with our stakeholders and certainly the ASMFC and probably the Horseshoe Crab Technical Committee, certainly members of the Shorebird Technical Committee, would all be invited to participate in that recovery planning process.

We would identify recovery strategies, identify tasks and partners, establish delisting and down-listing criteria, and we would provide a timetable and a cost estimate.

The goal of the Endangered Species Act is not to put additional species on the list. Our goal is for those species that unfortunately have to be placed on the list, our goal is to reduce or eliminate threats to listed animals and plants.

Another goal is to restore self-sustaining wild populations. And our ultimate goal is to remove species from the list. So I hope I cleared that up a little bit about the process and what some of the consequences of listing may be. And I would be happy to answer any questions.

CHAIRMAN PATE: Thank you, Annette. George, questions.

MR. LAPOINTE: Yes, thank you, Mr. Chairman, and thanks, Annette, for that because this is a confusing process. Having come under the loving attention of the Endangered Species Act a couple times one of the most difficult components or parts for me as a state manager is communication.

Is there a way, is there a regular way by e-mail or something that you guys do communication on a given listing? And the Federal Register doesn't wash. I mean, I know you have to do that but there is meetings that go on and there is information that goes on and information requests. Is there a centralized location to receive information on the listing of the red knot, the listing process?

MS. SCHERER: Really the Federal Register is our venue for getting that information out. But, you know, the Fish and Wildlife Service also, we do have information. We have list servers for new releases and things of that sort whenever we come to a conclusion for some decision that we can announce but I'm really not aware of any other mechanism.

CHAIRMAN PATE: Annette, what are the precedents for using the emergency listing process? I can't remember one in my

professional history, but that doesn't mean anything. (Laughter)

MS. SCHERER: The emergency listing provisions are very rarely used. Under the federal scrutiny for a species to be included on the Federal Endangered Species List most species by the time they get to the point that they need to be proposed for federal listing they're all very, they're all in trouble.

So, in some ways you could say that almost every species that gets to that point is in an emergency situation. So, emergencies really are reserved for species that, where there is some specific action that is so severe that if without that action that could be taken only with listing. I really don't have any good precedents to give you because I am not aware of any.

I have been with the Fish and Wildlife Service for 24 years and I have never worked with a species that has needed to be emergency listed. We have, in the past we have had some species that we felt needed to be emergency listed but we were not successful in moving them forward.

CHAIRMAN PATE: Thank you. Bruce.

MR. BRUCE FREEMAN: Thank you, Mr. Chairman. Annette, what is the process that you go through in using information on these reports? And the reason I ask that, I know that even some of the work that has been published on red knots there is some dispute in some areas. How do you resolve that dispute? And what information is used? Does it have to be published information or can it be other types of information?

MS. SCHERER: It doesn't need to be published information. For information that is not published when we compile our status report it will go through independent peer review. And we have a process for selecting those peer reviewers and it's Office of Management of Budget Guidelines so it isn't something that Fish and Wildlife Service invents.

And it's -- and I'm not quite sure because it does change from time to time and I'm not sure

exactly who the leading organization is that we go to but we go to an independent organization and ask for the names of independent peer reviewers.

And it has to be people who are familiar with the species and familiar with the topic but maybe have not necessarily been involved with this particular issue so that they don't have a vested interest.

So we try to get peer review that is truly independent and quite often that resolves the issues. Sometimes there are some things that we all have to agree that we're just going to disagree.

And in most cases those are minor parts of the whole picture so they aren't enough to prevent us from being able to make a determination on whether listing is appropriate or not. More often those are items that may be disputed that may make our recovery process a little more difficult.

MR. FREEMAN: And one other question, I know information is being collected continuously. After a report is established is there a mechanism for including more recent information or how is that information incorporated?

MS. SCHERER: Well, that's one of the things that I am trying to get a handle on right now is there are a lot of different people out there working on the red knot. And some of those have been continued for four or five years and then maybe because it was work that was being done by a university and it wasn't really sponsored by the U.S. Fish and Wildlife Service or their federal agencies.

So you're right, there is some, there are some data sets that do not have a long history so it makes it difficult to compare what has been going on because the information has been collected in different ways by different people. And hopefully that is what we will be able to resolve with the status assessment that has just been prepared.

CHAIRMAN PATE: Erling.

MR. ERLING BERG: Annette, you said this process is ongoing right now, I recall. If everything goes according to the timeline that I see in here, when do you think this would be final? I mean, after a 30-days period, I know that. So what date, if this red knot is considered to be endangered, when would it be, when would that date be? Is there any date on that?

MS. SCHERER: No, that is one of the things. We just don't have a good timeline on how long this is going to take. Even with the status assessment that we contracted for we have just received it so until we have an opportunity to go through that assessment report and determine whether or not it has all of the information that we've asked for, that will give us an idea of where we go and what our next steps will be.

One thing that I do want to point out is that because the red knot can only get a listing priority as high as three and that's because it's a subspecies, species that are a Priority 1 or a Priority 2 will be given funding first.

So the red knot, we are not sure how long it will remain as a candidate if we decide to move it forward as a candidate. It really depends on funding for when we would be able to start working with that species.

MR. BERG: So you don't think it would be like in '06, then?

MS. SCHERER: At this point in time I have no idea. The petitions that we received did have some new information that I was not aware of and I have gone back to the petitioners and I've asked them to provide me some of the sources of their information, some of the reports that they cited, and they have just -- last week they did get that information to me and I'm going through that now. So, really we have not made a determination at this point in time whether or not emergency listing is needed. And that would affect the timeline.

MR. BERG: Okay, thank you. This is a problem we've wrestled with in New Jersey for quite a while so this is why it's such a great interest for us. Thank you.

**-- Presentation on NOAA Marine Protected Area Program --**

CHAIRMAN PATE: Okay, thank you, Annette. Very informative. I hope you will keep us, do everything you can to keep this group apprised of any developments. Bruce Freeman is the current chairman of the Horseshoe Crab Board and for lack of any more efficient contact come through him or Bob Beal for any or I'm sorry, Brad Spear, staff to the Horseshoe Crab Board. And do you think it would be possible for us to get a copy of your slides, of your presentation?

MS. SCHERER: Yes, I think you have them.

CHAIRMAN PATE: Okay, thank you. Thank you very much.

MS. SCHERER: Thank you for having me.

CHAIRMAN PATE: Okay, the next item on the agenda is a presentation by Paul Ticco from the NOAA Marine Protected Area program. Paul is going around to the various commissions giving updates on the progress being made in that program for designation of marine protected areas. Paul, welcome, and if you will introduce your coworker, please.

MR. PAUL TICCO: Good afternoon. Thank you, Mr. Chairman. Good afternoon everyone and thank you for inviting us and giving us the opportunity to speak today to the commission. I see a few familiar faces here which is very nice.

My name is Paul Ticco. I am the Marine Protected Area Manager for the Coastal States Organization here in Washington, D.C. My role is to represent coastal states MPA, marine protected area, interests to NOAA's MPA Center and Department of the Interior.

And my colleague here, Kate Smuckler, is the Regional Coordinator up in New England for the MPA Center and we're going to split the presentation today. Today we're going to discuss the development of the national MPA system and, more specifically, state involvement in the system.

There are a few handouts which are in the back, on the back table, which describe both the national system itself and some of the state efforts. I only brought about a dozen today so if anyone would like copies please let me know.

On these slides we do have some contact information. So, I'm going to turn it over to Kate now and she's going to start with the discussion about the MPA Center and the national system.

MS. KATE SMUCKLER: Thanks, Paul. Well, just, again, my name is Kate Smuckler. I am the New England Regional Coordinator for the National MPA Center. I'm based in Boston.

I just want to give thanks again to Vince O'Shea and the commission for inviting us here today and just send the message that Joe Eurovich, our director, and Jonathan Kelsey give their regards. They couldn't be here today, unfortunately. I also want to acknowledge George Lapointe who has been participating in the MPA Federal Advisory Committee over the last few years.

So why develop a national system of marine protected areas? Well, there are hundreds of federal, state, territorial, tribal authorities out there doing place-based management with nearly 2,000 sites in U.S. water.

There are countless different types, purposes, and terms to talk about these different areas. And there is lack of integration to meet multiple conservation and management objectives within and among programs and sites.

There is also no framework for planned ecological-based connectivity among the different programs out there, among existing or for any new sites. And there is also no or little mechanism for comprehensive planning and coordination to identify and meet regional needs or national goals.

This all reinforces the purposes for which the Executive Order 13158 was signed in 2000 and the need for a coordinated framework of U.S. marine protected areas and also clarified

terminology, et cetera.

In its most simplistic form the national, regional, and sometimes local picture, to many stakeholders and even managers, looks like this, a complex mix of different terms and programs and a sea of place-based management efforts, all doing good work to meet their mandates but for the most part little mechanism in place to help programs work together in the most efficient way possible.

There are exceptions to this where there are excellent models of coordination and we hope through this initiative to learn from those and incorporate them into the workings of this effort.

How could this national system function? Well, we're in the process of gathering input to develop a national framework that really has a foundation in regional coordination and stakeholder participation.

This national system would be an evolving portfolio of existing enhanced new sites and networks as needed but really based on what are the local and regional priorities. It is built on partnership with existing programs and authorities where partners work collaboratively to identify science-based regional and local priorities across natural heritage goals, cultural heritage goals and sustainable production goals which, incidentally, are also at least as far as we can tell the three primary purposes for which MPAs are established.

So, we believe by working together, applying these principles and assuring input and participation across governmental levels and stakeholder groups that we can develop an effective national system that is fundamentally a system of systems.

So how can a national system of MPAs help state fishery agencies? Well, it could provide a forum for coordination at the ecosystem level across federal, state, territorial, tribal boundaries.

It could leverage resources and build partnerships to meet priority needs, for example, research on design and benefits for MPAs for

fisheries management or support for looking at effectiveness of different closed areas out there.

It could also serve to highlight all the good work that is going on that all you folks are doing and also provide data and analysis tools for building regional networks to see how these sites could work a little bit more efficiently together.

And the Executive Order, incidentally, requires the MPA Center to consult with states and understand the needs, concerns and priorities for a national system.

But given the significance of the resources that states manage and your efforts in parallel with federal programs to use MPAs to manage and conserve marine resources we think it's really important to go beyond this consultation and explore more in depth how we can work together in the context of a national system. And that really is what brings us here today. And Paul is going to talk about how we've been working with the states so far.

MR. TICCO: Okay, thanks again. State involvement in this process is extremely important on all levels, including coastal managers, cultural and historic resource managers, and of course fisheries managers.

So what we first did was decide to have three regional meetings in which we invited state representatives and some federal representatives to come and discuss these issues. And you will see that there were three: one on the West Coast, one in the South Atlantic, one in the Great Lakes.

After these workshops a draft white paper which described the state reactions to the workshop information itself and also reaction to the national system was put together and presented at a panel session at a conference last July in New Orleans, just a few weeks ago.

The participants at these workshops primarily were state agency representatives but also some federal agency people. There are also two groups in which these state and federal representatives can join and have consensus,

more of a say in some of these issues.

One is called the State Advisory Group and one is the Federal Advisory Committee. Some representatives on those groups were also present and of course people from the National MPA Center which of course is a part of NOAA.

The goals of these workshops were to: a. provide a forum for state managers to discuss these interests in the system, to foster greater understanding of the system, but most importantly to develop recommendations from the states to the federal government on state opportunities, concerns and considerations. And again it deals with fisheries issues, cultural and historic issues and coastal resource issues.

From these workshops and a few other meetings we have boiled down some of the primary questions and recommendations which you will see on the screen. Number 1 was the definition of a national system for regional or state use. In other words, what, exactly, does the MPA system mean and certainly what does it mean for the states.

Number 2, what are the particular issues that impact sites with shared jurisdictions? Many MPAs share boundaries with state and federal waters and states are obviously concerned with what the impact on state waters will be for a national system that includes these sites.

Number 3, what are the value-added benefits of a national system of MPAs in state waters? In other word, why should we do this? State representative, what is the great benefit to me, the state, for having this system and actually being a part of it?

And, finally, of course funding -- not just federal funding that is available for keeping the system going but also for monitoring, for research and enforcement. How much will be available? When will it be available? What is the process for achieving certain goals using the money?

Key recommendations. Again, we boiled them down to five. Number 1, the national system of MPAs should include shoreline and land-water

interface and must include regional links across jurisdictions between states, territories and nations.

It was very important, particularly for the Pacific Islands, that this particular recommendation would go to the federal government. And just to explain that a little bit, the federal government in this case is primarily NOAA and Department of Interior.

Number 2 in the state recommendations, federal support to states must include adequate funding, again for grants, technical assistance, enforcement, assessment, monitoring and so on.

Number 3, to improve MPA management the best scientific information must be developed. So, of course we look for the very best fisheries information to use and we hope you will become more engaged in this process, certainly on many levels but in particular the best scientific information.

The fourth recommendations, the MPA Center should reach out and partner with under-represented groups. Some of these interests in MPAs in the state waters do not have much of the say and the MPA Center really should reach out and start working with these groups -- in particular, some of the cultural organizations, not just historic but living cultural organizations, tribes, other indigenous peoples.

And, finally, for fisheries and cultural resource management interests the states believe that the MPA Center should partner with state and regional fisheries management and historic preservation councils and agencies which, of course, is one of the primary reasons we're here, to describe this program and hopefully to have you become more and more involved in the process.

So, to become more involved in the process I have a couple of ideas. First of all, the draft white paper that I mentioned earlier that was produced in July will be magically transformed into a full report which will go out in draft in October with an eye for January as the final report which goes to NOAA and DOI.



This report will be available through myself, certainly, through the MPA Center. There is also a Web site which is very extensive, [www.mpa.gov](http://www.mpa.gov), which includes all the information on both the federal side and state reaction to this particular system. So, again we hope you will become more engaged and I'm going to turn it back to Kate for a minute to tell a few next steps.

MS. SMUCKLER: Thanks, Paul. And just to go into a couple next steps for development of the national system, this fall and winter we're going to be continuing regional public dialogue sessions.

We have held three so far: one in D.C. in March; one in New England, in Portland in May; and one just in July in the Gulf of Mexico in New Orleans. And so we hope to have at least four of these, four more this fall and winter.

This fall we're also initiating our first regional pilot project, really, with a ton of different partners on the West Coast starting to look at what characterization work has been done out there and taking a little bit further look at the inventory of sites, what exists on the ground.

Ongoing, just wanted you to be aware we have a federal inter-agency working group that has -- I don't know the number of federal agencies but many different federal agencies that also participate in the Federal Advisory Committee as ex officio members.

And we're looking towards a lot of this input through the states, as Paul has been saying, through the federal inter-agency working group, through these public dialogue sessions. All will be fed into this draft framework document which will be published in the Federal Register for public comment in April 2005. And with that we'd be happy to answer any questions. Thanks.

CHAIRMAN PATE: Any questions? Pat.

MR. AUGUSTINE: Excellent presentation. Very positive and very upbeat with the exception that there are no dollars. And it seems

like the effort of identifying and linking together areas to end up with systems of MPAs, that's a great idea. It's like ecosystems. The question is when is it going to really hit the road other than being a paper document.

And I'm not being critical. I'm being realistic. And we are faced with reality in every single board meeting we have, whether we're going to find a state out of compliance, whether we're going to make another FMP, what direction we're going to go.

I mean, here again we have another very aggressive document and approach to another total ecosystem pitch with no money. And I think it's important to get the states involved but as, if you were here for any of the meetings we've had, there is not a state that's represented here that isn't totally strapped for dollars.

So to put the onus back on states to eventually, other than, as my friend said, it's great to have a nice backpack but it doesn't put the dollars in the hands of the folks that are going to be expected to do most of the work.

And I think the hard question is, are you folks going to go to Congress or is NOAA going to come up with seed money to a degree that it's going to be possible to attack this very ambitious program?

MR. TICCO: Well, that's correct. Obviously, whenever we have these meetings the Number 1 issue is dollars. And in my particular role in representing the governors of the coastal states for this particular program that is their Number 1 question, also.

Aside from that or just as a sidelight to that we also hope to show states the benefits internally for going through this particular program in trying to better manage their MPAs and their sites, of which there are a couple thousand, easily, throughout the United States.

We also of course have some states which are far more, well, feeling more negative than others, you know some very positive, some negative. The budget for this will continue. I

unfortunately do not have any figures for you and I can't even tell you whether there is seed money.

But I do know that there certainly is a lot of attention being paid to this and the funding has certainly been approved for next year. I assume it has been approved through for next year. Do you have anything to add from the federal side?

MS. SMUCKLER: You actually hit the nail right on the head but just to respond a little bit more to that, part of what I have heard in talking to different people, also, is this may be a good idea to be able to pool resources here and there to sort of further the coordination that already exists.

And you know faced with limited resources it may be more effective to coordinate on different issues that you may not be coordinating on to this point. And this may provide a forum for that coordination.

MR. AUGUSTINE: Just a follow-on comment, Mr. Chairman.

CHAIRMAN PATE: Real quickly, Pat, we can't debate this much longer.

MR. AUGUSTINE: We have some 21 estuaries I believe up and down and around the country and of those that we're participating in, in New York we have the South Shore Estuary Reserve and the Long Island Sound Study Program. They seem to be working quite well. But, again, we are all strapped for money so please dig deep and reach far and come up with some bucks for us. Thank you.

CHAIRMAN PATE: Paul.

MR. DIODATI: Yes, I mean those three bullets that you have up there: natural heritage, cultural heritage, and sustainable production, is sustainable production relative to fisheries management one of the goals of this program?

MS. SMUCKLER: I would say yes.

MR. TICCO: Absolutely.

MS. SMUCKLER: Absolutely.

MR. DIODATI: So if sustainable production through fisheries management is one of the goals of the program, where does the program get the authority to manage fisheries?

MS. SMUCKLER: The program actually doesn't have authority to do anything. It's all based on coordinating current, existing efforts. It has no regulatory authority.

MR. DIODATI: So why wouldn't those dollars be put into the existing programs such as this organization which is made up of all the coastal states along the Atlantic Coast that have authority to manage fisheries in state waters and through an interstate basis where we actually create marine protected areas in all the coastal waters up and down the coast for fisheries management? So I don't understand why we're creating another layer of bureaucracy for the public to deal with and to spend public dollars on.

MR. TICCO: This question of course comes up all the time, also. One thing to keep in mind first about this particular system, it has literally no regulatory authority. It does not change anything. It doesn't add MPAs to the number of MPAs in the country.

It doesn't produce management plans, if you will. The point of the program which is stated in the Executive Order in year 2000 was that a number of these programs in coastal management, fisheries management and cultural/historic management were operating almost in a vacuum and the point was to try to get them to work together, both at the state and national level.

One goal would be to have state fisheries managers, coastal zone managers, and cultural managers actually sit down and figure out a more efficient way to manage these resources in sum within their own state.

So, as for passing the money on to fisheries management agencies and other managers, it was decided that the money was going to be

spend to try to coordinate better at both levels and also have those particular managers and this organization, certainly, work with the MPA Center and with other states to produce a more efficient system so that less money may be used in the future.

CHAIRMAN PATE: Okay, John.

MR. NELSON: Thanks, Pres. Kate, nice to see you again. Paul, I hadn't met you before. The concern, not concern but you know the states all have managed areas, marine managed areas. We've made a giant leap here to what is a marine protected area.

And I think it's important to recognize that nobody has that definition really down yet and nobody has designated anything as a marine protected area because we're going through that iteration of marine managed areas.

Now, you know, big brother would like to help the little brothers and sisters, I guess. I think that's how it is being viewed. So we've been out there managing our resources in our areas by either having various restrictions on activities in various areas for whatever reasons.

And we've got a federal program coming along telling us we want you guys in the states to be able to work better together. That doesn't have too good a ring, the feds coming in and telling the states we're going to help you work better together.

We've already done the work. We've already set aside whatever we needed to set aside or wanted to set aside. And that's where I think a lot of the states are having some problems with how much help is actually coming and in what form is it coming.

Is it coming as we've heard in the source of funds so that we actually could do more work as far as resource enhancement -- and we'll stick on that one for the moment -- or is it coming in an overall plan that says, well, before you do anything else we have to have all the partners kind of talk about this and agree upon what we're going to do?

So is that diluting the responsibility and authority of the various state agencies who are doing this because we're going to have a federal mandate via a document that everyone has signed off on giving us better guidance?

I think that's the problem that the MPA program has been dealing with and I think we all want to work closely together but I'm not sure some of us see the benefits of the government helping us that much.

MR. TICCO: It's definitely a problem and it is certainly a problem on a personal level because my position requires me to try to help states get more involved in the system and there is certainly some objection to that.

One term that is often used incorrectly is "federal system." This is supposedly a national system which is why the states are involved in it. It's not particularly a federal mandate down to states. It's an Executive Order that gave authority to NOAA and DOI to create this system with state involvement. So there is a little bit of a difference there.

Your point is extremely well taken. I'm not sure how I can respond to that because I do deal with that every day but we do hope that states in general and also the managers of the resources do see the benefits internally for their own state programs to go through this, in particular, as you mentioned, the marine managed areas which is a broader category of areas.

There is an inventory which has been going on for about three or four years and the point of the inventory is basically to see what is out there through each state sending information in to NOAA, very complicated databases.

And many states have said going through that has shown us what we have, what the sizes are what the management plans are, what we need to change in the future. And that in itself so far has been quite useful.

We also hope that at the end of this year and through next year when the Federal Register notice goes out that states will see that they can

become more a part of managing those areas that are in state-federal waters that have some jurisdictional issues and can get involved more in that way. Other than that, I share your concern certainly and it's very difficult.

CHAIRMAN PATE: Okay, thank you. I'll take one more comment and then we need to move past this. We could spend the rest of the day talking about MPAs and I'm going to stay out of it. (Laughter)

DR. KRAY: I have two issues. One, you indicated that your role is one of coordination. And I'm sitting here thinking, I've just been working on a piece of legislation that has been introduced by my Congressman which -- and I met with him a few weeks ago to tell him of my concerns and that piece of legislation is called "Oceans 21."

One of the things that does is require both the council system and the commissions, the way I read it, it would create another layer of approvals for us when we develop fishery management plans.

And we have to go through enough approvals as it is from our level through all of these different gradations before a fishery management plan -- and you're going to add another one on top of that.

And now you're suggesting another one which is not one of control but one of coordination so we would have to go through another step of coordination. That's just a comment. Next is a question.

You used the term "natural and cultural resources." I know the term. I know what natural resources are. What is a cultural resource?

MR. TICCO: Actually cultural and historic resource: shipwrecks are a good example, areas that have traditional usage, in the Pacific Islands tribes in the states of Washington, Oregon, things like that.

DR. KRAY: So we have artificial reefs which

are made up of a combination of sunken ships, sunken barges, et cetera. Is that a natural resource? I don't think that's natural. Or are you talking about the Merrimack or something like that?

MR. TICCO: I'm sorry. I'm actually dividing. It's natural resource, and then fisheries resource, and then cultural-historic. So natural doesn't necessarily have to be fish; it could be -- what else could it be? -- it could be anything else that a state has deemed that needs protection.

DR. KRAY: Coral.

MR. TICCO: Coral certainly would be a good example. Habitat is certainly one.

DR. KRAY: But I still don't know what cultural means. What is a cultural resource?

MR. TICCO: Oh, a cultural resource would be perhaps a traditional fishing ground on the West side of an island in Hawaii which is being protected as a cultural resource for descendants of that particular people.

CHAIRMAN PATE: Okay, thank you, Paul. Very informative presentation and I hope you'll keep us in the loop.

MR. TICCO: Well, thank you very much, everyone. Thank you.

MS. SMUCKLER: Thanks.

CHAIRMAN PATE: Thank you. Our next item on the agenda is an update on the non-native oyster activities. Bob Beal is going to do that.

#### **-- Non-Native Oyster Update --**

MR. BEAL: Thank you, Pres. I think this update continues to get more brief each time I give it. Since the meeting in May there has been, most of the activity has been on the research front. The groups that are doing the modeling, the demographic modeling and the cultural modeling and everything else that is going along that will be fed into the EIS is ongoing.

There were two meetings of the advisory panel that have been formed, the independent advisory panel that have been formed to review the documents that are being developed. The plan development team -- I'm sorry, the EIS Project Delivery Team has not met since the last meeting so there has been very limited activity on the development as far as delivery and development of the EIS.

So the intent is still to get our, the commission's Interstate Shellfish Transport Committee together before the Annual Meeting and update so that group can begin to get up-to-speed on what is going on with the EIS development and provide feedback back to this Policy Board which will then in turn provide feedback to the Project Delivery Team. So it has been, most of the activity has been on the scientific front.

CHAIRMAN PATE: Thank you, Bob. Just as a matter of interest on that subject, North Carolina contracted with Dr. Pete Peterson at the University of North Carolina Institute of Marine Sciences to do some non-native research on non-native oyster culture in North Carolina.

And he looked at the biological and the economic components of that and the final reports are out on that. And if anybody is interested in receiving those just let me know and I'll make sure you get a copy of them. Lance.

DR. LANCE STEWART: Okay. Eric, sorry. Thank you, Pres. Bob, I was just wondering -- the commission doesn't have any of this on the agenda but as I have heard it one of the repercussions of the careful look at the ecology of the Asian oyster introduction had spun off a listing for American oyster to be on the Endangered Species List.

It has caused great headaches in the Northeast and many of the state agencies, not directly marine fisheries but some outside of that, that have had to respond and defend the situation. Is there any connection?

MR. BEAL: Well, the petition for listing of the Virginico oyster was an independent activity.

It's completely separate from this, the EIS development and the Project Delivery Team that I was talking about. It was brought forward by an individual rather than a group, I mean rather than a part of the formal, you know part of the Asian oyster group and all the non-native work that is going on so it was an independent action not associated with this.

DR. STEWART: Okay, thank you, Bob.

CHAIRMAN PATE: And they have formed a status review team to look at that listing proposal and that group met for the first time last week or the week before so that process is underway. Any questions of Bob? Bill.

MR. WILLIAM GOLDSBOROUGH: I apologize if you spoke to this and I missed it, Bob, but are there any plans to convene the Shellfish Transport Committee to discuss the Asian oyster implications for the commission?

MR. BEAL: The intent is to get them together before the Annual Meeting and be able to report back at that time any findings they may have.

CHAIRMAN PATE: Okay, any more questions of Bob on non-native oysters? If not we'll move on to his next report on the ACFCMA spending proposal status.

#### **-- ACFCMA Spending Plan Update --**

MR. BEAL: Great, thank you. This has been my pet project since the last meeting. I've been working on getting the paperwork together to transfer the money from the Northeast Regional Office to the commission and then in turn out to the states.

The submission of all the grant proposals and grant work has been done from our office. The intent -- it has been submitted to the National Marine Fisheries Service. Their grant review process is currently working on the documentation.

The timeline is somewhat uncertain. We're hoping to get it done, you know, get a response by the end of the fiscal year. Once we receive

that money at the commission we can then begin to distribute that out to the states.

I went through the specific projects last time. I can update people on what they are if they would like but I think the idea here was just to give a status check on what is going on with the proposals and transfer of money.

CHAIRMAN PATE: Thank you, Bob, and I appreciate all the work Bob has put in to that. It has been very frustrating trying to get this process underway. Gordon.

MR. COLVIN: I couldn't agree more. Bob has really -- this is the monster that ate Bob I think. (Laughter) But he really has worked very hard on it and we appreciate it.

Mr. Chairman, I want to offer a suggestion and that is that should we be fortunate enough to see this level of funding continue I would like to propose that we revisit the process and our thoughts about how best to manage the ACFCMA money, overall, not just the increment.

And I would like to recommend that the AOC take up the question of revisiting the overall recommendations that the commission has made for the management of the annual ACFCMA appropriation and to begin by soliciting input from state members of the commission to that extent and then perhaps at its next meeting consider that advice and to formulate some recommendations, perhaps for a change in direction.

CHAIRMAN PATE: Okay, thank you, Gordon. Actually, we discussed that at the last meeting and that's a good reminder that that's going to be necessary. Anne.

MS. LANGE: Thank you, Pres. Related to that, I hope everyone understands that part of the reason in the delay in getting the funding out was the time it took for the process, the proposals to come to NMFS.

We're under the gun this year to try to get an idea of allocation of all of our grant funding out

and that's through my division for IJ, anadromous and the Atlantic Coastal Act, and have a game plan set up before the turn of the fiscal year which is October 1<sup>st</sup>.

So anything the commission can do to have an idea of what advice to give to us on how to allocate an additional two million, if that's what comes up, ahead of the game would be great, would be very helpful, whether it's through the proposal process that you used last year or through whatever process you decide. But the sooner you can inform us of that the easier it will be for us to start the process on the allocation of the funds internally. Thank you.

CHAIRMAN PATE: Thank you, Anne. Robert.

MR. ROBERT BOYLES JR.: Yes, thank you, Mr. Chairman. Quickly. Bob, do you know I think the Senate mark was the 9.25. Was that also in the House? Do we know?

MR. BEAL: It's in one version and not the other and I'm not sure which way that goes.

CHAIRMAN PATE: I know it's in the Senate.

MR. BEAL: It's in the Senate and not the House is my understanding.

CHAIRMAN PATE: Okay, thank you. Bill Goldsborough, you've got your mechanical problems fixed and -- or not. Jiggle it again. Can somebody swap out mikes with Bill so we can --

MR. GOLDSBOROUGH: There we go.

CHAIRMAN PATE: Don't touch it. (Laughter)

#### **-- Habitat Committee Report --**

MR. GOLDSBOROUGH: Thank you, Mr. Chairman. I can happily say that on this occasion I am glad to be last on the agenda. It's a lot like being at the end of a buffet line. It's a big gamble whether there's going to be any food left.

In this case there is a lot of time left and I do have several things I'd like to share with the board if you have the energy left. They're all of the nature of ongoing activities of the Habitat Committee. None are final actions with work products to share. But we would be appreciative of any advice or guidance or direction that the board wants to give to the committee.

We met on Tuesday, had a long and productive meeting. The first major item on our agenda was a presentation by way of an update, actually, from Eric Schwaab, formerly of Maryland DNR and this commission, as you all know, now with the International.

Eric updated us on the National Fish Habitat Initiative program which I know a lot of you are well aware of. He came to the Habitat Committee meeting in the spring of '04 when that program was just getting started to tell us about it.

And it is really pretty exciting how far it's come and it looks like it will be very productive in the future with respect to coastal fish habitat. As many of you probably know it's modeled loosely after the North American Water Fowl Management Plan which has over the years been very successful in leveraging private funds toward wetland restoration.

So we see this as having a lot of potential for doing the same for fish habitat restoration in the future, including, as I said, coastal fish habitat. So, the committee is interested in following this process and being more involved in it if the right role were to emerge.

The first thing we'd like to do is join the coalition partnership or the partnership coalition -- I forget what Eric called it. But it doesn't commit the commission to anything. It puts our name on the Website and it keeps us in the loop for ongoing information. So maybe I'll pause there to see if anybody has any comment on that before moving on to the next item.

CHAIRMAN PATE: Any questions for Bill? Bruce.

MR. FREEMAN: Bill, what does this include? The name sounds very intriguing.

MR. GOLDSBOROUGH: Well, as I understand it the model it's based on, the Water Fowl Management Plan, is based on a series of joint ventures locally, all around North America, to leverage federal dollars and raise private dollars for wetland restoration.

And I think -- Benny, was it two to one, roughly, private dollars to federal dollars that it? Almost three to one so it has been, basically the program has leveraged federal dollars to a very effective ratio into private dollars to apply toward wetland restoration, hundreds of millions over a number of years.

So, the potential is there if that model is well emulated to raise similar funds for fish habitat restoration. That's the intention.

CHAIRMAN PATE: Okay, thank you, Bill. Go on to the next one.

MR. GOLDSBOROUGH: Okay. Next and perhaps loosely related is our continued planning for a water quality workshop. I reported to you in May that at the spring meeting of the Habitat Committee we conducted sort of a mini symposium on water quality.

We tried to basically bring ourselves all up-to-speed on the major water quality issues confronting us on this coast and committed at that time -- and I reported to you -- that we would move forward with developing an initiative, a role, a strategy, for this commission with respect to water quality as it affects commission-managed species by first starting with a workshop at the Annual Meeting and we continued this week to plan that workshop.

There are a couple of components emerging for this. Basically we'd be looking at trying to identify what we know about water quality in coastal waters of the Atlantic and what we know about the impacts of water quality on commission-managed species.

And so we would have a couple of speakers helping us describe those things. And then we would facilitate a question-and-answer period and this is open to all commissioners.

And we encourage all to come to help explore the gaps in both of those things -- what we know about coastal water quality and what we know about the impacts on commission-managed species -- toward the purpose of trying to flesh out an ongoing role for the Habitat Committee and for this commission in trying to flag when significant water quality problems come along that affect commission-managed species and identify actions that we can take or recommend to address them.

So we are trying to be proactive on water quality is what it comes down to. We have for years been reactive to a number of things on this front and yet we see things like the lobster die-off and there are a number of other major problems that this commission is well aware of and we're trying to get a little bit out front in that area.

This is, as I mentioned, something that could connect back to that fish habitat initiative in the future, say, for example, through developing a way for us to identify emerging problem areas in water quality it might help us, say, target areas that might be high priorities for fish habitat restoration activities. I'll pause there for a moment, Mr. Chairman, if anybody has any comment on the workshop.

CHAIRMAN PATE: Okay, thank you, Bill. Any comments?

MR. GOLDSBOROUGH: I will ask if anybody has any suggestions on the type of thing that we could offer at the workshop that would encourage attendance, you know like pizza, beer (Laughter) or whatever. We're receptive.

CHAIRMAN PATE: Guinness works for me. (Laughter)

MR. GOLDSBOROUGH: The third item I want to report to you on is our continued discussions on the U.S. Ocean Action Plan. As you know, the Management and Science Committee did a

thorough review from a broad commission standpoint on that, touched on some of the habitat issues but not all of them, and on a parallel track the Habitat Committee has been looking at the Ocean Commission's and the Ocean Action Plan that came out of the White House.

I know that the Management and Science Committee's work is done as far as the commission is concerned as of the last meeting but we've continued to look at some of the habitat issues and we did get some good input from our NOAA representative at this meeting.

And our intent is to revisit the major habitat recommendations of the Ocean Commission report and check them against the Management and Science review thereof and perhaps draft a letter.

Now this is where I seek a little guidance or direction. It is our understanding as of our meeting this week that the Ocean Action Plan is soon to be replaced by another action plan. It was described as the 18-Month Action Plan to us and thus that there is another interval for input and that there is a very real opportunity to emphasize important habitat issues.

So, this would be a letter to Admiral Lautenbacher, perhaps through Bill Hogarth, with the recommendation to facilitate it. So I'll seek any comment or advice the board wants to offer me on that.

CHAIRMAN PATE: George.

MR. LAPOINTE: If you write a letter I would suggest it go to the head of CEQ because they're doing the coordination on the Ocean Action Plan. You might as well send it to the people who are doing the work.

MR. GOLDSBOROUGH: I guess the recommendation for the admiral came from our NOAA person and the reason being that they felt that he might be able to help really move it at that level but I'm not sure myself.

MR. LAPOINTE: I guess, I mean if that's what



you want to do cc the other members. But again it's not within his -- he's one of the members of inter-agency team but he's not the director of it.

MR. GOLDSBOROUGH: So maybe send it there and cc him, then, you think?

CHAIRMAN PATE: Bill, is it time sensitive?

MR. GOLDSBOROUGH: It is something we would need to do before the Annual Meeting, yes. In that sense it's time sensitive.

CHAIRMAN PATE: Any questions of Bill on that subject? Well, my suggestion -- Bill, if you can draft the letter and I have some discussion and input on how involved the entire board wants to be on the review of that my suggestion is draft it for my signature to be sent.

And if others feel like that they need to be involved in the review, let that be known. We'll send it out. Otherwise I'll work with the staff in putting that together and sending it to the proper recipients. Any objections to handling it that way?

MR. GOLDSBOROUGH: Great, thank you, Mr. Chairman.

CHAIRMAN PATE: Okay, thank you.

MR. GOLDSBOROUGH: My next item is a water project in Virginia known as the King William Reservoir that has been before the committee for discussion before. It's reached a point where it was appropriate to discuss it again.

This is a long-running saga permit process. I don't know if I have the order exactly right but it has been turned down by the Virginia Marine Resources Commission once and then it was okayed by the commission a second time.

It was denied by the Norfolk District of the Corps once and that was overturned by the Atlantic Division and so it has been back and forth. VMS has steadfastly opposed it and the habitat division of VMRC has steadfastly opposed it.

What it is, is a water reservoir on the Mataponi River, a tributary to the York in Virginia, which with an intake that is located, in VMS' opinion, to be in the worst possible location with respect to American shad and other anadromous species.

Apparently there have been some modifications with respect to intake screens and the water flow and so forth but VMS still remains opposed to it and in fact is about to have a published paper come out emphasizing that.

The process, as I said, has moved along quite a bit. Of late the movement was to try and request a supplemental environmental impact statement because the original one was done a number of years ago and a lot has changed since then. Apparently, though, just a few weeks ago the Corps issued their -- what do you call it, Wilson?

DR. WILSON LANEY: Record of decision.

MR. GOLDSBOROUGH: Record of decision, thank you -- I've got my helpers back here -- and that renders that a bit of a moot exercise, nevertheless, demonstrating support for that.

And on behalf of the impacts to anadromous species and habitat I neglected to mention that this would be the largest loss of wetlands since the Clean Water Act was passed, so this is a major project, would be affected by expressing support for an SIES, regardless.

But where the process is right now, more to the point, is that the Fish and Wildlife Service has chosen to elevate the permit by a letter in Jaime Geiger's name just recently.

And what the committee would like to do at this point is I don't believe we're in a position where we need to write anything, write a formal letter of support for that action. But for now we would just like to put on the record of this board's proceedings that the Habitat Committee does support the service's decision to elevate this action.

CHAIRMAN PATE: Okay, thank you, Bill. Any comments? Kelly.

MR. KELLY PLACE: Mr. Goldsborough is right. It has been an extremely contentious process for about 17 years and just to update the state of it, the issue is also in front of the Virginia Supreme Court.

There are three cases that on March 14<sup>th</sup> the Virginia Supreme Court agreed to hear. The Mataponi Tribe is represented by the Institute for Public Representation in Georgetown on their Treaty of 1677 issue. Their contention is that the project would violate that, not to mention all the vast habitat and fishery losses.

As well, the Institute for Public Representation is representing the tribes challenging the Virginia DEQ, Virginia water protection permit that was issued. And, thirdly, the Southern Environmental Law Center is representing a number of groups also challenging the Virginia water protection permit.

The Supreme Court of Virginia took the step to agree not only to hear those cases on March 14<sup>th</sup> but to hear them as one which is kind of an unusual situation. I have to concur with everything that Mr. Goldsborough said regarding the SEIS question.

A number of groups, including those legal groups I mentioned and a number of others, have requested this SEIS because the original environmental impact statement was done in 1997.

Since 1997 the project has evolved dramatically into a completely different form that really doesn't resemble what was done in the original environmental impact statement -- just one example of many.

And I'll leave this because the original premise was predicated on withdrawing water during the high-flow months of this river to fill the reservoir. However, the VMRC permit precluded withdrawal of water during the high-flow months to protect anadromous species.

Therefore, the safe yield of the project has to be satisfied by withdrawing water during the lower flow months. That's just one example of why a

supplemental environmental impact statement really should be done because the impacts on the ecology of the river and the impacts on the ASMFC-managed species hasn't even been considered. There are many other issues. Thank you.

CHAIRMAN PATE: Thank you, Kelly.

MR. GOLDSBOROUGH: Needless to say, Mr. Chairman, Kelly Place has been an invaluable source of information for the committee.

CHAIRMAN PATE: Thank you, Bill. Next on your report.

MR. GOLDSBOROUGH: I have one more item, Mr. Chairman. It's not a small one. It may not take too much time but it is a major issue. It involves the energy industry.

Doc Gunther brought to the attention of the committee the issue of renewed development of LNG movement and processing along the coast with LNG terminals either being reopened or built in many locations or proposed to be in several locations and the attendant impacts on commission-managed species and any fish species in those areas potentially being huge.

Massive amounts of water for heating or cooling with the output water being as much as ten degrees different from ambient water as one example and of course impingement and entrainment potential problems as well.

So this is something of great concern and will be along several parts of the coast, as I mention, and probably a number of you are aware of that. The committee, therefore, is interested in becoming a little more informed about it and exploring how we might express the concerns for commission-managed species within that process.

So, we intend at the Annual Meeting, at our meeting, to have somebody in to share with us a little more information about it. So there is that. If there are any questions on that I'll answer them but I'd like to speak more broadly to energy development, too.

CHAIRMAN PATE: Any idea who you would invite?

MR. GOLDSBOROUGH: I would love to have suggestions.

CHAIRMAN PATE: I don't have any.

MR. GOLDSBOROUGH: We're looking into that. I was hoping you did but we're looking into that.

CHAIRMAN PATE: Robert.

MR. BOYLES: Thank you, Mr. Chairman. I mentioned this at the South Atlantic Board meeting the other day. With the passage of the Energy Bill I understand the Minerals Management Service has been granted or will be granted a great deal of authority on dealing with, shall we say, "non-energy" uses of the Outer Continental Shelf in addition to their traditional rubric of OCS planning and development with energy facilities.

It's my understanding that MMS is in the process of initiating discussions with stakeholders in various regions to talk about, to make sure that everybody's interests, you know, are at least addressed or at least heard as a part of this new management regulatory regime.

So I can keep the board informed I'm serving on the OCS Policy Committee for the Secretary of the Interior. I could certainly, you know, make sure that you guys are in the loop. But I think that may be specific to Bill's maybe broader energy-related issues maybe he's going to talk about in a second.

CHAIRMAN PATE: Okay, thank you, Robert. Bill, go ahead.

MR. GOLDSBOROUGH: Great. Obviously I think to a lot of us there are other energy development projects that have been of concern, the Cape Wind Project, for one, most recently the blue Atlantic pipeline system, before that any number of cable crossing issues have come before us, impingement/entrainment of power plants has been a concern, and going even

further back hydro power and fish passage.

So, just about anywhere you conceive of an energy project on the coast you have potential impacts and potentially huge impacts to coastal species. So, given that and given our ongoing frustration to have, at least appear to have even the slightest impact on these projects with respect to advocating minimal impact on --

CHAIRMAN PATE: I really didn't cut you off, Bill. (Laughter)

MR. GOLDSBOROUGH: Okay, I get it. What have I got, a minute left? (Laughter) Okay, I will remind the board you are an hour ahead of schedule so --

CHAIRMAN PATE: That is not by accident, by the way. (Laughter)

MR. GOLDSBOROUGH: This is that rare time when I'm at the end of the buffet line and I get a double helping, so. Okay, so with all these energy development projects coming along at an increasing pace and only more expected ahead of us we're trying to figure out how we can better position ourselves to be an advocate for coastal fish habitat protection within that process.

It's awful frustrating. We usually don't hear about something until comments have to be in within a few weeks or months and often times that falls between commission meetings and what can we do about it.

And if you haven't gotten that advice and consultation in early in the process you probably aren't making any difference anyway, as you all know. So, we have been mulling this over. I'd love to hear your thoughts but I'll bounce a couple off of you.

One just totally out of the box is could we perhaps find somebody, some energy industry insider, a consultant or somebody who might on a pro bono basis or who knows what it might cost come and do a mini workshop with the committee or something so we could explore ways that we could earlier in the process or the

development of these kinds of projects make considerations for fish habitat known and incorporated into the process. So that's one thought.

Probably the more traditional approach, again, is waiting until the project permits are actually applied for and then dealing through the normal comment process the way we've tried to but doing a better job of that, a more comprehensive job, by actually trying to monitor more precisely on a more comprehensive basis the announcements of those comment periods and those applications and be able to respond to them more quickly.

So, we need a process for doing that. And we're thinking that obviously we can't expect staff to be able to do that up and down the coast and so we're thinking of an approach that maybe we develop some criteria for when a project in a given state might rise to the level of commission involvement and then task various members from the states to within their own agency processes which normally do review permit applications to flag things quickly and then pass them up the chain; and we would have a process set up where even between commission meetings through perhaps an e-mail mechanism or something be prepared to respond fairly quickly.

So there is a couple of things we've been thinking about. The only other thing short of that that we considered was maybe having a secret meeting with Dick Cheney but I don't know if we can pull that one off. (Laughter) And I'm open to any other suggestions.

CHAIRMAN PATE: Bill, the criteria that you were talking about developing would be for energy projects only?

MR. GOLDSBOROUGH: Well, that's the general area we were dealing with. It wouldn't necessarily have to be restricted to that now that you mention it.

CHAIRMAN PATE: Okay, thank you. Any questions of Bill on that or any other parts of his presentation? Okay, are you through?

MR. GOLDSBOROUGH: Thank you, Mr. Chairman.

CHAIRMAN PATE: You and your group do excellent work. Thank you for all of that. Very important. Okay, that brings us to the end of our agenda other than other business. Bruce.

**-- Other Business --**

MR. FREEMAN: I just want to take a minute just to back up on the issue of weakfish, if you may. I spoke to Bob about a thought we had.

We've been talking with other states and during the process where the plan that we're or the addendum that we're looking at really talks about different ways to reduce the rate of fishing on a coast-wide basis and it's really dealing with either restricting the catch limit or restricting the season.

And there was discussion at the board meeting relative to increasing minimum size. And at that time it was indicated that it would simply delay mortality.

However, in discussion with other states there seems to be an appeal and something that seems to be of interest, a strategy to increase the size at least for the first two years so you get another two-year delay of mortality and at the same time control the season so that we get maximum production.

And we have spoken with our sister state of Delaware with a strategy that we could possibly increase minimum size and delay the opening of the season in order to have those first wave of weakfish moving into the bay to be completely protected so that we get increased spawning.

It is really late in the process. We will be going to public hearing with the document we have in front of us but I wanted to bring forth the strategy that we've been looking at. And we really haven't discussed it at any length but other states may be interested in trying to incorporate the same strategy.

And if it were done on a coast-wide basis, of

course, it would have maximum effect so I just wanted to raise that issue. We probably will raise it at our public hearing just to see how the reaction of our people will be impacted but I would ask that other states give this consideration as well.

CHAIRMAN PATE: Bruce, given that the document has already been approved for public hearing, I think it would be extremely important for the individual states if they are interested in pursuing that to raising that during the public hearing process so that even though it might not be a formal option to consider in the approved document for public hearing that may give us a little bit more latitude when it comes time to approving the addendum in November.

MR. FREEMAN: Again, we'd have to do it under conservation equivalency, although we believe that could be done. And if we're able to do some calculations we may simply provide this information to other states just to see if perhaps they would look at this as well and it could be done.

CHAIRMAN PATE: I think that would be real helpful. Bob.

MR. BEAL: Sure. At the Weakfish Management Board staff was given the direction to include conservation equivalency language. And I think in that description we can include some language that describes the delayed mortality associated with increasing size limits and the short-term nature of that and kind of hint at where you're going and that's still consistent with the direction that staff was given.

You know we obviously can't have the technical committee develop an option but, you know, review it to determine what level of reduction there is and those sorts of things. But I think putting some descriptive language in the document about conservation equivalency and the latitude that the states will have will move us in the direction I think you're looking to go in.

MR. FREEMAN: Thank you.

CHAIRMAN PATE: Any other items to be

brought up under other business? Seeing none then we'll -- George. Hurry up. Okay, then that will allow us to move directly into the Business Session.

(Whereupon, the meeting adjourned at 3:35 o'clock p.m. on Thursday, August 18, 2005.)

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