

**PROCEEDINGS OF THE
ATLANTIC STATES MARINE FISHERIES COMMISSION
ISFMP POLICY BOARD**

**Crowne Plaza Hotel Old Town
Alexandria, Virginia
August 20, 2008**

Approved October 22, 2008

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INDEX OF MOTIONS

1. **Approval of Agenda by Consent** (Page 1).
2. **Approval of Proceedings of May, 2008 by Consent** (Page 1).
3. **Move to approve changing the Charter with the language in question** (Page 9). Motion by Pat White; second by Pat Augustine. Motion carried (Page 9).
4. **Move to approve the revised project permit/permit comment protocol for habitat impacts** (Page 13). Motion by Pat Augustine; second by Bill Goldsborough. Motion carried (Page 16).
5. **Motion to include the language that is included up there on Page 12 of the Strategic Plan. The specific language is “to support data collection and research for ecosystem-based management strategies”** (Page 27). Motion by Dave Simpson; second by Pat Augustine. The motion carried (Page 27).
6. **Adjournment by consent** (Page 39).

ATTENDANCE

Board Members

George Lapointe, ME (AA)	Thomas O'Connell, MD (AA)
Pat White, ME (GA)	William Goldsborough,, MD (GA)
Sen. Dennis Damon, ME (LA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
Douglas Grout (AA)	Steven Bowman, VA (AA)
Rep. Dennis Abbott, NH (LA)	Catherine Davenport, VA (GA)
Ritchie White, NH (GA)	Del. Lynwood Lewis, VA (LA)
Paul Diodati, MA (AA)	Louis Daniel, NC (AA)
William Adler, MA (GA)	Willard Cole, NC (GA)
Vito Calomo, MA, proxy for Rep. Verga (LA)	Jimmy Johnson, NC, proxy for Rep. Wainwright (LA)
Mark Gibson, RI (AA)	John Frampton, SC (AA)
James Gilmore, NY (AA)	Malcolm Rhodes, SC (GA)
David Simpson, CT (AA)	Robert Boyles, Jr., SC (LA)
Pat Augustine, NY (GA)	Spud Woodward, GA, proxy for S. Shipman (AA)
Brian Culhane, NY, proxy for Sen. Johnson (LA)	John Duren, GA (GA)
Tom McCloy, NJ, proxy for D. Chanda (AA)	William Sharp, FL, proxy for G. McRae (AA)
Erling Berg, NJ (GA)	William Orndorf, FL (GA)
Gilbert Ewing, NJ, proxy for Asm. Fisher (LA)	Bill Johnson, FL, proxy for Rep. Needleman (GA)
Doug Austen, PA (AA)	Chris Moore, NMFS
Eugene Kray, PA (GA)	A.C. Carpenter, PRFC
Frank Cozzo, PA, proxy for Rep. Schroeder (LA)	Jaime Geigier, USFWS
Roy Miller, DE, proxy for P. Emory (AA)	

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

Ex-Officio Members

Staff

Vince O'Shea
Bob Beal

Nichola Meserve

Guests

Jack Travelstead, VMRC,
Steve Meyers, NOAA
Arnold Leo, NY
Moe Nelson, NOAA
Jay Odell, The Nature Conservancy

Michelle Duval, NC DMF
Harold Mears, NMFS
Gordon Colvin, NMFS
Terry Stockwell, ME DMR
Dick Brame, CCA

The ISFMP Policy Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, August 20, 2008, and was called to order at 1:05 o'clock p.m. by Chairman George D. Lapointe.

CALL TO ORDER

CHAIRMAN GEORGE D. LAPOINTE: Good afternoon. My name is George Lapointe; I'm the chair of the Policy Board. Before we get started, there are some introductions I want to make. Some of them were made earlier in the meeting, but not before the Policy Board. We have from Virginia a new commissioner, Delegate Linwood Lewis; Bill Orndorf from Florida; Doug Austen from the Pennsylvania Fish and Boat Commission; Gil Ewing from New Jersey; and from North Carolina, Willard Cole is now the governor's appointee commissioner; and we have a new staff member, Bess Gulliver, the new executive assistant. When you get a chance, introduce yourself to those folks, please.

APPROVAL OF AGENDA

We have an agenda which has been passed out and was in your briefing package. I have a number of changes I want to make. Right after public comment, I am going to have Gordon Colvin give an update on MRIP because I know some people have asked questions about that. Under other business we state and federal alignment public comments, timelines; a winter flounder meeting; and an update on the annual meeting.

Are there other changes to the agenda? Seeing none, is there any opposition to its acceptance? Seeing none, it is accepted.

APPROVAL OF PROCEEDINGS

The next topic of business is approval of the proceedings from May. It has been moved and seconded that they be approved. Any comments? Seeing none, is there any opposition to their acceptance? Seeing none, they are accepted.

AWARD PRESENTATION TO GORDON COLVIN

Gordon, if you could come up, that would be great. Before you come up, the Awards Committee for a number of years has been on a way to honor the contributions of outgoing commissioners. We honored Eric Smith when he left the last meeting. Because one of our former commissioners is here, I'm pleased to present one of the first pins that we've gotten done to Gordon for his long-standing service to the commission, so thank you very much. (Applause)

Shamelessly good timing; thank you very much. Gordon, welcome, congratulations, and if you give us an update. Gordon said he is going to brief update on the process moving forward with the Recreational Registry.

UPDATE ON MRIP

MR. GORDON C. COLVIN: Thank you, Mr. Chairman, and this is certainly an unexpected little bonus for coming over here today. I noticed the design of the pin before I read the little enclosure that explains it and immediately appreciated the potential significance of the Compass Rose. I think that is just terrific; and I look over at the executive director and I wonder if maybe, given his background, he might have had a little bit of influence in the selection of that. It's really lovely and I thank you very much. I'm quite pleasantly surprised and touched.

Thank you for accommodating me. I really didn't expect to do much today other than to be available here today during the last few hours of the open public comment on the registry rule to answer any questions the commissioners might have and to be available for that purpose informally in sidebar, but I appreciate being given a couple of minutes just to bring everybody up to date.

I also appreciate the staff copying and distribution of these two excellent editorials that appeared in *Saltwater Sportsman* by John Brownlee and Rip Cunningham that I think did an excellent job of explaining and expressing support for what we're trying to accomplish. The Proposed Rule for the Registry, as you all know, is out for public comment.

The public comment period was extended briefly and will end tomorrow, so we are very close to wrapping up public review of the proposed rule, at which point we will begin the process of assessing those

comments and developing proposed responses; and to the extent deemed appropriate, making some decisions for the changes in the contents of the final rule.

We are still hopeful of being able to complete the final rule-making process consistent with the Administration's desire to have regulations done by the 1st of November of this year. That's our game plan and to continue forward to roll the rule out beginning in January.

The other thing that is ongoing at the moment is that the folks involved in MRIP Program as a whole are developing an implement strategy which will describe in some considerably more detail than anything you've seen to date what the game plan is for what the process will be, what the timing will be, how budget resources will be applied to the actions that we will take to begin to make changes and improvements to the system of surveys that we are involved in around the country beginning in 2009.

That implementation strategy should be release this fall, hopefully in September, for public review and discussion; the idea being to have a final strategy approved by the Executive Steering Committee and returned to congress at the beginning of 2009. That really will be an important step and one which will reflect hopefully the input that we have had from our partners around the country as we conducted the listening sessions; one of which you were good enough to accommodate us with here during your last meeting.

That's pretty much it, Mr. Chairman, in a nutshell as to where we are. If folks have questions, I can try to answer them.

CHAIRMAN LAPOINTE: Any questions for Gordon? Dennis.

REPRESENTATIVE DENNIS ABBOTT: Thank you, Mr. Chair. Not so much a question but a comment about what Gordon has been doing. This summer Gordon came to New Hampshire at the request of Doug and myself and Ritchie to give a presentation to the general public regarding the MRIP. The following day Gordon was kind enough to meet with my Legislative Fish and Game Committees as we will be ones that will be trying to implement a saltwater fishing license in the near future.

For those states that have to implement a fishing license, I would suggest to them that they try to

arrange with Gordon's group or Gordon, hopefully, to talk to the legislatures who have the unenviable task of trying to implement a saltwater license. The senator to my right here has gone down that road, and I went down that road in the last two years, and Massachusetts has battled that, and Eric Smith, if he was still here, could tell you what Connecticut did.

I think that the information that Gordon provided us, I know it went a long ways with the committee members who I hope will be back this fall after the election to give us a better start on the implementation of saltwater license. I would urge everybody to try to get your legislature people involved and get them in touch with Gordon because it would be a big help.

CHAIRMAN LAPOINTE: Thanks, Dennis, good suggestion. Other questions or comments for Gordon? Well, thanks for the update and welcome back.

MR. COLVIN: I'll be here this afternoon if folks want to hit me with any questions on the details of what we're up to. I'll stick around.

CHAIRMAN LAPOINTE: Our next agenda topic, Bob Beal is going to give us an update on non-native oyster activities.

UPDATE ON NON-NATIVE OYSTER ACTIVITIES

MR. ROBERT E. BEAL: Thank you, Mr. Chairman. The big update I think for non-native oysters is the new timeline for developing the Draft EIS. The new timeline is set to release the Draft EIS on October 17th. This project has been delayed a number of times. I think the timeline now is kind of couched in there. This time they really mean the timeline so it sounds like things are going to happen by October 17th, and the science looks like it is falling in place to support that.

There have been a number of meetings and obviously things are moving forward pretty quickly to meet that timeline. Once that document is available to the public, the commission's Interstate Shellfish Transport Committee will get together and comment on that and will provide feedback to the Policy Board so the Policy Board can comment on the EIS.

I think there may be a little bit of a difficulty in time in that the document is going to be released on

October 17th. I should have said this. There is going to be a 60-day public comment period for the Draft EIS. That will be a comment period from mid-October through mid-December. The only opportunity the Policy Board is going to have to get together to comment on this will be at the annual meeting, which is only going to be about a week or so after the release of the EIS.

I don't think the Shellfish Transport Committee is going to be able to sift through the document and provide feedback to the Policy Board at that time, so we may have to work sort of offline with the Policy Board and develop the commission's perspective. The staff can work with the Policy Board and develop whatever feedback they would like to provide on the Draft EIS. That is my brief summary. I know there have been a couple of meetings actually earlier this week that Maryland, Virginia and the Potomac River Fisheries attended, and I'm sure if they have anything to add.

CHAIRMAN LAPOINTE: Questions for Bob or comments? So the thought is that we will probably get an update at the Policy Board in October and then have staff draft a letter and we'll fax it to people and hopefully we can come to consensus and submit comments officially. Does that sound like a plan? Anything else on non-native oysters? Excellent, that is a record for non-native oysters. Thank you, Bob. Vito.

MR. VITO CALOMO: Mr. Chairman, did we miss public comment?

PUBLIC COMMENT

CHAIRMAN LAPOINTE: Thank you for that. Before we do an update on interstate tagging, our agenda does have a spot, which I glossed over, for public comment. Does anybody want to comment to the Policy Board on matters not on the agenda? Sean, please come forward, and, and, again, thanks, Vito, for reminding me.

MR. SEAN McKEON: Thank you, Mr. Chairman and members of the board. I appreciate the opportunity to offer a few comments. Thank you, Vito, for reminding the chairman. About two years ago, maybe more than a little bit more than two years ago there was a meeting in Morehead City, North Carolina, at which some 200 or 300 fishermen showed up and expressed their frustration with the process at the ASMFC. Some of you probably remember that.

The result of which was there was an ad hoc committee that was formed to come down and to speak with the North Carolina Marine Fisheries Commission about several items. It was unfortunate that the plan that Commissioner Ross outlined to the commission was to come and talk to some of the stakeholders, to come and talk to some of the folks who actually had problems with the ASMFC or their representatives.

Unfortunately, the chairman of our commission in North Carolina chose to have it only commission members and the ad hoc committee. The message that the ad hoc committee received therefore was not the entire message that we wanted to deliver. What ended up happening as a result of that meeting, the ad hoc committee was given the impression that the problems we have in North Carolina, our industry has with the ASMFC are communication problems.

I was at that ad hoc meeting and at the end of that meeting that seemed to be the – the consensus was, well, we'll communicate better. Nothing, I assure you, is further from the truth, and that brings me to – I just want to talk for a couple of minutes, if I may, Mr. Chairman, about the dogfish issue that is continually plaguing our industry in North Carolina.

The Compact rules and regulations, under Article V, which addresses your finances here at the ASMFC, apportions cost in proportion to the primary market value of the products of the fisheries of the respective states, and I assume that makes North Carolina a full partner to the Interstate Compact and should assure us we will be treated fairly with respect to FMPs promulgated by this body.

In the Interstate Fisheries Management Program Charter, on Page 2, Section 2, the role of the commission, it states, and I quote: "The Atlantic States Marine Fisheries Commission is responsible generally for the commission's fishery management activities. These activities will be carried out through the Interstate Fisheries Management Program established under this Charter."

Also, I want to continue the role and functions of this board, if I may, "The ISFMP Policy Board" – this is again reading from that same document – "will be responsible for the overall administration and management of the commission's management program. In this regard it will" – and it lists several items, one of which, as you all know, Item Number 10, is to take any other action that consistent with the Charter and that is necessary and appropriate to carry

out the fishery management program of the commission, except a final determination of the state's non-compliance with provisions of a commission-approved plan.

The reasons the folks came to that meeting in North Carolina was because of the frustrations that they expressed over the treatment of North Carolina on several issues. As most of you know, this issue with dogfish has been going on about several years now. The last two years North Carolina has virtually been denied a fishery when we have historically had a pretty good substantial fishery in our state.

I also want to take one more opportunity here to go to another part of your document, which I want to read. I appreciate your indulgence for a minute, Mr. Chairman. Section 6, under Standards and Procedures for Interstate Fishery Management Plans, and I'm quoting in part, "The Atlantic States Marine Fisheries Commission recognizes that an effective fishery management program must be carefully designed in order to fully reflect the varying values and other considerations that are important to the various interest groups involved in coastal fisheries.

"Social and economic impacts and benefits must be taken into account. Management measures should focus on conservation while allowing states to make allocation decisions. Fisheries management programs must be practically enforceable, including as much as possible as the support of those being regulated in order to be effective."

"To this end," I quote again, "the commission has adopted the following standards" – you're all familiar with them, but I just wanted to call your attention to number seven, which is fairness and equity, "An FMP should allow internal flexibility within states to achieve its objectives while implemented and administered by states and fisheries resources shall be fairly and equitably allocated or assigned among the states."

The situation with the dogfish fishery, as I said, has been going on for six or seven years, and I think everybody in the room would agree that it has been disproportionately unfair to the southern sector, particularly North Carolina. North Carolina has tried on many occasions to put forward proposals and remedy inequities with little success.

On one occasion I believe the executive director of the ASMFC asked on the record if the northern sector would voluntarily abide by the 58 percent quota to which there was a resounding silence in response. I

believe that is on the record. North Carolina is asking that this board step up to the plate and do its job, and we are asking that before the season starts this board act to ensure the North Carolina has a fishery at least equal to its historic averages when we did, indeed, have a fishery.

There are many thoughtful individuals in this room and a lot smarter than I am on these issues, but it has been seven years now that we have been disproportionately affected by this and nothing has been done. I think it is a failure of the ASMFC, a specific failure of the ASMFC to address this situation. I am hoping that we look at this – there is an easy way to do this and there is a difficult, hard way to do this.

An easy way is that we come together somehow prior November 1st, prior to the season starting this year, and come up with a way – and I believe within your documents you have the power at this board to do something that guarantees that North Carolina gets an equitable share of that fishery. How you do that is up to you all. I think the easy way is the way that all of us prefer.

The difficult way is that we expend enormous energy and bitter feelings and bad blood and go to measures that are available to states with respect to compliance. Tomorrow I understand this will be an issue and we will have more comments at that point. There will be folks here also that I hope you're able to hear from. They will be here from the fishery, from stakeholders, from fishermen, and some county officials will be here from North Carolina.

This is an issue that goes to the heart of what I believe this Compact was formed for. While we have our problems with this commission, we certainly believe that fairness and equitable policies and reaching out in good faith to your neighbors is the way to go. There is an solution to this, and that is that the Policy Board interject itself at this time and at least guarantee, while you're working out the Addendum II and the Addendum III specifics, a fishery to the state of North Carolina.

I greatly appreciate everyone paying attention to this, because, as I said – and I really mean it – we would much rather deal with this in the easy way and a friendly way in a manner that would serve everyone. It is in no one's interest to take these measures. We just feel it would be a waste of time, energy and precious resources. With that, I would like to say thank you.

The short comment I have on a slightly different issue is – and I’m not sure if it’s on your agenda. If it is, I apologize – is accountability measures and ACLs in the recreational sector in state waters. We certainly support that and hope that you discuss it. If it is on the agenda, I apologize for bring it up at this time. Thank you, Mr. Chairman.

CHAIRMAN LAPOINTE: Thank you, Sean. I don’t want to get into a debate on dogfish at this meeting. The issues of fairness and equity are things that people think about. This board injects itself when it has to, but what it normally does on species and routinely does is it directs the appropriate board to look at the issue.

Dogfish is meeting tomorrow, and I believe that your delegation is going to bring up this issue with the same interest in mind. We will watch that, and they’re all here, anyway, but we’ll make that they’re aware of your concerns, and I suspect you’ll bring them tomorrow as well. Thank you very much. Other public comment? Thank you, and again, Vito, thanks for reminding me of that. Agenda Topic 5 is the Interstate Tagging Committee Report, Bob.

INTERSTATE TAGGING COMMITTEE REPORT

MR. BEAL: Thank you, Mr. Chairman. In the briefing materials there is a memo to the Policy Board from the Interstate Tagging Committee dated August 20th. This memo and the attachment refers to the state policies and regulations that are in place regarding tagging of fish within the state jurisdictions. The memo is designed to help the states and not to obviously make anything mandatory for the states. What it does is it summarizes the regulations that are currently in place in New Hampshire, Connecticut, Rhode Island, New Jersey and South Carolina.

Some of the states had expressed interest and thought it might be helpful if some draft language was developed along the lines that if a state wanted to provide guidance or regulations for tagging programs within their state, they can use the language that is included in this document. At the back of the second page, there is a section called “Options for Regulatory Language”.

This language is there, again, to help the states. If a state wanted to implement some regulations to provide oversight or guidance to tagging programs within their jurisdiction, this language is simply suggested by the Interstate Tagging Committee.

There is no action needed by the Policy Board today. It is just, again, a recommendation in nature.

RECOMMENDATIONS FROM THE FISH PASSAGE WORKSHOP

CHAIRMAN LAPOINTE: Questions for Bob? Seeing none, thanks for that update. Our next agenda topic is to review and consider approval of the recommendations from the Fish Passage Workshop. This was a handout that I think staff has copies of and it was on the briefing CD as well.

MR. BEAL: At the last Policy Board meeting in May, the Policy Board heard a presentation and a summary of the workshop that took place in April down in Jacksonville, Florida, on fish passage. The summary that was given to the Policy Board in May had a whole suite of recommendations that came out of the workshop. There were very productions recommendations and a good workshop.

The Policy Board asked staff to go back and sort of categorize those recommendations into short-term and long-recommendations, as well as kind of bin them into categories of who would actually address these recommendations and what should be considered for next year. If you flip to Page 10 of the document, there are some sections for short-term and ongoing recommendations.

This is simply to, in the near term and in the long term, send letters of support for fish passage projects as they’re being considered. There are also the recommendations for 2009, and I will quickly go through those. They are divided up into four categories. Policies and approaches; these consider ASMFC developing a policy on fish passage; prioritization of fish passage projects and performance criteria for projects; and also a request or a recommendation that the commission develop a preference for different approaches to support fish passage.

The next recommendation for ’09 is within fishery management plans consider setting targets for increasing fish passage. The way the language is included here, it is not a binding requirement of the states but simply a recommendation to the states that as the commission is going through the FMP process, to evaluate different targets that could be included in an FMP for fish passage.

The Habitat Committee, in the short term, would consider developing an East Coast Fish Passage Plan and also develop an outline for navigating through the FERC dam relicensing process. Also, the final recommendation for 2009 is for the technical committees to develop a tool to evaluate positive and negative consequences of providing fish passage. Again, that would be a species-specific technical committee project for each of the diadromous species that the ASMFC manages.

Page 11 and on to Page 12 are the long-term and ongoing recommendations that the commission should – it is a recommendation that came out of the workshop that the commission should consider. I think the idea that came out of the Policy Board meeting in May was as these recommendations are binned, as they are, the Policy Board would receive this report and consider providing staff with direction of taking these short-term '09 recommendations and working that into the Action Plan for next year depending on resource availability. That's a quick summary; I don't think I need to go through all the long-term recommendations.

CHAIRMAN LAPOINTE: Questions or comments for Bob? I was at the Fish Passage Workshop and these recommendations came because we told participants if they want to make recommendations, think about anything you want to put up there, and so they did. Some of them are easier than others.

Staff is asking if there is concurrence or opposition to working these into the work plan for the next year. I see people shaking their heads yes, which suggests concurrence. Any opposition to that course of action? Great, thanks, Bob, and thanks to Jessie for organizing the workshop and whatever staff that helped us organize it in this manager, because it helps us think about it as well. Gene.

DR. EUGENE KRAY: Mr. Chairman, we thought this would be the opportune time – Tony just passed out a multi-state proposal for fish passage – since it ties in right with what you were just discussing.

CHAIRMAN LAPOINTE: I was just going to tell you were on the agenda.

REMARKS FROM DR. DOUGLAS AUSTIN

DR. KRAY: Dr. Austen is going to explain what this is all about and what we need from the commission.

DR. DOUGLAS J.T. AUSTEN: Thank you, and it's good to be here. It's my first meeting so I have to chance to visit with you and I really enjoy being a part of this process. What you have passed out in front of you is a proposal which, in essence, is going to start moving forward with some of the ideas that were developed at the meeting down in Jacksonville, Florida.

I had a number of staff there. I wasn't there myself so I am more or less passing on the recommendations from these. Our agency, as many of you have been actively involved in fish passage, it's a huge part of what we're doing within the Susquehanna River Basin for shad and increasingly for eels, amongst other things.

The challenges there were many and are many and will continue to be many. One of the opportunities that presents themselves now is access to state to some Wallop Grant money. There is a nationally competitive pool of dollars that we can compete for. The proposal was put together by a variety of different groups.

Our staff has agreed to be the lead actors in this process and write the full proposal with ASMFC staff. Money will be funneled through the agency, but primarily work would end up being done with the Conte Labs in expanding their expertise, expanding their capacity to do some work that would help all of us.

Access to these dollars, though, is very competitive. We expect that there will be many other proposals. The support of this board, the support of all the states I think would be critical to the successful acquisition of these dollars. What we're looking for is, indeed, that support that would move forward with this process.

CHAIRMAN LAPOINTE: Thank you, Doug. Obviously, it is the kind of proposal which is consistent with the recommendations that we just accepted from the Fish Passage Workshop. I think the question and the dilemma is how does it fit into other multi-state projects and how does the commission judge this in consideration of those other projects, and is that a concern for other commissioners. I'd open it up for comments or questions. Jaime Geiger.

DR. JAIME GEIGER: Thank you, Mr. Chairman. Again, as you mentioned, I think it is well in line with the priorities and missions of the Atlantic States Marine Fisheries Commission. Certainly, this commission has supported and is indeed developing,

through its Habitat Committee and the National Fish Habitat Action Plan, a joint venture proposal for implementation.

Again, from my perspective, that is going along very well and has a possibility to be very powerful in achieving coastal habitat restoration and protection along the Atlantic Coast once it is implemented. I think that and this are very complementary activities. I think certainly we are becoming much more aware of the value of fish passage, and such a multi-state proposal such as this I think would go a long way to complement the already existing initiatives and actions that this commission is undertaking. I would certainly strongly support at the least the commission's endorsement of this as it goes through the various ranking and criteria. Thank you very much.

CHAIRMAN LAPOINTE: Other board members? Is there support for endorsing the project? Paul.

MR. PAUL DIODATI: Yes, Mr. Chairman, I certainly endorse this multi-state initiative, and I think the commission should embrace it.

CHAIRMAN LAPOINTE: Is there concurrence with that? I see heads shaking yes, so we will work on a letter of support. John Duren.

MR. JOHN DUREN: Should we vote on a resolution to support this measure; would that be helpful in perhaps obtaining funding for it?

CHAIRMAN LAPOINTE: My thought was I would have staff draft a letter for my signature to go along with the proposal. I do think that the question of how we may support other multi-state projects is something that Jessie and Emily with Atlantic Coastal Fish Habitat Project Partnership should consider in the future just so that we have a consistent approach. Thank you for that and thanks for bringing this before us. The next agenda topic is a NEAMAP Update, Ms. Paine.

NEAMAP UPDATE

MS. MELISSA PAINE: Thank you, Mr. Chairman, I just have a brief update from the NEAMAP Group. The NEAMAP Board met recently to discuss conducting an external peer review of the NEAMAP Mid-Atlantic Nearshore Trawl Survey. They would like that review to take place this year. They would like that review to take place now that a couple of surveys have been completed and to conduct that

sooner rather than later to some more prominence to the survey and some recognition.

There are several sources of funding that could be hit for this review. First off is some funds provided to NEAMAP from the state of New York for this year. Some of those funds could be allocated for this review. Alternatively, the Northeast Fishery Science Center is looking into cooperative research funds. Commission funds, there are some administrative monies that could be allocated to the review. And finally, there is some money from RSA that could be used as well. The board is looking for Policy Board to approve moving forward with conducting that peer review this year. With that, I'll take any questions.

CHAIRMAN LAPOINTE: Questions or comments for Melissa? If we endorse the peer review, it is obviously with the idea that you will be chasing after funding and not endorsing allocating funds from one fund or another at this point. Board members' concurrence on an external peer review? Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Maybe just a nuance of where do we decide this; terms have been thrown back and forth; whether it is a program review or peer review and what the terms of reference and that sort of thing are, so I'm just wondering where you would see those sort of issues being resolved as we go forward? What is it that they're actually going to try to do and what is the purpose of it?

MS. PAINE: The review is actually going to be not a programmatic review but rather just on the survey itself. In the Memorandum of Understanding it does say that periodically there can reviews of any component of the program.

CHAIRMAN LAPOINTE: I recall that the Maine/New Hampshire Survey was peer reviewed similarly a couple of years ago. Was that a programmatic review or a review of the methods?

MR. DOUGLAS GROUT: It was the methods.

MR. PATRICK AUGUSTINE: Dr. Thompson said that they were looking towards the NEAMAP approach to actually replace the Nearshore Trawl Activity that they presently have. Is there any possibility that they could actually offer some kind of peer review; therefore, it wouldn't cost us anything?

CHAIRMAN LAPOINTE: I think staff is exploring that. The utility of the NEAMAP cruise and nearshore cruises is going to become all the more important because the NOAA vessel can't go as far as shoreward. We'll just stop at that. I think Melissa

mentioned that the Science Center might be a source of some of those funds. Jim.

MR. JAMES GILMORE: You were going to New York's part of the funding for this; is that something that is included in the current contract that we're negotiating right now? I'm not sure, but it's okay from my perspective, but I was going to make that we have the language in there so we're covered when our fiscal people get hold of it.

MR. BEAL: Jim, I've been talking to Steve Hines and he said he was going to work in that flexibility. The ballpark that we're talking about is \$10,000 or less; so, on the whole scale of running the NEAMAP Survey and conducting the work that is going on on the water, percentage-wise it is a small percent. \$10,000 is a lot money but not on the scale that we're dealing with.

CHAIRMAN LAPOINTE: Any other comments on the proposal? Our action would be to support the external peer review as outlined by Melissa. Thank you very much.

HABITAT COMMITTEE REPORT

CHAIRMAN LAPOINTE: Our next agenda topic is the Habitat Committee Report by Jessie.

MS. JESSIE THOMAS: I'm just going to give a quick report today and not go into a lot of detail because we're actually discussing a lot of the habitat topics throughout the agenda of the Policy Board today that we've working on. There are just two things that I wanted to bring to your attention.

The first is that we plan to public the Diadromous Source Document, finally, in September, so be on the lookout for that document. It will include a GIS CD as well as about 11 chapters relating to the diadromous fish that the commission manages. It should be a fantastic document, and I just wanted to alert you to be on the lookout for that. After nine years, we have discovered it is finally happening.

CHAIRMAN LAPOINTE: And ahead of the Oyster EIS as well, so that's good.

MS. JESSIE THOMAS: The other thing that I wanted to mention really quickly is that I had sent out an e-mail and a letter to everyone sitting on the board today about completing a Habitat Program Effectiveness Review. The survey is on line, but you can print it out and complete it by hand, if you need

to. I just wanted to remind everyone about that survey. It will be very helpful for us to have some idea of what you all are getting out of the Habitat Program and how you see things going and what we can improve ultimately to make it a better program.

I printed out some reminders. Some of you have completed it and I thank you very much if you took the time. I know it is a little bit extensive, but it really is an investment that will help us out in the long run. If you need a reminder, I put them on the back table. They're bright yellow and giant so you can't miss them. If you need one, take one home with you to remind you to complete that when you get home. I know they're due next Friday, August 29th. That's all I have for the moment. Thank you.

CHAIRMAN LAPOINTE: Thanks, Jessie. I did the survey; and what did it take, about 15 or 20 minutes? The time investment wasn't that great. Questions for Jessie on these items? Seeing none, thank you for that. Our next agenda topic is considering changes to the ISFMP Charter regarding FMP Habitat Sections.

REVIEW OF ISFMP CHARTER REGARDING FMP HABITAT SECTIONS

MR. BEAL: Thank you, Mr. Chairman. On the briefing CD there was a memo from me to the commissioners dated July 28th. At the last Policy Board meeting, the Habitat Committee raised a concern that a number of habitat sections in FMPs were somewhat dated and could be improved with more contemporary information, but the Habitat Committee also was facing the realization that most of our fishery management plans – in order to update the habitat sections, you had to go through the full amendment process.

There were a few options presented. One is just waiting until the next amendment comes along and tacking it on, but that could be quite a while for some of species. The other was initiating an amendment just to update the habitat section. The Policy Board indicated that might be a pretty cumbersome process for updating habitat sections. The Policy Board discussed another concept, which was modifying the language in the ISFMP Charter to allow for the use of the adaptive management or addendum process to update the habitat sections within fishery management plans.

The Charter does have other types of addenda in there, technical addenda to fix omissions and

mistakes that were made when final addenda were published and those kinds of things. This would simply add another of addendum to the suite of flexibility that the Policy Board has. What it would do is it would essentially allow the use of the addenda process through the adaptive management section of each fishery management plan.

That would allow each management board to start an addendum to update their habitat sections of an FMP rather than going through the full amendment process or waiting until the next amendment comes along. The last paragraph in the subsections there provides suggested language. If the Policy Board is comfortable with going this route, that language could be added to the Charter to provide the flexibility for the Habitat Committee and the species management boards.

CHAIRMAN LAPOINTE: Thank you, Bob. Board members, questions or comments? It strikes me as a logical approach to get those brought up to date. Bill Goldsborough.

MR. BILL GOLDSBOROUGH: I just want say from a Habitat Committee perspective, having served for a number of years I think this is the kind of thing that we all can look at and say, "Gee, why didn't we think of that sooner?" It just makes a lot of sense. It streamlines the process and it is consistent with the continual and especially of late upgrading of the functioning and capabilities of this committee, so I think it makes a lot of sense.

MR. AUGUSTINE: Will what we're trying to do take the place of what we call an omnibus bill? Would that serve the same way as we would write a common bit of language that would apply? I think it is simpler the way you're trying to do it.

CHAIRMAN LAPOINTE: This just gives the flexibility for the Habitat Committee working with boards to update the habitat sections as needed without a plan amendment. I asked Bob and a change to the Charter takes a vote of this board. I recall the last number of meetings – the last couple of years we've talked about other changes, and we haven't really identified. I think it is appropriate for a motion to approve changing the Charter with the language in question, and then the staff will work on changing the Charter.

MR. PATTEN D. WHITE: So move.

CHAIRMAN LAPOINTE: Moved by Pat White; seconded by Pat Augustine. Questions or comments

on the motion? Any public comment on the motion? Seeing none, is there any position to the motion? Seeing none, the motion passes. Thank you very much and thanks to staff for that clear language. The next agenda topic is to consider approval of the Habitat Operations Procedure Manual.

HABITAT OPERATIONS PROCEDURE MANUAL

MS. THOMAS: We went through this at the last Policy Board meeting, but we have since revised the protocol that we proposed in the Operational Procedures Manual for commenting on projects and permits. I wanted to go through that just so that everyone understands exactly what we're talking about today and we can have a discussion about this starting at this point.

I wanted to highlight first that the staff is passing out a letter from the Habitat Committee Chair on behalf of the Habitat Committee that is highlighting the need for changing this project comment protocol and the committee's perspective in order for you to have information straight from them, so take a look at that as I'm going through this procedure.

We've created essentially two paths as part of this process. There is one path where we would write an informational letter, and there is a second path where we would write a recommended course of action or a comment letter. The informational letter would be written early in the technical review of a developing project; for example, during the scoping process for an EIS, really at the very beginning.

This is something that the Habitat Committee would decide as a group by consensus that we would like to provide an informational letter to this project with any sort of source documents or other background information that the commission has on the habitat impacts of that type of project in that area without providing any sort of comment or course-of-action recommendation. It is just going to provide information on potential impacts to commission-managed species.

The second path would happen later in the permit process during, for example, a public comment period, and this is when we would recommend some sort of course of action or a comment letter. This process would go through the Policy Board, and the action would be a letter specifying some sort of commission position, policy or course of action on that particular project.

I am going to go through the informational letter process in more detail first and then the course-of-action letter. First, we would identify a project, and the people could be potentially identifying projects would be commissioners, habitat committee members, other technical committee members or advisory panel, other stakeholders, possibly commission staff. They would bring this project to the Habitat Coordinator and alert them that there is this proposed project that potentially impacts the managed species or their supporting habitat.

This would happen early in the scoping period for the project. The Habitat Coordinator would notify the Policy Board, and they would let them know that the Habitat Committee is examining a particular project or permit and implementing this review process. At that point the Habitat Committee and any interested commissioners would get together and deliberate on this informational letter and discuss to determine if the project or permit meets the following criteria; first, that it may have significant impacts on commission-managed species or their supporting habitat; that commission involvement will potentially make an impact if we send an informational letter; that it has interjurisdictional implications; it establishes some sort of highly desirable or highly undesirable precedence; and that we can adequately research or address the proposed project in a reasonable timeframe and within the existing budget.

At that point, if the Habitat Committee decides that the project meets those criteria, then the person who proposed commenting on the project, in coordination with the Habitat Coordinator, Habitat Committee members, interested commissioners, will get together and gather the pertinent information on the impacts on commission-managed species. Like I said before, that may include things like fishery management plans, habitat management series reports and so forth information that the commission has. Then we would send that letter.

For a comment letter – this is the second path that part could go down – this could be identified by, again, the same group of people, commissioners, habitat committee members, TC members, whoever. They would alert the Habitat Coordinator again of this project that potentially impacts the managed species. This could be a new project or it could be one that we previously sent an informational letter for early in the process.

This would happen generally during some sort of public comment period. The Policy Board would be

notified and the Habitat Coordinator would issue notification that the Habitat Committee is examining the particular project or permit and implementing the review process. So far we're the same as the informational letter.

This deliberation has two phases. The first is that the Habitat Committee and any interested commissioners have a discussion, again to see if the projects meets those same criteria that happened for the informational letter, has significant impacts on commission-managed species, interjurisdictional implications and so forth.

The second phase of that deliberation will involve the Policy Board. If the Habitat Committee decides that this project meets these criteria in this case and they feel that the commission should comment on the project, they will bring the project to the Policy Board. The Policy Board will examine this project based on the technical aspects. They will consider the Habitat Committee's recommendation, and the Policy Board will deliberate based on the project's implications to fishery management.

The Policy Board will then take a vote and it will require a majority to pass to decide to issue a commission comment on the project. At that point the letter will be written by the proposer, habitat coordinator, interested commissioners, habitat committee and so forth. That letter would indicate a recommended course of action, indicate a level of concern for the project, present a justification for the recommended course of action and any other pertinent information, especially if an informational letter was not previously sent.

Finally, the commission chair and anyone else that he or she deems appropriate would conduct a brief review of the letter, request any changes, incorporate those changes and a letter will be sent to the responsible permitting agency. This will happen as a timely completion according to the length of the comment period and deliberations and voting may happen electronically if the current period doesn't correspond with a Policy Board meeting. That's all I have. Thank you.

CHAIRMAN LAPOINTE: Thanks, Jessie, you answered my first question and that was how we were going to fit this into the Policy Board meeting quarterly, and your last comment answered that. Pat Augustine.

MR. AUGUSTINE: Excellent job, Jessie, the group did a fantastic job with this. The last sheet you had up there; that would be signed by our chairman?

CHAIRMAN LAPOINTE: I would envision if this process is accepted, normally there are times when I send letters and sometimes when Vince signs letters, just depending on how it works out. Either way it still carries the full weight of the commission in the signature.

MR. WILLIAM A. ADLER: Do you have any idea of how long a process this is? I'm thinking in terms of the various projects that pop up. I very much agree with this because we've had projects in Massachusetts where I wanted the Atlantic States to chime in because it was going to affect some of our species that we manage. I'm just thinking in terms of the timeliness of how long do you envision it would take to go through this process you just explained and get the thing out to wherever it has got to go.

MS. THOMAS: I would hope that it would be relatively speedy. That's why we anticipate it may have to happen electronically, especially for the comment letters which generally would be in a public comment timeframe. The informational letter, since the Habitat Committee would be going through those, could create those pretty quickly, especially if we have a standard sort of letter for certain types of projects. For example, a fish passage project may have a similar letter and so we may develop sort of a library of comment project-type letters that would be tailored specifically.

MR. ADLER: If I could continue, we had some issues up in our state where, for instance, we were managing various species and the habitat that they needed was proposed to be taken away and put on a beach. Those are the types of things that I think this – and this was in state waters. I would hope that this commission could chime on some things like that. There are probably others.

I know that the federal government, with their Magnuson-Stevens and Essential Fish Habitat Department, have in fact come forth – when pushed – have come forth to put in their two cents worth, which I thought was very helpful. I remember an issue several years ago where there were these plans to do some project; and when somebody stood up at the hearing and said, “Well, this might be against the law,” and, of course, everybody looked up like “what do you mean it is against the law?”

The thing was, well, there is a fishery management plan called the Magnuson-Stevens Act and it has an Essential Fish Habitat Section, and these were looking like they never heard of this. All of a sudden it was like a glitch that they had to consider that they didn't want to consider. I think it would be great if the Atlantic States could do those types of things and bring their attention to the fact that there is fish in the ocean, and there is the use of the fish and the habitat that it needs. They just seem to blow that off. I think if the commission could do this, I think it would be helpful. Thank you, Mr. Chairman.

DR. LOUIS DANIEL: I'm just curious, I guess, more than anything. When we're reviewing permit applications for developments and various other projects, there are a suite of commenting agencies that are authorized to comment on those projects, and ASMFC is not one of those, at least for North Carolina projects.

I don't know what level of importance would be placed on a letter like that. The only concern I would have would be that we would go through all this for – I'm not sure what we would accomplish by doing this. Maybe the other states have a different process, but those comments from ASMFC would really have no weight or bearing on the decision-making process.

CHAIRMAN LAPOINTE: Bill Goldsborough, you had your hand up and then I'm going to jump in with a comment as well.

MR. GOLDSBOROUGH: Well, I had some broader comments, but I can speak to that if you like, and then defer to the chair on that point and then come back. I don't know if the circumstance that Louis describes in North Carolina is replicated in other state systems or not. I think what this protocol is speaking to is the public comment period that accompanies most of the permitting for the types of projects we'd be concerned about.

Within the protocol itself there is criteria that would have to be met wherein staff would judge that a letter from the commission would have an impact. If there were such a circumstance, a letter probably would not be sent.

CHAIRMAN LAPOINTE: Did you want to follow up with your other comments?

MR. GOLDSBOROUGH: I'd be happy to. Just from a broader perspective, first I was going to say that I hope, again from a Habitat Committee perspective from whence I came, I hope that some folks' reaction to this will be, well, of course, this

make eminent sense, and in fact that the protocol seems to make much more complex than necessary something that is pretty straightforward; that your Habitat Committee would undertake a review of projects brought to their attention according to certain criteria, would make a judgment to share information on potential fish habitat impacts as necessary and would bring to the attention of this board circumstances when it wanted to recommend that an actual position of the commission be represented in a permit process.

This board could deliberate on that and by a majority direct the committee to prepare a letter or not, so it is pretty straightforward and very consistent with the way we operate with other technical committees that report to the Policy Board. The reason the committee has gone to such lengths to develop a detailed process with every box checked and intricate criteria really is rooted in the history of the Habitat Committee and the previous protocol or I should say, I guess, the current protocol under which it is operating.

The committee has been around for at least a dozen years, maybe a little more than that, I forget, but when it was first formed habitat was really a new thing for this commission, and a lot of the state agencies represented here didn't have much and perhaps still don't have much authority over habitat matters, so there is a certain shyness about getting too involved in it.

When the committee was first formed, it was actually made up of half commissioners and half habitat experts from various state and federal agencies. I'll be honest, if I recall, the thinking at the time in order to be able to bring habitat more into the mainstream of the commission by that cross-fertilization, but that also meant that the committee itself was not fully staffed as a technical habitat body.

The protocol that was adopted under that circumstance, for the committee to write a comment letter on a given project that might impact fish habitat, was therefore given a very strong control, and that is that when the committee wanted to write a comment letter and it came before this board, any state or the state or the bi-state region within which the project was taking place, any commissioner from that state or those two states could veto that letter. Any one commissioner could say, "No, you're not going to send a comment letter." That continues to be the protocol under which the committee is operating.

And so a dozen or more years have gone by and there has been quite an evolution in that committee. I think you're all well aware that now this committee has professional habitat expertise from every state along the coast and all the relevant federal agencies. We now have the best staffing we've ever had.

We are improving on leadership, certainly, capability and expertise. All this protocol would do, then is bring the functional framework within which the Habitat Committee operates up to the standards the committee has achieved and make it like all the other committees operate. Thank you, Mr. Chairman.

CHAIRMAN LAPOINTE: Thank you. I'm going to pitch in a couple of comments. I have been a curmudgeon on this issue for a couple of reasons. One is – and I think at the last meeting we said, well, has the Habitat Committee asked for permission to comment on projects in states under the current protocol? My general sense is the answer is no, and there has been kind of this tension saying, "Well, you know, commissioners have veto authority if there is a project in our state, but we have never tested it", so that kind of made me cautious about it.

I'm concerned about the timeliness and how much time it might take the staff, the Habitat Committee and the Policy Board if in fact people start asking the commission to comment on a lot of projects, and so that is an ongoing concern of mine. It also is something I understand what they're trying to do. The comments from groups that represent the kind of interest we do can be helpful.

I know that in the state of Maine, when we've done projects like the Edwards Dam and whatnot, the comments from outside groups have been very helpful. My thought right now is let's try this. If it becomes too cumbersome, we can change it. If it spins out of control and we get outside groups pressuring the commission to comment on projects that impact Maine, we can consider that as well.

I think one of the things I see, particularly with regard to fish passage and energy projects, is the potential for a huge number of projects, retrofitting hydro; up our way, tidal power and wind power and wave energy and stuff, and I know that from the state government perspective, guess what, we want those energy sources, and so there is a delicate balance we have to pay attention to here. I am concerned that it could become a bigger beast than we think it is. Having said that, I have gotten past my curmudgeoness, I think, and I think it is worth moving ahead on. Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman, I'm glad you got past that. Jessie, the Habitat Committee did a great job in addressing the concerns that we had at our last meeting when the board actually said, no, this wasn't ready for prime time. I think we're there now. I have the same concerns you do, George. On the other hand, I do think that the letter from the commission in this particular case would be helpful in states where you're not getting – that don't have the teeth to push through some activity to remove passages in particular. So when you're ready for a motion, Mr. Chairman, I would like to do the move.

CHAIRMAN LAPOINTE: I have a couple of other people on the list, but they can comment once a motion is made, so that's fine.

MR. AUGUSTINE: Okay, move to approve the revised project permit/permit comment protocol for habitat impacts.

CHAIRMAN LAPOINTE: Do we have a second; Bill Goldsborough seconds and a bunch of other people. Jim Gilmore.

MR. GILMORE: Just a couple of comments. First, back to Louis' point; we've had projects in New York where a subcommittee or even just somebody sitting on a committee made a mention of ASMFC, and suddenly we had to get our regulatory people letters that ASMFC liked this or didn't like it. The commission actually carries some weight at least in our state. Any other organization may not, but if ASMFC is on a comment letter, generally that get people's attention, so I think anything that we say will have some good weight behind it.

That being said, I had just a couple of comments. First a suggestion and getting at your point, George, was the criteria that you've got set now in terms about what type of project would be looked at is a concern. I had talked to Karen Chytalo about this; and if you look at the criteria right now that it potentially impacts a managed species or supporting habitat, it means someone could, in our state in particular, look at a floating dock and say it is going to have an impact.

So, my suggestion to Karen at least might be to tighten up that criteria; or if you're starting to look at things along NEPA or in the state of New York, SECRA, things that have positive declarations where they're, you know, considered to have significant impacts, because I think we want to look at the major – the big, giant projects.

We don't want to look at a lot of smaller one. If there is some way we could add that in as part of the criteria, as a threshold to what projects we will look at, that may get at reducing some of the volume that we'll get at. Lastly, having been involved with the regulatory program for many years in my state on habitat, we've all got to recognize that we may get dragged into court if we – or, George, you'll get dragged into court as the chair or Vince, whatever, if essentially we get into a big legal action and ASMFC has officially either opposed or, you know, supported a project, we can get subpoenaed, so that is something that we have to factor in, including the legal support that will be required for that.

MR. DAVID SIMPSON: I'll just say I'm much more in favor of this when you think of the commission writing a letter in support of a particular project. When you talk about enhancing habitat or something like that, that's great. Opposing projects is another matter, very, very political, and it takes a whole lot more time to provide a thoughtful, critical comment on a project.

When you look at these EISs that are 1,500 pages long with lots of complicating details, it is troubling. I can just imagine some of the activities going on in Long Island Sound where, depending on which way whatever is flowing, Connecticut is for it and New York is against it or New York is for it and Connecticut is against, that type of thing. For the commission to get into the middle of that sort of thing I don't think would be – it would be tricky, at best.

Again, the amount of work we're talking about getting into, we have entire staffs, every state agency does that does this fulltime, entire staffs. As Jim suggested, I think we do need to strengthen the language that specifies what level project we get into; and when it says "may have significant impacts on commission-managed species", I might suggest that be modified to say "it may have significant stock level impacts on commission-managed species".

I really don't see the need or the value of the commission getting involved in a harbor dredging project that may have something to do with winter flounder eggs or something that we already handle on the state level. I think for the commission to step in with an adverse comment, you would need to be looking at a highly adverse project.

MR. GROUT: I guess I'm going to support Jim and Dave's comments basically from the standpoint of

the volume of comments that could be made. I know how much is made within our little 18 miles of coastline; and if you even took a small fraction of that and then multiplied it times the number of comments that are made coastwide, that could inundate us, so I think it is very important that we have some kind of threshold of impact before we comment on it. Otherwise, our poor habitat committee could be under a great burden here instead of doing something that is positive on a big scale.

CHAIRMAN LAPOINTE: Before I get to Paul, I think that is an important question. If you use Dave's criteria of a stock-level impact, think of river herring. Every project on the river will be included, and so I think, should we move ahead with this, we just have to keep our eyes wide open; and if it becomes too burdensome, we're going to have to rein back, and it's going to be an iterative review. Paul.

MR. DIODATI: I support a lot of what Dave said as well. I think that we need certain thresholds not so much to limit the workload, but I don't think it would take long before the commission is actually acting as the whipper for some local projects that got through and states are looking for that second or third bite at the apple to put their criticisms, if not comments, but perhaps criticisms forward.

Before too long, I think that can undermine the creditability of the commission, not to mention the political difficulties it is going to cause for agencies back home, because it would just seem to be a loop around a back-door approach. I think certain thresholds – I think this is a great initiative, but certain thresholds need to be kept in mind.

DR. GEIGER: Certainly, I think we have to pick our battles. I think the comments made about thresholds and the appropriate kind of projects the commission needs to weigh in on needs to be seriously considered. But on the other hand I do want to make an observation that I think our Habitat Committee is not the Habitat Committee of old.

Certainly, I think our Habitat Committee is re-energized. We have much more members. We have much more technical fisheries and ecological expertise on there. The Habitat Committee as well as our technical committees have had no trouble reaching out to other areas of technical expertise to seek that guidance and that input. I think this commission has made a significant investment in habitat-related activities.

There is the National Fish Habitat Action Plan; abilities trying to get this Atlantic Coastal Fisheries Partnership going; the overall emphasis on fish passage and the latest successful fish passage workshop. I think this commission has shown leadership and continues to show leadership in this area, and I think people are looking for the commission to step up and be counted, especially in these multi-state, wide-ranging projects that may have impact upon one or more states or management entity. Thank you, Mr. Chairman.

MR. GOLDSBOROUGH: Well, I'm sorry that Jim and Paul just left the room because I'm probably responding to their remarks, but one of the key things I think everyone needs to understand is that this is not a proposal that we start writing comment letters on projects. We already do that, and we have done that. That's not what this is about. We don't do it very often.

It is only when something does rise to the level where it makes sense for a body like this that has a certain measure of responsibility for the habitat for commission-managed species on an interstate basis. I would note that there are a couple of more criteria that do support that scale of application; one, that the project has to have interjurisdictional implications; two, the project would establish either a highly desirable or highly undesirable precedent from the commission's perspective. Those are already in there.

This is not about whether or not we should be sending comment letters. We have been doing that, and we do it very sparingly and very targeted. This is about whether or not this body, as a whole, is going to vote by majority to direct the committee to send a comment letter in a particular circumstance or whether it is going to have the veto ability of a single commissioner to prevent such a letter.

MR. P. WHITE: I don't want to belabor it, but I did want to pick up on a point because I think Dave makes an excellent example of what we do and don't want to get involved in. I don't want to get involved in whether it is right or wrong to dredge a harbor, but I do want to get involved in where the spoils are dumped, which has been a very serious issue up and down the coast and can be of major consequence sometimes. The point is well take that we need to be selective about what we do comment on.

DR. KRAY: There has been a project in the Delaware River that's been on the books for at least eight years to deepen the shipping channel from 40 feet to 45 feet to allow the larger tankers to come up

the – tankers and other vessels to come up the river. A big battle went on between New Jersey and Pennsylvania as to who was going to pay for it and how it was going to be paid, and that has all been resolved now.

They've also had to resolve what Pat has just indicated on where the stuff is going to be dumped. Some of it is going to go into coal mines up in the northeast part of Pennsylvania. There is still a concern – when I was wearing another hat a number of years ago, just before the governor was elected, and he has been in office now I think six years.

As matter as fact I know it was a week before the election – a number of his environmental staff an expressed concern about – because he strongly supported the deepening of the Delaware, and I expressed concern about what impact it might have on the fishing in the Delaware Bay, which is, of course, worse than ever right now.

I'm not sure how it could get any worse in the Delaware Bay – but the silt coming down the river and what impact that might have as well as impact it might have on any anadromous fish, you know, the striped bass and the eel and the shad and river herring that come upstream. So I think Dave's question of – and when he said "river dredging", it jumped into my mind.

That is a project in my mind that could have significant impact and we may want to say something about that, because it is going affect multi-states, Delaware, New Jersey, Pennsylvania. I think the question of what threshold do we use is one that I think we have to wrestle with and try to come to grips with that..

MR. SIMPSON: Just to reaffirm that the reason for the change is effectively to allow the commission to comment at the objection of the state where the project to proposed to occur; so, understand what we're voting on is for the commission to decide to intervene counter to the state's wishes to comment on a project.

That can very easily – it could be a problem and it can also pit one state against another. You could be stepping in between two states with differing opinions. It could be New Jersey and Pennsylvania; it could be New York and Connecticut; it could be any two adjoining states. I'm not sure that's a position the commission wants to insert itself into.

MR. G. RITCHIE WHITE: I guess first to comment on what Dave said, I think it is not necessarily a state;

it is a commissioner, and that is a big difference, I think. You might have a commissioner that the governor is leaning on. The other two commissioners may be in favor of it, and yet the one commissioner gets to veto it, so I think that is a difference.

I agree with George that I think we need to try this. If it starts to go in the wrong direction, we can easily and quickly change it. I think the Habitat Committee has listened to what has been said around this table, and I would astonished if they brought forward a project that we weren't all in favor of writing a letter on. I have confidence in them. I think it is going to work and I support it.

CHAIRMAN LAPOINTE: I have got Roy Miller and then I'm going to take the mike and try to bring this to a vote.

MR. MILLER: Not to belabor the points that have already been made by a number of speakers, but in consideration of Dave's points and Gene's points, I have to put this into perspective that I can relate to. I'm thinking of a project many years ago – I think it was the Annapolis Power Project, the Tidal Power Project up in the Bay of Fundy that could have potentially impacted everyone's American shad resources.

That seemed like a project that would be rife for consideration by the commission where the stocks of everyone's particular shad population might be affected. Conversely, if we look closer to the Delaware River, there was a project that is still being debated for an LNG facility on the Delaware River.

It turns out that my agency's official position was diametrically opposed to our neighbor's official agency position; and if the commission had weighed in on that one way or the other; it would have been awkward for either New Jersey or us because my department's secretary would have said to me "Don't you vote on that commission for me?" "Yes, sir, I do." "Then how does the vote come out this way?" That's the kind of thing that would make me uncomfortable and would wish to avoid. We have to be careful I think which projects we weigh in on. Thank you.

CHAIRMAN LAPOINTE: I think that is right, and I think what it means is that this board will have to come to those decisions. I would hope that if we do end up with something where we've got a Delaware and a Maryland and a Delaware and a New Jersey, we just say guess what, just say no on that one.

We'll take some heat for that; they will call us wimps, but that has happened before.

I think that is something that we have to be really cautious about. Again, to try to draw this to a close, Dave Simpson made a suggestion on Page 22, under deliberations, "The project may have significant," and he suggested the addition of the words "stock-level impacts". Is that okay with the maker and the seconder?

MR. AUGUSTINE: Yes, Mr. Chairman.

CHAIRMAN LAPOINTE: Pat White, is that okay?

MR. P. WHITE: Sure.

CHAIRMAN LAPOINTE: Okay, with that addition and with all the cautions we've – I'm sorry, Bill Goldsborough seconded. Is that all right with you, Bill? Thank you; I thought it might me. With that addition and the discussion we've had suggesting that we not get into this willy-nilly, I think we're probably ready for a vote. Does that make sense to folks? Do we need to caucus?

(Whereupon, a caucus was held.)

CHAIRMAN LAPOINTE: Are we ready to vote? All those in favor, raise your hand; opposed; any abstentions. The motion carries. Thanks for the good deliberations and discussion and thanks to the Habitat Committee and, Jessie, for your persistence to we curmudgeons. We have an easy subject next, discussion of annual catch limits and accountability measures proposed rule, Bob Beal.

DISCUSSION OF ANNUAL CATCH LIMITS AND ACCOUNTABILITY MEASURES

MR. BEAL: The National Marine Fisheries Service has a proposed rule out now describing how National Standard 1 would be implemented, including the annual catch limits and accountability measures. There is a three-page summary that was included on the CD. I am going to briefly run through a quick summary of the proposed rule.

I think a lot of members of the Policy Board may have seen a similar but much longer presentation at some of the fishery management councils. I know it occurred at the Mid-Atlantic Council last week or two weeks ago. I am going to go through an abbreviated version of that. I admit I lifted a lot of

this information right out of their presentation, but I'm going to, toward the end, focus on how this may impact the ASMFC.

The ultimate point of this discussion item for the Policy Board is should the ASMFC provide comment back to the National Marine Fisheries Service on their proposed rule for National Standard 1. The public comment period ends on September 22nd. As I go through this, keep in mind the intersection between what the federal government and the councils are doing and how it is going to impact the ASMFC-managed species.

With that, National Standard 1, this language hasn't changed from the Sustainable Fisheries Act from I believe '96 and is still included in the MSRA as reauthorized in '07. National Standard 1 has the two big notions of preventing overfishing and optimum yield. In 2007 the Magnuson-Stevens was reauthorized on January 12th, and the rest of this presentation stems from the changes that were implemented through MSRA.

The Act requires to end and prevent overfishing through the use of annual catch limits and accountability measures, so rest of this rule describes how those will be implemented. The law says that fishery management plans shall establish a mechanism for specifying annual catch limits in the plan, including a multi-year plan; implementing regulations for annual specifications at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

The fishery management plans at the federal level all are being modified. The fisheries that are currently subject to overfishing have to have the ACL and AM provisions included by 2010, and all other fisheries, the fisheries not subject to overfishing right now, have to have their ACL and AM, accountability measures, included by 2011.

The other main foundation for this proposed rule is that the action by the councils on annual catch limits cannot exceed the level established by the Council Scientific and Statistical Committee. There are a number of objectives that are included in the proposed rule that are on the screen. In addition to ACLs and accountability measures, I think the most important one for the ASMFC is the fifth one down, which is overlapping management jurisdiction.

The proposed rule clearly contemplates the effect of state harvest on the rebuilding of federally managed species and how the annual catch limits will be set with respect to species that are harvested in state

waters. There are a few themes that are throughout the proposed rule. One is a revision in the system for limits and targets for annual catch. The next is incorporating both scientific and management uncertainties to reduce the risk and accountability.

This figure, kind of a rainbow-colored diagram, is really the foundation for this proposed rule. The mathematical representation across the top describes how the proposed rule contemplates starting with an overfishing limit which corresponds to maximum sustainable yield, and then that overfishing limit is reduced by uncertainty to ultimately set an annual catch target.

The first two rectangles on top, the red and kind of darker orange color, the overfishing limit and the acceptable biological catch, the ABC, that is kind of the domain of the Scientific and Statistical Committee under this plan. The Scientific and Statistical Committee would meet each year or whenever quotas were required to be set; and at the end of the SSC meetings, you end up with an acceptable biological catch.

From there, the yellow box and the green box are kind of the domain of the management councils and/or boards for joint managed species. The way it would work is that the ABC, the acceptable biological catch, would be further reduced to the annual catch limit to account for uncertainty in estimating the catch.

That uncertainty is scientific certainty and management uncertainty, so the uncertainty is divided into two different categories. The idea is that each step along the way you start out with MSY and you reduce your fishing level to account for uncertainties, and you end up with an annual catch target or an annual catch limit. The idea is that, you know, some of these things can be equal. In other words, your annual catch limit can be equal to your annual catch target, but if there is uncertainty that managers felt they should account for, then this will be included in setting those quotas.

Accountability measures is the other big part of the proposed rule. There are two types of accountability measures that are contemplated in the proposed rule. One is in-season measures to prevent reaching the annual catch limit. This is pretty straightforward. You monitor your catch as the year goes on; and as the season or the year went along, you would modify the fishery management program to ensure that the ACL was not exceeded. All these accountability

measures apply to both recreational and commercial fisheries.

The second type of accountability measure is addressing an overage of an ACL, so this is after the fact of how should the fishery management program react to an overage of the ACL. The proposed rule also includes performance standards. This is with the recognition that no matter how well things are modeled and looked into, there is always a level of uncertainty in fishery management.

There is a comment to prevent chronic overfishing, which is if the ACL is exceeded in one of four years, the managers should go back and look at the management program and adjust the way their accountability measures are worded so that they reduce the probability of the ACL being exceeded in any year.

As I mentioned earlier, the state/federal fishery interaction is clearly contemplated in the proposed rule. The state harvest of fisheries creates a challenge for the federal managers when they're setting their ACLs. The plan recommends a state/federal collaboration in establishing ACLs and AMs.

There is a clear recommendation by the federal government that ASMFC in particular or in this instance should work together with the Mid-Atlantic Council, New England Council and South Atlantic Council as they're working through the ACL and process on any of the species that we have joint management plans or complementary management programs.

The proposed rule also has some guidance if the state and federal collaboration doesn't reach an agreement, which it happens, the ACL should be specified for the entire stock. They should identify a federal portion of the ACL, so that would account for a state harvest prior to the federal ACL being set. One scenario would be if the state harvested a certain percentage of the overall ACL, that is going to come right off the top before the federal ACL is established.

The accountability measures are going to apply to catch in the federal waters, but some of the joint managed plans there may be consideration to have those apply to state waters as well. The ASMFC perspective on this – and this goes into moving toward whether ASMFC or the states may want to comment on the proposed rule.

We have four joint management plans, summer flounder, scup, black sea bass and bluefish with the Mid-Atlantic Council, and we have five complementary management programs with the New England Council and with the South Atlantic Council. As I mentioned, all those councils are currently going through the process of modifying their FMPs to account for ACLs and AMs, and ASMFC may want to, obviously, keep an eye on that and decide how to react.

The question, at some point before the species board or before the Policy Board, is going to be how does the ASMFC want to modify its management programs to account for what is required to occur at the regional councils. As I mentioned at the beginning, the question is should the ASMFC comment?

The comment period ends September 22nd, so we've got about a month from now to decide if the Policy Board would like to comment and staff can work with you to develop those comments. With that, again, it is a much abbreviated presentation of what has been given at the council and I can try to answer any questions.

CHAIRMAN LAPOINTE: Thank you, Bob. Before I go to other questions, can you go back to your colored graphs? We've had a lot of conversations about data-poor species and scup and black sea bass come to mine. Those lines aren't going to be very close together on species – well, I mean, they're data poor and we've had differences between state and federal management, so those lower lines might be really down in the green; just to give a vivid example of how they may impact us. Pat White.

MR. P. WHITE; It is a guessing game, and I've talked with Bob about this, relative to, well, primarily initially for me, lobster, but with herring, if this is under Magnuson, it isn't under the Atlantic Coastal Act, but at some point that path will merge, I assume. And even if it doesn't, after 2010 how does that affect how we manage species that we're doing cooperatively with, as an example, lobster where we have – the ASMFC is the dominant one, but still involved in the federal fishery. Are we going to have to have a TAC as of 2010 or '11 in federal waters for that, and do we develop that or does the federal government – just those simple questions.

CHAIRMAN LAPOINTE: Chris, have you had discussion – I'm going to put you on the spot – about what you would do with lobsters specifically, because that is a good example.

MR. CHRIS MOORE: I haven't, George. I don't if anyone is here from the northeast region, is they've had those discussions. I haven't, no.

CHAIRMAN LAPOINTE: Good question. Pat Augustine.

MR. AUGUSTINE: It just seems to me that we should try to pay close attention to how this progresses and try to be in tune with ACLs and AMs only because whenever we've had a split in quota differences between the mid or the fed area versus ours, we're in trouble because we're always going to pay them back the next year. It just seems to me the more learn about this now, the quicker you learn about it, the better off we're going to be.

I did not want to breach this process. This was more leverage, more control by some other group, but the bottom line is MSA says there will be an SSC committee that will, along with the monitoring committee, basically tell you what you can and should not catch. I do think we should embrace it and make sure our technical committees are involved with this as we go along.

CHAIRMAN LAPOINTE: Thank you, Pat. Other comments? David Pierce.

DR. DAVID PIERCE: I would strongly encourage ASMFC to give some further thought to the National Standard Number 1 Guidelines as proposed. They will have serious implications for ASMFC-managed species, especially implications for the recreational fishery, I suspect, which is inside state waters; no federal permit, I don't think, unless the Registry actually makes these individuals federally permitted people who will have to live by federal rules.

I don't that is the case, but anyway there are some implications for the recreational fisheries. Comments should be prepared relative to that aspect of it; how would the National Standard Number 1 Guidelines affect fisheries inside state waters that are recreational with no federal permit entailed?

Also, the National Standard Number 1 Guidelines are what I like to call extraordinarily precautionary; to layer into the decision-making process for what quotas will be set and management uncertainty, biological uncertainty, uncertainty about productivity. This needs to be given a great deal of serious thought.

Certainly, in New England we have an interesting situation relative to international agreements. Lobster was mentioned, of course; no international agreement for lobster; not yet anyways, but for the U.S./Canadian stocks, Georges Bank, haddock, it says in the guidelines that those sorts of stocks that are affected by international agreements can be exempted from the setting of ACLs and accountability measures.

So one wonders what that means for sea herring since the Canadians have a tremendous impact on sea herring harvest within the areas that – in the Gulf of Maine, Georges Bank, Gulf of Maine, certainly, and the question would then arise – and this would be a very appropriate comment for ASMFC to provide with the intent for there to be eventually some understanding with Canada regarding how herring is managed; then wouldn't that mean, with the proposed National Standard Number 1 Guidelines, that ACLs and AMs are not needed; they can be exempted; herring can be exempted.

Those are just a few examples. I encourage ASMFC to take a look at the comments prepared by the New England Council on the guidelines. Quite a bit of work has been put into that. The comments are going to be reviewed by the council at our meeting coming up in a few weeks, very thoughtful comments. Again, those comments are very relevant to ASMFC discussions and the decisions that we make.

Then I will just ask one question of the Policy Board and specifically those who are involved with management of summer flounder, scup and black sea bass. I wasn't at the last meeting when those three species were discussed. Did the Policy Board adopt ACLs and AMs for those three species?

And if you did, I wonder what the nature of the discussions were by species board members, what the nature of those discussions were because ASMFC may have already accidentally backed into the acceptance of ACLs and AMs for those three species without any consideration of a position that this Policy Board may want to take first. I just ask that as a question; did that happen?

MR. BEAL: The management board didn't – I'll go the other way. The management board did approve quotas for all the jointly managed species, summer flounder, scup, black sea bass and bluefish, but they did not modify the FMP to include accountability measures. There are repayment provisions and those type things already in those FMPs. In the sense that they approved quotas for next year, those more or

less equate to ACLs, but they didn't tie accountability measures to those.

DR. DANIEL: If you haven't looked this over, it is worth the effort. One of the things that we've found is that the rule is very complex and it is confusing to everybody that has looked at it so far. One of the concerns I have, having gone through the Magnuson reauthorization at the council level in '96 when we developed the MSYs and the OYs and the control rules and all that, it just seems like we're starting over again.

I believe there is a way that we could have those reference points match up with our existing definitions, our existing terms. There are some real concerns and issues about it doesn't provide enough guidance regarding the development of the control rules. But one of the big issues that we have is discrepancies between state and federal data sources, and that has been an issue in the past.

We feel that the state trip ticket information should be the default dataset for the commercial catches. But we also continue to hound them about information, data, getting off this data-poor stock criteria and actually going out and collecting the information that we need to generate stock assessments; because when we start putting these things together for these data-poor stocks, the general consensus seems to be that we need to be more precautionary than we may need to be.

North Carolina has put together a series of about 15 points that we'll be providing to the National Marine Fisheries Service. Some of the ones that are specific may be of interest to this group are a question like if ACLs are exceeded because of the regulatory failures of one state, will other states in the councils or the ASMFC's area of jurisdiction be affected through mandatory accountability measures?

Barring state-by-state allocation for all species, the proposed regulations could punish commercial fishermen and anglers in all states and all regions. Another issue that came up was there is currently some uncertainty as to whether Florida will implement the gag regulations in state waters per a South Atlantic Plan, you know, so those states that choose not to implement those measures in state waters, how will that affect AMs across the various states?

The last one I'll bring up is just dealing with these data-poor stocks and how the Act is not going to allow us to use socio-economic considerations in

setting these up as well, and so with bluefish – well, not maybe not bluefish, but certainly with black sea bass and scup and some of these trawl index quota-setting processes, it is going to create some real problems and some real pain. I think it would be good for this group, if you agree with some of those concerns and issues, that we should put something together to comment by the deadline.

MR. A.C. CARPENTER: Can you put the slide back up that had in the case of disagreements between the state and the federal. My question was that we currently have a – that may not be it; it may have been the next one where the councils would be forced to set an ACL for just federal waters, and there would be another portion of that set aside for the state. What would happen if ASMFC decided to have its own separate summer flounder management plan and withdraw from the joint plan with the council?

How would the ACL be determined by the council and how would they account for whatever we do in state waters? Has there been any discussion of that or is there any thought even given to that type of thing where we would have separate plans? Take striped bass, for example, there is no federal striped bass plan. They've just simply got the EEZ closed. How would they go about opening the EEZ?

EXECUTIVE DIRECTOR O'SHEA: The Regional Administrator responds to questions like that and has indicated the strategy of just taking the expected or projected state consumption right off the top of the federal plan. In other councils and other regions that have been wrestling with this, that has been the practice as well. They just take it right off the top; then the federal plan goes forward. That then sets up a discussion between federal permit holders and state permit holders and the whole allocation issue. That is what you get with that.

DR. KRAY: And that same scenario is being discussed for the international as well, Vince, just to concur with you on that. Louis, you indicated that North Carolina's comments were that it was very complex. The Mid-Atlantic Council told them the same thing in our response to it. I chair the committee to review National Standard 1.

Another issue that we brought up talked about the accountability measures in a context that the way it is stated, if we exceed annual catch limits, that is when the accountability measures kick in. We are arguing that really is an artificial barrier. It should really be the acceptable biological catch, the ABC, because that is the overfishing threshold.

If we exceed the annual catch limits but don't exceed the ABC, there is no biological harm, no biological harm to fish and therefore why should we have accountability measures for that? Those are some of the comments that the Mid-Atlantic Council is making on the National Standard 1 Guideline Rule.

CHAIRMAN LAPOINTE: Thanks, Gene. Other board member comments? I have got a comment from Arnold Leo, so I'll take Arnold and then we'll come back to the board.

MR. ARNOLD LEO: I'm glad that Gene was the last speaker because I was going to bring up in fact that the Mid-Atlantic Fishery Management Council prepared a memo of several pages of comments of problems they found with this ACL/AM Standard 1 Provision. I really feel that, Bob, perhaps that document should be reviewed and reported on to the commission at the October meeting.

As Gene pointed out, there are some very serious objections to what this provision entails. I just want to mention the one that really struck me the hardest is that it introduces a new level of inflexibility in managing the fisheries. A very good example was provided. It requires that the Scientific and Statistical Committee recommend what the ABC/ACLs should be.

When it came to the scup fishery, Dr. Brian Rothchild, who is chair of that SSC for the council, said the data is so bad that we cannot make a recommendation and yet a decision had to be made on what the ACL/ABC would be for the coming year. The decision was made and it was a very one for the commercial fisheries. It just introduces yet another problem with inflexibility dealing with these data-poor stocks. Thanks.

DR. KRAY: Just one comment on Arnold's comment. The SSC establishes the acceptable biological catch, the ABC. They do not set the annual catch limits; the council does that.

MR. AUGUSTINE: Mr. Chairman, and to compound the problem even more is the regional office has not developed a set of guidelines for the councils to work by and the deadline is September 22nd. That was why the Mid-Atlantic went forward with their concerns and so on, so I would suggest that maybe the South Atlantic might want to do the same thing.

CHAIRMAN LAPOINTE: Well, we've got a couple of questions for the board. We could talk about it for a long time, and if we need to we will. Does the board want the commission to comment or not? My sense is the answer to that is yes, and so my suggested course of action is I will work with Bob and Vince and maybe the head of the MSC. We will gather the comments from the Mid-Atlantic Council, the New England Council, any states who have comments and try to come up with a coherent comment letter, and then we'll cycle that back out to the ISFMP Board members; does that make sense.

MR. AUGUSTINE: It makes sense.

CHAIRMAN LAPOINTE: Because, the important timeline is to get those comments in advance of the September 22nd deadline. Does that make sense to board members? Great, good discussion, thank you. Let's take a five-minute break.

(Whereupon, a recess was taken.)

ASMFC 2009-2013 STRATEGIC PLAN

CHAIRMAN LAPOINTE: Would you please take your seats again and we will get started. Our next agenda topic is Toni is going to go over the strategic plan, the public comments and review the updated draft strategic plan, and we will provide guidance to staff for developing the final draft. My thought, in talking to staff about this, is there were some public comments. Again, Toni will go over those. There are some changes they are going to recommend. We're past the point where we're going to, I hope, make major changes to this document, but to give them guidance on how to finalize or to prepare it for a final vote at our October meeting.

MS. TONI KERNS: If you do not have a copy of the draft strategic plan or the public comments in front of you, I think it will be easiest if you do have those in front of you, so please raise your hand and staff will pass those out to you. I'm going to go ahead and start to go through these public comments.

We received just about 40 public comments on the draft strategic plan. I'm going to go through the document. The first comment was regarding the introduction section. The commenter stated that the document had recognized the states' responsibility to respect wildlife, but then it doesn't say that we would work with other agencies to conserve and manage wildlife.

The action that staff suggested was on Page 2 of your strategic plan, in the first paragraph, to replace the words "fishery and wildlife" with "natural resources". Up on the screen you can see there are two places where we suggest changing and inserting "natural resources". The first sentence would read, "Each state has the fundamental responsibility to safeguard the public trust with respect to its natural resources."

CHAIRMAN LAPOINTE: Any objection to that change? It will be incorporated in the draft. Next comment.

MS. KERNS: The second comment is also under the introduction and the commenter states that the document doesn't recognize that the states must work together to safeguard the public trust, but at this time the commission works against the states in this regard. They provide an example where the Horseshoe Crab Board had not put a moratorium in New Jersey and Delaware. The response to that is that the commission's compact all states retain the inherent right to be more conservative than the FMP. Therefore, we suggest no action be taken.

CHAIRMAN LAPOINTE: Any comments? Next issue, please.

MS. KERNS: The next comment comes under the mission and vision section of the document. The commenter stated that the mission and vision do not take into account the ecological effects of fisheries on other resources or the need to protect the ecological systems. The response would be that the mission and vision reflects the Compact, ecological impacts and are included in multiple goals of the plan, and therefore no action is suggested.

The next comment is concerning that the vision does not mention the role of science. The response is that science is a means to achieve the vision. Goal 2 is completed devoted to science and therefore no action is recommended.

CHAIRMAN LAPOINTE: Next comment, please.

MS. KERNS: The commenter asked to define stakeholders at the start of the document. The response is that stakeholders are defined on Page 4 when it is first addressed and therefore no action is recommended.

CHAIRMAN LAPOINTE: Thanks, Toni. We had three comments on the vision. Any comments on the

staff's proposed course of action. Seeing none, we will incorporate those.

MS. KERNS: Next is under Driving Forces Section of the Strategic Plan. The first comment is that the plan should support an analysis of existing data and research to understand climate change interactions with fisheries and identify specific steps to begin adaptive management responses.

The response is that this is not specifically addressed in the plan. The action is to consider some additional language. The is on Page 6, Paragraph 3, of the document where we suggest adding the sentence, "Climate change may have impacts on the productivity and abundance of fish stocks".

CHAIRMAN LAPOINTE: Comment on that? A.C. Carpenter.

MR. CARPENTER: Doesn't the sentence just before that say the same thing, "natural forces", and isn't climate change supposed to be a natural occurrence?

CHAIRMAN LAPOINTE: I would think that people would argue that human-induced climate change is not a natural occurrence and therefore you could have two sentences just to accommodate that. Jaime Geiger.

DR. GEIGER: Would it be also appropriate to say "and their habitats", "on fish stocks and their habitats"?

CHAIRMAN LAPOINTE: Board members, any objection to adding "and their habitats"? No objection to that. Other comments on this particular section? All right, the next comment, please.

MS. KERNS: The next comment was that the commission should begin to develop new approaches in consideration of both fishing and non-fishing threats, including global climate change. The Strategic Plan recognizes non-fishing threats in the section on the driving forces and pressures on the fishery resources and industry. The plan commits the commission to considering many of these factors. Therefore, no action is suggested.

CHAIRMAN LAPOINTE: Next comment.

MS. KERNS: The next comments under Goal 1 of the plan. The first comment is that the goal should place greater emphasis on the development of fishery management plans in consideration with non-target species in addition to protected species. Currently

Goal 1 states "strategies to document, evaluate and minimize discards and bycatch in the commercial and recreational fisheries." This could be achieved through the FMPs as well as other venues. Therefore, no action is recommended.

CHAIRMAN LAPOINTE: Comments. Next issue, please, Toni.

MS. KERNS: The next comment was that the commission should consider rebuilding efforts and resources on stocks and species that remain seriously depleted. Goal 1 commits to making significant progress without any definition of what "significant process" means on rebuilding overfished stocks or depleted fish stocks. Therefore, no action is currently recommended.

CHAIRMAN LAPOINTE: Comments. Robert.

MR. ROBERT H. BOYLES, JR.: We did talk about this back in May and I think with some fairly vigorous discussion about specifics on the definition of "significant progress". I just ask one more time that we consider perhaps tightening up this portion of the plan.

CHAIRMAN LAPOINTE: Other board members? I recall we had discussion about that, and there wasn't an interest because people didn't know how that would constrain them, but other board members. We might get a lot of that through the back door, through ACLs and AMs, regardless of what our plan says. Robert.

MR. BOYLES: To that point, Mr. Chairman, I know that 2015 we've had on our letterhead for quite some time. Seeing this is basically 2009, and it is a five-year plan, we will be approaching 2015 during this timeframe, and I just think it is something that – I just ask the members of the Policy Board to think about how we're going define success. I think particularly as we transition with the new requirements for ACLs, AMs, et cetera, I think we should be very, very cognizant that we are being watched very, very carefully, and we need to be accountable for these kinds of things.

CHAIRMAN LAPOINTE: Other comments on that particular issue? The next issue, please.

MS. KERNS: The next comment was to encourage the commission to carry the strategies in Goal 1; return to the bold and decisive approaches to management as was done with the rebuilding of striped bass. The comment was that this is reflected

in the commitment for action on Page 3, as well as in the Commissioner Values, and therefore no action is recommended.

CHAIRMAN LAPOINTE: Comments. Next issue.

MS. KERNS: The next comment is that the plan should have a strategy for allocation that would best benefit the citizens of the nation and the commission states. Under Goal 1 a strategy states “evaluate alternative allocation approaches, including conservation incentives to promote fair allocation.” This strategy would reflect the comment and was purposely written to cover a broad range of possibilities. Therefore, no action is recommended.

EXECUTIVE DIRECTOR O’SHEA: Mr. Chairman, I think one thing on terminology that we’re using here and maybe the context maybe make me feel a little bit better. We’ve set this matrix up for you all in respect to the fact that this is your plan, and we, the staff, don’t want to be driving it. It is not our job to drive it.

As we went through the public’s comments, I’m kind of thinking that really our position in this is not a recommendation that you not do anything as opposed to our proposal here is no action. I want to maybe just put an advertisement in here that this is your plan. Sometimes we give you recommendations that we really want you to sail right through them, and in other cases we’re – so I feel that we’re in a difficult situation here of setting you guys up to really be the decision-makers here. I don’t know if you can help me out with what I’m trying to get across.

CHAIRMAN LAPOINTE: My sense is, yes, we are the decision-makers and it’s our Strategic Plan, and we’ve had staff help at the beginning and we have it now and we’ll get it in the end. One of the reasons we love working with you is you know what our history is, and so for most of these things you’re feeling your way along.

We made a change on the previous page because people identified an issue and they thought it was important. I think we need probably to go back to Number 14 that Robert was talking about a little bit and figure out how we might want to think about that between now and October. What we’re doing here is making sure that we understand and acknowledge the public comments and seeing if we want to make changes to the document that reflect those comments. I think we’re okay.

EXECUTIVE DIRECTOR O’SHEA: I think that is a good way to say it. This is our guess of how you

would interpret the direction you’ve gone based on some of the other comments you made during the workshop and up until now. Thank you for helping me.

CHAIRMAN LAPOINTE: You bet. Anybody for a change in allocation? Toni, next comment.

MS. KERNS: The next comment is that the plan should take a more proactive stance regarding harvest restrictions. The response is that this concept is included in Goal 1 in managing responsibility when facing uncertainty, as well as in the Commissioner Values. Therefore, no action was taken.

CHAIRMAN LAPOINTE: Comments. Next issue, please.

MS. KERNS: Next is when there is uncertainty associated with the accuracy of a stock assessment, the commission should follow a path of caution and reduce harvest. Again, the same response was that under Goal 1 we manage responsibly when facing uncertainty; therefore, no action.

CHAIRMAN LAPOINTE: Comments from anybody? Seeing none, the next issue, please.

MS. KERNS: The recent fish passage workshop suggests the potential role for the commission to improve the effectiveness of fish passage techniques. This was not addressed in the plan and therefore additional language was suggested. This is on Page 11 under the Goal 1 Strategies. The suggested language to add is “to promote the development of effective fish passage approaches and projects through state and federal collaboration”.

DR. MALCOLM RHODES: I was at that meeting. They talked about different fish passages for different species, but, more importantly, they talked about removal of obstructions, not just hydroelectric with the FERC licensing but with the low-head dams that obstructed many rivers and have been very successful by using state and federal monies for people who had certain liabilities with these old dams that were crumbling and helping in removal of those.

I would like to see if we could change the wording slightly to promote development of effective fish passage and removal of obstructions to fish passage by state and federal collaboration, so we’re getting not only at providing passage past dams but removal of obstructions that have been placed over the last 300 years.

CHAIRMAN LAPOINTE: Comments. I guess my thought, being involved in a number of projects, is that removal of obstructions is fish passage, and it is the one form that is 100 percent efficient. To me that is inherent in the statement, but, again, that is my view.

DR. RHODES: But we're faced with that earlier with the natural forces that change things; and by putting in here that we're looking at not only getting around obstructions but removal of obstructions, it shows that we're having at least a two-pronged look at waterways.

CHAIRMAN LAPOINTE: Other board member comments. Doug.

MR. GROUT: I might suggest modifying that to say "man-made obstructions" because if we're going to remove waterfalls, that might be kind of difficult.

CHAIRMAN LAPOINTE: Other comments. Do board members favor inclusion or not of the change? Paul.

MR. DIODATI: Actually I kind of feel the same way that you do. In Massachusetts dam removal is our first option in addressing any fish passage situation, and then we look at other technologies when that is not possible. I think it is inherent in the way it is stated.

MR. CARPENTER: Well, I think it is easy enough to just restructure the sentence and say, "promote removal of man-made obstructions and/or development of effective fish passage approaches".

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, the genesis on this comment may be helpful, and I apologize for not giving it sooner. This came from Pennsylvania, and it was in the context of Leroy Young going to the Fish Passage Workshop, knowing that Pennsylvania had invested quite a bit of money in different technologies to enhance fish passages at places where they couldn't remove dams, and he was hoping that he would get some information where other states have had other successes.

In fact, what he found was – his impression was other states are struggling just as Pennsylvania is, and he thought this was an opportunity for some strategic thinking by the states to say rather than have 15 different exploratory things on technologies, that maybe they ought to regroup and deploy limited resources to improving the technology where there were not options to remove the obstruction. I see Dr.

Austen is down in the corner, and I might put him on the spot, but that was the sense that Leroy had given me. It certainly made sense and that is why it made onto the comment section for your consideration.

DR. AUSTEN: Do you want me to try to respond to that? I'm not sure if I can respond. I think a lot of this did lead directly into this proposal that we talked about earlier, to try to identify some of the core issues and focus our efforts on solving them as best as we can. I have been pushing Leroy and his staff to be much more proactive with this because of that event in Jacksonville that did raise these issues to a much higher level than what they were before.

CHAIRMAN LAPOINTE: We need a decision. I will read it; "Promote removal of man-made passage obstructions and/or development of effective fish passage approaches through state and federal collaboration". Is that acceptable to people? I see heads shaking yes so that's good.

MS. KERNS: The next comment stated that the Strategic Plan's Web Survey answered by our commissioners provided valuable insight into the commissioners' perception of progress and performance; suggestion to conduct that simple exercise to evaluate progress annually. This was not addressed in the plan, and we suggested new text; again on Page 11 under the Goal 1 Strategies: "For an annual review of commission progress towards achieving the ASMFC vision".

CHAIRMAN LAPOINTE: Comments? Robert, this gets at your issue partially. Concurrence? We will include it; the next issue, please.

MS. KERNS: The next issues states that the plan should strive for consistent management for species jointly managed with regional councils. Under Goal 1 there is a strategy to promote cooperative planning with regional councils; therefore, no action was taken.

CHAIRMAN LAPOINTE: Comments; anybody for adding more about regional councils and interactions? Bill.

MR. ADLER: I don't know if it is here or it is later. Is that the part where we try to have a committee get together to work on joint plans; remember that? It disappeared off into the fog somewhere. Does this have anything to do with that?

MS. KERNS: State and federal alignment?

MR. ADLER: Yes, remember we had a committee or a subcommittee, what it was, that was going to talk about what we do when you've got the council plan versus the state plan, and we were going to try to do something about it. I don't even remember what happened.

CHAIRMAN LAPOINTE: My sense is that there have been a number of issues to deal with just that, and they fall under this goal about promoting cooperation. Much like the Holy Grail, we're still looking for it, but I think it is under this goal.

EXECUTIVE DIRECTOR O'SHEA: Specifically, his question about the thing that went into the fog, you announced at the beginning of this meeting – people might not have been in the room – that under other business we were going to talk about state/federal alignment, and that is going to be a report of the committee that includes a discussion of what Paul Diodati's committee had done.

MS. KERNS: The next comment was noted support for the improved multi-species and ecosystem approach for management as outlined in the plan; therefore, no response or action is necessary. The next comment was that the use of management strategy evaluation approaches for fisheries is rapidly increasing. The response is that we are committed to annual evaluations with the status of the stocks' document each year. Therefore, no action was taken.

CHAIRMAN LAPOINTE: Comments. Next item please.

MS. KERNS: Next we move to Goal Number 2. The plan does not clearly demonstrate a commitment to science-based management. The response is that this an interpretation by the reader versus what the commission intended. The action is a discussion by this group.

CHAIRMAN LAPOINTE: Board members, does anybody think we need to change Goal 2 based on this comment? Doug.

MR. GROUT: No, I don't, I think it is covered in several of the strategies that are already under Goal and all of Goal 2.

CHAIRMAN LAPOINTE: I think most people would agree; is there concurrence with that? I see heads shaking yes. Next issue.

MS. KERNS: The next comments was that strategies regional multi-sector collaboration and conservation

progress should be highlighted under Goals 2 and 4. The response is that each of these issues are discussed in several parts of Goals 2 and 4; therefore, no action was taken.

CHAIRMAN LAPOINTE: Are we okay with that? Yes, next issue.

MS. KERNS: Goal 2 should state a need for increased data collection and research for ecosystem-based strategies. The response is that Goal 2 strategy states we should expand cooperative research and statistic programs, which both would increase data collection and research that could be use for ecosystem strategies. Staff suggested that the board could consider language that states "increase data collection and research for ecosystem-based management strategies." This would have a significant burden on the fiscal and staff resources, though.

CHAIRMAN LAPOINTE: Jaime, you had your hand up?

DR. GEIGER: Yes, just a question. We are going to include that last statement, "but this would have a significant burden on fiscal and staff resources", or is that just a comment?

CHAIRMAN LAPOINTE: I believe that is a comment. I guess my general sense is that any number of strategies that make us do more work have a burden on fiscal and staff resources, and so it kind of goes without saying and we will have to work with the staff we have and the fiscal resources we have to set a work plan every year, so it doesn't bust my chops that much. If we only had those things in there that we could pay for, it would be a much shorter document. Vince.

EXECUTIVE DIRECTOR O'SHEA: And it doesn't say how much you're going to increase it by either, Mr. Chairman.

DR. DANIEL: And again the question is priorities and moving towards ecosystem-based management before we have first-order assessments on these fish stocks; I would not want to put this in the plan.

CHAIRMAN LAPOINTE: Other board member comments? My sense – it's the first time I've ever argued with Lou Daniel – is that we should have it in there and we should consider it because my sense is that we can build components that are needed for ecosystem-based management within our current data collection programs, but just looking at it a different

way, and so it is just to put an emphasis on it. It is not saying this is more important than those other issues, but that it should be an emphasis. Pat White.

MR. P. WHITE: Well, could you just say something like “whenever possible” so that we don’t get under an unfunded mandate where we’re trying hard?

CHAIRMAN LAPOINTE: I guess the argument against that is we have it after every statement. You know, it goes without saying. Lou, are you okay with that now?

DR. DANIEL: Not really. I know you’re the chairman, but to me it sends a message to the commenter – whoever the commenter is – but it sends that message that we agree and that we’re going to increase data collection and research for ecosystem-based management strategies, and we don’t have data collection programs in place to sample the commercial and the recreational catches. We don’t know what is coming out of the system but yet we’re going to move to an ecosystem-based approach, but whatever the board thinks. I just don’t think it needs to be in there.

MR. R. WHITE: I think we are already increasing data collection for this, and I think we’re already in the process of doing this. I think this is applicable and I support putting it in there.

MR. CARPENTER: Doesn’t this really fall in the ACCSP more so than the commission strategic plan directly?

CHAIRMAN LAPOINTE: They don’t do research Bob whispered in my ear. I’m glad he is here.

MR. CARPENTER: Neither do we.

CHAIRMAN LAPOINTE: But we try to promote it. Going back to the menhaden discussion a little bit ago, we’ve had a few discussions about research. I guess a question that we should look at is I could argue with taking or leaving it out if in fact we mention the recognition of moving towards ecosystem-based management in other goals within the plan. It could be seen as redundant, but I’m going to have to look through it to see if it is in there. Jaime.

DR. GEIGER: Mr. Chairman, by removing the word “increase” and substituting “support data collection and research for ecosystem-based management strategies” would maybe be more acceptable. I think

it also is a true strategy to achieve a goal. Thank you, Mr. Chairman.

CHAIRMAN LAPOINTE: Now I know why we invited you to the party; thank you. Pat Augustine.

MR. AUGUSTINE: It is promoting another specific expectation and it is not going to happen because we don’t have funding to do it. It is an ongoing process, anyway.

CHAIRMAN LAPOINTE: Dr. Geiger suggested “support”; does that make sense to people? I see heads shaking yes. Have we discussed it enough? Doug.

DR. AUSTEN: When I see something like this, one has to ask what sort of data would one want to collect for this. It is a very nebulous phrase that could mean just continuing doing what we’re doing now, but fill in the gaps. Ecosystem-management is a philosophical approach to this that might require some different data. We don’t know what those are, so we’re saying something here that really has no end product in sight, which I think is a little troubling. It opens up a Pandora’s Box that we really haven’t defined much at this point in time.

DR. DANIEL: I think a lot of the ecosystem-based models, probably the key gap in the information that we have is diet analysis. I mean, that is probably the single biggest issue that we have right now. I mean, that is what you’re supporting. This discussion is a good one to put on our future agenda. This board would be the board to look at research priorities, what we need to get out of data-poor situations, what we need to accomplish before we move into this arena of moving on past the basic biological data collection programs that we need to have.

If we allow the individual management boards to make those decisions, we’re always going to be sitting at the board level saying this is the most important thing for this stock, but is that the most important thing for the ASMFC to promote, and that is a discussion I think we should have at some point.

CHAIRMAN LAPOINTE: So do we leave it in or don’t we?

DR. DANIEL: I can support “support”. I can’t support “increase”.

CHAIRMAN LAPOINTE: My sense is most people – I’ve got some people saying take it out to my left, but my sense is that other people are shaking their heads on “support”. Do we need to take this to a

vote? All right, let's go for a vote just to get past this. Do we need a motion, then, to include it or not include it? Make a motion.

MR. SIMPSON: So move.

CHAIRMAN LAPOINTE: There was a motion by David Simpson to include the language that is included up there on Page 12 of the Strategic Plan. The specific language is "to support data collection and research for ecosystem-based management strategies. It was seconded by Pat Augustine. Do we need time to caucus? All those in favor, raise your hand, 14 for; against, 1 against; abstentions, 1 abstention; any null votes, 1 null vote. The motion carries. Thank you. Toni.

MS. KERNS: The next comment states that we should develop a matrix which juxtaposes data needs against the status of each stock to determine and show the public where and why assets should be expanded. The response is this is beyond the scope of the Strategic Plan and the information is imbedded in the annual FMP reviews, as well as stock assessment reports. Therefore, no action was taken.

CHAIRMAN LAPOINTE: I hope we don't have any comment on that. Next comment.

MS. KERNS: Strategies under Goal 2 should be further honed to focus on particularly urgent needs of depleted resources. Again, the response is that this is beyond the scope of the Strategic Plan and is imbedded in our FMP reviews and stock assessment reports. Therefore, no action was taken.

CHAIRMAN LAPOINTE: Comments. Next topic.

MS. KERNS: The next comment was to receive commercial fishermen's input on science. The response is that this is currently carried out under the ISFMP Charter through advisory panel and the public comment process. Therefore, no action was taken.

CHAIRMAN LAPOINTE: Comments. Seeing none, the next issue.

MS. KERNS: Next we move to Goal 3 of the plan. The first comment is should recognize the broader fiscal and resource constraints that exist for all state and federal law enforcement agencies, and that these limitations should be considered during the development of management measures.

The response is that this comment would strengthen the strategy under Goal 3 to include federal resources. The strategy currently states "to develop

practical compliance requirements recognizing state fiscal limitations". We suggest that language changed to include "develop management measures and compliance requirements that, as feasible, recognize state and federal fiscal limitations and the ease of enforceability." This is on Page 13.

CHAIRMAN LAPOINTE: Questions or comments? Dr. Geiger.

DR. GEIGER: I guess I have some problems with this statement, because, again, I think the commission has some underlying statutory authorities that basically tell us what we do and what our job is. We all realize there are always going to be limitations and concerns. The last time I looked this was a Strategic Plan, and I think the Strategic Plan is going to be framed in yearly annual work plans based upon what we can do with the available resources. I'm having a hard time seeing how this recommended language adds anything of value to the Strategic Plan.

CHAIRMAN LAPOINTE: Leave it in or take it out? I hear some "take it out". I see many heads shaking, so the suggestion is that statement is embodied elsewhere in the plan and we don't need that bracketed language. Is that all right with people? Thank you. Next comment.

MS. KERNS: The next comment states the final strategy under Goal 3 needs expansion to address paper compliance and dilatory compliance. The response is that this comment is reflected in the revisions made to the ISFMP Charter to address delayed implementation. All new amendments address this issue. Therefore, no action was taken.

CHAIRMAN LAPOINTE: There is no action proposed; is that all right with folks? Next comment.

MS. KERNS: Next we move to Goal to 4 of the plan. The first comment is to add specific strategies to address habitat protection measures in FMPs, to abate fishery impacts as needed, and to highlight non-fishing impacts of concern to other policy arenas. The response is that this level of detail is beyond the scope of the Strategic Plan and is more appropriate for the Habitat Program's Strategic Plan. Therefore, no action was taken.

CHAIRMAN LAPOINTE: People all right with that? We're good; next comment, please.

MS. KERNS: The commenter stated to incorporate habitat at the beginning of the plan; first, to add a bullet under the intended outcomes of the Vision, "to

improve fish habitat protection and restoration”; and, second, under the Driving Forces Legislation Section we should include the mention of EFH under MSRA; and, three, under the future of fisheries management, the importance of fish habitat protection should be mentioned. The response is that Goal 4 is completely devoted to habitat, and, therefore, no action was taken.

CHAIRMAN LAPOINTE: Are we all right with that? Next issue.

MS. KERNS: Goal 4 reads that one assumes all future habitat issues will be done through partnerships. The response is that Goal 4 reflects the power of partnerships for a meaningful success of the habitat program. Therefore, no action was taken.

CHAIRMAN LAPOINTE: We okay with that? Yes, thank you.

MS. KERNS: Lastly, the commenter supported the Habitat Section as outlined in the plan. No response was needed. Next we move to Goal 5 of the plan. The first commenter urged the commission to seek better ways to inform the public such as video-taping or web-streaming to help people everywhere to watch and understand the management process. The response is that the current commission process is to promote transparency through meeting summaries and timely posting of meeting transcripts to the public. Therefore, no action was taken.

CHAIRMAN LAPOINTE: Comments.

MR. AUGUSTINE: Do you want to put the word “web” in there? Posting is posting. I think it is inferred, but the comment referred to “web”, so would that be more clear than it is now? I think we all know what it is.

CHAIRMAN LAPOINTE: I guess I would just – I could go either way, but there might be other ways that posting is done as well, so if we left it broad it would be okay. Are people okay with that? Thank you.

MS. KERNS: The next comment was to replace the self-serving Goal 5 with preserve the commercial fishing industry. The response is that the Compact reflects the commitment to manage the resources; therefore, no action was action was taken.

CHAIRMAN LAPOINTE: Everybody all right with that? Thank you.

MS. KERNS: Next we move to Goal 6 under the plan. The first comment and the only comment was that the strategy under Goal 6 does not go far enough to assure cooperation with regional management councils for jointly managed species. The response is that Goal 1 acknowledges the value for cooperative planning with regional councils, and, therefore, no action was taken.

CHAIRMAN LAPOINTE: Are we okay with that? Yes.

MS. KERNS: Under other issues that were commented upon, states are facing fiscal constraints that restrict their participation in the commission. The response was that this is beyond the scope of the plan, and, therefore, no action was taken.

CHAIRMAN LAPOINTE: Folks okay with that? Yes. Last one.

MS. KERNS: Lastly, there was a commenter that supported an increased collaboration with Canada. The response is that this is technically beyond the scope of the Commission Compact. As a practical matter, it is addressed in the annual action plans for stock assessments of transboundary species, though.

CHAIRMAN LAPOINTE: People okay with that? Yes.

MS. KERNS: And then we have just one more portion where we made some changes to the Habitat Section that weren’t specifically in response to public comment but in response to the discussion at the workshop and then later discussion with some commissioners, and therefore I just wanted to put up here to show how we changed the Habitat Section to reflect the needs of what the commissioners were asking for. I can either read this out or you can go to Page 13 of your document and see exactly how those changes were stated.

MR. DIODATI: If I could, Mr. Chairman, I stepped back to the prior comment on support for increased collaboration with Canada; is that all right?

CHAIRMAN LAPOINTE: Sure, and then that will give people time to look through the language that is here as well.

MR. DIODATI: I just wanted to say that there is one fishery that is not covered by the Transboundary Species Discussions that we typically get involved in that the commission is really invested in, and that is striped bass. There are striped bass fisheries in

Canada that, through our tagging studies, we've documented that those fish are from spawning areas located within the U.S.

Given all the work that we've done, I don't think anyone is talking to Canada about those fisheries. At some point I think someone should initiate some dialogue with them and exchange of information through the ASMFC process relative to striped bass. This doesn't need to be within the plan, but I just thought I'd take an opportunity to raise the issue.

DR. GEIGER: Also, Mr. Chairman, to that point; also, the MOU or Proposed MOU with the Great Lakes Fisheries Commission and our Canadian partners related to American eel I think falls under this same comment. I do see international cooperation and collaboration between both Canada and the various commissions, including ASMFC, increasing it in the future. We may want to acknowledge.

CHAIRMAN LAPOINTE: Board members. I see heads shaking yes. I see heads shaking no. A.C.

MR. CARPENTER: We didn't need it in our Strategic Plan to cooperate with the Great Lakes or Canada; and on a case-by-case basis, if something comes up, we're certainly capable of doing it, and I don't think we need to change our Strategic Plan to account for that.

CHAIRMAN LAPOINTE: Other comments or is that acceptable for now? I see heads shaking yes. We go back to Page 13 and the proposed language is included in the text of the paper document you have. On the screen are those sections that have been highlighted. Do the changes reflect the earlier discussion; or, more importantly, is there objection to the text that is included on Page 13 of your document now? I have heard some "yeses" much clearer; I see some heads shaking yes. Is that the general consensus? Great! Well, thank you, all, and thanks to the staff for putting this together. Mr. Cole.

MR. BILL COLE: You're going to rule me out of order. Mr. Chairman, I'm going to have to agree with the distinguished commissioner from South Carolina about the language that we have at Goal 1 on Page 11. I think when you look at the entire page, it becomes very clear and very evident to us that we've got some things in here that don't make a whole lot of sense and I don't think are needed. Let me suggest that our Goal 1 obviously is based on a five-year period.

That is what cover of the strategy says; it is a five-year strategy. I just do not see the need for the sentence "in the next five years the commission is committed to making significant progress on rebuilding overfished and depleted fish stocks" when we cannot define what "significant progress" is.

Secondly, further down in there, we are now committing ourselves to an annual review of commission progress toward achieving our vision, which is at the bottom of our letterhead, of all of these same things by the year 2015. I think we can resolve my problem and South Carolina's problem just by striking that last sentence, which is frankly superfluous to the rest of this page.

CHAIRMAN LAPOINTE: I didn't rule you out of order, but you sure sound like a guy who came in at the eleventh hour. You know, I actually think that the idea of the inclusion of the annual review of commission progress towards meeting the vision is a way that allows us to approve this Strategic Plan without defining "successful", and it will allow us some time to figure out how to do that; you know, to put our feet to fire where it needs to be and declare victory on other things. I was comforted by the inclusion of the annual review of progress because it will allow us to develop the very thing I think Robert was asking for..

MR. COLE: But doesn't the inclusion of that sentence remove the need for the other indefinable sentence in the first paragraph?

EXECUTIVE DIRECTOR O'SHEA: Maybe just to recount briefly the history of this issue, at the February workshop the point was brought up by one of the commissioners who said when he looked at the status of stocks, he said that in order for us to measure success he would want to see at least five stocks moved from overfished to a corrected situation, and it would be helpful to have specific, measurable goals on rebuilding if we were going to make progress.

In the February workshop there was a degree of support of that. The next time we got together there was, upon further reflection, concerns that might be too specific, might not have flexibility, might not be achievable, and the result was to drop the five and to put in a commitment to rebuild the stocks, which resulted in the phrase that is now being under discussion. Perhaps with that background, that may put your position a bit in context for the commenter.

CHAIRMAN LAPOINTE: Other comments? Vince and I are actually getting together with the vice-chair who brought up this issue to talk about how we line things up for our discussion about how we present things for the next year, and so this will be on our list. Other comments on the changes that have been proposed? The staff will incorporate those changes and present the final document that we will approve at the Policy Board meeting in October. Vince.

EXECUTIVE DIRECTOR O'SHEA: The action plan thing, do you want me to cover that?

CHAIRMAN LAPOINTE: Please do.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, as we do for you every year, the staff develops an action plan based on the pattern and the model of the Strategic Plan, so it would be our intention with the action you've taken this afternoon, that you have conceptually approved your five-year Strategic Plan. Therefore, we will build your 2009 Action Plan on the Strategic Plan. As a minor process thing, we will ask you to approve the Strategic Plan at the annual meeting first, and then we'll also have you approve an action plan based on that. With that understanding, that is how we will go forward, Mr. Chairman.

CHAIRMAN LAPOINTE: Comments on that? That is the understanding; good. Paul.

MR. DIODATI: Just for something else; first of all, good work on this. This is a laborious task and everyone did a great job. I just question is the quote on the front page new; did we already talk about that, the Roosevelt Quote? Oh, it is not new? I guess it is the first time I've read the front page. Thank you.

CHAIRMAN LAPOINTE: Under Other Business I've got four items. I've got state and federal alignment; public comment timeline; winter flounder meeting and annual meeting. I'm going to take those in reverse order because the bottom three aren't going to take that long, I don't think. The bottom one is an update on the annual meeting. Roy, anything to report that we didn't have before?

ANNUAL MEETING UPDATE

MR. MILLER: Just very briefly, Mr. Chairman, I had an opportunity to go with Laura and Linda to visit the site. I'm satisfied that it is going to be a very suitable and attractive location. For planning purposes, long-term planning, it is on the Boardwalk.

It is a short distance to the beach where opportunities will abound for surf fishing, so hopefully we can have genuine fishing tournament and not a virtual fishing tournament this year.

In terms of the spouse/companion tour, we've lined up some very interesting things that I think are pretty exciting; a tour of the College of Marine Studies; a tour of the 165-foot new research vessel; a tour of Cape Henlopen State Park; a visit to the DuPont Nature Center, where we have the Shorebird and Horseshoe Crab Interpretative Displays. It is shaping up as a nice meeting. I think the banquet site is a short walk down the Boardwalk, so no additional transportation will be needed. I'm getting excited about the meeting and I hope you are, too. Thank you.

CHAIRMAN LAPOINTE: I am, and I'm going to a place with warm water, which always makes me happy coming from the state of Maine, so I think that's great. Thanks for the update. We had a discussion the other day. The winter flounder meeting was about the disconnect between the New England Council Groundfish Plan and Amendment 1 to our Winter Flounder Plan, particularly with some of the reductions that we're seeing in the GARM.

DISCUSSION OF WINTER FLOUNDER MEETING

The discussion was to direct the Chair of the Winter Flounder Board to schedule a meeting in October. I discovered I'm the Chair of the Winter Flounder Board, so folks can expect a Winter Flounder Board meeting in October to discuss this issue. That is just an update on that. Bob, can you comment about the public comment timeline.

PUBLIC COMMENT TIMELINES

MR. BEAL: We've had some discussions at the staff level, and this is just to introduce the concept to the Policy Board. A lot of times prior meetings and meeting weeks, in particular, we receive comments from the public that kind of come in at all different times, sometimes after the meeting week itself has started.

At the staff level we're thinking of developing a policy to control the public expectations of when they should submit comments to us and what they should expect in return from staff. It may be a valuable tool. These meeting weeks, a lot of times, start on

Monday and the Summer Flounder Board, for example, doesn't occur until Thursday, but on Tuesday we'll get a public comment letter on summer flounder.

Really, all the staff is over here at meetings and they show up in our office on the fax machine, and it may not show up for Summer Flounder Board on Thursday, and members of the public have been sort not real happy that their letter didn't appear in front of the board. If we get letters early enough, we can include them on the CD and on the website for all the briefing materials and those kinds of things.

We're, at the staff level, anyway, considering developing a timeline to sort of dictate when letters come into us what the public should expect the way those letters will be handled. The idea of this is not for public comment periods; so if we're out for an amendment or an addendum or something like that, those timelines are already set and there is a closing date on those.

This is for public comments that are just, in general, comments to management boards or to the commission on action that is not necessarily linked to an amendment or something else. For example, we handed out a couple of letters at the Menhaden Management Board this morning that we received last Friday. We were able to make copies of those and get those to the board.

But when some letters do come in, we are thinking about putting that together – I guess we can pull something together as a proposal for the Policy Board at the annual meeting if the Policy Board thinks that is an acceptable approach.

CHAIRMAN LAPOINTE: Comments. Vince.

EXECUTIVE DIRECTOR O'SHEA: The problem that we're trying to solve here is that when we try to accommodate those requests, people see that, and then at other times folks come in with things and we can't accommodate it, and then we have hard feelings and people are upset. I think that is an easy issue to address if they know up front what we're going to do, so it doesn't appear that we're playing favorites.

CHAIRMAN LAPOINTE: Any objection? I have a comment. I don't mind at all the development of the policy and saying if something comes in within ten days of a meeting, actually we won't get it copied and it will be the responsibility of the people to bring it to the meeting with them.

The difficulty will be is if I'm Joe Schmoe and I fax something in, how are you going to know the policy. CCA would know, but if they sent us a letter last week, how would they know if they just fax a copy in, and so how do you make known to people the policy, so just to think about that as you develop it. Pat.

MR. P. WHITE: I like the concept of having a deadline prior to a meeting week. It is very distracting sometimes when we get these three- or four-page reports handed out at a board meeting when people should be paying attention to what is going on and we're trying to read public comments. I think it would be well for us to come forward with a – and it should be working days, five working days or ten working days before a meeting that we would accept public comment. It can still go into the record, but it doesn't come before us to be considered at a commission meeting.

REPRESENTATIVE ABBOTT: Mr. Chair, along those lines, what about the people who walk in the door and then suddenly somebody is walking around handing us papers that they brought, too, would that be of a similar nature?

CHAIRMAN LAPOINTE: I would think so; good catch. So staff will develop that and we will have something to look at for the October meeting, but give it to us ten days in advance of the meeting so it doesn't violate the policy.

DISCUSSION OF STATE/FEDERAL ALIGNMENT

The last issue I have on the agenda is state and federal alignment. As Bill alluded before, there have been numerous attempts and discussions that have acknowledged the difficulty in the state and federal planning processes; one based on the Atlantic Coastal Act and our standards; one based on Magnuson-Stevens, and how difficult it is from the perspective of logistics and outcomes and expectations to make the process better.

And, again, this board has discussed a number of times different options for how to move this forward. Paul Diodati chaired a group that worked on the issue most recently, but there have been a number instances over the last five or ten years when it has been raised. In the discussions with people the issue is obviously very much before us, and it is going to be all the more before us with the ACL and AM issue on all the fisheries that are managed federally.

How do we do better and not become slaves to the federal process; one of the comments that Bill has raised a lot; not his words, but certainly his frustration. So to gather the information and to try to take another look at this – you know, a couple of years ago some people said, well, maybe we should give up some plans to the feds and just let them do the planning; or, maybe we should give the determination of biological targets and ACLs and AMs up to them and take over the state-level things and other aspects of planning.

We all recognize that it is something necessary to do, but trying to get progress on it and get traction has been incredibly difficult. The frustration has probably for most us mounted, the workload has mounted and the specter is only for those things to be exacerbated over the next couple of years. To talk about that, we did think that we would ask staff to drag up those documents from the past number of years to give us all a fresh look at it, but that is the issue pretty much; isn't it. Bill.

MR. ADLER: I read the recommendation in the back here, and the only thing I'm looking at is the ASMFC Chair being ganged up on by a bunch of feds; where you have the two council people and the regional director, and the only person against them or at them is the ASMFC Chair. It was curious that was the case.

I don't think we have figured out exactly how do you approach the director for NMFS and say, "We want to take that plan over, go away, and leave us alone"; or – and I don't know what they can do. I mean, are they under some thing where they couldn't give up a plan and give it to you? I don't know how that works.

CHAIRMAN LAPOINTE: I think it is a case-by-case issue. In some of the discussions that we had the other day, I asked, "Well, why does lobster work?" And they all said, "Because we wanted to get rid of it," you know, because it was problematic at the federal level. I think Louis talked about Red Drum and how there has been, I think from my sense, a commitment to transfer from federal to state management that is over a decade old and it still hasn't happened; is that accurate?

DR. DANIEL: Very close to accurate; very close to a decade.

CHAIRMAN LAPOINTE: Well, I don't want to tell war stories; I suspect we all can, but it is to acknowledge that there has been some recent work

done on it, and there has been some older work done on it, and I think people still aren't satisfied; so to grab those documents together and let us take a fresh look at it. Doug.

MR. GROUT: On the comment about Red Drum and looking at this recommendation here, my question is how come the South Atlantic Council isn't involved with it?

CHAIRMAN LAPOINTE: Good point. Louis.

DR. DANIEL: Well, one reason might be is because once we get Red Drum done, I think that is the only plan we have jointly with the ASMFC.

CHAIRMAN LAPOINTE: Maybe we need to emulate the South Atlantic.

MR. GROUT: That is my thought.

DR. DANIEL: Well, just remember the way we've handled it at the South Atlantic level is to have a South Atlantic Board, and we operate everything together but it is not really a joint plan. It is just that we work together as opposed to a formal NMFS plan.

MR. ADLER: So, in other words, what you are planning to do here is to sit down with these people and move ahead that way and see where we can go; is that what the idea is here?

CHAIRMAN LAPOINTE: I think that was the recommendation by the group that Paul chaired, but, again, in talking to some other people there was a discussion about what are we going to get that we didn't get before, so that is when we thought of looking back at those other efforts in the past to see what was suggested. Again, other people may have different recollections. Paul.

MR. DIODATI: This is a very succinct memo in order to give the board an opportunity to get their teeth into this, but just in this memo, if you read it, the complexity in the way we manage is far-reaching, and you probably didn't think it was this inconsistent. But, something like Northern Shrimp, which is a section, has only state delegates that vote on it.

There are no federal counterparts, there are no federal plans, yet the fishery takes place completely in the EEZ. I mean, how odd is that; it is quite odd, and very successful, and it works. It is extremely successful. On the other hand, we have other sections such as Atlantic Herring that has a council plan and a section plan. Then we have, I guess,

lobster; there is only one plan, but there is a fishery in the EEZ and works through the board process that we're mostly familiar with.

And I can go on with the examples that we cite are interesting. Some of the joint plans have a single plan and some of them have individual plans, so I think that the reason we're in this position is precisely because one size doesn't fit all, and some of the institutional history behind the development of these plans goes a long way, such as Northern Shrimp goes back to the early seventies. I don't think there would be any support in changing the way that fishery is currently managed.

That's part of the difficulty. I think the Red Drum situation is interesting because there has been an attempt to bring it under one rule, and that hasn't happened, so there has got to be some reluctance or impediments there that I wasn't able to identify in the short time that we had. As far as the recommended committee, it could be anyone that you think is valuable here if you need to increase the odds or the size here. Although council directors are not necessarily – they shouldn't be considered to be NOAA or NMFS employees. They pretty much are independent. That's all I have to say about it right now.

EXECUTIVE DIRECTOR O'SHEA: Clicking a couple of levels, Mr. Chairman, maybe you could help me out on my history. On the development of the Atlantic Coastal Act, can you recall the process that the commission used to staff the formulation of the commission's position in lobbying and working on developing that legislation?

CHAIRMAN LAPOINTE: I can't because my commission history goes from '87 through '89 and '95 through the present, and so the Atlantic Coastal Act largely developed in that five-year period. My sense is that those people who were proponents said the Striped Bass Act worked because it made us follow the plans we developed; and if it worked for that – weakfish might have been the genesis for it, but then it broadened into other species.

Gordon, can you come forward; we're discussing in terms of the Atlantic Coastal Act how the commission staff or commissioners were involved in the formulation of the Atlantic Coastal Act and then supporting its passage and supporting its – I think its support within the states because I know the issue of overriding state sovereignty was an issue that was raised in a number of jurisdictions; probably including my own.

MR. COLVIN: Well, I think it is probably always dangerous to rely on one person's relatively aging memory banks to try to address something like that. What I can tell you and what I heard, Mr. Chairman, of your response before certainly was a significant part of the context. You had to look at everything that was going on.

I couldn't put years to it, but the sequence of events clearly spun out from what was going on with the management of striped bass. The commission at the time was putting an extraordinary amount of energy and resources into working towards a successful restoration of the striped bass fishery, and the commission members were very concerned with assuring that success, as it became evident that it was happening, that there would not be backsliding and that we would not see any reversals of what was happening with the stock in the fishery.

And, I might add that Congress also had a significant interest because there had been a very, very substantial federal investment in striped bass resources through the Emergency Striped Bass Act and the very large amount of funding and scientific support that led to the restoration, as well as – and so Congress basically had the same interest that we all had, and there came a time when there was a dialogue about what is the best way to assure that this will remain on track.

There was also, at that time, some other dialogue going on involving some other problems in the fisheries that led to some legislative proposals for fairly broad involvement of the federal government in fisheries management. I think the commission's view of the importance of working with the folks in Congress who had helped us with striped bass was something along the lines of a Striped Bass Act where we agree to implement what we have agreed should be implemented was acceptable; going beyond that would not be, and so it was accepted.

Some years later that model was in fact looked at as the basis of ACFCMA, along with the perception of a need for the investment of the federal partners with the commission in making the program work. So, we recognized all along that we were looking to our federal partners for financial and technical support as well as the regulatory side, if you will, of ACFCMA and its predecessors.

The internal dialogue in the commission was pretty open, as I recall, and I think actually our support for the ACFCMA-style legislation was openly debated

and decided by the commission at its 50th annual meeting in Baltimore. One of the things that was open to discussion at that time was that if a model of management along the lines of ACFCMA was to go forward, there ought to be some changes in how the commission does its own business and makes its own decisions, which led to the expansion of the involvement of the legislators and governors' appointees as full voting members of all of the species boards and this board.

I can frankly recall myself sitting at a dinner meeting with Larry Cantwell and Senator Johnson, where those views that they held were very pointedly expressed to me that if we're going to go ahead with something along these lines and support it, we need to assure that the involvement of the states in the decision-making is broader than one agency bureaucrat; it ought to be the full delegation. That was part of the dialogue that took place at the commission level.

So, you know, there was a lot of discussion, formal, informal, on the record, off the record, open and in committees about different approaches to doing things, but it all led to that very much on-the-record discussion to support an ACFCMA-style approach at the 50th annual meeting. I think striped bass really was the driver ultimately, Mr. Chairman.

CHAIRMAN LAPOINTE: Thank you, Gordon. Jaime.

DR. GEIGER: Having gone through some of those discussions, I believe the commission was actually involved in initial discussions and formulation of the initial ACMA legislation through discussions with the Sportfish Institute, which was in force at that time. Gil Redonski had Jack Dunnigan, he had members of the federal agencies, I believe he had some subsets of state directors engaged in actually crafting a draft proposed bill based upon the Emergency Striped Bass Act.

That emergency bill was then considered by Congress, modified by various means, and basically what came out was the first ACMC Act that represented full commission involvement. It was clearly based on the Emergency Striped Bass Act and fully supported by then Senator Chaffee as well as Gerry Studts, who were the two main drivers supporting most of the appropriations going to the federal agencies and support the Emergency Striped Bass Act. Thank you.

MR. CARPENTER: I don't disagree with anything that anybody has said yet, but my recollection – and I'm falling in the category with Gordon now – but my recollection is that it was weakfish that was the emphasis, and there was an attempt to have identical legislation to the Striped Bass Act enacted for just weakfish. When that weakfish discussion got started is when it very quickly got expanded to all species.

MR. COLE: It is amazing what we can remember when try to sometimes. Gordon described it correctly and A.C. expanded on it. I at that time, of course, was working in the office of Dr. Bill Hogarth who at that time sat where you are, had just started, and he had the opportunity – and what was driving it was weakfish, and it was the failure and the perception on the Hill and amongst all of us that sit around this table that the council process was not really the adequate one for a lot of these nearshore species.

So, Gordon's point is that the Striped Bass Act, with its preemption and all that sort of stuff, and the success that we were having with the striped bass led us to the bolder Act that we have today. That is what drove it. In fact, we discussed it and voted it. We wanted those same provisions on the rest of our plans, but there was an outcry at that time from a lot of sectors to get the commission more involved in the planning process because the council process was not meeting the needs, the perceived needs.

CHAIRMAN LAPOINTE: To get back to the subject at hand is not to argue, I think, although it is interesting and good, that the Atlantic Coastal Act has provided us a platform to move forward with fisheries management. It's when the Atlantic Coastal Act managed species clashes with the Magnuson Act species, which is the rub we get into.

In an effort to move forward, I will work with Vince on trying to get a group together along the line that is outlined in this recommendation – we will pull in other people if we need to – to keep the discussion going; because even if we have not been successful to date, we've got to try again and it is going to more acute; and as part of that, to grab that old documentation to see what was said and to provide fodder or a foundation for that conversation. Does that make sense? Good.

EXECUTIVE DIRECTOR O'SHEA: It just strikes me, Mr. Chairman, there were significant policy issues that needed to be addressed by the commission in moving forward with that, and what we're struggling with here this afternoon is what is the appropriate body to work that. Fine stuff was

brought to the Policy Board and debated; we're aware of that.

The question is did it start at dinners or was there a committee, you know, how do we work that through, and I think that is the issue we're wrestling with right now. We have important policy issues that are going to be with us for a while, and we need a mechanism to get a proposal to the board.

DR. RHODES: I just had a question. This document deals with differences in management between the councils and commissions. Are we also going to look at differences in stock and fisheries between the commission and NMFS or is that something different; specifically, like the sharks a year ago, I guess, where we set a limit and NMFS had a different one.

CHAIRMAN LAPOINTE: I think the goal is to get us out of those kinds of issues; because, you know, if there are different provisions in plans or different goals or different TACs being set, it sets up friction, wicked friction. It sets up an inconsistent message to the public, which allows some members of the public then to use one group or the other against the other.

It uses up an incredible amount of resources on the part of members of this commission, our staff members and members of the council. I think people say there has got to be a better way, and so I think that is one example, one near-term example that is one, unfortunately, of many and that's why we're bringing this back to the Policy Board.

DR. RHODES: To follow up, what I'm getting at is this deals with differences between the councils and the commissions. What if there is a difference in –

CHAIRMAN LAPOINTE: Oh, between us and the feds.

DR. RHODES: -- between us and the fisheries or national fisheries; is that going to be brought into it?

CHAIRMAN LAPOINTE: Yes, I think it will be.

DR. RHODES: Okay, I just wanted to make sure it was inclusive.

CHAIRMAN LAPOINTE: Yes, I misinterpreted your question, I apologize, but the same kind of friction comes up sometime, so that's good. Paul.

MR. DIODATI: Mr. Chairman, do you need a motion to formulate this panel or are you fine?

CHAIRMAN LAPOINTE: I think we're okay. Other business before the Policy Board? A.C.

MR. CARPENTER: Just a question; the schedule calls for the Policy Board to meet again on Thursday. Are there any non-compliant issues that are going to be heard and will we be having that session?

CHAIRMAN LAPOINTE: I was just going to mention there are no non-compliance votes. If you look at tomorrow's schedule, the Policy Board was scheduled from 4:00 to 4:30 and the Business Session from 4:30 to 4:45. First of all, no, we don't need a Policy Board meeting, and so we will move up the Business Session.

ADJOURN

The Business Session will be needed to approved, on behalf of the commission, the Coastal Shark Plan if that is approved at tomorrow morning's meeting. We will move up the schedule as much as we can. Other business before the Policy Board? Thanks to everybody for their attention and their discussion.

(Whereupon, the meeting was adjourned at 4:30 o'clock p.m., August 20, 2008.)