

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

**Crowne Plaza Hotel Old Town
Alexandria, Virginia
May 7 and 8, 2008**

Approved August 20, 2008

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INDEX OF MOTIONS

May 7, 2008

1. **Approval of Agenda by Consent** (Page 1).
2. **Approval of Proceedings of February, 2008 by Consent** (Page 1).
3. **Move to accept the recommendation for all three documents** (Page 14). Motion by Pat Augustine; second by Pat White. Motion carried (Page 15).
4. **Move to accept the schedule as presented by Melissa Paine** (Page 19). Motion by Pat Augustine; second by Dennis Damon. Motion carried (Page 19).
5. **Move that the ISFMP Policy Board recommend to the Commission that it approve the draft Memorandum of Understanding between the Atlantic States Marine Fisheries Commission and the Great Lakes Fisheries Commission** (Page 22). Committee Motion by A.C. Carpenter. Motion carried (Page 23).
6. **Move that the ISFMP Policy Board approve testing the use of conference calls in the annual FMP review process and more fully engaging inactive advisory panels in the commission's fisheries management programs** (Page 23). Committee motion by Rep. Abbott. Motion carried (Page 24).

May 8, 2008

7. **Move to take the motion that was tabled at the last meeting off the table** (Page 39). Motion by Douglas Grout; second by Robert Boyles. Motion carried (on Page 39).
8. **Adjournment by consent** (Page 46).

ATTENDANCE

Board Members

George Lapointe, ME (AA)	Leroy Young, PA, proxy for D. Austen
Pat White, ME (GA)	Frank Cozzo, PA, proxy for Rep. Schroeder (LA)
Sen. Dennis Damon, ME (LA)	Roy Miller, DE, proxy for P. Emory (AA)
Douglas Grout (AA)	Harley Spier, MD (AA)
Rep. Dennis Abbott, NH (LA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
Ritchie White, NH (GA)	Jack Travelstead, VA, proxy for S. Bowman (AA)
David Pierce, MA, proxy for P. Diodati (AA)	Jimmy Johnson, NC, proxy for Rep. Wainwright (LA)
William Adler, MA (GA)	John Frampton, SC (AA)
Vito Calomo, MA, proxy for Rep. Verga (LA)	Robert Boyles, Jr., SC (LA)
Mark Gibson, RI (AA)	Spud Woodward, GA, proxy for S. Shipman (AA)
Eric Smith, CT (AA)	John Duren, GA (GA)
James Gilmore, NY (AA)	William Sharp, FL, proxy for G. McRae (AA)
Pat Augustine, NY (GA)	April Price, FL (GA)
Brian Culhane, NY, proxy for Sen. Johnson (LA)	A.C. Carpenter, PRFC
Tom McCloy, NJ, proxy for D. Chanda (AA)	David Perkins, USFWS
Erling Berg, NJ (GA)	

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

Ex-Officio Members

Staff

Vince O'Shea	Jessie Thomas
Bob Beal	Emily Green
Nichola Meserve	

Guests

David Simpson, CT DEP	Terry Stockwell, ME DMR
Chris Moore, NOAA	Dick Brame, CCA
Wilson Laney, USFWS	Christopher Holmes, NMFS
Rich Robins, VA	

The ISFMP Policy Board of the Atlantic States Maine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, Wednesday afternoon, May 7, 2008, and was called to order at 1:45 o'clock p.m. by Chairman George D. LaPointe.

CALL TO ORDER

CHAIRMAN GEORGE D. LAPOINTE: We have a draft agenda for today and tomorrow. Because we are ahead of schedule, it's my intention to move up as many items as we can. If you look at tomorrow's agenda, the things that we can move up are potentially, if we get there, is Bob Beal is going to give an update on the Committee to Address State Alignment Issues; the Law Enforcement Committee Report; and the Fish Passage Workshop.

APPROVAL OF AGENDA

For today's agenda, I have had four items of other business. One is the American Eel MOU. One is Dennis Abbott is going to give a report on the AP Oversight Committee. David Pierce has an issue on herring, and David Perkins wants to give an update on the Fish and Wildlife Service Strategic Plan. Are there other changes to the agenda? Seeing none, is there opposition to its acceptance. The agenda is accepted.

APPROVAL OF PROCEEDINGS

We have in the binder or on your briefing CD the proceedings from the February 2008 ISFMP meeting. Is there a motion for its acceptance.

MR. PATTEN D. WHITE: So moved.

CHAIRMAN LAPOINTE: Moved by Pat; seconded by Ritch White. Are there changes that need to be made? Seeing none, is there any opposition to its acceptance? Seeing none, it is accepted.

PUBLIC COMMENT

The next item on our agenda is public comment. All of our agendas include a spot for public comment. This period of the agenda is for public comment on items that may not be on agenda because people will have a chance to comment on the agenda topics as they come along. Are there any members of the public who want to speak at this time? Seeing none,

we will go to the next agenda topic and is the Habitat Committee Report, which I think is going to be tagged teamed by Wilson and Jessie.

HABITAT COMMITTEE REPORT

DR. WILSON LANEY: Thank you, Mr. Chairman. The first thing I would like to do before I forget to do it is to thank you very much for your new Habitat Committee appointments. For those of you may not be familiar with who those are, we have added representation from the U.S. Environmental Protection Agency, the USGS, the Army Corps of Engineers. We already had one from Environmental Defense, but we've now added one from The Nature Conservancy as well as one from the National Ocean Service. The membership of the committee has been broadened and I think greatly strengthened by those additions, and I thank you for those appointments.

Okay, to the report of the Habitat Committee. The Habitat Committee met last month. There are several action items that you all need to undertake; the first one being updating the habitat sections of fishery management plans. You should have either now or shortly a handout – the first thing I need to do is explain to why we need to do these. One reason is obvious, and that is that as time progresses the information that's in the habitat section of the plans becomes dated, new research is one, lots of new information is forthcoming and we like to be able to incorporate that into the plans.

Another reason that we are bringing this to you at the present time is because currently we can only update a habitat section when an amendment is in process. The adaptive sections of most of the plans do not include a provision for updating the habitat section. If you look on your handout, at the table that's attached, Table 1 there, we have all of the ASMFC plans listed and they're all color coded.

The ones that are in blue are the diadromous species that are being updated basically through the Diadromous Species Habitat Baseline Source Document. The red ones are joint plans, and much of the habitat information in those plans can be taken from the council compliment to the commission plan, so the ones that we're basically talking about here are the ones in green, which are commission plans alone.

We have done some brainstorming on this. I was the chair of a workgroup that undertook to prepare that

table and then brainstormed some options for your consideration. Here are the first two; the first one being to complete habitat section updates case by case as amendments are prepared for each managed species. In other words, that's the status quo. As the amendment is prepared for something, we update the habitat section at the same time.

The second option, and this is the one that the Habitat Committee preferred, would be to amend the ISFMP Charter or create an overarching amendment to allow for any habitat section changes to be made via addendum for any species. That seemed to us to be the most efficient way to handle it.

The third option would be to prepare an omnibus habitat amendment to address habitat sections updates for all commissioned-managed species. Again, those are the ones in green on the table that you have in front of you there. The last option would be to request any given species management board to initiate a habitat amendment when a new habitat section for that species is created by the Habitat Committee. Those are the options, Mr. Chairman, and I would await some guidance from the board as to which one of those they would prefer us to implement.

CHAIRMAN LAPOINTE: Thank you, Wilson. I have a question. Under Option 2, it talks about creating an overarching amendment and Option 3 talks about an omnibus habitat amendment. How do those differ?

DR. LANEY: My understanding per our discussions, if the Habitat Committee – and Jessie can feel free to weigh in with elaboration also to the extent that my memory cells don't have full recall. What we were thinking of there is that we would just somehow amend the charter to provide for habitat sections being included in the adaptive portion of plans, so it would be just a one-time amendment to the charter. The difference would be that number three would be preparing a comprehensive amendment that would address the habitat sections of all those other species, and I'll let Jessie elaborate on that.

MS. JESSIE THOMAS: Option Number 2, we would essentially amend the charter, but another option we came up with was to create an amendment that would allow us to create addendum like an overarching amendment. The Option Number 3 is an omnibus amendment where habitat sections for all those missing species, the complete sections would need to be developed and all put into one amendment, and that would be the omnibus

amendment. So that's number three is a very large undertaking. Number two is just an amendment to say we can do addenda. It's an option to amending the Charter. It was sort of another approach, possibly.

CHAIRMAN LAPOINTE: But given language in the Charter, we'd have to amend it, anyway, so it strikes me that there is some redundancy there. You can write all the amendments you want, but it's not going to amend the Charter; and if you need to amend the Charter to allow for adaptive management or addenda to be used to write habitat amendments, you still have to amend the Charter.

DR. LANEY: Well, yes, but the distinction I think, George, is number two just entails amending the Charter in and of itself. What we were envisioning is if the Charter doesn't presently allow us to create a new habitat section through addendum, so we were thinking you could just insert some language in the Charter which would require an amendment to the Charter itself.

Whereas, number three, as Jessie said, would just be preparing new habitat sections for those twelve species in green and then you'd have a huge document there that could then be passed as a single document but would be basically amending those twelve plans, similar to what the South Atlantic Council did with their habitat plan, Robert, is where they did it in one big omnibus amendment.

CHAIRMAN LAPOINTE: Thank you. Other board members, I'll quit dominating the microphone. Other questions or comments? A.C. Carpenter.

MR. A.C. CARPENTER: If I understand this correctly, if you go the omnibus route, or Option 3, there would be a habitat amendment to amend what or is it a habitat plan that lists the habitat requirements for all of the species, and then the management plan simply refers to the habitat plan instead of repeating the language, is that correct, and then you can update the habitat plan from time to time?

DR. LANEY: That's one way to look at it, A.C. Basically, what it would do is just provide new habitat sections for those twelve species in green that would supplant or replace the existing habitat sections of those plans. You could look at it as kind of -- what we call it in Option 3, we called it an omnibus habitat amendment, so it would just take the place of those habitat plans. The difference between this and number one is – you know, number one, we

just do them as they come up for amendment, which may or may not happen any time soon because most of the existing plans now have adaptive management provisions in them that allow you to change other management provisions through addenda.

Habitat, unfortunately, we didn't have the foresight to include that in that canned language that we used for the adaptive provisions in the FMPs, so we don't have that option right now, which is what is spoken to by Option 2, which change the Charter. Again, I'll defer to Bob and Vince as to whether we could easily do that or. We weren't sure that we could it, but it seemed like it would be the easiest thing to do, if in fact we could do that. Bob or Vince may want to speak to that.

CHAIRMAN LAPOINTE: I've got Ritch White and then Robert Boyles, and then Bob and I have a suggestion, I think.

MR. G. RITCHIE WHITE: Thank you, Mr. Chairman. It seems like that changing the Charter is a much simpler way to go if it's possible to do and it's not complicated.

MR. ROBERT H. BOYLES, JR.: Thank you, Mr. Chairman. I'm just curious about how often we crack open the Charter. I'd look to staff to give us a sense of that. It just gets me a little on edge about doing that. If we do it for this one – I understand the Habitat Committee's interest and certainly do think that may have some real potential, but I curious as to how often do we go about doing this and messing with the Charter.

MR. ROBERT E. BEAL: Thank you, Mr. Chairman. The Policy Board has adjusted the Charter probably on average every two years or so. I think the last time we did it was when we incorporated the language on the two-thirds voting provisions of amending and rescinding previous actions. I mean, there is not a scheduled change but it does happen from time to time.

CHAIRMAN LAPOINTE: Bob and I, last year, looked at the Charter and went through it to see if we needed to make changes. At that time the decision was that it didn't need changes. It strikes me that if you go with Option 2 – and I still don't understand and I don't think I want to – this is my personal view – go the route of whatever this overarching amendment, so I would cross that out, and it would allow habitat sections to be changed by addendum, also by amendment if the timing was right, either way.

To make the Charter change, Bob said he could come forward with proposed language changes for the Charter for our August meeting to affect that change. We might want to look in a parallel track because of your comment about opening the Charter to see if there are other actions that now require amendments – we may want to look at doing addenda, but that's just a thought at this point.

DR. LANEY: And that's a good thought, Mr. Chairman. We talked about that as well at the Habitat Committee meeting thinking that maybe you could package things together.

CHAIRMAN LAPOINTE: Board members, your preference. Option 2 was their preferred option. It strikes me as that would be a good way to go ahead and Bob and staff will come back with proposed changes to the Charter at the August meeting. Do we have concurrence on that? Robert.

MR. BOYLES: Do you need a motion?

CHAIRMAN LAPOINTE: I think we've got general consensus so we'll move ahead. Pat Augustine.

MR. PATRICK AUGUSTINE: On Number 3, Mr. Chairman, jointly managed by the councils, they might want to check with the Mid-Atlantic Council to see how far they've gone ahead with developing that section for our joint plans. I think there may be some activity already going on there.

CHAIRMAN LAPOINTE: There is but by our action of promoting Option 2, Option 3 is moot.

MR. AUGUSTINE: That will automatically do that?

CHAIRMAN LAPOINTE: They will do what they will but that's not what we're choosing as an option so we're okay. Other discussion on this particular item for the Habitat Committee? Wilson, I think you have something else.

DR. LANEY: Yes, sir, thank you. A second action item for your consideration is the Habitat Program Operational Procedures Manual is in front of you. I believe you should have a copy of that. We revised the document. Well, we created the document to break out the strategic elements from the operational elements in the old Habitat Program Strategic Plan, and we also wanted to gather all the various procedural documents into one place and update them.

The one thing I think that we need your input and action upon is the project and permit protocol. We've talked a little bit about some of these other things. I think most of you are aware of what the roles of the habitat coordinator and the committee and the committee chair and vice-chair are and the membership. This is all addressed in the document along with program documentation, including the use of the Habitat Program Strategic Plan and the ASMFC Annual Action Plan.

All of those have habitat elements to them. Then we just got through talking about the habitat sections of the FMPs and what those contain. We also have habitat source documents. We're working on a major one right now which will be completed this summer. The big thing that we need your decision on is the project permit comment protocol. I'll just briefly walk you through it here. It's up on the screen.

Many of you have expressed a desire to see the Habitat Committee more involved in individual projects in your jurisdictions, especially when they rise to the level of significance for ASMFC-managed species in terms of their potential threat to ASMFC species habitat. So, the commission staff or the habitat committee or commissioners would identify a proposed project or permit that rises to that level.

Commissioners from the states that would be directly affected by the project or permit are notified that the commission is examining a particular project or permit and implementing the review process. Those could be projects either within your jurisdiction or within an adjacent jurisdiction that would affect the habitat within your jurisdiction. Then there is a series of questions that we go through regarding whether the project meets all of the following criteria, and they're there in front of you.

The project could have significant impacts. Staff believed that the commission involvement has the potential to make an impact on the process. The project has interjurisdictional implications, and commission staff can adequately research and address the proposed project in a reasonable timeframe within the existing budget. That's a very key provision. I think everyone around this table has expressed the sentiment at one time or another in the past that commission staff have a very full plate and do not have time to initiate the preparation for documents that are reviewing these sorts of projects in and or themselves.

They rely heavily upon the work that's already been done by the staff of your agencies or by the federal

agencies in putting those comments together. So if the answer to all those four questions is yes, we move to the next frame. The project or permit goes to the Habitat Committee and they will decide if the informational letter is adequate or if a recommended course of action letter should be requested.

The difference between those is one of them basically just provides information. The other one actually recommends a course of action or possibly takes a position on an issue or a project. The commission and/or habitat committee – and, again, these are the criteria – the commission and/or habitat committee has pertinent information regarding adverse impacts of a project on a commission species or habitat. The applicant should be made aware of potential adverse impacts or the project. The habitat committee decides by consensus that the issue is significant to warrant an informational letter.

A recommended course of action letter, in contrast, should be requested when the habitat committee decides, by consensus, that the issue is so important with adverse impacts, especially cumulative impacts and coast-wide implications, that it requires more action than an informational letter. If that is the case, then we move to the next frame whereby the habitat committee would send either one of these – or send a letter or a representative to the Policy Board requesting that the commission comment on the projected permit.

The letter or representative should give reasons that more than an informational letter is justified in a given case, so the Policy Board would have the call on whether or not we send a letter recommending a course of action or we don't. The board would deliberate and make a decision based on a vote that requires a simple majority of present voting members in favor to pass. I mean, if it passes, then we send a letter recommending a course of action as opposed to one that just provides information.

Once the letter is prepared, then the commission chair and anyone else, including other commission technical committees, could have the opportunity to review the letter and request changes. After those changes are incorporated, the letter should be sent to the responsible permitting agency. The whole process should be completed in a timely fashion according to the temporal restrictions set by the given comment period.

Now, a lot of you are going to ask, I think, well, how can you get that done since a lot of the permit deadlines are fairly short? I think the answer to that

question would be if there one that rises to the level of significance that we feel like a recommended course of action letter is required as opposed to just an information letter, it would obviously have to be done electronically in those cases where you're talking about issuance of a public notice.

For a lot of these projects, we're going to be involved or we envision involvement at the scoping stage where an environmental impact statement is being prepared. Those timeframes are usually a lot longer and we have a whole lot longer time, so we could walk through the process during the course of several meetings, we envision.

There are a few other items. Insofar as commenting on other non-ASMFC documents, the Policy Board or the ASMFC Chair could charge the habitat committee with commenting on the document or the habitat committee could request the Policy Board to allow them to comment on a document. I think, Mr. Chairman, in addition to the provision that we have a habitat program annual effectiveness review, the question to all of you is to whether or not you approve the revised project permit comment protocol. Then subsequent to that would be whether you approve the Habitat Program Operational Procedures Manual.

CHAIRMAN LAPOINTE: Thank you, Wilson. Questions for Wilson? Doug.

MR. DOUGLAS GROUT: Wilson, it says "revise the project protocol." What is the current protocol?

DR. LANEY: I may ask for assistance from Jessie and Bob here, but currently the process is similar; the difference being that once we get a request in, it goes to the commissioners first, and if there is any objection on it whatsoever, the process stops. Bob, is that essentially the way it works, except for informational letters? I guess we can still do informational letters.

CHAIRMAN LAPOINTE: It would go to the commissioner in the affected state or jurisdiction.

DR. LANEY: Correct.

MR. WILLIAM A. ADLER: Thank you, Mr. Chairman. I support this format of putting the process in for a number of reasons. One of the problems that I see is frequently there are projects that are taking place that go after or could hurt our habitat for species that we manage. From out there what frequently happens is when these projects come

up, everybody sort of says, "Well, the ASMFC handles the fishing management things, but where are they when this thing that could damage the habitat comes into focus and the ASMFC is nowhere to be found."

I think this could go a long way to show everyone out there that we're not just concerned with the fishing part of the resource and the habitat, but also other projects that can hurt the resource. In a way it's the ASMFC coming to the aid of the fishing people, too, because they're going yes, we agree with you that this habitat destruction by a project or something is important; and since we deal with the resources, I think that we have to try to deal, as best we can, try to deal with the other non-fishing things that go on that can ruin the habitat.

Now, I remember in the strategic plan this morning there were a number of places where we gave at least ink service to looking after habitat from destruction and stuff like that. Then I noticed in the Habitat Program Operations Manual, on pages like 14, 15, 17, 18 and 22, they talk about doing things like this. My notes in the margin there were like, yes, and so what you going to do about it? I think this a good way.

I'll give you a couple of for instances. The mosquito spraying in Long Island Sound and elsewhere is not good for the water quality, and it has damaged the resource. I think it is important that the Atlantic States weigh in to whoever on the aspects of that danger. There are projects, for instance, in my state that can hurt the habitat and therefore the resource, many of which we manage, and it would be nice to have the ASMFC come in with – whether it be an informational letter or the more serious one – to come in and put their two cents in that this is not good.

I think that this is a step in the right direction to putting the ASMFC somewhere in the game plan, and I would support that type of thing because that shows we're interested in things other than just doing fishermen all the time.

MR. JAMES GILMORE: Thank you, Mr. Chairman. Wilson, the question I was relating to – well, first off, I think the assistance on some of the project review and assistance for the states I think is a wonderful thing. I mean, we've needed it on quite a few projects lately.

But the question I have is was there consideration given to the fact that if you play this out that if the commission comes down with a formal opposition to

a project and essentially you look at something like recent projects – we’ve have had LNG facilities in the Sound – and essentially we all get dragged into court and essentially commission staff gets subpoenaed and there are legal things, that is going to be an effort and an amount of resources. Has that been considered if we play this whole thing out?

DR. LANEY: We didn’t discuss that a great deal, Jim. I think the sense of the committee – and, I would encourage Jessie to speak up if she feels I’m misspeaking here – is that those occasions when we would recommend to the Policy Board that the commission actively oppose a project are probably going to be about as rare as hen’s teeth. I don’t anticipate that happening very often.

I think what instead you would see – notice the language says “a recommended course of action letter” there – I think we would be more than likely recommending measures that would – you know, using the mitigation policy language of the Fish and Wildlife Service – avoid or minimize the potentially adverse impacts of a project.

Now, I can foresee those cases where a project might rise to the level that the commission would feel that it should be actively opposed. One such example might be a proposed Corps of Engineers sand mining off the coast of North Carolina and Virginia, in the middle of the striped bass wintering grounds. You know, we don’t have necessarily a habitat smoking guy there, but there are certainly other sources of sand that could be alternatives to that.

Even in that case you wouldn’t have to necessarily oppose a beach nourishment project, per se, you could just recommend another source of sand. So there are ways I think to avoid the potential litigation complications that outright opposition to a project would entail. But, again, the habitat committee did not discuss that at any great length at all.

MR. SPUD WOODWARD: Thank you, Mr. Chairman. Wilson partially answered question, but is there anything out there right now pending or is there anything that we know won’t happen anytime soon that would rise to the level of us wanting to issue a letter of a recommended course of action? I mean, are there any examples of things that would be of that severity?

DR. LANEY: Well, how about benefit as opposed to severity? As far as I’m concerned this could go either way. I can think of one right now that the commission may want to endorse, which is a

proposed change in operations on the flow regime at Carr Reservoir, which is the dam that basically controls the flows coming down the Roanoke River. The Nature Conservancy has been working real closely there with Dominion Generation and the Wilmington District U.S. Army Corps of Engineers.

We happen to have a colonel who is very ecologically savvy and supports the concept of ecological flows. They are proposing – it’s out for public hearings right now – that they be allowed to increase the discharge cap on the Roanoke River, which right now is held at 20,000 CFS, up to 35,000 CFS, which is going to have some adverse impacts to the extent that some areas will be flooded that aren’t flooded now at a 20,000 CFS release; the difference being that the whole flood duration will be a whole lot shorter and we’ll be able to avoid the long-time growing season floods that are adversely impacting that habitat and that sometimes results in striped bass and American shad eggs being swept out into the flood plain and taken out of the system.

So there’s a case where I would advocate that the commission send a letter to the Wilmington District Corps of Engineers and say we support that change. Right off the top of my head I can’t think of one right now that would rise to the level where the commission would want to weigh in against a project. Some of the other commissioners may know of one.

MR. WOODWARD: Well, this is sort of building on what we learned at the Fish Passage Workshop. Say you had a major river that was blocked by a dam that was coming up for FERC relicensing and they currently didn’t have any fish passage, would that be an example of something that we would want to get involved with a strong recommended course of action so that the FERC relicensing be conditioned on construction of fish passage?

DR. LANEY: Yes. You know, your individual agencies sitting around this table have already done that, you know, been involved with the two services. If you recall, the commission itself, not too long ago, sent a letter to all of the state fish chiefs and all of the divisions of water resource chiefs along the whole eastern seaboard encouraging the state agencies to work closely with the federal agencies in FERC relicensing.

But, I’ll point out, you know, there are a whole lot of dams out there that aren’t FERC relicensed that constitute blockages that don’t have fish passage either, as we discussed at the Fish Passage Workshop. So, there are cases where the commission

would want to probably weigh in on structures like that where the FERC relicensing process is not involved.

CHAIRMAN LAPOINTE: Wilson, your answer “yes” was a good one, so remember godliness, cleanliness, brevity. It strikes me that both of those instances are probably cases where our current policy would work because you’d go to the state director and they’d say they were engaged anyway, so we wouldn’t need a change in policy necessarily for that. Robert Boyles.

MR. BOYLES: Thank you, Mr. Chairman. I’d like to echo Bill’s comments. We all know how important habitat is, and that’s the frontier, I think, for fisheries management for what we’re going to be dealing with in the future. You know, we’ve reached the bottom of our tool bag in many regards, so I really applaud the work of the habitat committee; however, the practical side of this concerns me somewhat as a departure from our current policy.

In some cases – well, let me just give you an example from South Carolina. We are locked in a debate and a discussion between the legislature and the governor’s office over offshore energy development. I happen to be a legislative appointee and am somewhat sensitive to the legislature’s concerns. My colleague, Dr. Rhodes, is a governor’s appointee who takes a different view of offshore energy development.

So, just in that one case study we have a very, very difficult issue to deal with; that if we’re talking about offshore energy development, clearly some implications for fish, clearly some implications for fish that are under this jurisdiction, and I just don’t know that I’m really comfortable with the proposed changes.

Quite honestly, I like having the opportunity to weigh in on this prior to the habitat committee’s going off in a very well-intentioned effort to protect habitat and protect fish. I think we’re going to find ourselves in a very, very awkward situation very, very quickly, and so, Wilson, with no disrespect to you or the members of the committee, I don’t like the proposed changes, and I would speak against them. Thank you.

CHAIRMAN LAPOINTE: I’m next on the list. I have a couple of comments. I share the concerns about – if you look at the proposed course of change or changes to this, it brings those issues before this Policy Board. If we think about the non-native oyster

issue and the amount of Policy Board time that’s been taken up ping ponging back and forth, that’s what I could envision happening here.

And if there is a proposal for an LNG project in Maine or something else, that in fact it could take a lot our time up, and I think that’s a concern for us. The other thing I think about – and this kind of a response to Bill Adler’s comment – we have a tendency to think we’re going to use this working on habitat issues that we want to engage in, whether it be an LNG project or spraying mosquito spray, notwithstanding the public health issues that came up, but what if we get pushed to discuss the impacts of mobile-tending bottom gear on fish habitat?

We can say it will never make it past the habitat committee and we can say it will never make it to the Policy Board, but look at the pressure that was borne on us by the empty rivers and the herring issue that has been pushed on us and will be pushed on us. So I think it just gives me concern about the change as well. A.C. Carpenter.

MR. CARPENTER: I was going to ask for a case study or what was wrong with the policy that we currently have and are there some examples of what the habitat committee feels we didn’t get what we thought we would?

DR. LANEY: Well, I’ll try and be responsive to that, A.C., and also address Robert’s concern for a moment. Off the top of my head, I can’t give you any examples. I think of cases where we haven’t responded. I think that what the habitat committee was seeking to do with this proposed procedure was to address several things that have been highly frustrating to the habitat committee in the past in those cases where we haven’t been able to generate comments that we felt were appropriate because of the provision that any single one member of a jurisdictional delegation can basically veto the commission commenting on anything.

Robert just articulated the fact that if we were to propose to comment on an offshore energy development of some sort off South Carolina, it’s likely that because of differences of opinion within that delegation, under the present process just one person, Robert or John or Malcolm, could veto any comments going out, so your habitat committee is sitting there with all the expertise that your chairman has assembled, including all this new representation from all these agencies that have a tremendous amount of expertise with regard to the impacts of such projects on habitat, and we wouldn’t be able to

do anything. That's very frustrating to your committee.

Under the new protocol that we have proposed, any instrument, any proposal would still have to come to the Policy Board for approval. I guess one additional difference is that instead of the decision of whether or not to send a comment forward being retained by a single jurisdiction everybody gets to weigh in on it.

I think that the times that would happen are going to be few and far between because I can't of that many cases where habitats that are used by, say, a majority of the brood stock – the one example I gave you is one; whereas, you have most of the striped bass brood stock wintering off of North Carolina and Virginia now. It would have to be a big project proposed in an area that's used by a large percentage of the stock, I think, for it to rise to the level where the habitat committee would recommend to you that we would send one of those letters actually making recommendations on a project. I don't know whether that speaks directly to your question or not; I hope so.

MR. CARPENTER: Well, it sounds to me like it wasn't broke, and the call for fixing it is because we've expanded the habitat committee, but all of the new members would be commenting in their own right from their own agency standpoint on anything of this nature whether it comes through ASMFC or not. I'm not sure where we have gained anything here.

DR. LANEY: Well, to that point, A.C., I think from my perspective as the vice-chair, and I think a lot of my habitat committee colleagues would agree with me, we think it is broken because of the fact that there is a de facto veto there. We would like to see that impediment removed and at least have a full and thorough debate at the Policy Board level in those few cases where we think it's appropriate to send a letter other than an information letter. That's why we came up with the new proposed process. Otherwise, we wouldn't have wasted our time, I think.

MR. ERIC SMITH: Thank you, Mr. Chairman. This is one of those lively discussions. The more I listen to it, the more I'm convinced Robert Boyles is correct. In principle I can't argue with what the habitat committee is saying. It makes perfectly good sense until I start to hear some of the examples, and Bill Adler has obviously triggered my attention.

It is not a fact that pesticide application in Long Island Sound is killing lobsters and therefore that would be an ideal one for this commission to weigh

in on. In fact the scientific community has said that's not a likely factor. There are scientists here and there, as there are on global warming, that still feel that's not an issue, but the majority of the scientific community feels it is.

There are some lobstermen who feel that's a problem. I would have a terrible time with my agency because the professionals in pesticide management feel that it's not an issue after they have looked it. So, when you get into the examples – and Robert had a good one. Lobster is another one – it becomes in the eye of the beholder, and that's the difficulty I have with it, because something could evolve a far way down the road before the Policy Board got it, and all of a sudden you've got a hot potato because we weighed in late rather than early.

So I'm very troubled because there is no clear signal. There is just a conceptual idea that is a good idea, but in practice I think we would create problems for ourselves and here is why; the words "de facto veto". The fact is it's one thing – because of the original charge of the commission sixty-some years ago and more recently the Atlantic Coastal Act, we have a strong role in fisheries management, and we do vote to call one of our member states out of compliance if we think their fishery management strategy does not comport with the plan that collectively we voted for.

It's another to go off into the habitat environment and do the same thing to bubble up from the habitat committee's concern to the Policy Board saying that we're going to outvote South Carolina on a matter of offshore energy production where there may even be a different of opinion between the governor's and the legislature; yet this commission is going to weigh in on that measure.

I think we'd find our governors pretty quickly putting a lasso on us and saying, "Guys, fisheries management". So I think we need to be very careful of it. I think we need to proceed in the general direction the habitat committee would like us to go, but the implications of the policy that they are recommending I'm not comfortable with. Thank you.

SENATOR DENNIS DAMON: Thank you, Mr. Chairman. I'm somewhat conflicted by all of this in that we have been talking about earlier today and other times that I've been here at the commission the importance of habitat and its function on our resource, our fisheries. I believe in that a lot and support that and support the habitat committee.

Then I'm thinking of the very things that Eric has talked about and some of the others have brought up, Bob Boyles, in terms of, well, until it's in my backyard. I'm thinking of in Maine, and perhaps, Mr. Chairman, you can help me with some of these questions, recognizing your position in that state.

Dredging and depositing of the spoils and what those contaminated spoils, which are often contaminated if they're dredged out of harbors, present-day harbors, and then deposited into areas where there are very important nursery grounds and growing areas for things like lobsters. Aquaculture lease sitings, presently your department and the legislature have some say into where those are going to be sited; yet there is some environmental concern with them especially with regards to finfish aquaculture sitings.

Port development; we are on the cusp perhaps of having a new or expanded port in Maine and that can have an impact on some of the environments in the surrounding areas. And, finally, energy development – and I'm not talking so much as offshore development as I am tidal energy development – that's an area which we're explored in Maine – and what impact will that have on our fisheries in those environments where those are located.

So, I guess my question and confusion is all in one. What part will ASMFC and the habitat committee and this document play in any of those issues that I have just cited? Is it going to have intervenor status? Is it going to be necessary to get through not only the Army Corps of Engineers and the legislature and the public and everybody else involved, but now ASMFC? I guess that's kind of what my question is. Thank you, Mr. Chairman.

MR. R. WHITE: Thank you, Mr. Chairman. Again, following the good senator's ideas, this morning we spent a lot of time, I felt, on talking about habitat, and I think this is kind of where the rubber meets the road. I think it's time that we do kind of go forward. I've heard a lot of concern about things that might not go right, but I think that I have a lot confidence in the habitat committee. I have a lot of confidence in the people sitting around this table.

I think they're not going to bring issues to us that don't make sense, and then in turn we're not going to make the decision to write the letter if it doesn't make sense. I think just knowing the two bodies I think that it would be positive and I support the changes.

CHAIRMAN LAPOINTE: I'm going to the Chair's prerogative and jump in before Vince. It strikes me A.C.'s comment about when you think this might be used is a good comment, but more importantly under the current system we've talked about the habitat committee and the commission commenting on a lot of projects.

I would like to know, as the commissioner in Maine and as the chair of the commission, how many times have you used the current system to comment? I can't think of a time when you've asked the state of Maine to come in and comment on a project, Wilson. I may be mistaken. I think it would give good – I don't want to get into an argument here. My request to the habitat committee is to give us a history of the projects you have commented on because I think that would be important to give us some context.

I agree we do need to get engaged more than we have, and I think that our current process would allow us to do that. You know, there are plenty of projects in Maine, you know, the hydro projects, it would be great to have an ASMFC letter, and I wouldn't stop you. I don't think that's been done, and so I think that would be useful for the commissioners to see that kind of history to help judge what we are and we aren't doing. Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thanks, Mr. Chairman, two quick observations. One is I'm glad to hear that this is a discussion about a letter coming from the commission in that it's not a commission committee, whether it's the habitat committee or shellfish transport committee that's writing letters, and it's a letter that comes from the commission, which has some weight and gravity to it.

The second is it strikes me that the current system is very respectful of the right of the state to manage the issues that are within its jurisdiction. In the case where all three commissioners aren't on board with protecting habitat within that state, the current system allows the habitat committee and the commission to get involved in that. What this is really about is overriding a state, and I think that's a very important matter and a slippery slope for this board to consider.

MR. ROY MILLER: Thank you, Mr. Chairman. I'll use a semi-hypothetical, semi-real example. There is a matter currently before the Delaware Legislature, a proposal called "Blue Water Wind". It's an offshore wind farm project. If it's permitted, I think it would be the first of its nature on the east coast, so it is precedent-setting. What if the Delaware Department of Natural Resources and the three commissioners

from Delaware requested ASFMC comments on this particular project?

In other words, what if the department and the commissioners were in favor of this project and felt it needed support in the Delaware Legislature to get through and requested that permission from the commission; could the commission take that matter up or something similar to this? In other words, if the impetus for the commission to act comes the state itself; does that give the commission the green light it needs to feel comfortable commenting on a particular project?

CHAIRMAN LAPOINTE: And my thought would be, yes, the habitat committee could take it up and then work it through the system because they would have the three commissioners involved. Jack Travelstead and then Jim Gilmore and then I'm going to try to wrap it up.

MR. JACK TRAVELSTEAD: Well, I had the same question, George, that you did about previous history, you know, how much have we used the previous policy and how that might change. But beyond that I want to say I agree with the senator's comments and Ritchie's comments earlier.

It seems like we like to talk about habitat as something we really need to pay a lot of attention to, but we never want to take that really hard step to do something about it. To me this is an opportunity to take that step and get something done, so I think in general, unless history shows that the current policy is working just fine, I think we need to move this along at some point and endorse it.

MR. JAMES GILMORE: Just three points. First off, I have an easier project if we want to consider that because right now we're trying to reinvigorate our artificial reef program and our regulatory people told us that is probably inconsistent with ASFMC. I figured that would be an easy one to send in and maybe get a positive referral on. We're going to do that anyway, so I'll just put that on for yucks.

Secondly, Vince, I think your point about maybe getting involved with the state's jurisdiction or whatever, my vision of this was more of a consultation. Most of the projects I'm talking about is if we got just a consultation saying we agree with the state, it would still leave the decisions up to them but give them a little bit more strength if they're going into some legal proceedings.

And, lastly, I have to disagree with Eric. I think if we agreed with what we talked about this morning, habitat is part of fisheries management, and it's going to be something we're going to have to do into the future. It's the first thing I worked on when I started working for the state, and definitely we've got to start putting our money where our mouths are if we're going to effectively management stuff in the future.

MR. LEROY YOUNG: There are other ways to support the state's efforts to protect habitat than writing letters from an interstate body like this. I was a member of an organization called The In-Stream Flow Council for quite a few years, and out of the membership of all fifty states, that was about 45 of states; the in-stream flow biologists from those states. And through that organization there have been products developed, books, you know, literature, items like that, there have been workshops that have been very helpful in Pennsylvania, for example, or other states in supporting their own habitat projects, to get the weight of additional state biologists and experts behind what you're trying to do, as well as keep informed about what is going on in the other states.

I think that's a function that the habitat committee certainly could serve in without – because we've had this same discussion in that in-stream flow council about how does this body write any kind of letter when the battles are really within the states on most of these issues. We've pretty much come down on it just doesn't work very well to write these letters and so forth.

I just throw it out for consideration because I think there are a lot of good things that could be done through the habitat committee to support habitat protection in a collaborative fashion that wouldn't necessitate letters that cause a lot of conflict.

CHAIRMAN LAPOINTE: I think Jessie wanted to respond to my question about the history of what has been commented on or not.

MS. THOMAS: I just wanted to note that unfortunately Bill Goldsborough is one of the commissioners not here at the table today. He's actually the person that originally championed the need for revising this protocol and is one of the people who really knows the history behind it. Unfortunately, he is not here.

I don't have any specific examples beyond one that Wilson actually had brought to the commission last year. The issue wasn't actually that one of the

commissioners vetoed; it's just that they wouldn't respond to our request to find out whether they would allow us to comment or not. That's sort of another issue with this, I guess.

But ultimately what has happened over the past few years is that the habitat committee has essentially decided that they're sort of defeated before they start because unfortunately if they want to bring an issue or one of these letters forward, they have to have a lot of information to justify why we should comment on it before the commissioners from the state will allow that comment.

If they know that one of the commissioners – first of all, if they know that one of the commissioners is going to say no, they're not even going to ask for it. Also, if they think that there might even be a possibility, there is a good chance they just won't take the time or waste the time essentially to put that information together just to have it vetoed.

They feel like this type of letter would make a big difference, especially if, for example, a state is commenting on a project but they feel that the commission, the weight of the commission, a letter from the whole commission would really sort of give a boost to their comments that they have submitted on a particular project and they think that it would really make a difference, a number of the habitat committee members feel like a letter coming from the whole commission would make a big difference for some of these habitat projects and permits. Thank you.

REPRESENTATIVE DENNIS ABBOTT: I thank the chair for indulging me after he said he was going to close the discussion. One of the concerns that I have is I can understand states having objections to the Atlantic States weighing in on a project, but as we manage a shared resource, as we look at the issue of beach nourishment, or whatever, sand mining off the coast of Virginia or North Carolina, that affects everybody and I think the greater good is possibly weighing in.

And as all the habitat issues rise now – I mean, we can't point to a history because we didn't have a lot of things going on in habitat. We're entering a new generation of management and habitat has to be considered more, so I go along with what Wilson is trying to propose. I don't think there is a lot of harm in moving forward. The harm might be in not moving forward and possibly continuing as we are. I just think it would be a good idea to give it a chance. I don't think we would abuse.

CHAIRMAN LAPOINTE: I don't get a clear – well, actually I get a clear direction that most people are pretty reluctant about this. My suggestion would be that we table – well, we either leave the habitat operations manual as is or we table it until August, and probably I would favor the former, and that would be to table it.

I'm still struck by the idea that, you know, the fear of what we nasty old commissioners are going to do has held the habitat committee in abeyance doesn't wash with me. There are plenty of projects I know in our state where I'd say, "Come on down", and so I think we do need to get engaged in habitat. I think we can do it with the current policy now, and we should ask our states and we should challenge the habitat committee to bring us a bucket load of projects.

You know, the hydro projects in Maine; would I love another letter going to FERC; you bet I would. Dredging projects I wouldn't mind it either. It strikes me that we've not taken advantage collectively of the opportunities that are there and we don't need a change in policy for that, so that would be my suggestion at this point. We can have the habitat committee do some work and discuss it again in August. Does that make sense? I see many heads shaking yes. I sense it's some consensus, so that's good. Wilson, do you have other issues?

DR. LANEY: Yes, Mr. Chairman, I will complete the report of the habitat committee here just very briefly. I'll give you a few updates on some other items. The Diadromous Source Document is nearly complete. We plan to publish that in the summer of 2008. We have a new Atlantic States Marine Fisheries Committee Member Descriptions' Document that Jessie very graciously put together.

It gives you the profile of all of the new members' contact information, relevant committees on which they served, job descriptions and hot topics in which they're interested. Those are available and if you'll just send an e-mail to Jessie, I'm sure she can provide you with a copy of that.

We continue to work the Alternative Energy Source Document outline. We've been working on that document with the Management and Science Committee, trying to decide the scope of that document; and then once we have an outline finalized, we'll begin work on that. We also, under the leadership of Chris Powell from Rhode Island, are trying to conduct an effectiveness review to evaluate the use and success of the ASFMC Habitat Program documents that we've produced. We've generated a

bunch of these things that are there. We have no clue at the moment how much they're being used. We want to try and find that out with a view toward improving that dimension of our program.

We also will be requesting input from all of you on the Policy Board on your impressions of the habitat program and its effectiveness. We'll be putting together a survey instrument to that end and providing that to all the commissioners for completion at some future date. I believe, Mr. Chairman, that completes my report.

CHAIRMAN LAPOINTE: Thank you, Wilson. Ritch.

MR. R. WHITE: Thank you, Mr. Chairman, just a clarification on the last issue. You said that will be delayed until August, so we'll have another shot at that at the August meeting?

CHAIRMAN LAPOINTE: That would be my thought, and I will work with Jessie and staff just to satisfy my perception, perhaps, that there are things that could have been done that haven't been. And, again, I may be wrong, but I think the two will help us move forward. Jessie, Atlantic Coast Habitat Partnership.

ATLANTIC COASTAL FISH HABITAT PARTNERSHIP

MS. THOMAS: First, it's my pleasure to introduce to you all our new full-time Atlantic Coastal Fish Habitat Partnership Coordinator Emily Green. (Applause) She will be taking over my responsibilities as far as coordinating the Atlantic Coastal Fish Habitat Partnership, and so we're working on transferring all of that information and knowledge that's built up in my little head to her.

She will move that forward and I'll continue to be involved in other ways, but she will be the primary contact for the partnership after this meeting. We also have a new logo. It's up on the screen. We're very excited and happy about that; so if you ever need copies of it, please let me know if you want to distribute it. Also if you have a need for a basic informational presentation, I have that and can send that to you as well if you want to share that information with other folks in your circles.

We also have identified a contractor to conduct an existing information assessment for Atlantic Coastal Fish Habitat. That will be the National Oceans Service. A gentleman named Moe Nelson will be

working on that project for us and we'll be meeting up with him and sorting out the logistical issues for the contract and also what exactly is going to happen to make this assessment work.

The assessment should be completed as per our grant obligations by the end of this year, so hopefully you'll hear more information as that moves forward. Also, we've been working on a species habitat matrix that will be used to help narrow the habitat focus of the partnership. It's being developed regionally, different regional groups, many of whom probably work for you folks sitting here at the table here today.

We are working on completing that matrix so that we can focus the results of the information assessment that we're going to be completing, and also hopefully focus what habitats the partnership are going to focus on for their on-the-ground projects and also for the conservation plan next year that will be completed.

The Memorandum of Understanding is currently in the process of we are identifying signatories for that. Many of you have been contacted by your habitat committee representative to identify a signatory for your state or agency. We hope to have that signed as soon as possible. We are missing a couple of state signatories so hopefully we'll be getting in touch with you if we can't get that through your committee representative. We'll get that signed and move forward with that.

We also have completed a charter and bylaws that should be approved at the next steering committee meeting for the partnership in June, so we have some of that management structure fairly solidified at this point for the partnership, which is good. We've been working on a website and have completed a detailed website outline that the ACFHP Communications Working Group has been working on.

They'll soon issue a request for proposals for a contractor to start designing that website, so the commission should be hopefully soon including a single page as part of the commission's webpage for the partnership, but the partnership itself is going to have its own independent web page that they can exchange data and other information as an independent entity.

Finally, we've submitted a grant proposal to the U.S. Fish and Wildlife Service for funding a demonstration project. That proposal is to create a hydrologic river classification for the Atlantic coast drainages in cooperation with the Southeast Aquatic Resources Partnership, the SARP; and the Southeast

In-Stream Flow Network, which is sort of an element associated with SARP.

We hope to hear a decision on that demonstration project next week at the National Fish Habitat Action Plan Board Meeting. We hope that we'll be able to get funding to have a project that we can sort of publicize as an important step in the process of developing this partnership in addition to all of the management structure and assessments and conservation plans and sort of background administrative stuff that we have to do to get this going. That's my update for ACFHP. Thank you.

CHAIRMAN LAPOINTE: Thank you. Questions or comments for Jessie. Thanks for the report. Welcome, Emily. Bob is going to talk about non-native oyster activities. My optimism about moving the agenda along is quickly evaporating, and so we'll do what we can and pick up the rest tomorrow. Bob.

NON-NATIVE OYSTER ACTIVITIES

MR. BEAL: Thank you, Mr. Chairman. After that comment, I'll probably go quickly here. The development of the Environmental Impact Statement for Chesapeake Bay Oyster Restoration continues to move forward. There are a number of sections that have been drafted. They're not yet publicly available. The project delivery team is reviewing those sections right now. The hope originally was to have this document done by mid-June this summer.

What I'm hearing this week is that it's probably not a realistic timeline. The end of summer may be more realistic and even that may slip a little bit, depending on the time it takes to get some of the scientific peer reviewed. The Commission's Interstate Shellfish Transport Committee met about two weeks ago to review some of the science that's going into the environmental impact statement and was asked to comment on that. We're still developing the comments from that group.

The project delivery team met last Monday, and, again, they were reviewing some of the sections of the environment impact statement. Once those sections of the EIS becomes publicly available, our Interstate Shellfish Transport Committee will get together, review those sections and provide comment back to the Policy Board, and then the Policy Board can decide what to do with those comments and forward those on to the reviewers of the EIS. Jack Travelstead or someone from Maryland may have some additional comments, but that's my quick summary of where we are with the process.

MR. TRAVELSTEAD: Just real quickly, that was a good summary, Bob. The three basic parts of the EIS that are taking so long are three different risk assessments; one on the ecology; one on the economics; and one on the social cultural aspects of an introduction. Each of those has now been through a peer review process rather extensively, and the writers of those documents are now attempting to respond back to the comments of the reviewers.

This is what is taking quite a bit longer than we had originally anticipated, but eventually it's going to get done and the thing is going to be out sometime this year. In the not too distant future you'll see a first draft of the entire document, and there will be a very extensive public comment period. It will be made available to all the states, of course, for their individual comments as well. Unfortunately, it's taking a lot longer than we had anticipated, but it's still going to happen this year.

CHAIRMAN LAPOINTE: Thank you, Jack. Any other questions? Tom.

MR. THOMAS McCLOY: Thank you, Mr. Chairman. I wonder if I might ask Mr. Travelstead to give us an update on industry trials that are being conducted or not being conducted this year.

MR. TRAVELSTEAD: The Virginia Seafood Council has proposed, I think, its seventh overboard experiment with the ariakenses oyster. A decision on that permit request is expected within the next week or two by the state of Virginia. I think the Corps of Engineers will also be announcing its decision, if it hasn't already, within a matter of day. The proposal is quite similar to what you've seen in previous years; approximately 1 to 1.3 million animals at 10 to 13 different sites. We should have a decision soon.

MANAGEMENT AND SCIENCE COMMITTEE REPORT

CHAIRMAN LAPOINTE: Thanks, Jack. Other comments or questions? When will we hear back again? We'll have an update in August. Our next agenda topic is an MSC Report, Harley Speir.

MR. HARLEY SPEIR: We met yesterday and reviewed a couple of documents from the benchmark stock assessment peer review process. We think that the additions that were made to it should clarify the process and make it easier to apply. It would also clarify and extend the scope of evaluations on data and model inputs, add an evaluation of effects of assumptions, a number of things like that. I think

that Melissa has a good deal more detailed report on that aspect of it.

MS. MELISSA PAINE: Thank you, Harley. I just wanted to give this board an overview of those documents that are under revision or that the MSC and NASC have revised up to this point. These documents just provide –

CHAIRMAN LAPOINTE: There were provided to us, right?

MS. PAINE: They are all provided in your briefing books, and so if you haven't had a chance to review them, this is just a quick overview. They all provide a framework for the commission's stock assessment and peer review process. The benchmark stock assessment document that is listed there first, I'll just refer to it as the benchmark document.

This is a document that's gone under revision over the last several years, and so now there is a current version. Like I said, the two committees have looked that over and revised it. A new document is instructions to peer reviewers, and that actually has come out of the benchmark document. Then, finally, some revisions were made to the generic terms of reference, which are in the benchmark document.

These modifications were made to improve the peer review process to ensure impartiality in the whole process. ASC has oversight of the stock assessment process and then MSC has oversight of the peer review process. All the revisions that were recommended, the actual recommendations from MSC were the ones that were incorporated since they have oversight over the peer review process.

Starting with the benchmark document, we have inserted language, since it wasn't explicitly stated in the document previously, that when a management board has been presented with peer review results, the board should indicate that they accept or do not accept that advisory report and the stock assessment itself. That's just for clarification.

Also, improvements to this process were made in these areas and instead of belaboring each of these topics, these are just the general areas that improvements were made. If you have any questions on each of these, I can address them a bit more specifically. Then moving on to the instructions to peer reviewer's document, this document was pulled from the benchmark document. It's more just clear guidelines for those peer reviewers on the whole process.

That document will be an appendix to the benchmark documents. It includes things like instructions for the panel on how they interact with the stock assessment subcommittee and steps that the peer review panel needs to take in case of a rejected TOR. The generic terms of reference were revised after a subcommittee of the assessment science committee met and realized that in reviewing past peer reviews the TORs that were more specific resulted in better peer review reports.

With that in mind, they decided to address the generic TORs that were in place and to make them a bit more specific. One of those TORs that was added was one to address retrospective bias, and that was a specific recommendation from the MSC and ASC. Also, there is a TOR on addressing any stock assessment minority reports; and, finally, a new TOR on model assumptions. Now that both of these committees have edited these documents and brought them forward to this board, we are asking for your approval so that they're ready to be used in upcoming external peer reviews.

CHAIRMAN LAPOINTE: Thank you. Do you want to take action on that before we go to our next MSC issue? I think we do. Board members, have you had a chance to review these? The MSC recommends, as does the ASC approval, of these three documents. Dennis.

SENATOR DAMON: Thank you, Mr. Chairman. I think I heard it but I'll ask it again. The instructions for a peer review, that's going to be attached as an appendix to the document?

MS. PAINE: Yes, it is.

CHAIRMAN LAPOINTE: Board members. Mr. Augustine.

MR. AUGUSTINE: Mr. Chairman, I move that we accept the recommendation for all three documents.

CHAIRMAN LAPOINTE: Do we have a second? Pat White seconds. Questions or comments, discussion? Seeing none, is there any opposition to their acceptance? I see none, all three are accepted. Thank you. Harley, you're on again.

MR. SPEIR: The second item we took up was there was a task in the 2008 Action Plan to evaluate mortality of juvenile fish not accounted for in current assessments. We were more than a little unsure of what the intent of that was and talked to the maker of the motion. The recommendation is to reword that particular task.

In fact, the assessment or estimation of the impact of removing juveniles from the population; these are done during a stock assessment process. If there are concerns about removals of fish in the juvenile or age zero stage, these should be brought to the stock assessment subcommittee and technical committees on a stock-specific basis.

CHAIRMAN LAPOINTE: Questions or comments on that particular item? Vito.

MR. VITO CALOMO: I believe I was the mover and the shaker on this, and I am very concerned. I don't believe that I was fully understood when I conveyed my message. Yes, I believe you take in view of some juveniles passing by, dying or whatever, but not into the quantities that I'm talking about.

It was brought to me years ago about the menhaden industry killing the zero age class by the hundreds of thousands, but I'm talking about in the millions of pounds that was done in the past year in the Gulf of Maine. When spawning areas were closed, they concentrated on the juvenile fish and there is a concern about Area 1A in the Gulf of Maine to rebuild that stock.

Even though I don't feel it has a problem of being rebuilt, but the science seems to be a problem and the councils seem to think there is a problem and have reduced the total allowable catch in that area. One of things I believe in very strongly is the protection of spawning fish, but I believe for the past 40 years the protection of juvenile fish.

At one time – I can't make this short, Mr. Chairman, but if you want to cut me off, you're the boss – at one time I bent the rules in my own mind, which was to allow this fishery because there was such a thing as the sardine packing company, many of them, and provided many jobs in the coast of Maine. I visited them myself personally where many women were lined up there with scissors and cutting these little fish and putting them in cans and making a good living at it. I felt that it should have been allowed at that time because they were going somewhere.

But to the senseless slaughter in a time where people feel that 1A should be rebuilt into somewhere around 20,000 metric tons, which is similar to 44 million pounds, is a travesty. Whether it be menhaden, whether it be herring or spot to be used as bait, they should have a chance to grow in weight and also a chance to spawn one or two times.

But if you left them small fish alone, the juveniles alone for approximately two or three seasons, they would triple in weight. Where you would have 20,000 metric tons, you would have approximately 60,000 metric tons. The total allowable catch of herring in that area is only 45,000 metric tons and to be reduced.

I think that maybe needs to be brought in a different venue as you suggested. I appreciate your comments, but my comment was not that these fish were killed during a time when we took a portion of them. This is an overkill as far as I'm concerned. I come from the commercial fishing industry and I fished on these fish for years way back when. I do understand it, but I'm beside myself to see fish destroyed in such a manner and in such quantities, whether it be, again, menhaden, spot or herring. Thank you very much, Mr. Chairman.

CHAIRMAN LAPOINTE: Thank you, and, Harley, you said that the MSC believed that those should be taken up in assessments, and I think our job as members of respective management boards is when we are asking an assessment be done, that we make sure that's included as one of the terms of reference?

MR. SPEIR: Yes.

CHAIRMAN LAPOINTE: Thank you. The next item on your report.

MR. SPEIR: We have a document; the priority research needs was last prepared in 2004. It's got 22 species and 9 issues, and it lists current research needs. We discussed updating that, and indeed it does need updating. We are going to send a request to the involved technical committees, as well as ACCSP, and ask them to update the list. We're also going to probably work in conjunction with them to put them in high, medium and low priorities.

We would also want to do this as a searchable online document. Apparently it is fairly well used by coastal researchers, so we want to make it a little easier to use. We'll follow up probably at the fall meeting with a report on the progress of that. We have a subcommittee on forage fish, and they have provided us with a couple of lists of important forage species, two lists.

One is assessed species. These could be menhaden and Atlantic herring. There are numerous unassessed species. The subcommittee needs to a little bit better define I guess what it is that we need to do with this

information, where do we go from here? Would we incorporate this information on forage fish into an individual FMP, into our multi-species model, exactly what would we use it for?

An additional item was brought up that this past year an aquaculture operation in Virginia raising black sea bass asked for a waiver from the minimum size. This is not a new issue. It apparently has come up before with a number of other species, aquaculture species. We're recommending that we have some sort of potentially a registry of aquaculture species, who is providing them, what size they are. The law enforcement committee is also going to be looking at this, and I think most of the major recommendations are going to come out of that committee. We had a number subcommittee reports, and I think we're going to get reports on those from the staff.

CHAIRMAN LAPOINTE: Does that conclude your report so far except the subcommittee reports?

MR. SPEIR: Yes.

CHAIRMAN LAPOINTE: Thank you. Any more questions for Harley? Thank you very much. Is there any opposition to accepting the MSC Committee Report? Seeing none, it is accepted. Thank you very much and thanks to the MSC members as well. Our next agenda topic is a NEAMAP Update, and I think that is Melissa Paine.

NEAMAP UPDATE

MS. PAINE: Thanks, Mr. Chairman. Chris Bonzek couldn't be here today. He is a little bit worn out from just coming back from the first leg of the NEAMAP Spring Survey, so I'll do my best to report. The first full NEAMAP Fall Survey took place last year. There was a presentation on that survey to the NEAMAP Board and the NEAMAP Operations Committee back in March.

They were able to sample 150 stations from September 25th to October 20th. Some of the highlights were that the catch of scup was the highest number caught of a given species with over 270,000 caught. Other priority species with catches in at least the tens of thousands were butterfish, weakfish, Atlantic croaker and spot. In all, 54,000 kilograms of fish and crustaceans were caught.

The NEAMAP crew or actually the NEAMAP scientists did some outreach efforts at stops in Montauk, New York, and Cape May, New Jersey, with commercial and recreational representatives, so

that's a really great way to get the NEAMAP word out. These two groups, the Board and Operations Committee, previously had discussed the timing of the spring survey as there had only been a fall pilot survey performed and then this full fall survey.

It was decided that a late April start would be best for capturing less non-zero tows. The only bad thing about that was that would not coincide with the Northeast Fisheries Center's bottom trawl survey, which happens a lot earlier. But, notoriously, their inshore trawls have received very few catches, so both the Board and Operations Committee both supported that later start in April. Like I said, the spring survey is undergoing right now.

They also discussed how to use possible funds in the future, but those are just ongoing discussions depending on funding; and as always the top priority is to support the fall and spring surveys. That's pretty much it.

CHAIRMAN LAPOINTE: That concludes Melissa's comments on NEAMAP. Any comments? David Pierce and then Mark.

DR. DAVID PIERCE: I was the board chairman at the last meeting, and I just wanted to highlight a couple of things. First of all, we were quite pleased with the outcome of the NEAMAP Survey to date in terms of how the operations committee has done its job quite well, as a matter of fact. Those involved with the NEAMAP Survey from the fishermen down to the crew, to VIMS have done a splendid job. The presentation was given by Chris Bonzek at our meeting, and I am sure that they can make that available to those who would like to see it; very well done; very extensive coverage; great potential.

The objectives that we set for ourselves, ASMFC set for itself regarding NEAMAP apparently are being achieved. As it turns out, it's a good thing we did what we decided to do relative to NEAMAP a few years ago. Since events being the way they are, this NEAMAP cruise is going to be – well, the survey itself is going to be extremely important for stock assessments up and down the coast.

I can say that because our surveys go from 20 to 60 feet, I believe, and the National Marine Fisheries Service will no longer be going less than 60 feet because they're now using the Bigelow. The Bigelow has a significant draft that provides – well, it makes it impossible for the vessel to sample the shallow water depth strata, which is a rather astounding outcome, but it's the way it is.

NEAMAP now fills the gap, so we will be supplementing through our NEAMAP work the trawl survey work done by the National Marine Fisheries Service now with the Bigelow and not with the Albatross. One aspect of the NEAMAP work that I think will be fascinating and will require some scientific review, some review by the Northeast Fishery Science Center and our own state scientists is the fact that the NEAMAP scientists, VIMS scientists, specifically, actually have been able to come up with some swept-area biomass estimates for a number of species.

Those estimates will need a peer review. We certainly do swept-area biomass estimates now for spiny dogfish. Potentially, we'll have those estimates for many of these other species of fish. That's where we are right now with our being hopeful that the ASMFC, perhaps through the efforts of Vince and all of our partners, ASMFC partners we'll be able to get continued funding for this survey; because, you know, without funding for this survey, it would vanish and then we would have a rather significant hole in the data base.

We would not have sampling of the shallow water depth strata where many of these species happen to set up shop for most of their time off the Atlantic Seaboard. So, pat on the back for ASMFC and NEAMAP specifically.

MR. MARK GIBSON: Thank you, Mr. Chairman. I looked at a copy of the report at the last New England Council meeting that Captain Ruhle gave to me, and I agree with Dave that it shows a very well-executed survey with extensive coverage, good operation of the gear, the design of the gear and so on.

I have a little more guarded opinion than I think Dave does, particularly with respect to several species which are very important to the commission from an assessment standpoint, scup, sea bass and weakfish, all of which have serious assessment problems, the most important of which is inability of us to sample the older age classes.

As I looked at that report, I was struck that for scup, sea bass and weakfish, there were very few old fish caught, almost none at all in the case of scup and weakfish. That may be just because it's a fall survey and the catches are dominated by young of the year, but if we're to find out in the spring cruise that we also don't sample the older larger age classes, I'm not sure that survey would then get us where we need to go relative to improved assessments, so I'm guarded in my hopes. I think it's a good survey, but I'm still

concerned about the ability to catch the older and larger fish, which are crucial in any stock assessments.

MR. CARPENTER: I was only curious as to where they found the weakfish.

CHAIRMAN LAPOINTE: They can't tell you. Vince.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Mr. Chairman. Perhaps for Dr. Pierce, if he could maybe remind us in the vision of NEAMAP and as the cruise they just reported on becomes more regular, could you remind us again what then happens in the world of NEAMAP to the individual state surveys that are currently being conducted.

DR. PIERCE: Well, I believe that will play out as time goes by. Once we determine through peer review how useful NEAMAP will be to the Northeast Fishery Science Center – because that's still part of the process, we appear to have at this point in time buy-in from the Northeast Fishery Science Center, as you might expect because we're going to fill the hole that's been created by their being unable to get into the shallow depths – I think it will be up to the individual states to make their own decisions as to whether they want to continue their specific state surveys once they, as well, participate in this peer review or at least see the results of the peer review.

If the Northeast Fishery Science Center indicates that NEAMAP would, well, make it possible for those specific state water surveys to be concluded. So, again, this will all unfold as NEAMAP evolves. I will echo the point made about the lack of older fish. The spring survey will be critical for us to get a better understanding as to whether or not we are sampling the older fish.

We also have an ongoing research set-aside project that's pot sampling of areas for sea bass, for example, scup, to determine if, indeed, we can have an additional survey involving pots, using the research set-aside that will enable us to again fill that hole, which potentially would be our not being able to sample effectively with a larger fish maybe because they inhabit hard bottom where a trawl is not going to go.

Whether it's a NEAMAP trawl or a Bigelow trawl, they may not be able to go in those areas where those particular larger fish are found. But, once again, we'll see, and I'm looking forward to those results of the spring survey.

EXECUTIVE DIRECTOR O'SHEA: You mentioned a peer review or program review. I think it's important that as we move towards that, that the terms of reference for that review get a rigorous discussion and input from all the NEAMAP partners going forward to enhance the credibility and confidence of the program. I just make that comment. Thank you.

MR. MILLER: Thank you, Mr. Chairman. I'm just curious as to what the future funding forecast for the NEAMAP Program is. Perhaps Dr. Pierce has some understanding of – I assume there is money to conduct the fall survey in addition to this spring survey; and if so, what are the prospects beyond this fall? Thank you.

CHAIRMAN LAPOINTE: I believe we have funding through 2009 now; do we not, spring of 2009? And we have a number of states who we're in discussions with Massachusetts being one and New York being one that are offering funding. The commission has been working with all our respective congressional delegations to try to secure long-term funding.

Now that we have a research vessel that NOAA has that needs more water than a fully loaded aircraft carrier to operate, the NEAMAP cruise is going to be a critical part of our assessments moving forward. I mean, simply put, we will be poached without this survey, and so we all need to make sure that we go after funding for NEAMAP beyond 2009. Was that a fair summary of the funding? Other comments on NEAMAP? All right, thank you, the next agenda topic is Melissa again, the Assessment Science Committee Report.

ASSESSMENT SCIENCE COMMITTEE REPORT

MS. PAINE: Thanks, Mr. Chairman, I'll try to keep this short as well. The Assessment Science Committee met on March 26th. The major topic of discussion or the pretty standard topic was the stock assessment schedule for 2009. You received a copy of the schedule in your briefing book, and I'll just highlight some changes since the last the Policy Board approved this schedule, and that was in October.

Croaker and menhaden were moved from 2009 to the 2110 SEDAR schedule. Scup was removed due to a lack of discard data. Black sea bass is tentatively scheduled for 2009, and that could be delayed until

2010. Weakfish was moved to 2009. I need to ask for an approval of the schedule.

CHAIRMAN LAPOINTE: I'm look if people are ready for approval of the peer review schedule. Doug Grout.

MR. GROUT: I just have a question. I thought I recall they delayed the lobster peer review schedule at our Lobster Board meeting; is that not the case, or was it not delayed out of 2008. It's still 2008?

MS. PAINE: I believe it's early 2009 now. When the Assessment Science Committee met, it was still late '08.

MS. SMITH: As I understand it, though, the peer review is going to be done in December of '08. We will get the report in February of '09, so the schedule is still accurate.

MS. PAINE: The schedule reflects the peer review, so the assessment will be complete in December of '08.

MS. TONI KERNS: The review will be in January of 2009, and the report will be presented in February of 2009.

CHAIRMAN LAPOINTE: So if we approve it, it will be with the understanding that lobster shifts to 2009. David Pierce and then Pat Augustine.

DR. PIERCE: Melissa, I didn't hear what you said about scup.

MS. PAINE: I said that it was removed from the schedule. We had it on there for 2009, but it's been removed from the SAW/SARC schedule.

DR. PIERCE: Okay, so it's been removed from the SAW/SARC schedule. I wasn't here Monday afternoon. Did the Scup and Black Sea Bass Board pass any motion relative to our looking at additional data that's out there relative to scup specifically, the results from the pot survey specifically and other data sources? Did that pass the board?

MR. BEAL: The SARC has scheduled a series of what they're calling data-poor workshops. There are a number of species that have data limitations that are preventing a quantitative stock assessment right now. Scup is on that list. That workshop is going to take place I think in either November or December of this calendar year.

The next assessment and peer review are kind of contingent on the results of that data-poor workshop. They are going to look into all the data sources that you've mentioned and try to really think of any creative ways that they're going to be able to pull together a scup assessment.

DR. PIERCE: Okay, very good. That information, however, will not be available until after we do the specification-setting process or set the quotas for next year, correct; that when the board meets this year in concert with the Mid-Atlantic Council, we won't have that information? We'll be obliged to live with the bottom trawl survey data from the Albatross to determine what needs to be done. I'm just trying to get enough feel for how useful that information will be later on this year when we have to make those fateful decisions about what the quotas will be.

CHAIRMAN LAPOINTE: I think the short answer to your question is, yes, that's what is going to happen.

DR. PIERCE: I could use an expression that you used a little while ago, but I won't, but it's the same situation for scup.

CHAIRMAN LAPOINTE: I could have used way worse, but I didn't. Pat Augustine.

MR. AUGUSTINE: Well, I knew where that was going, so I think we're going to have accept what we've been given. Without ado, do you want a motion?

CHAIRMAN LAPOINTE: I would entertain a motion.

MR. AUGUSTINE: Move that we accept the schedule as presented by Melissa.

CHAIRMAN LAPOINTE: Do we have a second? Second by Dennis Damon. Robert Boyles, you were on the list; do you want to discuss the motion?

MR. BOYLES: No, I just wanted to let the Policy Board know I appreciate the leadership that staff has exhibited in stepping on our behalf in the southeast for ensuring the Red Drum SEDAR stays on schedule. I appreciate Bob and Vince's efforts on our behalf. Thank you.

CHAIRMAN LAPOINTE: Thank you, Robert. Mark Gibson.

MR. GIBSON: I'm not commenting on the motion, but I wanted to make sure that Dave Pierce knew what Dan McKiernan had done, and I think Toni just relayed the motion to him.

CHAIRMAN LAPOINTE: Then we have a motion to approve the list with the one change, and that will be that lobster is now in 2009 and not 2008. Any discussion on the motion? Seeing none, is there opposition to the motion? Seeing none, it passes. Is there other Assessment Science Committee stuff; go ahead.

MS. PAINE: Yes, very briefly, another thing the committee discussed was that they just wanted to request that the Striped Bass Technical Committee just consider the frequency of stock assessment updates. Some committee members felt that updates pretty regularly were okay, but others felt that they were updated a little bit too frequently, and so they just wanted to put forth that suggestion to the Striped Bass TC.

The other discussions that the committee discussed was in the MSC report, and that was to address the action plan task to evaluate mortality of juvenile fish, so that's already been discussed. Another discussion was tasked to ASC by the Policy Board at their last meeting, and that was to look at the NMFS Strategic Plan for Fisheries Research.

The concern here was that a commissioner felt that NMFS was not giving priority to first-order stock assessment needs and were kind of jumping forward to those more elaborate second-order models and things. John Boreman from the Office of Science and Technology came to our committee meeting and clarified that to say that is actually just planning document and does not actually govern the research that is performed at NMFS, and actually what they use is an internal document such as the stock assessment improvement plan, which does recognize the need for better input data.

Then, lastly, the Assessment Science Committee also looked at those three documents that we've already reviewed here previously. They reviewed the long-term stock assessment schedule. They also got an update from the Multi-Species Technical Committee, and right now that TC is working on an update to that MS VPA Multi-Species Model. They've performed the continuity run, but now they're working on a base run, and that will be presented to this board early next year.

CHAIRMAN LAPOINTE: Thank you, Melissa. Questions? Pat Augustine.

MR. AUGUSTINE: Yes, Mr. Chairman, a question on the recommendation to go to a two-year review cycle for striped bass; was that a recommendation you folks are making, are you reviewing that, or do we have to take action on that?

MS. PAINE: No action was requested. We didn't even specify a two-year schedule. It was just to have the TC consider the frequency.

CHAIRMAN LAPOINTE: And I suspect the TC is doing it on a more frequent basis because the board might be asking them to do it as well, and so it's a reflection on those of us who sit on the Striped Bass Board to take that into account. Other questions or comments? Our next agenda topic is the Interstate Tagging Committee Report, and Wilson Laney will present that.

INTERSTATE TAGGING COMMITTEE REPORT

DR. LANEY: Thank you, Mr. Chairman. The Interstate Tagging Committee met during the technical committee meeting week in Baltimore, and I'm bringing this report on behalf of our chair, Paul Caruso, who couldn't be here. I also need to express my appreciation to staff, especially to Jessie Thomas, which I neglected to do during the previous Habitat Committee Report, and also to Dr. Genny Nesslage for the staff support she provides to the Interstate Tagging Committee.

You should hopefully have in front of you or have read already the May 7th, 2008, memorandum that brings to you one minor wording change to the Tagging Program Certification Process and then a question for your consideration. The Policy Board hopefully is aware of the fact that we just recently completed our first certification.

We selected the American Littoral Society, ALS, Tagging Program as the pilot for the certification program, with their consent. Pam Carlson from ALS serves on the Interstate Tagging Committee. We felt like it was a very productive process. They graciously consented to go through the review as our guinea pig, and they were certified.

We had a number of recommendations back to them, and Pam met with us at the meeting and we had a thorough discussion of the recommendations that committee members had and that the subcommittee that conducted the certification had. As a result of

that, we decided to recommend to you very few changes in the wording for the certification process, which you approved some while back.

Those are in front of you on the memo. Specifically, I'll read the change. The present language is that the ITC will rate each item, parenthesis, see application for more information on the rating system, close parenthesis, and will respond in one of the following ways to the tagging program within a certain time period of the application date.

We propose to insert into that language "make a recommendation to the full ITC. Then the ITC will discuss the subcommittee's review and respond within six months." That's the proposed change that we're recommending to that language, Mr. Chairman. What we're trying to do here is shorten up the review time.

CHAIRMAN LAPOINTE: Have folks had a chance to review that language? Eric Smith.

MR. SMITH: At the risk of looking like I'm wordsmithing something, I'm reading the paragraph that Wilson just identified on recommending the changes. I would ask him to look at it again because it seems like applications are sent to the certification subcommittee; and then with the new change, it says the committee will rate each item and make a recommendation to itself. Then the committee will discuss the subcommittee's review. I think in the second sentence it needs to say the subcommittee of the ITC will rate each item and then make a recommendation to the full committee.

DR. LANEY: I believe that's correct, Mr. Chairman. That was an oversight on our part. Dr. Nesslage, would you concur with that? Yes, where it says "the ITC", it should say "the subcommittee will rate each item", so we'll make that part of the proposed change as well.

CHAIRMAN LAPOINTE: That is the language before us; have folks had a chance to look at it? Unless there is opposition, we'll just accept the changes, but I wanted people to have a chance to look at it. Are folks ready to take action on it? Is there opposition to its acceptance? There is none; the change is made.

DR. LANEY: Thank you, Mr. Chairman. I have one other item and that is the potential certification of other NGO and state programs. The Interstate Tagging Committee Certification Program was designed primarily with NGO programs in mind. At

the time the committee was formed, BOAT US was selling tags to anglers, and we were concerned about the information being generated by that program and especially the followup and the use of the data ultimately generated.

We're recommending continuing review for other NGO programs, and we propose to go ahead and send letters to those programs soliciting their participation in the process. Another thing that the committee discussed was whether or not state programs – it should say state and federal programs or state or federal run programs, components of the interstate – well, we do say federal programs should be reviewed as part of the certification process.

The general consensus of the committee is that what is good for the goose is good for the gander, so to speak, so if there are those active programs or components out there – and we discovered, by the way, during the course of our certification process that some of the members of our committee who were with state agencies were not aware of all of the tagging programs that currently existed within each state.

We felt it would be a good idea for those programs to consider undergoing a similar review that could, at a minimum, we felt like take the form of at least advising the ITC of the programs that are in existence so we ask them to complete a form and sort of register those programs so we can include them on the website. And, by the way, if you haven't visited the website, it has recently been updated. It needs additional updating, and we're soliciting funding to be able to do that. You might want to check the website out.

Registration would be certainly one component of it. We would appreciate some feedback from the board if they would like for us to proceed to the next logical step in considering possible certification of state programs and federal programs. Again, what is good for the goose is good for the gander.

We felt like it certainly wouldn't hurt for us to take a look at our own programs if we're asking NGO programs to go through some sort of certification process. The amount of time that's involved is very minimal. It takes about an hour to fill the form out. Then the subcommittee would take it from there if that is something that you all feel would be beneficial.

CHAIRMAN LAPOINTE: Board members. Leroy.

MR. YOUNG: Wilson, I have a question. Is this list on this one-page document a comprehensive list or expect to be a comprehensive list of all the tagging programs?

DR. LANEY: It is not at present, Leroy. For example, we had some discussion of this at the committee. Dr. Nesslage may want to help remind me here of exactly how many more programs we discovered during the course of the committee meeting. So, no, this is not comprehensive list; it's just a first shot at putting in front of you a list of the programs that we're presently aware are going on, so these could be potential candidates.

I don't think we're proposing this as a mandatory thing. We're just asking the board what you all think. If we're asking NGOs to do this, is this something that would be a good idea for us to do with our own programs. It sort of basically constitutes kind of an internal peer review of our science. You know, we've heard a lot of discussion this morning during the planning session about doing good science, so the question really is sort of shouldn't we take a look at ourselves to see if we are in fact doing good science.

I think in most cases the answer is going to be a resounding yes because we know most of the state and federal agencies are already working with scientists who are designing those programs, so they should meet all the criteria that we come up with that we're using to evaluate NGO programs with.

CHAIRMAN LAPOINTE: The recommendation is whether our state tagging programs and federal tagging programs could be put through that certification program. Is there any opposition to that or comments? Roy.

MR. MILLER: Just a quick question; I notice in just looking through the list, Wilson, that there are some non-ASMFC managed species listed there. Is it our intention to devote any time to say, for instance, black drum, tarpon, et cetera?

DR. LANEY: Dr. Nesslage, would you help remind me of what we decided on those non-government programs? I think, again, the intent of the whole certification program was to try and take a look at programs that weren't government programs and make sure that they were being properly conducted and that the data that were being generated were being used in some sort of a sound fashion, preferably in some sort of assessment process.

Genny has reminded me that the intent would be to concentrate initially on ASMFC species; and then if we find ourselves with time on our hands, to go ahead and start tackling some of the others. Again, it's strictly a voluntary thing; it's not a mandatory thing at all.

MR. SPEIR: I guess I might object slightly to the issue that the state programs are being certified when, in fact, I'm sure they have gone through some sort of internal review. I'm just wondering how some of the state biologists might take this certification issue, whether or not it may be better to refer to it as registration?

DR. LANEY: Yes, I mean, that would fine. You know, if you use the work "registration", that implies that you're basically just listing the program. Again, the committee was wondering if the board felt that it would be beneficial to go that extra step and have the subcommittee go ahead and conduct the review just as we did for ALS and then provide feedback to whatever program it might be with regard to possible recommendations for improving things.

MR. SMITH: I can tell you right now my staff will be nuts over this until I explain to them it's an hour, you go through and fill the form out, and it's a good idea to do because it might actually point out that there is an improvement to be made or an inconsistency that we weren't aware of. In the realm of things that might be problems, I don't think this one is a big problem. I think it's actually a beneficial thing to go through. Thanks.

CHAIRMAN LAPOINTE: How about if we get the tagging committee to provide a memo to all of the state directors? We can bring it to our states and then we'll make this change in August after you get a chance for them to calm down. Does that make sense to people? Wilson, come on.

DR. LANEY: Well, just one comment, Mr. Chairman, in that the committee is your staffs. You know, your staff people are the ones on the committee making the recommendations.

CHAIRMAN LAPOINTE: Well, I'm speaking for the state of Connecticut, but technical staff can get ginned up about issues if they aren't right before them, and this memo will allow it to be put before them. I could use another term but that will work. That's what we'll do. Wilson, you'll help us with a memo? Thank you.

AMERICAN EEL MOU

That concludes the items on the agenda. We have a couple other items. The American Eel MOU has been circulated. We had a subcommittee working on it. It was approved by the Eel Board. I think our action – I'm going to let A.C. speak in a minute – is for the Policy Board to approve it as it's presented. Now it still has to go to the Great Lakes Fisheries Commission, so we'll hold off on full commission approval until it comes back from that, but I believe that's what we're going to do. A.C.

MR. CARPENTER: Thank you, Mr. Chairman. The staff has a motion prepared and I'll be glad to read into the record. On behalf of the American Eel Management Board, I move that the ISFMP Policy Board recommend to the Commission that it approve the draft Memorandum of Understanding between the Atlantic States Marine Fisheries Commission and the Great Lakes Fisheries Commission.

As you said in your opening remarks, this is still to go through the process, but from the board's standpoint we wanted to bring it to the Policy Board and not have it to go back to the Eel Management Board.

CHAIRMAN LAPOINTE: It's a committee motion so we don't need a second. The idea would be that the Policy Board approves it and we would not approve it at the Executive Committee until we see what comes back from the Great Lakes Commission?

MR. CARPENTER: Yes, I think there may be still an opportunity for some small wordsmithing that's going to occur, so it's not really ready for signature yet, but I think in principle it's there.

CHAIRMAN LAPOINTE: And my thought is that either this chair or the next chair, depending on the timing of that, if we need to, we'll get that subcommittee together to look at whatever changes the Great Lakes Commission might propose.

MR. CARPENTER: Excellent idea.

CHAIRMAN LAPOINTE: Thank you. Board members, questions or comments? Are we ready to take action? Dennis Damon.

SENATOR DAMON: Thank you, Mr. Chairman. Have we seen this MOU; has it be distributed previous to this?

CHAIRMAN LAPOINTE: I believe it was distributed to the Eel Board, which we all sit on.

MR. CARPENTER: It was distributed through the Eel Board, and everybody had it in their Eel Board packet yesterday.

CHAIRMAN LAPOINTE: Other board members, questions or comments? Seeing none, are we ready for the question? Is there opposition to the motion? Seeing none, the motion carries. Thank you, A.C. Our next agenda topic is Dennis Abbott is going to bring up something from the Advisory Panel Oversight Committee.

ADVISORY PANEL OVERSIGHT COMMITTEE REPORT

REPRESENTATIVE ABBOTT: Yes, thank you, Mr. Chairman. The Advisory Panel Oversight Committee met Monday, May 5th, to discuss non-traditional stakeholder nominations to the Shad and River Herring Advisory Panel, as well as to address any other issues related to the operation of the commission's advisory panel process.

As part of the latter item, the committee discussed ways to improve advisory panel input on a more consistent basis. The committee remains concerned that in the absence of active management program changes, many of the advisory panels are not engaged on a consistent enough basis to keep the advisors interested and involved in their respective species management programs.

In the case of the Shad and River Herring Advisory Panel, nearly ten years elapsed from their initial involvement in the development of Amendment 1 to their most recent activity as part of Amendment 2 and 3 development, so not surprisingly only four advisors attended the most recent meeting with the majority of the advisors expressing a disinterest in continuing their involvement in the process.

In addition to staff providing annual updates to the panels regarding the status of the resource and management program, the committee felt that the advisory panel should be involved as part of the annual FMP review process for each species. This involvement would include an annual conference call of the panel to review the FMP and provide AP inputs and concerns regarding the status of the fishery and resource.

Their input would in turn be captured under a new header in the FMP review entitled, "Advisory Panel

Comments and Concerns". In order to evaluate the effectiveness of this process, the committee recommends that staff work with five of the fairly inactive panels over the remainder of this year to engage them in the FMP review development process through the use of conference calls.

Each panel would subsequently be surveyed to determine the utility of using conference calls in the FMP process to more fully engage them in the fisheries management process. It was further suggested that during these conference calls that the management panel chair participate in that conference call. I do have a motion to offer.

CHAIRMAN LAPOINTE: Do you want to offer that motion and then we'll discuss it.

REPRESENTATIVE ABBOTT: On behalf of the Advisory Panel Oversight Committee, I move that the ISFMP Policy Board approve testing the use of conference calls in the annual FMP review process and more fully engaging inactive advisory panels in the commission's fisheries management programs.

CHAIRMAN LAPOINTE: Thank you, we have a motion. Bob, do you want to comment from the staff perspective?

MR. BEAL: I don't think the staff burden is that great to do this, and the financial resources for five conference calls probably won't be cost prohibitive.

CHAIRMAN LAPOINTE: Thank you, that's what I thought, but that's good to hear. Board members, questions or comments? It strikes me as a good way to try to do just what they're talking about. Any discussion on the motion? Seeing none, is there any opposition to the motion? The motion carries, thank you very much.

Other issues from the Advisory Panel Oversight Committee? No other issues from Dennis; thank you very much for that. David Pierce, herring, you had an issue that I put on because I knew you wanted it.

MANAGEMENT OF SEA HERRING

DR. PIERCE: Okay, thank you, Mr. Chairman. This morning we discussed at length the five-year strategic plan and we went over all the different goals and adopted that first goal, rebuild and restore depleted Atlantic coastal fisheries and maintain and fairly allocate recovered fisheries through cooperative regulatory planning. We highlighted that we would be involved in the development of fisheries

management programs that account for ecological interactions, bycatch and other matters, but those were top on the list.

In light of that discussion, in light of those decisions we made relative to the strategic plan, I believe that we need to improve the way in which we deal with management of sea herring in concert with the New England Fishery Management Council. Currently the council's sea herring committee meets independent of the sea herring section, unlike the way it's done with fluke, sea bass and with scup where an ASMFC board meets with the Mid-Atlantic Council's committee that deals with those species.

I would request, Mr. Chairman, that you meet with the New England Fishery Management Council Chair, perhaps with the executive director, to discuss ways in which the council and ASMFC can improve our collaborative efforts to manage sea herring. I say that because I know that the Sea Herring Committee will be meeting very soon, and the Sea Herring Committee, without any state input – that's certainly Maine, New Hampshire, Massachusetts and some of the other states. I can't recall whether Connecticut is on board.

Rhode Island is not on board, I believe. Certainly, New Jersey is not because New Jersey because is not – or New York not part of the New England Council. But they will be talking about acceptable catch limits, accountability measures, sectors, monitoring of the fishery, and these are all issues that are high up on the list of ASMFC, yet, again, the section is not involved and it should be, especially since the legislative appointees, the governor appointees are not in the mix – you're out. So, that's what I would request you consider doing, Mr. Chairman.

CHAIRMAN LAPOINTE: Comments on David's proposal? We had a conversation and I asked him to bring this up. He may have mentioned it when I was talking to Bob, but the Herring Oversight Committee on the New England Council has no state members. The executive committee of the New England Council has no state members.

We have these – we don't call them joint plans – parallel plans, but there is a big influence of one on the other, and so it is as the council engages in Amendment 4 where, as David said, the Magnuson Act requirement is in it and who knows what else with regard to bycatch of river herring, for instance, and other species.

We talked to the council about getting more connected in terms of the committees so that we don't get left on the caboose or get caught by surprise. It would be to engage with them and discuss how to do that. I do encourage any section members, who can, to attend the committee meeting, which I believe is on the 22nd in Portland – easy for me this time to attend, but that's in essence what you're asking for. Board members, does that make sense? I see many heads shaking yes. Great, thank you, David.

Dave Perkins, you have the last word. Before you do that, we have used up our entire time, and so we'll start at eight o'clock, as we had planned. So much for my optimism earlier; I should know better.

STRATEGIC PLAN NORTHEAST REGION OF THE FISH AND WILDLIFE SERVICE

DR. DAVID PERKINS: Okay, thank you. Given the talk of strategic planning, this was appropriate just to get you folks updated briefly on our efforts in the fisheries program, the Northeast Region of the Fish and Wildlife Service, to develop a strategic plan. We have been engaging with the state partners throughout this. We value your input.

The impetus for this is as we look forward to our budget situations in the future – they're not necessarily favorable – we're going to need to make tough decisions on what we do and what we don't do, and we wanted to get a sense of some of the state priorities to help us guide our actions in the future.

We've reached out in the past asking for state input through the state directors on priority species, priority watersheds, priority actions that the states are looking to the Fish and Wildlife Service for. We met face to face with the state agencies last summer, and now we've recently provided the state directors a draft plan at the Northeast Fish and Wildlife Association meeting, of our strategic plan.

We'll be looking for formal comments from the states in June. We especially wanted to make sure we reached out to the marine folks because sometimes – well, we just wanted to make sure we touched base with them as well. That's partly my purpose here now is just to let you guys know that is coming.

Your state directors will be getting a request and we'll copy the fish chiefs of freshwater and marine

both and we'll be looking for your input. We wanted to try to provide some transparency as to how we're setting our priorities, and so we'll be looking at three documents. The first thing you'll be getting and one of the drafts you have now is our overall strategic plan, and then following that will be more of a five-year operational plan, which will get down to some of the specific objectives of what our stations and our hatcheries are producing under perhaps different scenarios.

There is material here that I've passed out and the draft plan as well as the input that we've received from the states on those priority species, watersheds and actions. I guess stay tuned. If there are any questions, I'll entertain them now, but otherwise –

CHAIRMAN LAPOINTE: You mentioned three documents, Dave, and then you talked about the operations plan and this. What is the third?

DR. PERKINS: The third document would be our annual work activity plans.

CHAIRMAN LAPOINTE: And those are going to be distributed to –

DR. PERKINS: At this point we will have the – in June we will have the overall strategic plan distributed to the state directors, copying the fish chiefs, and asking for formal comments.

CHAIRMAN LAPOINTE: And you'll let us know about the comment period at that time?

DR. PERKINS: Correct.

CHAIRMAN LAPOINTE: Great! Questions for Dave? Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. New York is cut out of this one; is there a reason? We've been dropped out of the Union or are we going to be seceded from the states?

DR. PERKINS: Dropped out of which, Pat?

MR. AUGUSTINE: Well, out of the priorities for Fish and Wildlife action. I know we're moving very rapidly and heavily on the herring situation by removing dams where possible and that sort of thing, but we have nothing showing here. Maybe it's something in the contracts that I didn't see.

DR. PERKINS: No, I think there were a few states where we simply didn't get feedback from the marine

folks, and so that's, again, part of this purpose. We love to hear it.

CHAIRMAN LAPOINTE: State members, this is your chance to help the Fish and Wildlife Service set their priorities, so take advantage. Anymore questions or comments for David? Seeing none, we will stand in recess until tomorrow morning. Vince corrected me; the executive committee starts at 8:00; ISFMP at 8:45. Thank you for your attention.

(Whereupon, the meeting was recessed at 4:00 o'clock p.m., May 7, 2008.)

MAY 8, 2008

THURSDAY MORNING SESSION

The ISFMP Policy Board of the Atlantic States Maine Fisheries Commission reconvened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, Thursday morning, May 8, 2008, and was called to order at 8:35 o'clock a.m. by Chairman George D. LaPointe.

CALL TO ORDER

CHAIRMAN LAPOINTE: We have a quorum. We have a Policy Board Agenda that was included in the briefing CD. I believe there are copies on the corner table. I have one additional item under other business. We had a tabled motion in February about data elements in the recreational program. That was a Doug Grout motion so we'll bring that off the table and deal with it appropriately. Are there other changes to the agenda? Mr. Smith.

MR. SMITH: We wonder if we could talk a minute about HR 21, the oceans bill.

APPROVAL OF AGENDA

CHAIRMAN LAPOINTE: HR 21, we certainly can. Other agenda changes? Seeing none, is there any opposition to the agenda's acceptance? Seeing none, we accept the agenda.

PUBLIC COMMENT

Do we have any members of the public? We have a public comment period on our agenda for topic that are not on the agenda. Does any member of the public want to make any comments at this time? Agenda Topic 4, we do not have any non-compliance recommendations; that's nice. Bob Beal is going to do an update on formation of Committee to address state/federal alignment issues.

UPDATE ON FORMATION OF COMMITTEE TO ADDRESS STATE/FEDERAL ALIGNMENT ISSUES

MR. BEAL: Thank you, Mr. Chairman. For about a year now the commission has been talking about the alignment of state and federal fishery management programs and had some concerns that we were – the commission has, I think, seven either joint plans or complimentary and in early '07 we were out of alignment on five out of the seven of those plans with different quotas and some other different provisions.

The discussion was started based on those number of plans were out of alignment. The Policy Board formed a subcommittee to look into this, and they brought forward a recommendation at the February meeting to form a committee to work with the New England Council and the Mid-Atlantic Council and the Northeast Region to come back and kind of brainstorm some ideas and bring those back to the councils, the National Marine Fisheries Service and the commission to hopefully improve some of the state and federal alignment issues that are out there.

The working group that the commission had was Eric Smith, Paul Diodati, Jack Travelstead, Pat Augustine, Gil Pope and Bill Adler. Eric Smith, as you guys haven't noticed, is a short-timer, so he's probably not – the Policy Board may want to consider replacing Eric on this subcommittee. The idea was that this subcommittee would represent the commission at the discussions with the Mid-Atlantic Council, New England Council, and the National Marine Fisheries Service.

We'll probably get that group together sometime this summer, the larger group, our subcommittee plus the folks from those other area and work on the state/federal alignment issues and bring some recommendations back either in August or at the annual meeting, depending on when we can get all those folks in the same room. That's the update. The

NRCC endorsed this and the two councils and the National Marine Fisheries Service are on board and willing to participate.

CHAIRMAN LAPOINTE: Thank you, Bob. Any questions for Bob? We won't ask for it now, but if anybody wants to volunteer to be on that subcommittee there is one slot that will open up on the 1st of July. I don't many heads shaking on that one, although the remaining members I think provide a good cross-section of the commission as well, so I think we're in okay shape. The next topic is the Law Enforcement Committee Report, Captain Howard.

LAW ENFORCEMENT COMMITTEE REPORT

MR. MICHAEL HOWARD: Thank you, Chairman LaPointe. We met on Tuesday for approximately eight hours. Everybody on the committee was here with the exception of D.C. and our chairman who had a family emergency in North Carolina. We followed up on some issues. We had some guests from the National Marine Fisheries Service to explain some of the offshore lobster regulations.

If you recall, five or six years ago, when we went to area management, we were very concerned about the confusion created with multiple regulations, dual permits, most restrictive. As you all have become aware, so has law enforcement. It's very difficult for the officers to keep up with the multiple regulations. I want to thank Toni for keeping us up with a cheat sheet that an officers has. He can go and it explains the regulations in each area and the pot restrictions.

We have come into an issue with crab pot and lobster trap issues, and we're working to deal with those to ensure that the laws pertaining to dual permitting are enforced and that it isn't a way to expand lobster fishing but with the use of crab pots. Eel and Addendum II, we are on record and we want to remind everybody that it's very, very, very difficult to measure a live eel, and we would hope that you would continued to consider that it's impractical for law enforcement and look for ways through vent sizes or other things that we can measure.

Aquaculture, we participated years ago in the Aquaculture Guidance Document. It continues to come up in various scenarios throughout this country with international aquaculture, domestic aquaculture and domestic aquaculture of indigenous which we harvest. The latest one is in Virginia, and we find that it's economical to sell these fish at an undersized – what in the wild would be undersized and the issue

of interstate transportation and readily identifiable by officers is of concern.

We are still looking and have a subcommittee that will be looking at ways that aquaculture can mark or that law enforcement can identify easily in the field without an investigation that these fish came legally from a facility that obtained that brood stock legally and raised them legally.

Sharks, I want to thank Chris Vonderweidt for including us at the very front of this new plan. Many, many of our considerations have been adopted in that document; and the few that haven't, we'll just have to bite and go on with.

Finally, something, we've been working on, when Magnuson was reauthorized, was VMS and having state access to that to assist us with law enforcement. By August of this year their goal and mandate is to have that online for us, and we will be putting it on some boats. When I say we, the National Marine Fisheries Services will be putting that on some of the patrol boats in Maine as a pilot program. Once the kinks are out, it should be expanded through JEA funding throughout the coast. Thank, Mr. Chairman, any questions?

CHAIRMAN LAPOINTE: Thank you. Any questions for Mike? I have a question. On the aquaculture issue, I know one of the early discussions was there are two, I guess, trains of thought. One is a paper trail so that in fact you can tell chain of custody. The other thing that they talked about was individual marking of fish. Can you tell me where the recommendations are going to go on that, if they're far enough along?

MR. HOWARD: Those are certainly part of anything is a firm paper trail, an origination document and some sort of identification, whether it's visual or a tagging system or a grouping that an officer in the field can look at that fish without having to do some special investigation of analytical process. I will tell you that even in wild stocks it is difficult under existing regulations to prevent massive fraud using paper and other things. That I can speak more to this fall as we see some dealers and other problems that have arisen.

CHAIRMAN LAPOINTE: Thank you, Mike. Any questions or comments for Mike. Thank you, sir. The next agenda topic is a report on the Fish Passage Workshop that was held a while ago.

FISH PASSAGE WORKSHOP REPORT

MR. BEAL: Thank you, Mr. Chairman. At the beginning of this meeting a document was passed around which is a summary of the workshop. The workshop was held April 3rd and 4th down in Jacksonville, Florida. This workshop planning was started in 2007, but due to some scheduling limitations for some of key participants, we weren't able to pull this thing off until early April of this year.

In my opinion, it was a well-attended and very productive workshop. As you can see on the front page of the summary document, there were 60 to 70 people there. The goals of the workshop are there. The idea generally at this workshop was to get the states together and get a number of folks from each of the states on the same page as far as fish passage goes. There were eight or nine commissioners there, and some of those folks are in the room today.

It was good to get a range of folks from the technical side all the way up to the commissioner level. This summary document includes the abstract from all the presentations that were given. In between the presentations there were times set aside for discussions and panel discussions on ASMFC involvement in fish passage issues.

If you go toward the back of the document, Pages 8, 9 and 10, there are a series of recommendations to the ISFMP Policy Board. They fall under a number of different categories, FMP changes, habitat committee work, technical committee work, policy recommendations, public relations and workshops and training. There are quite a range of recommendations. A lot of these recommendations boil down to the commission should keep doing things like that, which is get folks together that are dealing with fish passage, help the states work through some of the issues and kind of have a lot of cross-talk between the states as to what other folks are doing.

There was a presentation on the FERC process and FERC relicensing. There is a lot of interest from the states to continue having discussions on the FERC process just to figure out what has worked well in certain states along the east coast. There were west representatives there as well to give examples of how they worked through the FERC process.

That's a quick summary of it. I think it's up to the Policy Board where we go next, but as you can see there are about two solid pages of recommendations,

so there is quite a bit of work that is recommended that came out of this workshop. There is probably some staff work needed to boil those down and maybe prioritize and recommend where to go next. That's my quick summary, and I can answer questions if you like.

CHAIRMAN LAPOINTE: Thank you, Bob. Questions for Bob? David.

DR. PERKINS: Bob, how were the recommendations generated and developed?

MR. BEAL: They came out of the panel discussions and discussions between different sessions in the workshop. We'd have three or four presentations on an issue and an hour or so set aside for discussion. Usually the presenters were on the panel for that session and then the members of the audience interacted. The facilitator of the workshop was George so he helped extract some of these recommendations from the audience and the presenters.

CHAIRMAN LAPOINTE: I told people – the attitude of the folks was kind of like when Wilson was discussing habitat yesterday. People wanted to tell the commissioners what they thought should be done. I've got a term with my staff and I said, "Pretend you're sitting on Santa's lap and you get to ask for whatever you want. You may not get it but you should ask for it." So that's where the recommendations came from, and so they are pretty broad, and I think we do need to distill them down.

Some of them are things that we may not be able to do, but we didn't want to limit people up front on what their recommendations were. If I might jump in before I get to A.C., it was a great workshop. Staff did a good job organizing it and people were engaged from the start to the finish because there is a lot of interest behind the issue. A.C.

MR. CARPENTER: During the workshop, was there any discussion about downstream passage from obstructions as well as upstream passage? In the case of eel, that's one of the problems that we're having there where the hydro system doesn't allow them to come back downstream? Was there discussion of that issue?

MR. BEAL: Yes, there was. The workshop was set up where there was a day and a half of general fish passage issues, focusing on upstream but there was a downstream component. The second half of the second day of the workshop focused on American

eel, and a couple of the presentations did focus just on downstream passage of eel and the problems associated with that.

The other thing I should mention is that this is the first shot at a summary of the workshop. We've got almost all of the PowerPoint presentations in our office. We're going to compile those and put all of those on our website so that folks can access those presentations and get more detail on each of these if you're interested in that.

CHAIRMAN LAPOINTE: Other questions or comments? Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. Rather than just always – we talk about these things, they're great ideas and stuff like that. Is there any way that this commission, maybe in its habitat committee meeting, maybe at one of the board meetings where the states could sort of say we've got this information, we've got X number of passageways for eels and for river herring, and we're making progress on opening up five of them or whatever, just so we could see that the states would sort of be reporting in an informal way of their passageways that could help the river herrings, it could help the eel, and what they're doing about it.

It just would be – I think it would be helpful if we knew that the states were – they knew what their problems were, they're trying to work on it and we could see that things were starting to improve. I just throw that out as some way to get the thing going.

MR. BEAL: Bill, a couple of the recommendations actually do talk about reporting, and I think that's similar to what they had in mind, you know, let's get an inventory of – I mean, there is a pretty good inventory of the dams and other obstructions that are out there on the rivers, but I don't think there is a very concise summary of what exactly is being worked on in any given state each year. That is some of the recommendations that kind categorizes that.

CHAIRMAN LAPOINTE: One of the recommendations – and it might have been Wilson's – Gail Wippelhauser on my staff had this kind of diagrammatic portrayal of the Kennebec River, and it listed all the dams and with ones were FERC and which ones weren't and which ones were of a concern to the different diadromous species, and so I think the idea was that provides a pretty good template if we move forward to show where you are

on each river system, and you can do it in a digital format. Dennis.

SENATOR DAMON: Thank you, Mr. Chairman. This is for Bob. When do you expect that those presentations might be available on line on your website, those powerpoints?

MR. BEAL: We can probably get them up in the week or so.

MR. MILLER: Thank you, George. Bob, is there any consensus of what an eel ladder should look like? In other words, the ones I've seen I would have to characterize them as fairly low tech, comparatively low cost compared to eel ladders or something of that nature, but I wondered if there are any minimum standards or any suggested guidelines that people may be starting to put together with regard to eel ladders.

MR. BEAL: There is a lot of work being done, obviously, but I'm not sure if there is sort of a set of guidelines that describe what the most cost-effective and effective way of passing eels upriver is. That can be one of the projects that comes out of this workshop is pulling together state of the art. During this workshop, we tried not to get into too many of the nitty-gritty details on how to construct passage.

It was more of a procedural workshop and talking about – I mean, there were some general sessions on different types of passage, but it wasn't to the level of describing the ideal fish passage. The other thing that came out fairly loud and clear was that it's a case-by-case basis as to what works better on different situations, different heights of dams and different things, different flow rates and everything else. There is a lot of customization that has to happen even if we have a standard set of guidelines.

MR. CARPENTER: A number of years ago the state of Maryland started to work on impediments to upstream migration, and one of the things that came out of that was not only dams but road culverts are major obstacles in some of the smaller tributaries. I'm wondering was that addressed at all in this fish passage; the idea that a road culvert that's a foot or two above drop; was there any discussion of those?

MR. BEAL: Yes, there was. A lot of the states have actually cataloged all those obstructions throughout their state; and when you put map up, it's kind of a series of dots that connect and kind of color in the whole state for a lot of places. There are a lot of those out there. They're not that difficult to resolve

and pass fish usually, and eels in particular, but someone has got to go through the effort of taking the step, putting the passage on there and then doing it at multiple sites throughout the state. It's just a volume thing more than a technology thing with those issues.

DR. PIERCE: The first set of recommendations relate to policies and approaches, and in particular there is one that caught my attention is the second one about ASMFC should take more of an ecosystem-based approach like NMFS and the Fish and Wildlife Service are mandated to do. At the workshop was there any discussion of how the National Marine Fisheries Service and the Fish and Wildlife Service have implemented an ecosystem-based approach or how they've defined it, for that matter?

MR. BEAL: No, we were focusing on fish passage rather than the ecosystem efforts of those two agencies.

CHAIRMAN LAPOINTE: I think no is the right answer, and a lot of these recommendations were just what was coming up in the discussions, and so that's why we need to winnow this list down so that in fact if that's something that we bring forward, we know what it means rather than just having the recommendation standing by itself. Leroy.

MR. YOUNG: Two comments. One relates to the culvert question. It's an issue that we've been working on a lot in Pennsylvania. We have an old program that our Pennsylvania DOT has basically embraced for all their culvert designs in the state, particularly with respect to passage of fish. If anybody is interested in that, I could provide information you'd be interested in.

Also to the question of addressing ideal design of passageways, I can't remember if it was at this conference or one – I'm getting conferenced out here, but there's one a little earlier on passageways in Pennsylvania that I attended, but one of the leading designers of these passages; a question was asked, you know, what's the best design, and he described one of the fishways in Pennsylvania is the ideal design, and the only problem with it is that it hardly passes any fish, so I'd caution you on ideal design.

I don't think we know what the ideal design is, and it's a real concern I have. There has got to be some tremendous advances in our understanding of these fishways, especially for these east coast diadromous fish. It's a lot different than dealing with some

problems, and it's been a real challenge for the engineers.

CHAIRMAN LAPOINTE: The ideal design is actually the Edwards Dam, which is removed. I mean, a lot of people just said the best fish passage is an open river, and obviously that's true, and we got then into a discussion about balancing different social needs like hydropower and – what did my governor call it – renewable indigenous sources of energy, and so then you get those other discussions. Other comments on the workshop? Jimmy.

MR. JIMMY JOHNSON: Wilson just reminded me that North Carolina has already a complete list of their dams prioritized. It's done for the EEP Program conjunction with the Army Corps of Engineers. There is a big program at NC State that standardized the design for culverts and they're working with the Federal Highway Commission and DOT. A lot of that work has been done in North Carolina.

CHAIRMAN LAPOINTE: Thanks, Jimmy. Other comments? David.

DR. PERKINS: It's great to see the interest and fish passage is a huge issue. I think all the states are involved to a large degree and a lot of different projects. It's great to see the commission more involved and interested in it, and I'm trying to see how we can continue to keep the momentum.

It sounds like, Bob, maybe the staff is going to continue to look on these things and we'll hear more about it, but I'm just looking to see how can we keep this going, whether we look at the habitat committee or maybe a subcommittee for fish passage issues to see what's most important to us, how the commission can contribute. We all are doing lots of things. We've got fish passage engineers who are helping support designs and so forth. What can the commission bring to it that we can –

CHAIRMAN LAPOINTE: Well, I'll let Bob jump in. One thing, we have a tendency to think that our fish passage people are talking to every other fish passage person along the coast and they know everything everybody else is doing. NOT!! You know, you get people – and I'm immensely proud of my staff and the Sea Run Fisheries and Habitat Division, Gail Wippelhauser and Tom Squires and Company have been doing this for, you know – and Lou Flagg got started there for decades.

So the workshop was beneficial for people like that who have been involved in it a long time because

they talked to people in other states and regions they don't normally talk to, so just that information sharing I think is a huge benefit. Now I'll let Bob talk about the other parts.

MR. BEAL: I agree with everything George said. That's one of the messages that came out loud and clear was just getting folks together to talk about these things was a big step forward. I think as far as next steps with the commission, you know, as I said, we've got the two pages of recommendations.

I envision at the August meeting we'll pare down that list and probably coming out of the August Policy Board meeting will be some tasking to separate groups, either the habitat committee, species technical committees, work for staff, maybe some additional action plan items for 2009 and additional workshops, those sorts of things. I think paring down this list and then bringing it back to the Policy Board and then the Policy Board can kind of allocation work from there is how I would envision the next step.

CHAIRMAN LAPOINTE: The other thing I think that we might consider, if we think about Wilson's Habitat Committee Report yesterday and our concern about how we move forward, this may provide – you know, there may be some high-profile hydropower projects along the coast for which the habitat committee can engage and add extra value and comment to the comments that the states are already engaged in with the federal agencies, and that may well provide a spot for the habitat committee to move forward on commenting on individual projects in a way that works under the current policies. Other questions or comments?

Seeing none, we'll move on. Again, I want to give my thanks to staff for organizing a great workshop. Jessie deserves a lot of credit. She did a lot of the legwork, but Bob was there, Nichola was there, as well, and made it easy for commissioners and participants to get in, participate in the workshop and get out. They deserve our thanks for that.

The next agenda topic is continuing discussion on ASMFC involvement in the state recreational registry program. Gordon is going to discuss this. I thought he wasn't going to be on until 10:30.

MR. BEAL: Well, we were going to ask Gordon to come up and just give a five- or ten-minute spiel on where the status of the federal recreational registry is and the proposed rule and those sorts of things.

CHAIRMAN LAPOINTE: And then that will lead into the discussion on the tabled motion?

MR. BEAL: Yes.

UPDATE OF THE STATUS OF THE FEDERAL RECREATIONAL REGISTRY

MR. GORDON C. COLVIN: Mr. Chairman, what I'm going to try to do is just give you a very update, and I think what you're going to see is information you've seen before. There is really little new to report on the status of the program. This is the timeline that we've established presently for the entire MRIP effort. Those of who have been getting the monthly updates now, I think many of should be getting them, staff should be getting them, and I want to come back to that subject at the end of the presentation in terms of the information that we're distributing.

Those updates have included this information, included regularly in terms of trying to track where we're headed. If you'll notice on this timeline, there is a red dot more or less in the middle, and that's where we are now in time. The proposed rule to establish the requirements for the National Saltwater Angler Registry was completed and cleared NOAA a couple of months ago and has been under review in OMB.

It is in the company of two other major rule-making efforts that relate to the Magnuson-Stevens Reauthorization Act, the ACL and AM rule that I think many of you are familiar with, and NEPA rule, so there is a fair amount of rulemaking sitting at OMB now. All three of these rules have been classified by OMB as significant rules which subject them both to detailed OMB review and also provides for a 90-day review period.

Our expectation, based on that, is that the proposed rule will be cleared and ready to publish by early June. There will be a 60-day comment period. We'll put the registry team together to review the comments, make recommendations to NOAA on where we go and we'll be looking at a final rule to be published in the fall, and that registry itself will go live as scheduled in January of 2009. That's the timeline for the registry.

Other activities that are worth noting particularly is that this summer the MRIP Program will be developing a detailed progress report and the initial description of how the program will begin to evolved and roll out into the new system a survey, something

that's being referred to here in this slide as the program blueprint. There will be public review and discussion of that later this year and a detailed progress report, including the blueprint, will be submitted to congress in the beginning of 2009.

The session that we will have following the policy board meeting, the joint session with ACCSP will include a little bit more discussion of all this because the information we're hoping to get there is part of the information that will go into that effort. Just, again, to review the registry information – I think this all consistent with the information that I provided to you back at the annual meeting – the registry itself, the legal basis for it comes out of the Magnuson Reauthorization Act, which requires the Secretary to institute a program to register anglers who fish either in the U.S. EEZ or for anadromous species or for continental shelf resources beyond the EEZ, which is pretty moot since there is really no recreational fishing for continental shelf resources beyond the EEZ.

It provides that a fee cannot be charged until January 1st of 2011 for this registration requirement. It enables the registration of either vessels or anglers as the Secretary determines, and it provides the basis where anglers may be exempted if states can provide data that is suitable for the Secretary's needs as an alternative to federal registration. The Federal Registry Process, for those anglers – and for-hire vessels because there will be two registries. There will be one for each that will have to register with the federal government.

The process will look something like this. It will be applicable to persons in vessels that are not licensed or registered by a state that is designated as an exempted state based on the data that it submits to us. Anglers and for-hire vessels would need to register if they fish either in the EEZ or for anadromous fish. The anadromous fish part of this has been subject to a fair amount of internal discussion since last year, primarily focusing on the issue of how we define anadromous fish and how we define fishing for anadromous fish to make a rule enforceable.

I think that the likelihood is that we will define anadromous fish by the species. We will specify the species that are defined as anadromous, and in all likelihood the rule will provide that fishing for anadromous fish in any tidal waters will be subject to the federal registration requirement. Vessel operators will be able to register via the National Permit System, which is the one-stop shopping system that is being developed by NOAA Fisheries concurrent with

this. They will be able to either register via NPS online or via toll-free telephone operator system, who will connect to the NPS online registration.

The exemptions for the registry will include persons under age 16, persons who are fishing on a licensed for-hire vessel, and for-hire vessels would be exempt if they have another NMFS permit. We'll pull them into the registry from the other permit data bases that the Service has. How do states get exempted? Two ways under the law; they can be exempted by providing NOAA with a license or registry-based sample frame of their anglers and/or their for-hire vessels that include the identification and contact information that we need – a lot of that is going to be spelled out in greater detail in the rule – or a state could use a registry-based information and a regional survey that would be accepted by NOAA.

Right now the regional surveys that are most likely to be in that category are the Pacific RECFIN Survey, the Alaska Survey and possibly the West PAC Survey in the Western Pacific Islands. What state license exemptions would NOAA accept and still find the state data suitable for the Secretary's use? The ones that we're thinking of are for the youth anglers; initially for a two-year period, seniors; persons fishing on licensed piers and for-hire vessels; anglers who are disabled; and active military while they are on furlough.

The state license exemptions that are of great concern to us that we would be disinclined to accept unless we can find some other way to collect information or identifies these individuals are for those persons who are fishing on a licensed private vessel; fishing from private property; fishing from shore and public piers; and license frames in states that exclude large segments of their marine waters.

Some of the other issues that we're trying to deal with in terms of creating complete registries working with state license data bases include the lifetime and long-term licenses, how do we work with those licenses to refresh the data so that we have current contact information for holders of lifetime saltwater fishing licenses? Combination licenses are an issue we would need to find a way to earmark or identify or assure that we are sampling only saltwater anglers.

Senior licenses, as I indicated, if there are senior license exemptions, we need to work to find a way for the states to identify their senior anglers within a couple of years. Data delivery is another issue we need to identify and incorporate into agreements with the states; the standards for the makeup and the

manner in which their data will be delivered to us and incorporated into the federal data base. That's basically it.

I want to just point out that there are a number of the members of the registry team here in the room with us today, and I just ask them to wave or stand. A couple of them are board members and, of course, Chairman LaPointe is a member of the registry team, Spud Woodward, Ron Regan from AFWA in the back of the room and Eric Barr from Virginia just joined us. And Dick Brame over there in the corner is a member of the team and our liaison to the MRIP Operations Team.

I'm grateful to have a number of the team members here. Please feel free to talk to them as long as they can stay with us today about anything that's on your mind. I did want to come back to that one point I raised, and that's on communications. What you're probably beginning to see – hopefully you're beginning to see it – is that communications generally about the MRIP Program is ramping up.

We're seeing and we're actively kind of cultivating and supporting a climate in which there is more and more coverage of the MRIP Program occurring in both national and regional media. We're getting more press accounts of things that are going on. We're increasing the inventory of outreach and communication materials that we have developed and generated, and we certainly are prepared to make them available to our partners. There is now a monthly e-mail-based newsletter going out.

One of the things that I think we're thinking about is expanding that list. At the present time I know it's going to all the states and usually to multiple persons with the states. It's going to the commissions, the councils, and a lot of our regional partners and data collection and everybody that's actively involved in the MRIP Program itself, the many members of the teams and the workgroups.

It may be appropriate for us to consider expanding that list to include the commissioners from the Interstate Fishery Management Commissions, generally, and I'm seeing a lot a heads nodding. I think that may be a helpful addition, and we work with each or three commissions to get information.

The other thing is I'm beginning to think that it might be useful to consider some key members of state legislatures, and the state directors might want to talk to us about whether they feel they that there are some legislators or legislative staffers that would benefit

from having this information, and we'll be glad to add them. It's a pretty easy thing for us to do, and I think it would be helpful. Mr. Chairman, that's it; that's the update; and I'll be happy to answer your questions.

CHAIRMAN LAPOINTE: On the communication issue, if I think about people in my agency, they sometimes try to rely on me forwarding the e-mails, so I might get a list of people and key staff as well who can pay attention to it, and they give great input. I think all of us should consider doing that because it would be the addition from my state of maybe six or eight people on your distribution list, and they'll pick up things that I missed. The idea of our Marine Resources Committee makes a world of sense as well. Dennis and then Roy.

SENATOR DAMON: Thank you, Mr. Chairman, and I would concur on that information piece. That would be very helpful. Gordon, the purpose of this, as I understand it – correct me if I'm wrong – is for groups to accumulate data with regards to landings so that we can develop policies surrounding our fisheries.

If that's the case, I'm wondering why there was a rather substantial list of people who are exempted from having to have a license; whether they be youngsters or oldsters or handicapped or military, and the justification of that, because if in fact they're landing fish, that data, in my mind, ought to go into our general pool of data. Now if the reason is because we don't want to impose upon that group for whatever reasons with regards to a financial hardship, that's a different issue, but I thought they weren't even going to be required to have license.

MR. COLVIN: Thank you. We'll try to get that slide back up, but I think there are some pretty good reasons for the inclusion of each of those exemptions, and I'll try to run through them. Again, I think we'll get to a point at the end of the comment period where we'll be re-evaluating all of these things in the rule.

The first one that we proposed to exempt was youngsters. I think there are a couple of reasons. Of course, all the states exempt youngsters from their licenses. There isn't a state that mandates a license. The thought that we had is that it would be more appropriate to establish a program to encourage kids to register voluntarily and to try to come up with something like that. But, the notion of the National Marine Fisheries Service, United States Coast Guard, and our enforcement partners in the state enforcing Magnuson-Stevens based registration requirements

on kids just doesn't stand up. It's not going to work, so we can't really go there.

However, that said, the fundamental reason for creating these registries is to create a telephone directory, if you will, that we will use in lieu of coastal household general telephone directories. We will use that directory to contact people and ask them if anyone in their household has been fishing within the last – whatever the sampling wave turns out to be. Right now it's two months.

We think that for the most part, not always but for the most part we'll be able to adequately capture the trips made by youngsters when we contact the household that has an adult who is in the registry. There may be some exceptions to that, and we may need to do some studies to see if there is any significant bias associated with that, but we don't think so going in.

The one was, well, seniors we know is an issue. We have to get the seniors in the phone book. The states that have senior exemptions; they're in their statutes. They're very difficult to address. In many cases the states won't be able politically to change their statutes to require a license, but they might be able to come up with alternatives, whether it's a free license or a free registration program or some other way of getting the identification we absolutely need on the senior anglers.

What we've said is we'll let it go up front because we want to get you in and get you started, but we want to work out an agreement with you to get the seniors in there within two years. Clearly, without having them, we've got a big bias issue. The licensed piers and for-hire anglers, the piers are going to be probably a separate issue, and it doesn't apply in too many places.

But on the for-hire vessels, as I said, the purpose of this registry program is to create a phone book to contact anglers to ask them how many fishing trips they made. Right now in virtually all of the country we no longer get that effort information on the for-hire fishery from individual anglers. We have separate surveys where we get that information in some way, shape or form from the owners and operators of the for-hire vessels themselves.

If a person only fishes on a partyboat, it's the only kind of fishing they ever do we won't be calling them to get their angling effort. We call the operator of the charterboat; or, maybe they do a logbook. In Hawaii they do a logbook and some of the California skippers do, too. So, that being the case, it's not

necessary to ask people who only engage in fishing in that mode to register with us since we don't want to call them. That's why they're out.

The last two categories of disabled anglers and the active military on furlough, that is essentially in deference to people in those categories. When we've looked at the states, there are very, very few anglers who actually qualify for those exemptions. Given the nature of their state exemption, we feel it's inappropriate to force them to register federally. It seems to make sense to honor that exemption at the state level. That's our thinking. We kind of went through every one of those and thought they were justified, but, again, we'll revisit it after comment periods.

MR. MILLER: Thank you for that summary, Gordon. Considering that January 1, 2009, is rapidly approaching, you probably have an idea at this point of how you're going to do your initial notification to the angling public. Can you share with us what your plans are in that regard?

MR. COLVIN: It's a little bit complicated, Roy, by the fact that the first thing we have to do is identify preliminarily which states we think are going to qualify for exemptions because we won't have to cover those states. We have done that and it's been done in the proposed rule. We've talked about that and we have a pretty good idea that the west coast states, the Gulf coast states, except Florida, and on the east coast the states of Georgia and North Carolina are likely to be exempted, and the rest of the states are likely not to be.

Now that could change and we don't know yet. There are a few details yet to be sorted out, but for planning purposes that's what we're looking at. We are in the process now of engaging consultant services for mass media kind of marketing campaign to address both the issues associated with advertising the registration requirement and how-to issue as well as doing additional MRIP mass media stuff.

The basic strategy is we're bringing some experts on board to help us get that done. We're not going to roll it out too early because we have to have the final rule in place, and we have to have a very clear picture of which states are going to be in and out. We're really looking at something that's probably the first quarter of the next federal fiscal year, the last quarter of the calendar year.

MR. MILLER: If I may follow up briefly, do you envision there being an enforcement action as early

as 2009 if people do not register or choose not to register who would otherwise have to register? How do you intend to handle that aspect?

MR. COLVIN: We'll be working up an overall enforcement strategy working with obviously our fisheries enforcement staff and with their partners in the states and the coast guard. I think as that evolves it will be fairly clear that the initial focus will be on education. The end of 2009 is a long time from now, and I would not be surprised if there weren't some enforcement action taken before the end of that year, depending on the things that people consider when they make decisions whether or not to take enforcement action, and I think you know exactly what I mean.

MR. BOYLES: Thank you, Mr. Chairman, and Gordon, thank you for being here. It's always nice to get a briefing and an update. As you know, Gordon, in South Carolina we've got a little bit of a political problem that we're still trying to work through. We have indicated our interest in doing what we can to gain exempted states for our licensing program, so I'll talk to you about that off-line.

The question I've got, a very practical one, is come January 1, 2009, I was under the impression that the Fishery Service was going to accept the license data base of those anglers who were licensed under our state program regardless of exempted status as a means of registering those anglers initially. Did I misunderstand that?

MR. COLVIN: I think so, Robert. The current strategy we have been outlining is that once the final rule is in place those states that are eligible and meet all of the eligibility requirements can apply for designation as exempted states. And to the extent that they are so qualified, we will work out and come to terms of Memorandum of Agreement with those states so that their anglers would not need to register. But, we were not – and I remember Roy actually asking me this question in October.

We are not proposing that there be partial, if you will, or semi-designations; it was kind of an all-or-nothing approach. The state would either qualify or wouldn't qualify, and we wouldn't transfer the data until the state was exempted. You know, that said, again, this is a rule-making process, and I wouldn't be surprised if we get some comments during the rule-making comment period that suggests the registry team think of some changes to that, and we'll obviously consider the comments that we get.

MR. CARPENTER: Good morning, Gordon, and thank you for coming. I have two thoughts or two questions in this regard. One was why licensed piers are being considered to be different from licensed private boats? The second is if North Carolina, for example, is accepted and approved, if I buy a North Carolina license, can I fish anywhere in the EEZ or for anadromous fishes anywhere else and be covered?

MR. COLVIN: Let me take the second one first and then I'll deal with the hard one. I think the simple answer is the way the rule is structured and the way hopefully it will come out, if you are the holder of a license that's issued by a state that's designated as an exempted state, then you don't have to register federally because you're in the phone book. We've got you; we can call you. That's the thinking.

Now, the issue on the piers and the boats, the first thing I need to say is that there aren't too many places where we have these pier exemptions. I think probably most of the members of the team would admit that we didn't think as hard about the piers as we did about the boats. But, by and large, I think they are treated fairly consistently in the registry team's recommendations in terms of if a person is fishing from a licensed for-hire vessel or on a licensed pier, they could be exempted. What we're not sure about is if we really should have included the piers in that. We're pretty confident about – you're talking about for-hire vessels?

MR. CARPENTER: I'm talking about the slide that was up there that said that one of the potential groups that you're going to exempt would be fishing on a licensed pier, and my question is what is the difference between somebody fishing on a licensed pier and somebody fishing on a licensed private boat?

MR. COLVIN: Okay, I misunderstood, I thought you were talking about a licensed for-hire vessel.

MR. CARPENTER: I understand licensed for-hire; they're covered already.

MR. COLVIN: Yes. I think the difference is that there is the perception that the pier owner who is a commercial business like a for-hire vessel owner can generate a registry of those customers that fish there. Now that may prove to be true, and I think there is a good chance, by the way, that will change. The other thing that's different about it is that there are not very many of them; whereas, there are hundreds of thousands of private vessels, and that large number of private vessels is a big part of the team's thinking

about the fact that we really need to get information on the individuals who fish on them.

MR. CARPENTER: A follow up to that; you're going to exempt youth fishermen simply because you're going to get in touch with their parent, assuming if you call the household, and there is an exact logic that is identical to that. When you call the licensed private boat owner, he knows who has been on his boat. He knows what they've caught and he knows how many times the boat has been used and they're gone fishing. You can get the information on four or five people with one telephone call as opposed to making five or six telephone calls.

MR. COLVIN: This is very reminiscent of a conversation I had in a restaurant in Delaware not long ago, Roy. No, we can only get the information about those people when they fished on that individual's boat. What about all the other fishing trips they might have made during the sampling wave? We don't get it. Unless we can call them and ask them about their fishing, we don't have it. I think that's a good part of the answer.

The part is, of course, that there are some concerns about duplicating. A lot of the people who fish on those boats will have licenses and will be in the registration data base for other reasons, and we might end up getting their effort information twice; once from the holder of the private vessel license and once from them. There are a couple of different reasons why we felt very strongly that license private boat thing just doesn't work.

DR. PERKINS: I just wanted to get a little more clarity on the anadromous fisheries and fishing. It looks like we've got the marine aspect covered. You mentioned the tidal waters, that they would be registered, which then leaves the freshwater component, so what is the thinking about how we're going to get information for that?

MR. COLVIN: We're going to come back to this issue I think later this morning when we have the workshop, and we're going to need to have a little bit of discussion about data needs for anadromous fish management in the rivers. We have a lot of difficulties from an enforcement perspective, but remember this, right now we don't get any information from the rivers, none.

We don't get it on the east coast; we don't get it on the gulf coast. Through the MRFSS and the historically and now the RECFIN Program, we don't get it on the west coast either. The information from

the rivers comes from entirely different sources. Anything we get is an improvement, and now we need to start to think hard for the MRIP Program about what we need to get.

That said, in the meantime we have an issue with respect to the enforceability of the rule, and it's a little tougher with some of the east coast anadromous species than it is for things like Pacific salmon because in the rivers we have situations where we have both above impoundments and the unimpounded streams above tide. Populations of river herrings, smelt and some other anadromous fish that are essentially landlocked stocks and at the same time in the same system we have truly anadromous stocks that are moving in and out of the rivers into the estuaries.

We have a real problem with law enforcement on knowing and being able to enforce a requirement to be registered if somebody is fishing for or in possession of river herring or some of the other species above the influence of tide as to whether or not this is what the Act was intended to cover.

The current thinking is that we would extend the registry up through the tidewater and that enforcement requirement would be something that an enforcement officer could intelligently and defensibly act on in the presence of tidal action. Above that it's not clear. I think that's probably where we're going to end up on this at the outset, recognizing that there may be some anadromous fish – and there are some, striped bass included – that may be taken above the limit of tide that are in fact anadromous and that do move into saltwater.

If people only fish up in those parts of the rivers, we might miss them, but we'll still be a heck of a lot better off than we are now. We can address some of these other issues and problems I think down the road is the current thinking, but we've got to have something that's enforceable from the outset. I can assure you that a lot of the dialogue that I've had internally within NMFS since I last met with you in October has been with both NOAA Enforcement Counsel and with the National Marine Fisheries Enforcement Staff to try to build something that everybody was confident we could credibly enforce.

MR. JOHN E. FRAMPTON: Gordon, have you had any discussions about participants who would be under a free fishing license day? I know some states have that.

MR. COLVIN: As I recall, we talked about that very, very briefly. It's almost more of a survey issue, and it's kind of like tournaments where you have short-term events that may attract a lot people and catches that differ from the kind of catches that occur normally on day-to-day basis. For the most part we didn't think it would be a problem or an issue.

Now it could be that somewhere down the road there is a decision with tournament fishing and possibly with free fishing day fishing that we need to get some better data on these sorts of things, but I'm not sure that our basic surveys, the telephone survey and the intercept surveys are the way to do it. I don't see it being a problem or an issue, John.

REPRESENTATIVE ABBOTT: Thank you, Mr. Chairman. I won't promise to be brief. As we go along, Gordon, I viewed this as us taking two parallel paths. The state, on their own, is trying to do the saltwater license and you're trying to create a registry, and it's my belief that you would rather the states establish a saltwater license as a means for you to get your registry information. I think that's –

MR. COLVIN: I think we've been pretty clear about that.

REPRESENTATIVE ABBOTT: Yes. And in that light both the gentleman to my right and myself have sponsored legislation in our states unsuccessfully for a saltwater license. One of the things we've anxiously been waiting for is we need the clubs and whatever tools you can provide us to make this all happen. Just as a comment, I would say that in my legislature my sponsorship of a saltwater fishing license met as much opposition as any piece of legislation in the previous two-year biennium.

Legislators not involved in fisheries at all or even close to the coast were inundated with their constituents voicing their opposition to a saltwater license. It's being repetitious and redundant, but we need to know where we can fish and how much you're going to charge because that becomes a very important thing as our states try to go about this.

We will wait patiently, but I view 2009 and 2010 as being very gray years in the states because everybody is hanging their hat on the fact that it's not going to be until 2011 that there is a charge. We need to know as soon as possible. As I said, I know I'm being redundant, but we need to know what you are going to charge.

And let me ask you a question I just thought of this morning. If the state of New Hampshire did not enact a license and someone registers federally, would they be exempted from any state licenses in states that have licenses? Do you need both?

MR. COLVIN: The federal registration requirements would in no way, shape or form trump or supersede any state licensing requirements. That's as plain as I can say it.

REPRESENTATIVE ABBOTT: That's what I would assume. Another comment I would make is regarding the military. I did sponsor some years ago – we do give free licenses to the military, but on the other end of things I see that probably they would not be available to query for data purposes, anyway, if they're on leave. They're apt to anywhere, and I think that would probably make a talking point is you're not going to be talking folks around the world after they go back on duty.

I'll close with that, but we hope to invite you or your folks up to New Hampshire this summer because the bill that we didn't pass I placed in interim as the chair and I have established an interim study committee of one, being me, and Doug Grout and I this summer will be trying to put together another proposal, but, again, to forward that proposal we really need from you folks as much ammunition as we can to be successful in our legislature because it's a tough battle. I think the senator from Maine would repeat a lot of what I said and have the same feelings about it. Thanks.

MR. COLVIN: Well, it would be my pleasure, and I'm sure I can speak for the rest of the folks in the MRIP Program, to come up and visit with you and to sit with anybody in any of the states. If we could help in some face-to-face discussion that would be of benefit to you, we'll be happy to do it and we'll get whenever we can. If we're invited to New Hampshire and Maine this summer, you can bet we'll be there.

MR. ADLER: Thank you, Mr. Chairman. Gordon, three points. First of all, I didn't see Native Americans listed under any exemptions. You know, sometimes they get exempted under some of these fishing things, and I didn't know if that was being considered. Secondly, I know they're trying to get more information to improve the thing like the MRFSS way of doing things, and yet I don't know that this registry is going to ask the questions of how many of the other fish that recreational people catch and that MRFSS captures in some of their things and

whether it's even going to be collected because it seems to be just limited to a certain group of fish.

And my last thing was the scenario I'm looking at is somebody after education for a year or something and a couple of guys out in a boat, in an outboard, and being approached by the police on the water to ask them if they have a registry and if they don't have this license with them, I don't know whether they're going to eventually ticket them.

I know there would be the education probably run first, but eventually they would literally be getting a ticket because they didn't have their – I mean, that's what I'm envisioning happening. I guess my two questions was the Native American and the second was they're not going to be asking for getting information for some of the fish that the recreational people catch and go into the MRFSS Survey that we then have to deal with. That's true, correct?

MR. COLVIN: The first question you asked, Bill, was about Native Americans, and that's a complex issue and it has several different layers to it. Assuming for the moment we're talking about a state that is not an exempted state, the registry team had some considerable discussion about the prospect for exempting indigenous people from the requirements for the registration overall, and we opted not to recommend that.

We have recommended that indigenous people – and we have attempted to define them imperfectly, and I think we're going to have to work on that – might be exempted from the fee requirement when it came along. One thing that we perhaps have not adequately addressed – and this is kind of the second thing – is what about members of United States recognized tribes who are fishing within the confines of their established and legally recognized tribal rights, and that is an issue I think we may have to revisit after the comment period.

The third issue relates to what about the states? In those states that are exempted, we are going to take the state license frames and whoever they license when it comes to indigenous people, Native Americans, members of tribes, Alaska native corporations and so forth, that's what we'll take and defer to the state laws in terms of where they require licenses and where they don't by indigenous people. It's a complex issue and I know we're not done with it.

Your second question related the coverage, and the answer is this. Our future surveys, whether it's the

MRIP Program, whether those surveys are similar to the surveys that are done now with improvements or whether they're even substantially different in some ways, are going to need to capture all saltwater fishing effort and all saltwater fishing catch, not just anadromous fish. We know that.

So what we're going to try to do is to work with the states to build angler registries that cover all the fishermen. Even though our authority is somewhat limited in state waters, and we recognize that, we know we need to work with the states to get everybody into the phone book, Bill. So that's our aim; that's our goal.

MR. YOUNG: Okay, so I'm in Pennsylvania, everybody that fishes except the kids need a license, so if they're fishing in the Delaware River, which is really the only place this would apply in Pennsylvania, and they're in the estuary. They're going to have a license; is that going to be enough or are they going to also have to register? That's going to be difficult.

MR. COLVIN: The thought I had, and this is kind of, Leroy, building on the question you asked back in October is that is, yes, if they're fishing in the lower river for stripers or shad, they would need to register federally unless we could find a way to exempt Pennsylvania. I think Pennsylvania's license is more than adequate in its coverage. The only issue is can we find a way to identify the people who fish in that part of the state so that we're not making phone calls to people in western Pennsylvania.

I think you had mentioned at the time that you might be able to add a question or an item in your license application in terms of people's intent to fish in the Delaware Basin that we might be able to use to pull out a subset for inclusion in the registry. If we could do that, I think that would work out great, but I think the license – my understanding of Pennsylvania's license is that it ought to be more than adequate for exempted state status.

MR. YOUNG: Would we have to specifically ask "do you plan to fish in tidal water"?

MR. COLVIN: I don't know how we'd do it. I think we'd have to sit down and work with you to figure out how best to carve that subset out, and I think we're open to your ideas. I don't think we're going to prescribe it.

MR. GILMORE: Gordon, this one is sort of a request because we're – and it really boils down to

maybe some special consideration for the first part of 2009. I mean, we've been working to try to get something in place, and then our former governor got really creative with his business trips.

That didn't go very far, and what we're really trying to avoid doing is having the fishermen have to go through something at the beginning of 2009; and then based upon the timing right now, if we really pull this off and say April or May of 2009 they've got to go through a second process to do something for the state, it's going to piss everybody off and they're going to be pissed at all of us.

So, that's really the consideration I think we need to throw in there. I think if we're close in 2009 and we've got the thing framed out, that would be considered to maybe avoiding having to do both, a federal registry and then a state one six months or four months later, whatever it is.

MR. COLVIN: Well, that's certainly one of the strangest bases I've ever heard for asking the federal government to delay action. I think my reaction to that, Jim, is that may be a point of view that some other states who are contemplating legislative initiatives next year may also share with New York. If that's the case, I think it would be really important to make a case for that on the public comment record when the proposed rule comes out.

We're pretty well convinced that we read the statute to require us to begin this registration process in January of '09. If we're going to do something different, I think we're going to need a very strong on-the-record basis for contemplating some alternative schedule. And, I think the other thing would be when you do that think about what would be a sufficient commitment to action on the part of a state to convince us to delay or defer. You know, the notion that a governor is thinking about submitted a bill to the legislature is probably not going to get it done. We're going to need something a little bit more definitive than that.

CHAIRMAN LAPOINTE: That's actually a good segue to what does the commission want to do about commenting on the draft rules? The draft rules are coming out in June?

MR. COLVIN: Assuming OMB sticks to its 90-day review deadline, George, yes.

CHAIRMAN LAPOINTE: Well, we'll stick with that assumption for now. Do we want the commission to comment as the commission? Do we

want to devote time at the August Policy Board meeting? I would have staff draft up some comments, but then for our consideration and submission as a commission.

My thought is we would want to do that, and I see heads shaking yes, so we'll plan on it in that regard. If in fact the stars line up and your comment period starts, say, the 1st of June and it's a 60-day comment period, we'll miss the August meeting, and so we may put in a request for an extension if that's the case to deal with our time issues as well as yours. Does that make sense to folks? Eric.

MR. SMITH: It makes sense so that you could talk about it at the August meeting, but it doesn't help the schedule of getting all this done – their schedule. I mean, let them worry about that, but it's already so compressed I think Jim Gilmore's concern is going to get taken care of just by the logistics of how all this is going to have to come together.

CHAIRMAN LAPOINTE: An alternative is we could have staff develop the comments and just circulate them by e-mail and see if our stars line up we could agree on the comments just through e-mail correspondence. We could try that first; and then if we don't, we'll go to Plan B. Does that make sense to people? I see heads shaking yes. Bill.

MR. ADLER: Gordon, what are the changes of getting an extension on time table? I mean, they do that all the time various things, but on this one what are the chances of saying, okay, we're extending another 30 days, whatever?

MR. COLVIN: You know, I really don't know, Bill, but I know that it is done, as you said, that's true. Your meeting in August is when?

CHAIRMAN LAPOINTE: It's the third week.

MR. COLVIN: Third week.

CHAIRMAN LAPOINTE: We'll probably be okay.

MR. COLVIN: Yes, I think you'll probably be okay, but it's awfully close, yes.

CHAIRMAN LAPOINTE: One of the things Gordon has learned is that the pace of review at OMB can take a bit of time. Everybody is hoping that it comes out in early June. If it comes out in June, we'll be lucky; and if it's the latter half of June, we'll be fine with the 60-day comment period as well.

DISCUSSION OF MOTION TABLED AT LAST MEETING

Other discussion for Gordon; and we have a workshop we're going to start at 10:30, so we will be able to pick up more information then. Dennis Abbott, what is the correct way of getting a tabled motion off the table; just a motion to remove it from the table? Does it require second.

REPRESENTATIVE ABBOTT: I think it does. I think it requires a two-thirds vote.

MR. GROUT: I would like to move that we take the motion that was tabled at the last meeting off the table that is up on the screen there.

CHAIRMAN LAPOINTE: That's enough; do I have a second? Seconded by Robert Boyles. We need to take a vote on the tabling action; don't we, or the untabling? All of those in favor, raise your hand; opposed, like sign. The motion is before us again. Doug.

MR. GROUT: At our last meeting we had considerable discussion about what the commission's involvement would be with this recreational licensing or registry proposal. There was considerable discussion about how exactly we should become involved. I made the motion up there to try and see if we could come up with an ideal set of data elements. My main concern was that the federal registry only includes anadromous fish within state waters, and from a data standpoint I think ideally we'd like to have everybody covered on this.

However, several commissioners had concern about the timing of this because of the lack proposed rules that did not come out on the federal registry. We wanted to see what Gordon and the federal registry were going to be developing and then maybe we could use that as a basis. Given that those proposed rules are not out yet but will be close, what I'd like to do, just to make things simple, is to make a motion or I would withdraw this motion until the August meeting when we have federal rules. We are going to make comments on the federal rules and we can use that as something.

CHAIRMAN LAPOINTE: Is that okay with the seconder, which is Mr. Augustine?

MR. AUGUSTINE: Yes, it is, Mr. Chairman.

CHAIRMAN LAPOINTE: The motion is withdrawn. Bob's question was do we want to

postpone of withdraw? He did withdraw. I mean, the issue will still be with us, and we'll just take it up at the appropriate time.

MR. GROUT: Just a clarification; I want to make sure that this issue is obviously on the August meeting agenda so that we can take up some form of this in the future.

CHAIRMAN LAPOINTE: If nobody else puts it on the agenda, you'll remind us and it will be on there. Gordon.

MR. COLVIN: There is one other thing I wanted to mention before we ended the discussion, and that is that during our prior discussions of registry issues, several of you and I think no one more clearly and firmly than John Frampton have addressed the challenges that we face in bringing the state license data physically into a central data base to be used as the basis of our registry.

We recognize that challenge; and as I indicated at the last meeting, we have now created an Angler Registry Data Base Workgroup comprised of some folks from the states who are helping us with that task. I just wanted to recognize this morning Dr. Eric Barth, a member of our registry team who is chairing the workgroup, and Scott Sowery from our Office of Science and Technology staff, who is providing the staff support to that workgroup.

They are up and running. They're doing a great job. We have support from many of the states and the commission. I know in addition to Virginia, Connecticut, North Carolina, South Carolina and Florida at least from the Atlantic coast – I may have left some out – are assisting in that effort and we are very grateful for it.

There is a likelihood that at least the states that have licenses now and even those states that may not, but when they do, would be adding them to their current hunting and fishing license issuing process. You'll be contacted by the workgroup and requested to provide some information and support to the effort as we inventory the state license data bases and how the licenses are constructed in each state.

I would ask you to provide support to the workgroup when they come to you for that and would very much appreciate it. And, again, if you have questions about that, Eric is here as is Scott and they can address them before they have to go. Thank you, Mr. Chairman.

CHAIRMAN LAPOINTE: The next agenda topic was Eric Smith wanted to discuss HR-21. Ron Regan from the Association of Fish and Wildlife Agencies is here; can you just come sit at the table because I think we may ask what the association is doing as well, Ron.

MR. SMITH: I simply want to bring it to the attention of the board since it wasn't on the agenda that this has been percolating in congress for over a year now, and the bill has a couple of main features. It essentially establishes a U.S. Policy on Ecosystem-Based Protection of Ocean Resources. Then it seems to require each federal agency to adopt regulations or revise their policies and regulations to make sure that they comply with that policy of protecting the ocean, which is pretty heady stuff when you think of Department of Defense and Transportation and all the non-environmentally oriented agencies, or at least the ones that don't have it as a principal mission.

Then Title II is the NOAA Organic Act which gets into anything that speaks of NOAA because they've never been codified. Then the third part, the major part is this whole notion of regional ocean commissions which came out of the Pew and the National Ocean Commission Report. The reason I bring it in here is in one spot it's very careful about saying that it's not going to try and go reinvent the wheel for other regional-based organizations like fishery councils and any others of that same design.

In a steering committee mode, the executive director of ASMFC or any of the interstate commissions and the executive director of each of the regional fishery councils would be members of – and I forget the exact level of steering committee representation – so it sounds like they're trying to bring the fisheries folks into the fold without saying that they're going to go out and change the world of fishery management, which brings my blood pressure down a little bit, of course, and probably everybody else.

Nevertheless, it's still something that really deserves watching because it could have a profound impact on how states interact with the federal government in the future. There is a pretty hefty price tag, tens of millions of dollars. Divvied up among 27 or 30 states and commonwealths and territorial governments, it won't seem like much, \$20 million to NOAA for all the different things they would have to do.

The Association of Fish and Wildlife Agencies – I'm glad Ron is here – they've been watching this pretty carefully and sent it out to get comments. Because it wasn't on our agenda and I hadn't heard any other

mention, Mark and I were talking about it this morning, and I thought I would just mention it as placeholder that we should watch this and at the right time, which may have passed, we may want to comment on it.

MR. ADLER: Thank you, Mr. Chairman. I wanted to ask Eric what was the second part of that – after the ecosystem-based policy, and then the next one was the regional ocean commissions; there was something in between there you mentioned.

MR. SMITH: It's called the NOAA Organic Act. NOAA was formed by, I guess, an executive order in the early seventies, and they have never been institutionalized by act of congress, so Title II of the bill goes through all of what they would have to do, how many deputy assistants, secretary, undersecretary and so forth, what they would do. It's watching paint dry in government.

I mean, you can read through it, but essentially it's designed pretty much how they're operating now. And it's not just NOAA – well, it's all the subunits of NOAA. It's just called the NOAA Organic Act and it's plopped in here.

CHAIRMAN LAPOINTE: Do you want to give us a bit of an update. The Association of Fish and Wildlife Agencies has a subcommittee dealing with marine issues, and is it Kelly Hefler –

MR. RON REGAN: That's correct, Mr. Chairman.

CHAIRMAN LAPOINTE: From Alaska has been putting together comments, so if you could just give us kind of a synopsis of what you've been doing, that would be great.

MR. REGAN: Okay, thank you, Mr. Chairman. In fact, I talked with Kelly Hefler yesterday, and we're probably going to draft a letter for our executive director's signature that won't necessarily be very aggressive but will at least raise some issues that we think merit the attention of congress to think through if they haven't already.

Eric has raised some of them. We're a bit concerned about the lack of precision in Title I on some of the definitions dealing with ecosystems. That same title also creates a new designation, and if I remember correctly it's an important ecological area. We're not sure what we gain from that versus the many other designations that are already applied to marine resources and marine habitats.

We've also heard from states concern about the governance structure and whether or not in fact the wheel is being reinvented. That governance structure is very planning intensive. Strategic planning often appears in the legislation. There are deadlines for it and it seems to us, anyway, that a lot of time could be spent on new planning initiatives, which might detract from some of the work that the commissions or councils are already doing.

So we're going to be crafting something. We anticipate full committee markup on this bill within the next few weeks. We don't know how quickly things will move after that. We do know that when the subcommittee dealt with the issue it did pass out of the subcommittee without a whole lot of dissent.

The one other thing I guess I would make you aware of is that the coastal states organization is formally on record strongly in support of Oceans 21, and they are in support of the regional construct that's contemplated in it, for those of you that need to balance coastal versus marine fisheries issues in your organizations. Thank you, Mr. Chairman.

MR. BOYLES: Thank you, Mr. Chairman. Just one of the practical things that we have run into in this brave new world of scrutiny of federal budgets and earmarks is that I know a number of congressional offices have asked for underlying authorizations for programs that we were seeking appropriation support for.

Insofar as many of those programs that we are interested in and are in NOAA, I think, Eric, the practical aspect of Title II would give some authorization to some of these NOAA programs that have only been authorized through appropriations. I think that would help in the long run as they deal with changing the way they fund some of the projects that we're interested in. I think my read on this is if we get some authorization for some of these NOAA programs, some specific authorization it may help us as we seek to find additional resources for our programs that we're interested in.

CHAIRMAN LAPOINTE: Thank you, Robert. I might suggest that we have Vince work with Ron and get their comments and work with our Legislative Committee, which is chaired by Robert Boyles, and draft up comments on behalf of the commission to go in with the associations, just again to push on those issues that we think need pushing on. Does that make sense to folks around the room? Other discussion on HR-21?

The last item we have on our agenda is a recognition of a number of events that deserve mentioning today. The first one is – and I was talking to Robert – it is the 53rd anniversary of VE-Day, Victory in Europe Day, when World War II ended. I know that because it's my mother's birthday as well. That's certainly a day I think to note.

The second is we have a staff member, Erika Robbins, it is her last meeting. She has been with the commission almost two years and worked, as we know, diligently and cheerfully on a number of plans. Erika is getting hitched to a marine in Europe, and so she is going on to different things, and so all the best to you, Erika, and thanks on behalf of the commission for all your great work for us. (Applause)

And then last and certainly not least is this is Eric Smith's last commission meeting. It is, as you've reminded us about 700 times this week; thank you very much. When I joined the commission as a staff member in 1987, I don't remember what Eric's exact role was, but he was a commission groupie at that time, like I was, and he has been around steadfastly since.

We were having dinner with Dave Simpson the other night, and we were talking about past commissioners. He survived a number of years under Bob Jones and he survived a number of years under Ernie Beckwith, and that's no easy task. He has come to our meetings and he has put his time in and he's been diligent and he's done his homework when some of us haven't, and we have benefited mightily by his dedication and his good spirit and his continual work for the commission. On behalf of the commission, I want to wish you well. Thank you for your friendship, thank you for your long-standing service and best of luck in the future. (Applause)

MR. SMITH: Thank you very much; I appreciate it. I hope I'll get a chance to chat with everyone as I somehow head out of the room today, but I just want to tell you without going into any length just how much I appreciate the personal relationships that I have developed in the commission and also – they're not here, but the council process that we've had over the years.

That's the only real take home from all of this is the people you meet and work with. This is important stuff. It's hard to explain it to legislatures and congress. Sometimes we're the only ones to know, but I just can't say good enough things about all the people, commissioners, staff, everyone that is

involved in this, and that's the stuff I'll remember. I will also note that difficulties aside, I have enjoyed working for every guy I've ever worked for, so thank you.

OTHER BUSINESS & ADJOURN

CHAIRMAN LAPOINTE: Thank you, Eric. Having no other business before the Policy Board, we stand adjourned.

(Whereupon, the meeting was adjourned at 10:15 o'clock a.m., May 8, 2008.)