

**ATLANTIC STATES MARINE FISHERIES  
COMMISSION**

**Proceedings Of The  
INTERSTATE FISHERIES MANAGEMENT PROGRAM  
POLICY BOARD**

**AUGUST 29, 2002**

**SWISSOTEL HOTEL  
WASHINGTON, DC**

## TABLE OF CONTENTS

Summary of Motions.....	3
Call to Order, Chairman Susan Shipman.....	5
Approval of Agenda.....	4
Approval of Proceedings.....	4
Public Comment.....	4
Review Non-Compliance Recommendations .....	4
Discussion of Compliance Efficiency White Paper .....	4
Discuss Commission Reorganization .....	10
Discussion of USFWS Horseshoe Crab Workshop .....	21
Habitat Committee Report.....	26
Other Business/Adjourn.....	30

ISFMP Policy Board

August 29, 2002

***On behalf of the American Lobster Board, I move that the ISFMP Policy Board recommend to the Commission that the Commonwealth of Massachusetts be found out of compliance with Addendum III to Amendment 3 to the American Lobster FMP in that it has failed to implement and enforce the zero tolerance definition of v-notching for its waters of area 1. This measure is required to ensure that the egg rebuilding targets of the plan are achieved and to maintain effective cooperative management of the lobster resource. In order to come back into compliance, the Commonwealth must fully implement and enforce the zero tolerance definition of v-notching in its waters of Area 1 (i.e., any female lobster bearing a v-shaped notch of any size).***

Motion made by Mr. Lapointe.

***Move to table action on the Massachusetts' v-notch non-compliance finding until the first Lobster Management Board meeting in 2003 and subject to the Commonwealth of Massachusetts taking the following actions to:***

- 1. Evaluate the rate of compliance with the requirement to v-notch all egg bearing female lobsters by Massachusetts fishermen in lobster management area 1 and provide analysis to the Technical Committee and Management Board prior to January 7, 2003.***
- 2. Immediately undertake a process to formulate and prioritize alternative management measures to achieve the egg production targets (equivalent to 100% v-notch compliance at zero tolerance by Massachusetts fishermen in area 1), and submit the alternatives to the Management Board at the ASMFC Annual Meeting in November 2002.***
- 3. Submit a quantitative analysis of the alternatives to the Technical Committee by January 7, 2003.***
- 4. Implement one of the alternative measures by February 28, 2003 provided the alternative has been reviewed and approved by the Management Board.***

Motion made by Mr. Borden; Seconded by Mr. Colvin; Motion carries (11 in favor, 1 opposed, 2 abstentions).

***Move that the ISFMP Charter be amended to:***

- 1. Provide for establishing and implementing a compliance efficiency policy***
- 2. Requiring each Board to adopt an addendum to existing FMPs to establish a penalty/repayment system consistent with the compliance efficiency policy;***
- 3. Establishing a minimum notification standard for in-season changes to be specified by each board; and***
- 4. Establishing a reporting and tracking system for management changes***

Motion made by Mr. Colvin; Seconded by Mr. Lapointe; Motion carries unanimously.

***Move that this Board support a federal appropriation to investigate important striped bass***

***health issues, including mycobacterial infections, ulcerative dermatitis and possibly nutritional and habitat relationships associated with these concerns; and further recommend staff and member states act in support of funding for a 5 year plan to study these matters.***

Motion made by Mr. Schwaab; Seconded by Mr. Carpenter; Motion carries.

***Move to approve the Beach Nourishment paper.***

Motion by Mr. P. White, second by Mr. Pate; Motion carries.

The ISFMP Policy Board of the Atlantic States Marine Fisheries Commission convened in the Monticello Room of the Swissotel Washington, The Watergate, Washington, D.C., on Thursday, August 29, 2002, and was called to order at 1:00 o'clock p.m. by Chairman Susan Shipman.

### **Call to Order**

CHAIRMAN SUSAN SHIPMAN: We'd like to convene the policy board. I would like to welcome everybody. Thank you for your patience and indulgence and a little dose of humor, which I think we could all use at this point.

### **Approval of Agenda**

The agenda, I believe, has been handed out to everyone. It supplements the one that you would have gotten with your CD. With the agreement of the policy board, I would like to recommend that we move Item Number 9 up ahead of Number 5 so that it comes after public comment.

That would be the non-compliance recommendation. Are there other items? Mr. Carpenter, you have one, I believe.

MR. A.C. CARPENTER: Yes, ma'am. Under "any other new business", I'd like to add an item to discuss the implementation schedule for Amendment 6, striped bass.

CHAIRMAN SHIPMAN: Okay. Dr. Geiger.

DR. JAMIE GEIGER: Thank you, Madam Chairman. If at all possible, could it be possible that we can get Item 10 a little bit sooner in the agenda. I will need to leave probably right around 4:00 today. And looking at the previous board meeting, I want to make sure we have an opportunity to cover that agenda item.

CHAIRMAN SHIPMAN: We'll do our best. Several of us have to be on planes at 6:00 o'clock so it's my intention to move this right on through. We are hoping we will not have to have a business meeting, but we will see about that.

Other items? Is there any objection to approval of the agenda as reordered by consensus? Seeing no

5

objection, the agenda is approved.

### **Approval of Proceedings**

We have the proceedings from May 22nd of the policy board. Those were on the CD. I believe there may be copies in the back. Are there any additions, corrections, edits, to the minutes? Okay, seeing none, is there any objection to approval by consensus? Seeing no objection, the minutes stand approved.

### **Public Comment**

At this point in our agenda we'd like to take public comment. And we would ask if any one from the public is with us that would like to address the policy board, we would be happy for you to come forward to the microphone at the back.

Okay, seeing no one from the public, that will be a standing open invitation as we move through the items. If there is anyone from the public that wishes to speak, please raise your hand and we will call you forward to the microphone.

### **Review Non-Compliance Recommendations**

I'd now like to take Item Number 9. That's to review the non-compliance recommendation. I believe this is a report coming forward out of the Lobster Board.

MR. GEORGE LAPOINTE: It is. Do we have that motion on the screen? I apologize, we should have preordered this.

CHAIRMAN SHIPMAN: We do have it and it will be--

MR. LAPOINTE: The non-compliance motion?

CHAIRMAN SHIPMAN: Yes.

MR. LAPOINTE: At Monday's Lobster Board meeting, Monday afternoon, there was one issue of non-compliance which Tina will put up. I would just note for the record that I don't think that was made -- oh, that is made here by Mr. Lapointe because I'm the committee chair. I will read it for the record.

On behalf of the American Lobster Management Board,

I move that the ISFMP Policy Board recommend to the Commission that the commonwealth of Massachusetts be found out of compliance with Addendum I to Amendment 3 to the American Lobster FMP in that it has failed to implement and enforce -- that's not correct.

Well, yes, but while we're there, the trap tag program for non-commercial fishermen and the Law Enforcement Board -- oh, no, that's correct because it's in July. I apologize. This shouldn't come before the board until -- a bit of a technical error. Let's just move on beyond that one. That was an issue that we handled.

Here is the motion, I believe. On behalf of the American Lobster Board, I move that the ISFMP Policy Board recommend to the Commission that the Commonwealth of Massachusetts be found out of compliance with Addendum III to Amendment 3 to the American Lobster Fisheries Management Plan in that it has failed to implement and enforce the zero tolerance definition of v-notching for its waters of Area I.

This measure is required to ensure that the egg-rebuilding targets of the plan are achieved and to maintain effective cooperative management of the lobster resource.

In order to come back into compliance, the Commonwealth must fully implement and enforce the zero tolerance definition of v-notching in its waters of Area I; i.e., any female lobster bearing a v-notch shape of any size. Made on behalf of the American Lobster Management Board.

CHAIRMAN SHIPMAN: It's a motion on behalf of the board so it does not require a second. Is there discussion on the motion? Mr. Borden.

MR. DAVID V.D. BORDEN: Thank you, Madam Chair. I am not a member of the board -- Mark Gibson is -- but I did sit in the audience and listen to the debate and discussion. I have given it a great deal of thought.

To me I am very uncomfortable with a finding of non-compliance at this time. What I would like to do is offer a motion to table, which I have given to Tina.

I will read this into the record and then if I get a second I will provide the rationale for it.

I would move to table action on the Massachusetts v-notch non-compliance finding until the first Lobster Management Board meeting in 2003 and subject to the Commonwealth of Massachusetts taking the following actions:

1. To evaluate the rate of compliance with the requirement to v-notch all egg-bearing female lobsters by Massachusetts fishermen in Lobster Management Area 1 and provide an analysis to the technical committee and management board prior to January 7, 2003;

2. To immediately undertake a process to formulate and prioritize alternative management measures to achieve the egg production targets (equivalent to 100 percent v-notch compliance at zero tolerance) by Massachusetts fishermen in Area I and submit the alternatives to the management board at the ASMFC Annual Meeting, November 2002;

3. To submit a quantitative analysis of the alternatives to the technical committee by January 7, 2003; and, finally,

4. Implement one of the alternative measures by February 28, 2003, provided the alternative has been reviewed and approved by the management board.

I would move that and if I get a second I will explain why.

CHAIRMAN SHIPMAN: Okay, we have a motion by Mr. Borden, a second by Gordon Colvin. Discussion on the motion, Mr. Borden.

MR. BORDEN: Thank you, Madam Chair. My rationale here is that I think all of us take non-compliance findings very seriously. In my own case I think the board was entirely justified in formalizing this recommendation.

In other words, I think it is the appropriate recommendation. Clearly, the state of Massachusetts voted for the regulations that are in place and has failed to implement those as required by the plan.

I think the action by the board is totally appropriate, but to me the issue that's critical here is the conservation of the resource. I can't help but think that if we pass the non-compliance finding, we're going to end up with a

very protracted amount of discussion and potentially litigation that's going to drag out this whole conservation issue.

The state of Massachusetts, basically, has agreed, through both verbally and in writing, to do an evaluation of this whole program. Paul, in previous correspondence, has identified the need to come up with very conservative conservation standards for Area I.

And if, in fact, the v-notch program isn't meeting those standards, then he has already expressed a willingness to the board to explore other alternatives. In fact, he has put that in writing to the board.

So the time frame that I am advocating here would accelerate what the board basically approved at their last meeting. In other words, the state of Massachusetts has already agreed to evaluate the v-notch criteria and do so in 2002.

This provides the industry in Massachusetts an opportunity to adhere to the program and it gives them the benefit of that. But what this really does it is if they fail to meet it, we will have already started the process of how to substitute measures for this action, which is clearly within their prerogative.

I would just conclude by saying I think that this will achieve what we all want to achieve, which is conservation of the resource in Area I. It allows the industry up there the opportunity to prove that they can meet those standards.

And if in fact they fail to meet those standards, we will have other alternatives which will be implemented sooner than any non-compliance standard could ultimately result in improvements to the resource.

The last concluding point. I have discussed this with the Massachusetts delegation. I provided copies of the draft motion to them. I'm authorized to speak on Paul's behalf that he is willing to adhere to the terms and conditions that are expressed in the motion if it passes.

CHAIRMAN SHIPMAN: Thank you, David. Other discussion on the motion? Tina, can you scroll down to we can see the rest of it. Yes, Tom Fote.

MR. THOMAS FOTE: Did Massachusetts leave?

MR. BORDEN: They have left.

CHAIRMAN SHIPMAN: Yes, the delegation is not here. Other discussion on the motion? Yes, Eric.

MR. ERIC SMITH: Just very quickly, I would note that the board vote on the original motion was very close, 4-3-2, which leads me to believe, just watching how this plays out, that there was some uncertainty and different ways of looking at it, which is why I think this may be a beneficial alternative.

CHAIRMAN SHIPMAN: So you're speaking in favor of the motion?

MR. SMITH: Yes.

CHAIRMAN SHIPMAN: Okay. Mr. Fote.

MR. FOTE: I would just have felt a little more comfortable if Massachusetts was here to reinforce what Dave said. I mean, I just find it a little uncomfortable without them being here.

CHAIRMAN SHIPMAN: Further discussion on the motion? Seeing no hands, we're going to take a vote on the motion. Okay, we're going to do this by show of hands. Let's do caucus. Take a few minutes to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN SHIPMAN: Okay, are we ready to take the vote? All right, all those in favor of the motion -- do we need it reread into the record or is it sufficient, Joe? Joe tells me it is sufficiently read.

All those in favor, signify by raising your right hand; all those opposed by like sign; null votes; abstentions. Okay, the motion carries by a vote of 11 in favor, 1 opposed, 2 abstentions. Mr. Miglarese.

MR. JOHN MIGLARESE: As a follow up to the motion, now, it's going to be incumbent upon us to have some sort of review come January, so the next possible action would be at the spring meeting?

CHAIRMAN SHIPMAN: Well, I believe the Lobster Board will take that up. Mr. Borden, what is your intent there?

MR. BORDEN: I think that's a good suggestion. What I would suggest for follow up here is that, one, the Executive Director formally communicate this action in a letter to the commonwealth of Massachusetts; and, two, I'm sure George will set up a schedule with staff appropriate to review the time lines and actions.

CHAIRMAN SHIPMAN: Mr. Lapointe.

MR. LAPOINTE: And then following that February board meeting, we will communicate back to you as chair.

CHAIRMAN SHIPMAN: Okay, thank you very much. Does everybody understand the sequence of events, how this monitoring will be done and the report back to the policy board? Okay, thank you very much.

All right, let's take a quick break; grab some lunch; bring it back to your seats and we'll continue next with the compliance efficiency white paper. Let's take about five minutes.

(Whereupon, a short recess was taken.)

#### **Discussion of Compliance Efficiency White Paper**

CHAIRMAN SHIPMAN: Everybody is back at the table so we're going to resume with our business. The next item we have was the review and discussion of compliance efficiency white paper and a decision document.

You will recall at our May meeting Bob presented to us a document on compliance efficiency. This was an issue that we had looked at in February. We gave Bob some comments about some case examples and asked him to put some options together for us to look at.

He did that, and we have that for you. That, too, was on your CD but I believe there should be a handout. If you did not bring it with you, please raise your hand and we will get that to you.

This issue, you will recall, has to do with ramifications of non-compliance in the short term and the fact that our process, as it is structured in the charter, is really not set up to handle a state not coming into compliance on issues that really are of a short-term nature, either closures of a fishery, prompt implementation of bag limits, so on and so forth. I'm going to turn this over to

Bob. He's got a powerpoint to lead us through this.

MR. ROBERT E. BEAL: Thank you, Madam Chair. Yes, there is just a quick powerpoint. Actually, Susan has covered most of this. This is the third iteration of this document that the AOC and the Policy Board have seen.

It deals with the fact that our traditional out-of-compliance finding process really can't deal with delayed implementations on the order of weeks or even a month or two. So, in the document there is three different case studies; commercial spiny dogfish, commercial black sea bass and recreational black sea bass.

It kind of illustrates what time line some of these things have to happen on and what delays some of the states and jurisdictions have had in the past with implementing some of the management measures that are required under the fishery management plans.

Some plans such as black sea bass have a number of annual changes of closures and trip limit changes and those sorts of things that have to happen pretty quickly, and it has to be very coordinated among the states in order for the equity to be there in the management plan.

I can go into more of the background but I think we've seen this document a number of times. The last two pages of the white paper is a decision document. It basically just illustrates or quickly outlines four different decisions that the policy board could consider in dealing with this short-term non-compliance issues.

The first issue appears to be the amount of time that staff or the notification period that staff supplies to the states prior to states having to take a certain action. In the past we have tried to give a week.

We've been better at some fisheries than others, depending on how quickly a quota is going or some situation kind of sneaks up on the staff.

So, the first thing the policy board may want to consider is some sort of standard notification, minimum notification time that the staff must give the states prior to a management change. Do you want me to go through all these?

CHAIRMAN SHIPMAN: Yes.

MR. BEAL: Okay, I'll go through all four of these, and then we'll apparently deal with them. The second issue in there is to put together some system that reports and tracks on the speed and the timing on which states make management changes when they are required under a management program.

That can kind of give us a gauge as to how well or how quickly or how consistently are the states implementing management changes that are required by the FMPs.

The third and fourth issue are somewhat mutually exclusive. If you do one, you may not need to do the other and vice-versa, or you can actually mix and match a little bit.

Issue 3 is to establish an overall umbrella policy that deals with the short-term non-compliance issue. It may be some sort of amendment or charter change that deals with all the fishery management programs that the commission has currently in place.

It details what type of penalties could be implemented if a state has a delay in implementation. The fourth option or the fourth issue is to -- if an umbrella policy does not work or it may not be the right way to go, we could task the individual management boards with developing some sort of document, probably an addendum, to deal with the delays in implementation.

It seems that the management programs across our species are so varied that one document may be too complicated and may not be able to really capture all the nuances of our management program, and it would take hours if not days of policy board deliberations to capture all the nuances of individual management plans.

So it may be better to turn this responsibility over to the individual management boards that are all too familiar with those management programs and they can develop an addendum of some sort to deal with delays in implementation.

CHAIRMAN SHIPMAN: Okay, thank you, Bob. I appreciate staff bringing back to us -- basically what we charged Bob to do at the last meeting was to lay out more or less a decision document for us. You have it in front of you. You've got the issues, so I would like to take some discussion on this. Mr. Colvin.

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MR. GORDON C. COLVIN: Thank you, Madam Chair. I am very grateful to the staff and to Bob for his persistence in getting this issue developed and brought forward to us for action. We've discussed it many times, and I'm not going to burden with board with any further discussion.

I would like to suggest that what could happen here is more or less a single decision to agree today to adopt the ISFMP charter -- to amend the ISFMP charter to provide for explicit recognition in policy for action on compliance efficiency to require each board within some time frame to adopt an addendum which establishes a penalty/repayment system that would be consistent with such a compliance efficiency policy; and, further, act to incorporate in the charter as components of that policy a seven-day notification period and the establishment of a tracking and reporting system.

CHAIRMAN SHIPMAN: That sounds like a motion.

MR. COLVIN: Madam Chair, if it is your view that such a motion would be in order, I would be happy to offer it. It's going to take a minute for me to finish writing it down.

CHAIRMAN SHIPMAN: Well, while you do that, we can take some more comment, but I think it probably would be in order. There are sort of two issues here. I think we need to give some overarching guidance to each of the boards from the policy board, and that's probably best directed through the charter.

And we may want to look at the component of the charter that talks about the contents of plans, that each plan would include those type of things. We may want to send a directive, if you will, to all of the boards inclusively to incorporate those things Gordon has just mentioned in their next amendments to their plans.

And in some of the plans, some of that may be able to be accomplished through adaptive management, I'm not sure. We're also going to have to look, obviously, at the resource load and the resource burden that will cause on staff as we work through these. Tom, did I have your hand? And A.C.

MR. FOTE: Just looking at the last decision with Massachusetts, I mean, what kind of penalties do you

do with the v-notching thing? I mean, that really needs the direction of the board because they would have to decide how that does. I think the board is the perfect place for this. I can't see us doing it at the policy committee.

CHAIRMAN SHIPMAN: And I think, Tom, in some cases, as you mention, it's going to have to be customized to whatever the measure is. A.C.

MR. A.C. CARPENTER: I want to follow up on that. All three examples deal with quota management, and is this policy going to be unique to quota management or are we expecting the boards to develop penalties for any possible violation of a management measure?

If we're talking about quota management, I think we're on the right track. If we're talking about any violation of any management measure, then I think we've got a whole different issue.

CHAIRMAN SHIPMAN: Mr. Colvin.

MR. COLVIN: In response to A.C.'s question, I think there are issues that go beyond quota management that need to be addressed in this fashion. Let me give a specific example. I think this tends to primarily relate to the timing of the implementation of specific measures that we are called upon to implement.

In many cases, these are done annually or periodically. We are called on, for instance, under the summer flounder, scup and black sea bass management program to annually propose, receive approval of and timely implement recreational management measures.

And if we propose a management measure for the closure of a season and don't implement it until after the initial date of such a season closure, then we have not timely implemented or achieved the conservation benefit of the plan. There ought to be a consequence for that.

Similarly, if we propose to raise a size limit and don't get around to doing it until after the fishery has begun to be prosecuted that year, the same circumstance applies. So, I do think it needs to go beyond, and one of the key focuses here is the timeliness of the implementation of measures that we are required to implement.

CHAIRMAN SHIPMAN: Thank you, Gordon. I have

George and then Tom.

MR. LAPOINTE: Thank you, Madam Chair. I think it does go well beyond quota-managed species. And the penalty -- I mean, as I envision it, the penalty would have to be customized based on what they're out of compliance with, how long, and kind of the magnitude of the compliance issue.

So it would need to be tailor-done. In lobster we recently had a couple states who were late in implementing size limits. One of the things we're asking the technical committee is, well, what is the biological penalty for that. And so, I mean, trying to build those kind of things in is what I would envision with this.

CHAIRMAN SHIPMAN: Tom.

MR. FOTE: I was just trying to figure out how we could penalize the feds for not putting rules and regulations in place in a timely manner.

MR. COLVIN: I'll second that motion, Tom.

CHAIRMAN SHIPMAN: Well, the motion is still going up. Other discussion on this concept while the motion is being posted.

What my thoughts would be, if the motion is approved, relative to Number 1, we would probably put together some sort of work group, ad hoc work group of commissioners of the policy board to work with staff on developing some language that we would then bring forward for amendment to the charter. Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thank you, Madam Chair. When the staff was looking at this, one of the questions we had for the states was whether the seven days would cover everybody's internal regulation process.

It seems to me that's going to be a critical issue here. Different states seem to be able to move quicker based on their own internal process.

CHAIRMAN SHIPMAN: Well, that may be an issue that would be addressed at each board level, depending on what the management measure is. I mean, I can just speak for my state. No, seven days is not adequate.

But the plans that we are involved in have not involved

quota management. I think for the South Atlantic states -- I certainly can't speak for the others -- we have not been involved in plans necessarily where we have been affected by quotas.

In many cases we are de minimis with regard to the commercial measures. It's something we're almost going to have to look out on a case-by-case basis. Vince.

EXECUTIVE DIRECTOR O'SHEA: Well, I guess the issue is here we want to differentiate where -- or maybe the other way is we don't want to -- it would seem to me we don't want to set ourselves up with an impossible tasking to the state.

If we really want to have a process that the state gets notified and the state immediately then takes actions, we come out with a date on the other end that everybody can live with as opposed to a state that's dragging its feet for whatever reason in implementing the measure. Thank you.

CHAIRMAN SHIPMAN: Eric.

MR. SMITH: I think the question and answer between A.C. Carpenter and Gordon has emphasized where we would have a concern, and I didn't think we would have one. Our quota management regulations are set up to respond quickly, so when we get notification, seven days is fine.

You know, that's just putting something in the mail. But if the management plan were to call for a size limit change and a notification within seven days, seven months is more likely.

So the question is which management measures -- you know, we're talking about two entirely different things; a plan that changes, like we talked about in dogfish where you give yourself a several-month implementation schedule versus your in-season adjustment.

And if we're going to have an in-season adjustment of minimum lengths, well, that's okay, amend the plan, give us the several months to change our regulation.

But then that regulation would say on a vote of the commission or on meeting a certain trigger, which is the more appropriate way, this Connecticut size limit would

have to change. We would have to go through a rulemaking to change that once and then we could do it on the rapid response.

CHAIRMAN SHIPMAN: Mr. Colvin.

MR. COLVIN: Thank you. I appreciate folks bringing this up. The intent of the seven-day notification standard is to apply to certain actions that we are called upon to make in terms of in-season adjustments that we are aware of ahead of time through our management programs.

They are usually trip limit changes or in-season period closures. There may be some other examples of that. Perhaps this discussion on the record would be helpful to clarify it or I can try to add some language to the motion.

But, it is the intent that Item Number 3 relates to the in-season changes that are already part of the management program that we are aware are going to happen ahead of time, we just don't know when.

CHAIRMAN SHIPMAN: And we'll add that clarifying language parenthetically. I had David Borden next, I believe.

MR. BORDEN: Thank you, Madam Chair. That was exactly the suggestion I was going to make. I mean, if you do that, then we will just focus really on the quota-managed species and not these other issues.

Once we get a track record, we will have a learning curve and then we can decide whether or not we want to expand it to the other species.

CHAIRMAN SHIPMAN: Okay, thank you. The motion is up there now. Gordon, could I ask you to read that into the record, please.

MR. COLVIN: Thank you, I will be happy to. Move that the ISFMP charter be amended to:

1. Provide for establishing and implementing a compliance efficiency policy;
2. Requiring each board to adopt an addendum to existing FMPs to establish a penalty/repayment system consistent with the compliance efficiency policy;
3. Establishing a seven-day minimum notification

standard for in-season closures; and

4. Establishing a reporting and tracking system for management changes.

CHAIRMAN SHIPMAN: Thank you for reading the motion. You have heard the motion. Mr. O'Shea.

EXECUTIVE DIRECTOR O'SHEA: Thank you. I just had a question, and maybe this is for the maker of the motion. But, there is also, it seems to me, the issue of history in these overages in some of these situations.

So, my question would be would this concept also include looking at the impacts on the historical allocations? In other words, you go over it, does that go into the hopper for subsequent allocation discussions if they develop down the road? Would that be included in your intent of things you would look at?

CHAIRMAN SHIPMAN: Mr. Colvin.

EXECUTIVE DIRECTOR O'SHEA: Or maybe to be more bluntly, the example would be if you go over it, do you get to claim that maybe two years down the road as part of your history if you go to a quota fight.

MR. COLVIN: I think that we would all agree there ought to be a mechanism to prevent quota overages from contributing to an allocation share in the future. I would think that the policy statement that we're calling to be incorporated into the charter could address that affirmatively.

CHAIRMAN SHIPMAN: The second to the motion, I believe, was George Lapointe. Mr. Freeman.

MR. FREEMAN: Gordon, back to the seven-day minimum notification, what exactly are you referring to so far as the seven day; seven days to give the fishery notification or seven days for a state to act after notification by the board has been given?

CHAIRMAN SHIPMAN: Gordon.

MR. COLVIN: It would be more or less the latter, Bruce. Because we are in a situation where we are contemplating a policy that will actually impose a penalty against a state for implementing, say, a closure or a trip limit reduction later than at some time, it then

becomes necessary to establish a standard within which all the states need to act upon receipt of notice from the commission; otherwise, there's no basis for determining when you start the sanction from.

So the intent of the standard is to say that a state has seven days from the date it receives notice from the commission, maximum, in which to take such action as they have been notified is necessary. And, again, in most cases a trip limit reduction or a closure.

MR. FREEMAN: It would seem to me, Gordon, that may be an issue better left to each of the boards. I mean, I can't give you an example, but there may be a situation where some boards, the time period may be greater; and in other boards, for example, there may be something less than that.

MR. COLVIN: I think the intent here is to establish a standard in the policy that the board could act more conservatively than. If seven days is too short for such a thing, I would be open to something longer.

But given the applicability seven days and the fact that I think almost all of us act within that time frame, that seemed like a reasonable proposal when I saw it in the staff draft.

MR. FREEMAN: Yes, I'm not arguing the seven days but I recall when we talked on sea bass there was an informal query as to how quickly states could act, and I think the longest was seven days. That's why we selected that.

But I'm just wondering if that should not be left to the board's determination, just as a greater efficiency. For example, a board may want to have a lesser time.

CHAIRMAN SHIPMAN: David.

MR. DAVID CUPKA: I think originally, when Gordon was discussing this, didn't you really say for in-season changes and existing FMPs? In other words, this was for things already established, not things that we were trying to get established through our legislative process or whatever, but things that were already in place and we were aware of; is that correct?

MR. COLVIN: David, that's right. In the cases that I am thinking in terms of it would be situations like the winter scup fishery or the current black sea bass

management program where there is a coastwide quota being managed and coastwide trip limits and a schedule for trip limit reduction, all of which we have set in place ahead of time, and the staff simply notifies us it's time to close or it's time to reduce consistent with the thresholds we have previously established. But we know what they are; we just don't know when they're going to happen.

CHAIRMAN SHIPMAN: Gordon, for Item Number 3, would you want to just strike "seven day" and say "establishing a minimum notification standard"?

MR. COLVIN: To be specified by each --

CHAIRMAN SHIPMAN: By each board.

MR. COLVIN: By each board is fine with me.

CHAIRMAN SHIPMAN: Is that a friendly amendment? The seconder of the motion has agreed to that. David.

MR. CUPKA: Yes. I'll, again, go back to the point I was making before. I was going to suggest maybe we add that wording, but this will probably take care of it because it's going to be specified by the board.

I just want to get that on record because there seemed to be a little bit of concern about exactly what actions we were talking about.

CHAIRMAN SHIPMAN: My understanding, as Gordon stated, is the in-season actions that pertain to already adopted management plans and measures. And as new plans or amendments or addenda and measures are adopted and crafted, the overarching policy statement would be taken into consideration and the boards would establish these penalties/repayments. Yes, John.

MR. MIGLARESE: I think all we were just trying to get across is I think that ought to be on the record.

CHAIRMAN SHIPMAN: I think the intent has been well stated. Other discussion on the motion? All right, the question has been called. Anyone object to calling the question? Bruce, quickly.

MR. FREEMAN: I don't object but there's other issues and, Gordon, this wasn't meant to be all-inclusive, was

it? I mean, there are other situations where there is "none of these apply" and yet states still may be out of compliance for weeks or months. I'm just curious, was this motion meant to cover all the circumstances?

MR. COLVIN: Well, the motion isn't meant to cover all those, yes. The intent is that there will be a statement of policy incorporated into the charter; and that presumably when we reconvene, probably in November, we will have a staff draft of that to review as a charter amendment.

That policy will state that it is the intent of the commission to provide for a system of penalties and repayments for delayed compliance, if you will, consistent with the compliance efficiency paper and its findings and that, as an implementation mechanism, each board will be called upon to adopt an addendum to existing FMPs and presumably to include in new FMPs and amendments in the future a specific system of penalties and repayments that are consistent with that policy. That's the intent.

MR. FREEMAN: Well, what comes to mind is a situation where we agree, for example, on a given bag limit and then one state does not implement that, and we find out later that's the case, although the intent was for all states to do it.

MR. COLVIN: And we should find out later because the tracking system is going to point that out to us, and that report of that tracking system is going to go to the PRTs.

The PRTs are going to notify the board and the board is then going to turn around and impose, as a compliance requirement, the penalty/repayment system that it has established via addendum.

MR. FREEMAN: Okay.

MR. COLVIN: That's the concept.

MR. FREEMAN: I wasn't certain that situation would be covered. But, yes, it would be, okay.

CHAIRMAN SHIPMAN: And I would envision we would have a new component of Section 5 of all of the plans. Section 5 has the compliance measures. It has the schedule. I would assume they will, in the future, have the repayment penalty schedule in there. Other

discussion on the motion?

The question has again been called. I see no objection to calling the question. All those in favor, signify by saying aye; all those opposed; any abstentions; any null votes? Okay, the motion carries unanimously. Thank you.

And what I would hope to do now, we'll work with staff and we may, as I said, appoint a small subgroup to work with staff to bring something back to you in November that would address Number 1 and with more of a road map, if you will, for how we will address 2, 3, 4 to the board.

Thank you, Bob, again. This is something we've been working on for some time, and I appreciate the board's patience with this and your fine input. I think we're headed down the right direction.

#### **Discuss Commission Reorganization**

Okay, the next item we have is to discuss the pink paper. This is also an item that has been around for some time. And this has to do, basically, with the organizational structure of the commission.

We discussed where would be the most appropriate place to take this up. It had come before the policy board in the past. I elected to bring it back to the policy board today.

You will recall when it came to us first we were looking not only at what the future role of the ISFMP Board and Executive Committee might be, but we were also looking at whether or not there was an appropriate restructuring, if you will, for the various species management boards.

We elected to move away from the question of restructuring or reordering the boards, but we did decide to look further at the role of the policy board and the Executive Committee and whether or not to retain them inasmuch as we have some redundancy, particularly now that we have full delegations at the table for the policy board.

In essence, the policy board is the commission augmented by the jurisdictions of PRFC and D.C. and our federal partners. So with that, I'm going to turn it over to Bob and let him lead you through the infamous pink paper, version three, I think.

10

MR. BEAL: Yes, at least; 3.9 or something. All right, thank you, Madam Chair. This is just another quick powerpoint summarizing the document that was e-mailed as well as passed around to you, so I think you all have it.

This paper explores two different issues that Susan mentioned; the elimination of the policy board and what is the revised and continued role of the executive committee. Currently the policy board pretty much is an oversight and management group.

There is a list of I think ten different bullets in here that are the current policy board duties under the ISFMP charter. I don't think I'll read through all of those.

But basically it's oversight and guidance to a number of committees within the commission as well as review of compliance findings. We have already changed the charter where amendments in fishery management plans no longer go through the policy board.

They go straight to the full commission. So that is a slight modification in the last couple years. As you all remember, I think it was 1999, the makeup of the policy board changed quite a bit when all three commissioners sat -- all three commissioners from the states sat on the policy board.

So now that results in a situation where the policy board and the full commission are pretty much redundant except for the Potomac River Fisheries Commission, District of Columbia, and the two federal services.

Those folks don't sit on the full commission. So, you know, that is one difference. If the policy board were to be eliminated, what will we do with those four members of the policy board currently? In this paper it explore potentially having them sit on the full commission but not being voting members of the commission, obviously, allowing them to participate in the discussions but not vote.

One of the discussions in this document, as well, is that kind of the real decisions or kind of the ground-level work is done at the management board level, anyway, where those agencies and jurisdictions are part of the management boards.

So, you know, maybe, maybe not. It's kind of an open-

ended question, how big of a deal that is if those four groups are not included on the full commission.

I think I've kind of pretty much gone through all those except the last bullet there which is -- you know, the policy board currently serves as an intermediate review level between the management board level and the full commission.

The policy board is kind of a sounding or an appeals board, given the current hierarchy and organization of the commission as it is right now.

This little schematic which is -- it's kind of hard to read from far away, probably, but it is included in the very last page of your document. Basically, this one just shows the current makeup, including the policy board, where a number of committees report to the policy board and the policy board reports to the full commission.

And then, as you can see here, the executive committee is a little bit off to the side. And the executive committee's function pretty much has been to act for the commission when the full commission couldn't get together.

In recent years they have dealt with litigation issues over conference calls and those sorts of things, as well as selected Vince O'Shea as our executive director. That group does have some very valuable functions, but they are a little bit outside the hierarchy of the commission right now.

This little schematic kind of illustrates how the commission would be structured if the policy board were to be eliminated. You can see that all these subcommittees or committee-level groups would report to the full commission.

If the policy board was eliminated, the executive committee could become sort of an appeals board. If a state felt that they needed an intermediate step between the management board decision and the full commission decision, they could request an executive committee review or an appeal of any decision from a management board.

That's one potential way of reorganizing the commission, which is

-- you know, the idea there is to make the whole

process more streamlined. If we vote on a non-compliance finding within this group and ten minutes later reconvene another meeting and take the exact same vote, it's a fairly redundant process.

The other issue that's explored in this document is what do we do about the executive committee and what's their continued role within the commission hierarchy?

Right now the executive committee is made up of the chairs of each state delegation as well as the chair of the legislators' and governor appointees' section. There is representation from each state as well as from the legislators' and governor appointees on the executive committee.

And I think we have already gone through the executive committee doesn't meet real frequently, but they do still serve a function as a smaller group than the full commission when there is not a commission meeting going on.

And the first couple bullets there are just that the administrative oversight and the full commission can and do handle a number of the executive committee potential responsibilities. You know, we do have some redundancy in the process there, which is probably a good thing.

But, the executive committee is still a smaller group that the executive director or anyone else, can call on if it is necessary between meetings. And then I've already gone into the fact that the executive committee could serve as an appeals board if the policy board were to be eliminated. That's it.

CHAIRMAN SHIPMAN: David and then Tom.

MR. CUPKA: Thank you, Madam Chairman. I have a question and I want to know -- am I correct in assuming that in order for, say, the Potomac River Fisheries Commission and D.C. and the two services to be voting members on the commission, that would take congressional action since the actual voting members of the commission are spelled out in the original Compact that was approved by congress Is that correct?

CHAIRMAN SHIPMAN: That's my understanding. The Compact would have to be amended. And I'm not sure -- and it's no reflection on the jurisdictions or the services or anything, but the commission is a compact

of the states and I'm not sure -- just my thought -- that we would want to revise that.

I think there is certainly a way to integrate their input through other venues, either through the boards, and certainly we would welcome them at the table when the commission is deliberating any item to give us their input.

But it would take a Compact amendment which would have to go through congress. Also, just from an administrative standpoint, some of the changes that are contemplated in this document would require an amendment to the rules, but that is something that is done by the commission. That is something that is readily achievable. Tom.

MR. FOTE: Then committees like the Habitat Committee and a few of the others would just report to the full board instead of reporting to the executive committee?

CHAIRMAN SHIPMAN: The full commission.

MR. FOTE: Yes.

CHAIRMAN SHIPMAN: Pres Pate.

MR. PRESTON PATE, JR.: Thank you, Susan. One area of redundancy in our process that I have not fully appreciated, although I may be getting some insight into it now, is the need for having the decisions on adoption of plans from the management boards go to the ISFMP for final adoption.

I was interested in the reference to the need of establishing an appeals process if we make some changes in the charter. Was the process for approving plans by the entire board conceived originally as a form of appeal; as another step of debate in the board's decisions, taken up by the entire delegation to include those member states that might not be sitting on a specific board?

CHAIRMAN SHIPMAN: I believe it was in the charter. Actually, the appeal process that was contemplated that the policy board would take was more of if a state felt aggrieved by an action, they could come to the policy board which, as you mention, could well include states that were not part of the range of the plan.

12

So, you would have, say, three or four neutral parties, neutral brokers, sitting in to have an additional ear, if you will. But that's laid out actually in the ISFMP charter, what that appeals role was.

MR. PATE: And I need to go back and read that once again. And a follow-up question while I have the mike, if I may. What do you want to come out of this today, this discussion today?

CHAIRMAN SHIPMAN: Well, I think we'd like a sentiment of is this the direction you all would like to go. We did e-mail this out to everyone. We have had these discussion ongoing for about a year now.

I don't know that everyone is comfortable in approving this dramatic a change today. You may be; you may not be. That's really up to this board.

We could certainly bring something back in final form, if you want any fine tuning, tweaking, further contemplation of the role of our sister jurisdictions like D.C., PRFC that are very integrally a part of the Interstate Fishery Management Program -- and the two services.

But I think we've been talking about this for well over a year. I think we need to make a decision at the annual meeting of where we're going with this.

MR. PATE: Well, and on that point, Ms. Chairman, I am in favor of this. And I agree; I think we need to move forward with these changes. If a motion is appropriate at some point in this discussion, I would be happy to make it.

CHAIRMAN SHIPMAN: Okay, thank you, Mr. Pate. Let me take some more comments. I think I saw David Borden. I had Bruce, Tom, and John.

MR. BORDEN: I would just like to echo Pres' comments. From a personal perspective, where this became very apparent to me is when I was chairing the commission and suddenly found myself asking for motions at three meetings; one that just followed one after another and I kept saying to Jack, "Why are we doing this?"

You know, nobody changed at the table or there were two people that changed at the table. I think it's a good

idea, just in a general context, to try to flatten the organization, make it more efficient, and effective.

The intent here is not to eliminate input. I just remind everybody that in the past year we have gone -- or the past two years we have gone from this position of having limited input to having unlimited input where we have everybody at the table.

I think it has been a wonderful success. I think the commission is much stronger for it. But, in doing that, I think that eliminated the need for the redundancy that we had built up before. I totally support what Pres said.

CHAIRMAN SHIPMAN: Thank you, David. And this was an initiative, I think it probably started under your administration, and you have helped us achieve much streamlining that was much needed in this commission. I commend you for heading us down this road. I had Bruce and then Tom and then John.

MR. FREEMAN: Thank you, Susan. I am not convinced at this point that this is a wise move, and it primarily revolves around Items 8 and 9, and that is the non-compliance.

That's a very serious issue, tremendous political implications if a state or jurisdiction is deemed out of compliance, and it has tremendous social and political repercussions in that individual state.

And it has been my experience dealing through the policy board, it has been an effective way. I think a good example is what we did today with a motion relative to Massachusetts and the v-notching. I think that would be a much more difficult discussion at a full commission meeting.

And relative to a timing issue to actually empower the full commission to discuss such an issue may be much more complicated than what it was.

The other issue deals with the appeals of the state action. It is a rare event; however, it does happen occasionally and it's very useful to have a policy board. I'm not convinced that the policy board needs to be done away with.

I agree that in the past the policy board has been an individual representative from a state and now it has all

three members, and there is certainly some redundancy in some of the other issues. But, particularly on those two, I'm quite skeptical that to do away with the policy board and not have some foundation for these other two considerations is very wise.

CHAIRMAN SHIPMAN: Bruce, to your point, do you have any reaction or thoughts on Bob's suggestion, the discussion relative to the executive committee possibly stepping in and performing a role with regard to compliance or appeals that the policy board now has? In essence, the policy board is the commission with a few additional members.

MR. FREEMAN: Yes. It may be difficult, Susan, if in fact an executive member is not present at a meeting. I mean, one of the -- as David indicates, there is difficulty when we went through the species board, then the policy board, then the commission.

We just, over a period of a half hour, changed our names, did the same thing with the members present. It is somewhat silly, but if those particular members are not the executive member and you want to make an appeal during a meeting week such as this, it may be somewhat complicated.

But let me just speak quickly on the executive. I know I have to deal with Tom next to me, and he's sometimes emotional. But, to Tom's credit, we have expanded the role of all the commissioners on an equal basis, which I know it was difficult to begin with, but I think people recognize the value of it at this point.

On the executive committee, the reason that we insist we be members is because it deals with budgetary issues and we're the ones that have to come up with the money. Now, at times it's our legislative representatives that are extremely important.

But under most issues, when it comes to budget, we either can or can't do it, and to have someone else speak for the agency becomes very difficult. Now if other states feel the same, it more or less excludes the other two members.

I mean, maybe I'm totally wrong on this, but it almost dictates who is going to be on the executive committee because of the money issue. And then I would submit that those other two voting members may not

necessarily want all the power to be invested in the state agency.

CHAIRMAN SHIPMAN: My only thought there, Bruce, if an executive committee meeting occurred during meeting week when the other two members were there, I mean, certainly they would be welcome to sit in on a meeting of the executive committee and confer with the executive committee member if it were an appeal issue or a compliance issue.

MR. FREEMAN: It may work, Susan. I just haven't thought clearly through how all situations would be handled. And it's possible that it could be; I'm not convinced.

CHAIRMAN SHIPMAN: Okay, I had Tom then John then David.

MR. FOTE: Well, as usual Bruce and I sit next to each other and have different points of view on certain subjects. Basically, when I walked into the commission a long time ago, in '87, it was a whole different commission than it is now.

When I first got appointed in '90, the only place the governors' appointees and legislative appointees had a place to vote was at the full commission meeting. That has changed after a lot of hard work and a lot of people's contributions over the years, like Steve and Larry Cantwell and myself and a few others -- Doc and Owen Johnson -- and so I know I'm going to leave somebody out so I'll just stop there.

But right now it does become redundant. I mean, the full commission is really the policy board minus the agencies and the two jurisdictions. I can see this really working out. Bruce has always -- basically, I have never argued with Bruce over the standard budget things on the executive committee. That's why we've never discussed it.

One day Lou Bassano and I, when I was governor's appointee said, "We're going to throw you off" and we were only joking about it.

Yes, but I understand why they want to be sitting on the executive committee, because it was a lot of the budget requirements.

That's where we talked about budget. But, truthfully, right now it's really all three members. We're all sitting

there. And, Bruce, you forget that maybe you have to go to the legislature, but I have to get the constituencies to bang on the other 39 senators and 80 assemblymen to get the money, too.

So it's really a joint process. That's why all three of us need to be sitting there because when we go back for funds and we have to all realize to get those funds for you; and then we all go to congress and we're banging on the doors there to get the funds and make sure the commission is basically fully appropriated every year.

So it has really become an interesting partnership. I'm happy to be back here again as the governor's appointee to see this process change over the years. I think we can simplify it. I think we have to. This is a very good step in the right direction. I think we can get a policy done by the November meeting.

CHAIRMAN SHIPMAN: John Miglarese.

MR. MIGLARESE: Thank you, Susan. From strictly an organization perspective, if the purpose and intent is to streamline the process and moving from management board action directly to the commission, and that's our purpose, then inserting an appeals process from the board to the commission does nothing more, at least in my estimation, than create the very act of -- it goes against the very act of what we intend as streamlining.

There is an appeals process as it exists. And if you stop and think about it, what has happened today, and any one of us who has been in the compliance issue, we'd be crazy not to go on record as appealing the board action before we got home.

So, my issue is with the appeals side of this and that I don't think the executive committee ought to insert itself in there. And, in fact, I think that the commission ought to act, and there ought to be an appeal process after the commission acts, which I think there already is.

CHAIRMAN SHIPMAN: Okay, I had David Cupka and then Eric.

MR. CUPKA: Thank you, Madam Chairman. My intent is not to put anyone on the spot or anything, but I would be curious if they are willing to give us some comments on the reaction of the two service representatives and A.C. to this proposal because they certainly are an integral part of this process.

I wouldn't want to do anything that's going to make them feel disenfranchised in any way, shape or form. As you mentioned, that certainly isn't the intent. And, like I say, I don't want to put anyone on the spot, but I would like to hear some comments, if they are willing to offer them, on their reaction to this proposal because in a way it is going to affect them, and I'm just curious as to their reaction.

CHAIRMAN SHIPMAN: Thank you, David, and I did plan to do that. If they would like to speak to that now, I'd be willing and certainly welcome their thoughts. That's one reason I wanted to bring this topic to the policy board.

I certainly wanted to afford them the opportunity to give us their thoughts and for all of the commissioners to hear that. Do either of the services wish to comment on it? A.C., we would certainly welcome your comments. Jaime.

DR. GEIGER: Thank you, Madam Chairman. As many of you know, I had an opportunity to testify to the Pew Ocean Commission in Boston several weeks ago.

The topic of it was to talk about ocean policy, and particularly my role was to identify those particular partnerships that I felt were very effective and very efficient in dealing with the real resource issues of the country.

I had the distinct privilege and the high honor of identifying the Atlantic States Marine Fisheries Commission as one of those such partnerships; a partnership that basically is forged on interactive communication, certainly the appropriate give and take as we try to deal with the tough resource issues that faces our country and especially along the Atlantic Coast.

More importantly, I think, the ability, the ability to discuss in a good, clear and even forum the resource issues and without regard to, in many cases, jurisdictions or biases or politics or those other external factors that so often have a tendency to influence our decisions.

One of the factors that I think has been very strong here, obviously, the underpinnings of the commission, the Atlantic Coastal Cooperative Fisheries Management

Act has been an extremely effective and efficient piece of legislation.

And certainly I can well recall the day when I was one of the members sitting and looking at some of that draft legislation and working with the Sport Fisheries Association and some of the other "founding fathers", so to speak, along with Jack Dunnigan and ASMFC staff and the National Marine Fisheries Service staff as we looked to how could we make the Emergency Striped Bass Act stronger, better and more interactive.

And the ultimate result that did come out of that was the Atlantic Coastal Cooperative Fisheries Management Act. I think that Act has gone a long way to serve as a very unique and special model of interjurisdictional fisheries management along the Atlantic Coast.

And I think one of the hallmarks that came out of that was a commitment by the commission, as described by at that time Executive Director Jack Dunnigan, on making sure that the services were fully engaged and involved in the process.

And part of that was to allow us an opportunity to declare an interest in the particular management boards, but more importantly allow us to sit in on the broader forum that constitutes the ISFMP Policy Board.

Certainly, hard issues of compliance come up at this particular Interstate Fisheries Management Policy Board but also issues of science and management and habitat and other wide-ranging resource issues that I think the service, both the Fish and Wildlife Service and National Marine Fisheries Service, have a lot to offer and to add and to discuss, and as well, in some cases, to debate.

I think that this policy board has served as a very effective vetting process to look at these issues, get federal perspectives on the table, to have a chance to discuss other activities that may be beyond just the realm of two or three of the individual component states.

And, quite frankly, I think the policy board has served in a real synergistic kind of a function; that is, it goes beyond just the total sum of its part. And that's where I think the real advantage of this policy board has been and continues to be.

Certainly, I will not argue against increased efficiency and effectiveness. Certainly, if one looks at the president's management agenda, that's the whole intent, to make government more effective and efficient. I certainly support that.

But looking upon the history of the effectiveness and the role of the services at the policy board level, I certainly appreciate the opportunity to become fully involved in all avenues and aspects of issues that came before the commission, have an opportunity to put a service perspective in, have an opportunity to respectively debate and discuss those with our state partners and our private sector partners as well, and to have a chance to at least influence the ultimate decision-making process at that particular level.

That is an opportunity that I think if this board did decide to eliminate the policy board would be somewhat removed from us. And in a way I would hate to see that happen at this point of time. Thank you very much, Madam Chairman.

CHAIRMAN SHIPMAN: Thank you, Dr. Geiger. Anne, would you like to comment?

MS. ANNE LANGE: Well, that's sort of a hard line to follow here. Obviously, I'm hoping that this will be delayed until the annual meeting so I can get back with headquarters and find out their perspective.

And, as Jamie said, I fully agree that I understand the need to streamline. The federal government is doing that as much as possible. We at NMFS are trying to do that to help get regulations to address Tom's issues that he raised earlier.

I'm not so sure I'm -- I'm hoping that if this happens, that the full commission will be able to have some of the debates that do occur here at the -- and we're just skipping a step and doing it all at one table as opposed to stepping back for five minutes and coming back to the table.

If that's the case and there will be full vetting of issues, including other than the management boards, this seems like a reasonable thing. As far as the voting goes, again, I'll have to get headquarter's comment on that, or the ability to vote versus the full commission versus the policy board.

We don't vote on compliance issues, anyway. If the

services are fully able to debate and sit at the table, whether it's a vote or not, I'm hoping that will at least occur. But, again, I will reserve until November.

CHAIRMAN SHIPMAN: Thank you, Anne. I'd like to go to A.C., if I could, and then I had some other people. Is yours to either of those points, David?

MR. CARPENTER: Thank you, Madam Chairman. I sit here at the grace of the commission and the congress that set up the Compact to start with. We have felt that our participation at the management board levels for those species which we have declared interest is paramount and it's a fair thing.

As far as the policy board level goes, we do feel that the policy board is the one place that, as Jamie said, we do get to interact at the level of that particular policy board function of being able to bring it into the broader view.

Recognizing that you do want to streamline and quite possibly as an alternate idea, the law enforcement, management and science, advisory and habitat committees could report directly to the commission without having to go through the policy board. That would eliminate one step there.

But for the species management board issues, I think the policy board has provided an opportunity not only for us to participate, but it's almost a precursor to the full commission meeting and it may give us an opportunity to rethink some of the things in a second vote.

But we have found sitting at the policy board level to be beneficial to us. The one thing that I think I do question is the elimination of the policy board. Where would the PRFC and the District and the agencies be involved at the species priority-setting level where we do get the opportunity to try to rank the work that is going to be done in the future, and particularly through setting the species priority next plans that we're going to develop and that sort of thing? I think that we would miss that.

I would also note that Eric Schwaab is a PRFC commissioner. He is my boss. And if he would like to add anything at this opportunity, I'd like to give him the chance.

CHAIRMAN SHIPMAN: Well, he's next on the list anyway. Eric.

MR. ERIC SCHWAAB: But certainly not to speak as A.C.'s boss here today. Well, I did want to add my view that I am in support of this type of proposal and do think the time has come to move forward with something of this nature.

But even before hearing the last three speakers, I wanted to add the caveat that I thought in doing so, we needed to pay particular attention to that consideration of the non-state membership and build into that very explicitly and very carefully some formal role for their continued participation in an appropriate capacity at the full commission level.

The other thing that I just wanted to introduce a reminder about, and one of the reasons that I think it's time to move forward with this proposal, is that recall that this is only a portion of what was envisioned when we started down this road with respect to the executive and administrative operations.

I think that many of us anticipated that given many of the issues that we're facing with multispecies management and ecosystem-based processes, as well as some of the introductions of some of the socio and economic concerns that the operational opportunities that will hopefully follow after we complete this process are as important, if not more so than what we're discussing here today.

And while I think it's appropriate to move forward in a two-step process, we need to keep in mind that it is envisioned still to be a two-step process, and there is another part of this to follow.

CHAIRMAN SHIPMAN: Thank you, Eric. Yes, this is very much a work in progress. We're sort of taking little bites at a time. Pat, I think you were next.

MR. PATTEN D. WHITE: Thank you, Madam Chair. I guess I would like to address the fears of Dr. Geiger and some of the other members that are on the policy board and not on the full commission, I think it's imperative that we move forward with them as people that are allowed to sit at the table.

I really don't know how you address the PRC thing, but I still don't see any reason why that can't be represented in this process. I've spent a year and a half promoting the whole concept of the ASMFC management through

the Pew Ocean Commission because I fully believe in it, and I believe streamlining it is also important.

We have taken issue after issue that we've worked on with the ISFMP Policy Board and have the exact same deliberations with the very same people at the next meeting, and I think this would help streamline that a great deal.

I think it's extremely important to keep the public sector involved in it and NMFS and that whole process to keep it as transparent as possible.

CHAIRMAN SHIPMAN: Thank you, Pat. Now I believe we elected A.C. the vice-chair of one of the committees yesterday. He has chaired the Sturgeon Board. I think you still chair the Sturgeon Board; and shad and river herring, that's the one.

So we certainly, I believe, embraced our partners who are non-member states as far as leadership roles in the management boards. I just had "David" down.

MR. BORDEN: He's the one with hair. (Laughter) I would suggest, Madam Chair, that we move forward with this in the following context; that some of the groups that would be negatively effected by this would have an opportunity between now and the annual meeting to not only go back and consider the impacts of this but to propose alternatives so that we can continue to have them at the table.

I would just offer my personal comment that I think if we do this, it would be appropriate to do it in the context of that consideration; that, number 1, where they would still be at the table and may not be voting members.

I think one of the other things that I think we should consider is whether or not we need a fundamental change in the charter that would give us the ability to have A.C. and others actually voting participants.

I think we should just move on. We have had a lot of very good comments on this. We can leave some time for different people to funnel more comments into the staff.

CHAIRMAN SHIPMAN: Are you suggesting, David, that people forward their pros and cons of some of these different options that you have in front of you,

particularly if you refer to Item Numbers 1 and 2?

I would ask people, as you forward those suggestions to Bob -- and Bob Beal is sort of our archivist and staff person working on this.

Please send any of your comments to him.

What we would like to do is maybe flesh this out a little bit more fully, even than it is here, with those pros and cons and bring something back to you in November. Pat.

MR. WHITE: To that point, though, Madam Chair, I think initially in the proposal, if we are going forward with this, if we could address having the invitation out to people like the Service and the Potomac River and all, that we would reduce the negative impact to an awful lot of people so we wouldn't have to go down that road.

CHAIRMAN SHIPMAN: I have Pres and then Gil.

MR. PATE: Thank you, Susan. Actually, David started making a point that I wanted, and that was the need to expand this to a more thorough analysis of the adequacy of the charter to achieve what we have all seemed to agreed upon is necessary to be achieved.

We may find that we are constrained by the definition of the commission and the statute and can't do anything about the voting membership, but I would hope that if that's the case, then we would find that we would at least have the prerogative of identifying those groups as ex-officio members of the commission. That would guarantee their seat at the table for discussion, although they may not be afforded the voting privileges.

CHAIRMAN SHIPMAN: I think when you say the "Charter", you mean the "Compact."

MR. PATE: The Compact. Yes, Ma'am, the Compact.

CHAIRMAN SHIPMAN: And I believe, David, that's what you meant. You said "Charter" but you really mean "Compact", because the charter is a creation of our own. That's something we've created. We can amend it. We can amend our rules as we need to.

But the Compact -- and Laura pointed out to me earlier, the Compact also has to go back to every state legislature for ratification. So keep that in mind when we look at, you know, fundamental changes that would

have to be made.

MR. PATE: North Carolina votes against that. (Laughter)

CHAIRMAN SHIPMAN: And that's a very good point. I mean, I think, you know, we need to tread very lightly with the thought of taking this Compact back to our state legislatures or commonwealths. So, yes, you may not want to tread at all, as Pat said. That's a very serious issue. Bruce.

MR. FREEMAN: Susan, has there thought been given to the issue of abolishing the executive committee and keeping the policy board?

CHAIRMAN SHIPMAN: I think the thought has been given to just about anything. The thing is the executive committee is rarely activated. In the spring the executive committee approves the budget, if you will.

The Legislative Committee reports to the executive committee. There are some other things. But, I mean, the executive committee really isn't invoked very much during the regular meeting week process.

It is utilized in between meetings, as Bob mentioned, when we've had litigation and when we have had to commit resources and also in issues of hiring the executive director.

MR. FREEMAN: Well, my point being that since it's relatively inactive, essentially do away with that and give those responsibilities to the policy board.

CHAIRMAN SHIPMAN: Well, that is certainly a possibility. I don't think it eliminates the redundancy of actions that we're seeing around the table where we are taking action on the same thing three different times; board, policy board, commission.

That's what we were trying to get at. Gil has been patiently waiting. If I could, let me take him and then I've got Cathy and then Vince.

MR. POPE: Thank you very much. I can remember a workshop that was convened probably a couple of years ago now, maybe a little over a year ago, on this subject. And as far as the ISFMP Policy Board goes, they are the ones that you can go to with an appeal of compliance findings.

And to kind of touch more on what Preston and I had just talked about, I would really like to see -- and I know this would be adding a layer to what you were just speaking about -- I would like to see an appeals board for compliance issues where you have a situation where you run into the same snag over and over and over again.

Because, one of the things -- this is probably the best board that I've seen or council or whatever, and I'm very happy to be a member of it; but, just like any other process, there are some little weaknesses.

I guess my pet peeve has always been one of the politics leaking in somehow through lack of either process or something that has gotten into our policymaking that will kind of put some states at a disadvantage or another state at a disadvantage, and to where you can go to an appeals board, whether it's at the ISFMP Policy Board level or not, and you can make your case to a group other than just going right from the species management board to the full commission and finding that there is just a difference in maybe one or two people on there out of forty-some-odd people, so the findings may not be all that much different.

So even though it would probably add to this layer we are trying to streamline, I would really like to see somewhere down the line an appeals board of some kind to where if you really, really are aggrieved on a particular decision that's made on -- whether it's weakfish or lobsters or whatever it happens to be -- that you can go from that management board decision to an appeals board; not to delay timing or not to delay the implementation of what we were just talking about at the meeting before, but something to where it can be examined in its totality as to whether that particular policy really has something that's wrong with it.

So, that's something that I wrote to you about I guess a couple of times a couple of years ago, something that I personally would like to see. I know that's probably adding on to something that we're trying to streamline, but it is still something that I don't want to see eliminated. Thank you.

CHAIRMAN SHIPMAN: Okay, thank you, Gil. Cathy.

MS. KATHERINE BARCO: Mine was only to address Bruce's suggestion about eliminating the executive

board in that's usually, from a business standpoint, is there as a lot smaller group to handle administrative processes in which you have to usually act quickly and efficiently, and which is why it doesn't always meet.

But when it does, it needs to meet quick and be able to make a decision very fast. And I don't see any -- I was just trying to clarify the purpose behind what --

CHAIRMAN SHIPMAN: Right, and that's a very good point.

MS. BARCO: -- the executive board was.

CHAIRMAN SHIPMAN: Vince.

EXECUTIVE DIRECTOR O'SHEA: Kathy made my point.

CHAIRMAN SHIPMAN: I've got a copy of the Compact. It may be that the executive committee is actually specified in the Compact, we're not sure. We're not sure we could do away with it even if we wanted to. But, I think Kathy's point is well made. Bruce.

MR. FREEMAN: Gil touched on an issue that I think may be important, or I believe it is important, and that deals with the compliance issue, again.

In some instances, issues brought to boards, particular parties feel grieved and sometimes issues get emotion, and the policy board served as somewhat of a more neutral or different perspective in that in many instances the management boards made up only a portion of the coastal states.

And when other states get involved and hear the issues, there are often some very good suggestions made or a very fair hearing, I think, is given. Now, again, it could be that could be accomplished by, as Gil talks about, some grievance board or perhaps the commission.

But, I think many of the issues that we deal with, some of the difficult issues are resolved much short of litigation, which we're seeing occurring on the federal level. I think it is because we have time to deal with and find solutions. And it is just, perhaps, a little bit more time between making decisions that we find very useful.

CHAIRMAN SHIPMAN: Just an observation. What

is sitting around this table is the commission. It's the commission augmented by the two federal services and by the Potomac River Fishery Commission. So, you know, the same vetting, the same issues would go on at the commission, the same appeals, the same addition of neutral parties that really don't have a fish in that fight, so to speak.

I think that is what I would hope people would keep in mind. That's really what we are talking about is the role that the policy board has been playing, -which is the commission plus some, would still be conducted by the commission.

It would still be all of us. It would still be the same people.

And in many cases the services are abstaining anyway as far as the vote. Now we would certainly want to, as Pat and other have pointed out, have a role for them at the table to give us their invaluable input, and A.C.'s invaluable input. I think what we're talking about is the same role as we are all sitting here playing right now in a sense. Tom.

MR. FOTE: I mean, the appeal process is not going to change whether we have a policy board meeting and a full commission board meeting right after it.

Your appeal process right now is between the management board and us sitting at a policy board and the full commission because that after you get voted out of compliance you sit with a few people and we try to figure out how to get you without going out of compliance if you can possibly do that.

I mean, that's basically the appeal process. Then your appeal process after that is the Secretary of Commerce when he gets a note from the commission.

To do a separate buffer, you're sitting around the table, yes, when we get down to the full commission to vote you out of compliance, that's when all the other states are sitting there and that's when the argument will take place.

CHAIRMAN SHIPMAN: Gil.

MR. POPE: Yes, thank you very much. There's a couple of layers to that, and the first layer has to do with is it a compliance issue? Yes.

But the thing is with the board that I'm talking about

would actually look at the rule. itself, that is not being complied with and reexamining the rule, itself, and saying, when the board or when the species management board came up with this and voted to make this a policy and it went up the line, how valid was that.

In other words, there has got to be a reason why it wasn't compliant. If it is a date-certain type of thing, then that's a no-brainer. It hasn't got anything to do with the policy.

It just has to do with those people either can't do it on time or there is some other reason why they are out of compliance. But specifically -- and I'll go back to what happened to me at the Lobster Board on Monday -- in my mind it's the policy itself, not whether or not there is a time that we are going to do it

It's the actual policy itself that I would like to see. So there has got to be some mechanism that if a state is aggrieved with the actual policy and not with actually whether or not they have to come into compliance within a certain date; that's the two layers that I'm talking about. Thank you.

CHAIRMAN SHIPMAN: We're going to take just a couple of more comments on this, and then I think we're going to move forward to give staff some instruction of where to go from here. John.

MR. MIGLARESE: I'm kind of curious. Are some of the previous speakers now moving toward the role of the policy board as strictly a compliance issue board and that's it? That would be the only agenda item, and it would only meet if there were compliance issues?

CHAIRMAN SHIPMAN: Mr. Pope is shaking his head no. Would you like to comment on that?

MR. POPE: No. In other words, this is all if you decide that the ISFMP Policy Board either is eliminated or takes on a whole new role. In the charter, in one of the issues there under "appeals", it goes right to the policy board for the appeals.

So, in other words, if the policy board weren't there any more, there would be no more appeals. It would have to go somewhere else. But, the board that I'm talking about is a board that not only examines whether or not they would be in compliance but would examine the

actual policy.

CHAIRMAN SHIPMAN: What Gil is suggesting is a separate sort of appeals body, if you will, either a subset of the commission or policy board or whatever. And, Gil, maybe you can recraft your idea and send it to staff. We can see what we can do with that as far as putting that down on paper.

Again, what I would ask is it sounds like there is enough sentiment around the table for us to move forward to look further at this, to certainly take in Item Number 1 of how to continue to embrace the non-state members in the dialogue.

That's very important, I think, in the functions of the commission. I would ask that you all give any thoughts, pros, cons, mechanisms that you would see that function being enhanced to Bob.

We're going to also look at the implications for the Compact. We will look at the implications for the charter and for the rules.

We will bring that back to you in November. Is that agreeable to everybody?

I'm seeing nods so that's the direction we will follow. Thank you all very much for your indulgence in that issue again. I think it is a very important one. I appreciate the good input you all have given us today.

#### **Discussion of USFWS Horseshoe Crab Workshop**

Next we're going to go -- Bill Goldsborough, would it be okay with you if we put Jamie in here because I know you are the chair of the Horseshoe Crab Committee, too, so could we take both of these items up now? Okay.

We have an item which is to discuss the Fish and Wildlife Service Shorebird Horseshoe Crab Interaction Workshop. I'm going to call on Dr. Goldsborough, the chair of the Horseshoe Crab Board, and he in turn will introduce Dr. Geiger.

DR. WILLIAM GOLDSBOROUGH: Thank you, Madam Chair. I have to give a little bit of background, if you will indulge me. Some of you will remember the last Horseshoe Crab Board meeting was in May. At that time the current chair, who was Charlie Lesser of Delaware, announced that he was retiring from state service effective this summer.

21

Subsequent to that I was railroaded-- I mean, I was honored to be elected vice-chair. And since there has not been another meeting since that time I have, I find myself in the position of representing the Horseshoe Crab Board while I have not yet actually chaired a meeting.

CHAIRMAN SHIPMAN: You are for today.

DR. GOLDSBOROUGH: I mention that only as a disclaimer should I need some reason to extract myself from a subsequent debate with Dr. Geiger. Now, to the issue.

Since that meeting in late June, the commission received a letter from the Fish and Wildlife Service describing a workshop that they intend to hold sometime later this year -- at that time I believe September was suggested as the date -- a workshop on shorebird and horseshoe crab interactions.

The commission, under Vince's signature, responded with a letter in July describing some concerns we had about the timing of such a workshop, not about the workshop itself because the board has consistently been very supportive of enhancing communication on this topic.

The timing is an issue, also, because of a piece of background. Recall that the board had been seeking the establishment of a Shorebird Technical Committee for a few years now and there was one established, I believe, last fall.

And one of the first things, and today probably the most important thing, we have asked that body to do, and that it is currently engaged in doing, is pulling together a paper to essentially describe and assess the state of the Atlantic Coast shorebird populations and their interactions and dependencies on horseshoe crabs.

The paper that would subsequently be peer reviewed and would provide the board with the kind of technical documentation that it needs, drastically needs, desperately needs, I should say, to deal with some of the very contentious issues that have come before it.

That paper is due to be completed, peer reviewed and available for the board at this point we expect in February. So, the substance of our letter back to the

service was to remind them of that and to suggest our sense on behalf of the board-- again, the board hasn't met since this correspondence took place -- but our sense given all the discussions related to this to date, that a workshop like that would be better timed if it awaited the production and distribution of that paper and that technical information.

With that, I will hand it over to Dr. Geiger to take it from there with the intentions of the service.

DR. GEIGER: Thank you very much, Mr. Goldsborough, and thank you very much, Madam Chairman. Again, we did send a letter investigating the possibilities of having a horseshoe crab migratory bird workshop.

Again, I think the objectives of this workshop were relatively broad and I think are valid today as they were in early June when we sent the letter; basically to provide shorebird experts with a better understanding of the Horseshoe Crab Management Plan, the stock assessment work; to provide horseshoe crab experts with a better understanding of the shorebird issues and available data, including status and trends and population information; and providing an opportunity for collaborative efforts and partnerships to develop.

And then a fourth unstated objective would be to have a facilitated workshop in which could possibly provide good, sound recommend-ations to the various management entities involved in both horseshoe crab management as well as in migratory bird management.

I think those objectives are as valid today as they were then. We were hoping to get some input from a variety of different folks. Indeed, we have received significant input from many of you, from many of the private sector as well as from the Atlantic States Marine Fisheries Commission.

It appeared from that input that several important things became available. Number 1, we wanted to honor the work of our advisory shorebird group. We wanted to make sure that they had adequate time to do their work and do it well.

The other input was that certainly we wanted to fully engage the Atlantic States Marine Fisheries Commission and the commissioners in this process, to be inclusive. And that was always our intent, to be

inclusive.

And, third, to try to make sure that we had the available migratory bird experts available that may be beyond just the scope of our own advisory bird committee. That includes both service, state and private sector migratory bird experts, as well.

We were hoping to do this in September. That would coincide with a migratory bird get-together of international experts. Based upon your input, we have decided that September would not be an appropriate time to have this workshop so we will not be sponsoring a workshop in September.

But the issue on timing still, I think, is relevant to our discussion. Certainly we have heard from Mr. Goldsborough that the Advisory Shorebird Technical Committee may not be able to finish their work until February.

Certainly, from our perspective, we are of the understanding that all the data analysis has and perhaps has been done and that all that needs to be done is writing the paper and going through some peer-review process.

We are also aware of concerns, from the discussions with some of the state resource managers, that they were looking for possibly some good, solid recommendations to come out to be available to the commission and possibly be of value to set various regulatory regimes related to horseshoe crab management in the upcoming harvest year.

And, certainly, we certainly got an indication that at least for some states waiting as late as February may not allow good, substantive recommendations to be not only developed, but it may be difficult for various states to implement based upon their rule-making capabilities or limitations.

So where we are right now is I think that we all agree that there is a value to have a workshop. Certainly, the service, both the fisheries and habitat conservation activity and migratory bird activity of the U.S. Fish and Wildlife Service, is jointly interested in sponsoring such a workshop.

We also are very well aware of the financial limitations that are currently going on with states in the Northeast

and to a lesser extent the Mid-Atlantic and the Southeast in terms of travel restrictions for state directors and key people to attend out-of-state workshops.

And that is also a factor that is entering into our planning and hopefully ultimate successful execution of such a workshop. As it stands right now, we are looking at possibly a time frame around November, possibly to early February.

The timing is still subject to some discussion. We are very interested in seeing what the FY 2003 budget may mean to the service budget; because, certainly, if the 2003 budget allows, we certainly would have some additional funding to support a workshop and allow hopefully some financial support to get the key players at such a workshop.

And, certainly, we want to honor the request that this workshop happen early enough that we can get good, solid recommendations to be of valuable use to both ASMFC and the Horseshoe Crab Management Board, as well as to migratory bird regulators as an outcome of such a facilitated workshop.

So, our intentions, I think, are still valid. I think the issue is timing. My sense is that right now we are looking more towards a November time frame in terms of having and getting this workshop together.

And, certainly, once we get some resolution on the 2003 budget, which should happen in the next couple of weeks, certainly, that will help crystalize at least our intentions on having a workshop.

And, again, please be aware that we want to be inclusive on this one, the biomedical industry, the various constituency groups, university folks, state resource managers and directors, commissioners, ASMFC, National Marine Fisheries Service.

Certainly, we want everybody to be able to be involved so that we can have a good, interactive discussion of the ideas and opportunities that may be available to us.

One of the driving factors from the service's perspective is, again, based upon preliminary, very preliminary information is maybe the precarious nature of at least some of the populations of some of these migratory shorebirds.

And, certainly, there's the possibility but not necessarily the probability that some entity may petition the Fish and Wildlife Service to list one or more of these populations under the Endangered Species Act.

Certainly, I think none of us would like to see that occur. Certainly, we would like to be proactive and avoid if at all possible such a possibility. Our intention to have such an interactive workshop would be to get all the players together at one time, to have that good, interactive debate.

And, again, the question I believe again and again boils down to timing. I'll be happy to entertain any questions, Madam Chairman.

CHAIRMAN SHIPMAN: Okay, I think we have some. I had Dr. Goldsborough and then Roy and then Tom.

DR. GOLDSBOROUGH: Thank you, Madam Chair. It sounds to me like the spirit of this workshop is entirely consistent with the interests of the Horseshoe Crab Board, no question about that. There is an issue of timing.

And Dr. Geiger has touched on a couple of things that would also be an issue for the commission, I think, and the Horseshoe Crab Board. I will briefly mention them. One is the budget.

And more broadly than that, perhaps, what exact role for this commission would you envision? For example, would we be seeking to have the entire Horseshoe Crab Board attend or certain members; maybe the chair or maybe staff; those kinds of questions.

Understanding that there is no allowance in the current commission budget for a large meeting, that's one issue. You did touch on that to some extent.

The other issue remains that the work of the Shorebird Technical Committee, and our interest in seeing that come to some completion so we could utilize that in those kinds of discussions, and perhaps we need a little more information on where they do stand.

I'm encouraged by your comments, Jamie, that they are close to completion. It was our understanding that they actually had some more work to do. So, we would like to understand that a little bit further and do our best to

reach a resolution of the timing issue consistent with being able to utilize those results as best as possible. Thank you.

CHAIRMAN SHIPMAN: Roy.

MR. ROY MILLER: Thank you, Madam Chair. I'd like to commend Dr. Geiger and the Service for undertaking this particular endeavor. We applaud its purpose. I just have two comments that I wanted to throw out there.

I had envisioned sending technical people to this workshop as opposed to administrators, if you will. If Dr. Geiger has a different view on that, I hope he would follow up.

Secondly, he mentioned that it would be useful to have the workshop's recommendations available to the jurisdictions for regulation setting.

I would just remind Dr. Geiger that some of the states, mine in particular, can only implement regulations when they become part of an approved interstate fishery management plan, that we could not implement a regulation solely on the basis of a recommendation from a workshop. Thank you.

CHAIRMAN SHIPMAN: That's an excellent point, Roy. I think many of the states and jurisdictions may be in a similar situation. Jamie.

DR. GEIGER: Thank you, Madam Chairman. Certainly, Roy's points are extremely well taken and valid, and it was not our intention to circumvent that process at all.

In terms of the issue of technical versus resource managers at the workshop, we envision a mix of both. Some of the feedback we did get from the state directors at the Northeast Fish and Wildlife meeting was that there would be a desire to have one or more or several of the state resource managers there present as well, okay, as well as with technical folks.

And, again, that would give us a broad spectrum of both technical, non-technical, and manager expertise there which I think is going to add to the overall results coming out of such a workshop.

It will be much more than just a technical get together.

I think some of the resource decision makers have indicated that they definitely would like to attend that as well. Thank you.

CHAIRMAN SHIPMAN: Tom.

MR. FOTE: I really hope if we do a workshop like this, we also look at other reasons. I mean, to blame the whole collapse of all these birds and all the shorebirds on the fishermen harvesting horseshoe crabs seems to me is a little ludicrous.

There is a whole bunch of factors going on, whether it is destruction of habitats in their zones down in South America and things like that.

There is also the production of horseshoe crabs being curtailed because of the environmental factors that have changed in the bays and the estuaries. We should be looking at all those factors.

I mean, I just don't want to come in and say that I'm going to blame a couple of fishermen that are harvesting a lot less horseshoes than they were 50 years ago because there was a lot more horseshoe crabs. They used to harvest them for fertilizer then.

So there's some underlying factors that are going there and just to blame fishermen, commercial fishermen, on this, I want to make sure that's clear and that we're going to be looking at all the areas of basically that has affected the shorebird decline.

CHAIRMAN SHIPMAN: Jamie.

DR. GEIGER: Thank you, Madam Chairman. Certainly, Tom, I hear your point loud and clear, and that was certainly our intention. Again, getting a wide variety of shorebird experts would allow us to pursue these broader geographic areas, to look at true, if there are indeed true population declines related to these species, what may be the appropriate causes of these declines in a much broader perspective and a more of a landscape-based perspective as well. I think that's the value of such a workshop. Thank you.

CHAIRMAN SHIPMAN: Any other comments? Yes, Mr. Plumart. If you would come up to the microphone, we would be happy to have your comments.

MR. PERRY PLUMART: Thank you, Madam

Chairman. It's Perry Plumart, Director of Government Relations for the National Audubon Society. I want to thank Dr. Geiger and the members of the Horseshoe Crab Management Board for taking a look and putting this emphasis on the horseshoe crab and migratory shorebird interaction.

I think it will provide us some good data and help to provide a sound scientific basis for what we believe is further regulations that are needed. I'm glad that the workshop is going forward.

I would like to add one other thing. We have been involved with some of the states, and currently we have included in the Senate appropriations for Commerce, Justice, State \$700,000 for horseshoe crab research.

I believe the commission, too, also sent a letter supporting that. We are working to make sure that gets through on the House side, also. So, I'm glad to see that the interaction of the shorebirds and the horseshoe crab workshop is going forward and we are moving forward on other research fronts for horseshoe crabs, also. So thank you very much.

CHAIRMAN SHIPMAN: Thank you and thank you for being with us today. We appreciate your advocacy for that funding initiative. It's important to all of the states and to the NGOs as well. Vince.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Madam Chair. For Dr. Geiger, Jamie, going over your time line for a November meeting, given that we have the Shorebird Technical Committee was going to look at both the status of shorebirds as well as possible connections between shorebirds and horseshoe crabs, in your mind, if you went forward with a November workshop, how do you see the findings and work of this Shorebird Technical Committee sort of being integrated into the process, given that we really want to make our decisions based on the best science; and, again, as opposed to perhaps waiting until February when maybe that work could be incorporated into the workshop.

DR. GEIGER: And, certainly, that is a real concern of ours. Obviously, we want to have the best science available for any recommendations that would come out of a facilitated workshop.

It is our sense and our belief that the analysis may be

that far along that it would allow us to infer the appropriate levels of information to communicate to all the partners on what just are the status and trends of these populations.

Certainly, I think we are looking at somewhat of a larger venue and a larger arena of shorebird experts than maybe presently entailed by the Shorebird Technical Committee. I think those values and those opinions may be valuable to have, as well.

Certainly, I, under no circumstances, want to undervalue or underestimate the extreme value of the work of the Shorebird Technical Committee. It has been a long time getting these folks together. It has been a painful journey.

And, certainly, the Fish and Wildlife Service share some real responsibility for the unfortunate delays and lack of progress on getting that group together and in function. And, again, I applaud the leadership of the Atlantic States Marine Fisheries Commission for giving us the appropriate emphasis and urgings to make it so.

So, again, Vince, we share your concerns and that certainly is a very significant factor in the obvious ultimate decision on timing of the workshop. Thank you, sir.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Jamie.

CHAIRMAN SHIPMAN: Okay, Bill.

DR. GOLDSBOROUGH: Just on that point, I know we need to reach some resolution. Perhaps the thing for this board to do is to just urge the Service, as they determine the timing for this workshop, to seek a date or a time when the Shorebird Technical Committee is comfortable that they have reached a point at which they are able to report their findings and stand behind them to some extent, such that they can be a contribution to the workshop.

CHAIRMAN SHIPMAN: If there is no objection from all the policy board, I think we will formally communicate that to you. We may just want to write a letter to that effect from the commission to the service, just articulating that. Thank you, Bill. That's a good suggestion.

Anything else with regard to this issue? And, Jamie, I know you came specifically to update us on this and I appreciate you being with us for that.

DR. GEIGER: And thank you, Madam Chairman. I hope that my attendance will be more regular in the future, once we get through some of these budget wars. Thank you very much.

CHAIRMAN SHIPMAN: The only thing I would add is your budget wars are no worse than those of the states sitting around this table. Vince.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Madam Chair. And before Jamie leaves, in public I would like to point out to the board that I was in the audience when Jamie testified before the U.S. Oceans Commission.

In his testimony he had some very kind words for the work of the Atlantic States Marine Fisheries Commission. I sent him a note thanking him for that, but I would also like to repeat my thanks in public for your testimony.

CHAIRMAN SHIPMAN: Thank you, Vince. Bill Goldsborough, if you don't mind, could we go to the Habitat Committee report next?

### **Habitat Committee Report**

DR. GOLDSBOROUGH: Sure. I'm pleased to say I have a segue of sorts from the previous topic in that the first of four things I want to report to the board from the Habitat Committee has implications for both shorebirds and horseshoe crabs.

And that is that we have completed, for all intents and purposes, the beach nourishment paper that has been in process for quite some time now. You will recall that this has been available for comment for some time, including at the last meeting in May when we sought input from the policy board.

We did receive some. It has been incorporated. I have to say specifically that while we regretted the retirement of Rob Dunlap from South Carolina, a long-standing member of the Habitat Committee, his replacement, Bob Van Dolah, as it turns out, fortuitously, is somewhat of an expert on beach nourishment, perhaps the most knowledgeable person on the East Coast,

anyway, as my understanding has it.

And the timing couldn't have been better because he was able to work with our writer and literally push this over the top and help us produce a really top-notch paper. That was the sentiment all around the table at the Habitat Committee on Monday.

We have heard that from elsewhere, as well. So, this paper was on the briefing CD in the policy board section, so you all have had access to it. At this time I want to offer it as a proposed publication from the commission.

CHAIRMAN SHIPMAN: I think we may have some questions or comments. David.

MR. CUPKA: Thank you, Madam Chairman. I was just going to point out that Bob's appointment was not fortuitous, Bill; we did that on purpose.

CHAIRMAN SHIPMAN: Any comments on the document? You will recall we had an opportunity to have some discussion about this in May. We asked for any states and anyone actually to submit any additional comments to the Habitat Committee.

Karen Green has done a fine job along with Carrie and Dr. Goldsborough and the committee of refining this document. I think it is a very good source document for referral to the states. I think what we need probably is a motion to approve that.

We have a motion by Pat White; a second by Pres Pate. Discussion on the motion? Is there any objection to the motion? Seeing none, any abstentions; any null votes. Seeing none, the motion carries unanimously.

The Beach Renourishment Source Document publication is approved. And our commendation and thanks to the Habitat Committee for another excellent work. We appreciate all the work you all put into that.

DR. GOLDSBOROUGH: Thank you, Madam Chair. I think it will be available at the annual meeting, printed copies.

The second thing I want to report on is an update on the SAV state plans that has been ongoing for some time now. You will recall that I think it was about a year ago when this board concurred with our suggestion or made

a suggestion -- I forget which it was -- that we undertake a voluntary approach to this recommendation that came out of the SAV policy and action plan that we had adopted, in other words, asking states voluntarily to draft a brief plan for submerged aquatic vegetation.

We've provided a template for that in the form of a draft plan from Rhode Island. It really amounts to only a few pages, actually, depending on how much a state wanted to put into it. We tried to make it as minimally onerous as possible.

And recall that the first deadline for those voluntary plans was March 1st. We had I think a couple in hand at that time, and we, thus, extended the deadline to October 1st, feeling that maybe we hadn't given enough time.

I'm now just reminding the board. We have five, I think, in hand now, five states, so I'm reminding the board and those states that have yet to submit a plan that October 1st is now our deadline; and if they need to see that template again or see the information again, we would be happy to get it out to them.

Carrie can provide that. Our intention is to put together the plans that we do get by that deadline and have them bound and available at the annual meeting.

CHAIRMAN SHIPMAN: Are there any questions on the SAV plans? Okay, proceed.

DR. GOLDSBOROUGH: The third item is just to update the board on our progress on dealing with the second major habitat type -- the first being SAV -- and that is as yet an unfinalized name, actually.

We have been calling it "molluskan shell substrate" but found that to be a bit of a mouthful. We think we are going to call it "molluskan shellfish habitat." That's not final either.

In any case, it encompasses shellfish beds from oysters to mussels to shell hash and other types of substrate that provide valuable habitat to commission-managed species. So we are in the process of writing a white paper on this habitat type.

We have had some voluntary assistance from Dr. Ken Painter, a shellfish biologist from the University of Maryland, and ongoing support from a NMFS intern

named Jennifer Lowry. So that paper is moving along, and we hope to have it for you some time in the not-too-distant future.

CHAIRMAN SHIPMAN: We could have a contest to name that habitat, Bill.

DR. GOLDSBOROUGH: Well, there's an annual meeting exercise.

CHAIRMAN SHIPMAN: Go ahead.

DR. GOLDSBOROUGH: Finally, Madam Chair, I want to inform the board that the Habitat Committee has brought about the submittal of a letter on behalf of the commission under Vince's signature, I believe, to the EPA on their proposed 316B guidelines for existing power plant facilities.

This is the impingement and entrainment issue. That letter is on the briefing CD in the Habitat Committee section if anybody wishes to see it. It was expressing the concerns that are reflective of the ongoing discussions here and various venues over the last year or two. Thank you.

CHAIRMAN SHIPMAN: Thank you, Bill. Are there questions of Bill on the Habitat Committee report? You all have been busy, as always. You always have a very good perennial work plan. We appreciate all the products you are turning out.

I did work with staff and with Bill and with Vince on the 3/16 letter; and if you are interested in that, that is on the briefing CD. Okay, if there are no questions, thanks very much, Bill.

We do not have a report from the Committee on Economics and Social Sciences; it is my understanding, so we will go down now to other business and I believe A.C. Carpenter had an item for us on striped bass.

MR. CARPENTER: Couldn't let a meeting get by without that. The schedule, as I understand it, has the commission adopting Amendment 6 to the Striped Bass Plan at their November meeting in Williamsburg.

I think the schedule also calls for the states and jurisdictions to supply management plans for 2003 at that same meeting. Given the 812 permutations of possible outcomes of that meeting, I'm not sure that we

are able to develop a fishery management plan to submit prior to knowing what the hell we're submitting plans for.

For those of us whose fisheries start in January, this is going to present a problem. The reason that I asked to bring it before the policy board was we're either going to need some kind of time delay on the implementation of Amendment 6 or we're going to need to call for a board meeting to review management plans in very short order. I think there are several of us in this box.

CHAIRMAN SHIPMAN: I'm certainly going to call upon those of you who have knowledge of Striped Bass Amendment 6 to discuss this; knowing nothing about this, myself. Tom, it may be that you are going to have to have a conference call or something. I don't believe we've got resources committed for an additional meeting. Tom.

MR. FOTE: Yes, A.C., if I remember right, when we usually passed amendments, most of the time we passed an amendment and then took the next year to get plans in place because some of the -- like with New Jersey, we've got to go through actually a bill.

We have to put a bill and go through the whole legislature to change any of our regulations, which can take a long time. We're not going to probably get compliance by April or May of that year.

Unlike quotas, when we handled striped bass in New Jersey, it goes to a full legislature and signed by the governor, so it's a whole long process. I mean, us southern states here -- because I see there's only one state north of New Jersey here left -- have that problem. I mean, I sympathize and we really have to address that because we're going to be out of compliance, too.

CHAIRMAN SHIPMAN: And I'm going to ask Bob to comment on it. Maybe he can help you out here.

MR. BEAL: Okay, thank you, Madam Chair. I think the schedule A.C. went through is the plan right now. The plan hasn't been adopted. We intend to approve the document in November, but part of that approval is going to be developing the compliance schedule.

And depending on the magnitude of changes, I think 812 permutations is probably too low, the number you said earlier. But depending on the magnitude of changes and the state requirements, we're going to have

to roll that all into the compliance schedule that's developed in November.

MR. CARPENTER: Well, then would the -- I don't even know who is the chair of that board now.

MR. LAPOINTE: I'm the proxy for the chair. Lew Flag is the chair.

MR. CARPENTER: Well, if you will carry our concerns back to Lew, but are we then to prepare plans based on Amendment 5 to be submitted if there are any changes? And would that be, then, what would be reviewed and then this Amendment 6 would have to come at some later date?

MR. BEAL: I mean, it's hard to anticipate where the management board is going to go on Amendment 6. Some of the options in there basically boil down to status quo.

The states and jurisdictions may not have to make major changes. I'm not exactly sure what "major" means. But, some states, even minor changes may have to go through the legislative process, as Tom mentioned.

We're going to have to roll all that into the schedule. I think we may even hold a meeting in the October time frame of the management board, if funds permit, to deal with some of the early decisions for the document so that we can make changes and have a final document available in November. So, some of this we may be able to grapple with in October if we have an additional meeting outside of a meeting week.

CHAIRMAN SHIPMAN: Roy Miller.

MR. ROY MILLER: Speaking for one of those states that is going to have difficulty implementing anything in time, I see our state basically opening its fishery in 2003 under the provisions of Amendment 5.

In other words, no need to submit anything because I just don't think it's going to happen in time to affect our spring fishery, as I see it, unless you have a different intention, Bob and Susan.

CHAIRMAN SHIPMAN: I have no intentions on striped bass; I assure you. I had Tom and then Eric.

MR. FOTE: I mean, the only thing I could think we could implement in 2003 would be -- if there was an increase in the commercial quotas in some of the states, coastal states and things like that, then we could add that on later in the season, which I think states could comply with.

If we were going to do recreational things that we have discovered lately, when we pass a plan sometimes it takes a year, especially on striped bass, to get it implemented. We have done that numerous times.

I remember when we did Amendment 4 and when we did Amendment 3 we gave that -- so we expected everybody to be in full compliance by October of 2003.

I think that's how we went through the last process on Amendment 5. It took us almost a year to get some of the stuff in place. So, my suggestion, my recommendation is that we basically set up for the fishery under Amendment 5 and if any -- you know, we can make some changes to basically increase quotas or things like that, we should do that in 2003. That would be my recommendation.

CHAIRMAN SHIPMAN: Eric.

MR. SCHWAAB: Well, I don't doubt that is going to be the outcome, but that's very different than our expectation as we had approached the completion of Amendment 6. I think what we need -- and obviously we're not going to get it here today, but we need some guidance on that sooner rather than later.

In addition to that, Bob raised the other point that was of concern to me, and that is the schedule for how the work process is going to unfold this fall, which is another item about which we need, I think, some information sooner rather than later.

You know, I have also heard this discussion of an extra board meeting. I guess I would just simply say here today that if that is going to be the case, the sooner we have a game plan for that, the better because this fall is filling up quickly, and this is obviously going to be something important to all of us.

CHAIRMAN SHIPMAN: Bob.

MR. BEAL: Thank you. Yes, I'm in the middle of scheduling all the multiple public hearings that are

going to go on for Amendment 6. The board chair and I were kind of waiting to see how far into October those hearings were going to have to be held so we could schedule the meeting of the management board prior to the annual meeting, if we have time and funds to do it.

So that's kind of where we are; that's what the hold up is right now. Once we get those public hearings set, then we can decide what our next step is.

CHAIRMAN SHIPMAN: What I might suggest is that Bob confer with Lew and then get an e-mail out to the striped bass listserve, the board. When do you think you will know about those hearings?

MR. BEAL: Hopefully by the end of next week.

MR. FOTE: I mean, Susan, Bob is saying we could have a meeting in October. I'm looking at weakfish. I'm looking at doing public hearings. I'm probably doing two or three in the two weeks in October. And it's going to really leave -- travel time.

I mean, if you want to have another meeting, the only place that you're going to drag me to is Duck Island so we could probably do a striped bass on Duck Island. We'll have players there. But, I mean, it would be very hard in October.

I'm looking at a schedule and travel plans so far of the meetings, that you have to basically schedule a striped bass meeting in October between weakfish meetings and what is going on with striped bass.

CHAIRMAN SHIPMAN: Well, again, I think Bob is going to have to confer with the Chair of the Striped Bass Board and get back with you all on this. But for the time being, A.C., until you all decide otherwise in either a separate meeting or whatever, it sounds like the other states that are in your situation are going to move forward under the premise of Amendment 5 for the time being as far as their plans.

MR. CARPENTER: Well, thank you for entertaining this discussion. I know it has meant a lot to me to know that I'm not the only one in this box.

#### **Other Business/Adjourn**

CHAIRMAN SHIPMAN: Okay, anything else on striped bass? I think Bob knows what he needs to do

there and he will go back and get busy on that. Any other items to come before the policy board? Hearing none, there is a motion to adjourn. Without objection, we stand adjourned. There is no business meeting so the meeting week is concluded. Thank you all very much for staying.

(Whereupon, the meeting adjourned at 3:50 o'clock, p.m., August 29, 2002.)

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