

Atlantic States Marine Fisheries Commission

Sturgeon Management Board

February 19, 2013
4:30 – 5:30 p.m.
Alexandria, Virginia

Draft Agenda

The times listed are approximate; the order in which these items will be taken is subject to change;
other items may be added as necessary.

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| 1. Welcome/Call to Order (<i>R. Allen</i>) | 4:30 p.m. |
| 2. Board Consent | 4:35 p.m. |
| • Approval of Agenda | |
| • Approval of Proceedings from October 2012 | |
| 3. Public Comment | 4:40 p.m. |
| 4. Review and Populate Stock Assessment Sub-Committee Membership (<i>K. Taylor</i>) Action | 4:50 p.m. |
| 5. Review of NOAA Fisheries/ASMFC Mid-Atlantic Gillnet Bycatch Workshop | 5:10 p.m. |
| 6. Other Business/Adjourn | 5:30 p.m. |

The meeting will be held at: the Crowne Plaza Hotel, 901 North Fairfax Street, Alexandria, Virginia • 703-683-6000

Healthy, self-sustaining populations for all Atlantic coast fish species or successful restoration well in progress by the year 2015.

MEETING OVERVIEW

Atlantic Sturgeon Management Board Meeting
February 19, 2013
4:30 – 5:30 p.m.
Alexandria, Virginia

Chair: Russ Allen (Assumed 5/12)	Technical Committee Chair: Dewayne Fox (DE)	Law Enforcement Committee Rep: Brannock/Meyer
Vice Chair: John Clark	Advisory Panel Chair: Vacant	Previous Board Meeting: October 2012
Voting Members: ME, NH, MA, RI, CT, NY, NJ, PA, DE, MD, VA, NC, SC, GA, FL, D.C., PRFC, USFWS, NMFS (19 votes)		

2. Board Consent

- Approval of Agenda
- Approval of Proceedings from October 2012

3. Public Comment – At the beginning of the meeting, public comment will be taken on items not on the agenda. Individuals that wish to speak at this time must sign-in at the beginning of the meeting. For agenda items that have already gone out for public hearing and/or have had a public comment period that has closed, the Board Chair may determine that additional public comment will not provide additional information. In this circumstance, the Chair will not allow additional public comment on an issue. For agenda items that the public has not had a chance to provide input, the Board Chair may allow limited opportunity for comment. The Board Chair has the discretion to limit the number of speakers and/or the length of each comment.

4. Review and Population stock Assessment Sub-committee Membership (4:50 – 5:10 p.m.) Action
Background
<ul style="list-style-type: none"> • In October 2012 the Board initiated a new stock assessment for Atlantic Sturgeon.
Presentations
<ul style="list-style-type: none"> • Stock Assessment Subcommittee membership by K. Taylor
Board Action for Consideration
<ul style="list-style-type: none"> • Approve stock assessment subcommittee membership

5. Review of NOAA Fisheries/ASMFC Mid-Atlantic Gillnet Bycatch Workshop (5:10 – 5:30 p.m.)
Background
<ul style="list-style-type: none"> • In January NOAA Fisheries and ASMFC held a joint workshop focused on sturgeon and sea turtle bycatch in Mid-Atlantic gillnet fisheries.
Presentations
<ul style="list-style-type: none"> • Review of Mid-Atlantic Gillnet Bycatch Workshop by K. Taylor

6. Other Business/Adjourn

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**DRAFT PROCEEDINGS OF THE
ATLANTIC STATES MARINE FISHERIES COMMISSION
STURGEON MANAGEMENT BOARD**

**Radisson Plaza-Warwick Hotel
Philadelphia, Pennsylvania
October 25, 2012**

These minutes are draft and subject to approval by the Sturgeon Management Board.
The Board will review the minutes during its next meeting.

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1. **Approval of Agenda by Consent** (Page 1)
2. **Approval of Proceedings of August 9, 2012 by Consent** (Page 1)
3. **Move that the board approve the Habitat Sturgeon Addendum as presented and to give editorial license to add any significant new pieces of information relative to habitat use into the document** (Page 16). Motion by Pat Augustine; second by Doug Grout. Motion carried (Page 17).
4. **Move that the board direct the technical committee to develop a draft delisting/down-listing petition to be considered by the board at the annual meeting** (Page 17). Motion by Bernie Pankowski; second by Pat Augustine. Motion carried (Page 17).
5. **Adjournment by consent** (Page 17).

ATTENDANCE**Board Members**

Terry Stockwell, ME, proxy for P. Keliher (AA)	Loren Lustig, PA (GA)
G. Ritchie White, NH (GA)	Roy Miller, DE (GA)
Douglas Grout, NH (AA)	John Clark, DE, proxy for D. Saveikis (AA)
Jocelyn Cary, MA, proxy for Rep. Peake (LA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Dan McKiernan, MA, proxy for P. Diodati (AA)	Tom O'Connell, MD (AA)
Bill Adler, MA (GA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
Robert Ballou, RI (AA)	Bill Goldsborough, MD (GA)
Bill McElroy, RI (GA)	Jack Travelstead, VA (AA)
Rick Bellavance, RI, proxy for Rep. Martin (LA)	Kyle Schick, VA, proxy for Sen. Stuart (LA)
David Simpson, CT (AA)	Cathy Davenport, VA (GA)
Rep. Craig Miner, CT (LA)	Louis Daniel, NC (AA)
Pat Augustine, NY (GA)	Bill Cole, NC (GA)
James Gilmore, NY (AA)	Patrick Geer, GA, proxy for S. Woodward (AA)
Russ Allen, NJ, proxy for D. Chanda (AA)	John Duren, GA (GA)
Tom Fote, NJ (GA)	Jim Estes, FL, proxy for J. McCawley (AA)
Adam Nowalsky, NJ, proxy for Asm. Albano (LA)	A.C. Carpenter, PRFC
Mitch Feigenbaum, PA, proxy for Rep. Vereb (LA)	John Bullard, NMFS
Leroy Young, PA, proxy for J. Arway (AA)	Wilson Laney, USFWS

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

Ex-Officio Members

Dewayne Fox, Technical Committee Chair

Staff

Robert Beal
Mike Waine

Kate Taylor

Guests

David Pierce, MA DMF
Nicola Meserve, MA DMF
Mike Armstrong, MA DMF
Scott Ault, Kleinschmidt Assoc.
Steve Meyers, NOAA
Charles Lynch, NOAA
Tom McCloy, NJ DFW
Raymond Kane, CHOIR
Rob O'Reilly, VA MRC
Kelly Denit, NMFS
Bob Ross, NMFS

Sean McKeon, NCFA
Peter Burns, NMFS
Bob Bowes, PRFC
Ellen Cosby, PRFC
Amanda Keledjian, Oceana
John Whiteside, Sustainable Fisheries Assoc.
Shaun Gehan, KDW
Kelly Place, VA Waterman's Assoc.
Mark Alexander, CT DEEP
Jane Davenport, DE Riverkeeper Network
Kim Damon Randall, NOAA

The Sturgeon Management Board of the Atlantic States Marine Fisheries Commission convened in the Radisson Plaza Warwick Hotel, Philadelphia, Pennsylvania, October 25, 2012, and was called to order at 8:30 o'clock a.m. by Chairman Russ Allen.

CALL TO ORDER

CHAIRMAN RUSS ALLEN: If everybody will take their seats, we can get started.

APPROVAL OF AGENDA

Are there any changes to the agenda that we want to see? Seeing none, we will consider that approved.

APPROVAL OF PROCEEDINGS

Approval of the proceedings from the August 8th meeting; does anybody have any questions or concerns about that? If not, we will consider those approved.

PUBLIC COMMENT

We had no one sign up for public comment. I will open that up now if someone has public comment on anything that is not on the agenda today. Seeing none, we will move forward. The first thing on the list is Atlantic Sturgeon Endangered Species Petition Update.

ATLANTIC STURGEON ENDANGERED SPECIES PETITION UPDATE

MS. KATE TAYLOR: In August the board tasked the technical committee with the development of a delisting or down-listing petition for review at this annual meeting. A request for volunteers was sent to the technical committee, which federal technical committee members recused themselves.

Technical committee members from Maine, New, York, North Carolina and South Carolina as well as our Technical Committee Chair Dewayne Fox agreed to join a subcommittee to develop the draft petition for the board's review. We were able to get representation from four out of the five DPSs that have been listed.

The Petition Subcommittee met via conference call and e-mail to discuss and develop the drafts. The subcommittee reviewed the required format for a petition and the elements that are necessary to go into a petition that is submitted to the

Service, as well as the subcommittee discussed the delisting and down-listing alternatives for each DPS and the available supporting data for those alternatives.

The following information the subcommittee reviewed is relevant for determination as to whether a petition provides substantial information and indicates that the requested petition action may be warranted. These are the factors that the subcommittee reviewed and will need to provide in the petition if it is to be successful in the 90-day review and as it would progress under the Service's policy.

This information includes estimates of current population status, trends, sizes and distributions both in captivity and the wild, biological information on the species that is relevant to determine whether a species may be endangered or threatened, identification and description of the Act's five factors that the petitioner believes are affecting the species, including where these factors are acting upon the species, the magnitude and eminence of these factors, and whether either singularly or acting in combination these factors may cause the species to become an endangered or threatened species.

To date the Petition Subcommittee has not yet developed recommendations for each DPS. The Xs in the draft petition are reflective of that. There has been substantial discussion and a determination was not able to be made by this meeting. However, the subcommittee did discuss that for each DPS they would need to develop the delisting criteria or metrics that they would need to include within the petition and then also provide the assessment of the listing threats with the updated data that has been identified by the technical committee.

We possibilities for what these delisting criteria or metrics could be; and we reviewed examples of previous recovery plans. Those were also provided in the draft document that was included in the board material as to other recovery plans, what their delisting criteria and metrics have been in the past and how we might be able to use that as the basis for potential criteria for Atlantic sturgeon.

Those recovery plans and delisting examples included the shortnose sturgeon where they had an endangered threshold and a threatened threshold that was included in their recovery

plan; as well as for Gulf sturgeon. There were short-term and long-term recovery objectives and a definition of what a self-sustaining population would look like.

As we move forward with the development of the petition, most subcommittee members have informed me that they will be directed to work on the assessment. They were unsure if it would be approved; but since it has, they will be allocated their time to work on the assessment, so we will be losing a few of those members.

We will need representation and a lead from each DPS at a minimum in order to proceed with this petition. The lead will be responsible for gathering the data for each DPS as well as being in communication with the other states that are represented within that DPS about the appropriate designation based on the analysis conducted.

Additionally, we may need additional technical staff in order to conduct any analysis that is needed for the petition. Most importantly, we will most likely need outside legal advice and review of the document as it does go forward. Thank you, Mr. Chairman.

CHAIRMAN ALLEN: Thank you, Kate. From what I've seen and heard from talking to people that are involved in this petition, it sounds as if we really need to get some sort of legal or policy people involved in doing this petition. Most states don't have that availability right now. I think if we want to move along on this petition, I think that is what we need to do.

We need to start getting some people involved that really know their Ps and Qs when it comes to this kind of stuff. I know I don't, but I'm willing to help out whenever I can. This process may take a little longer than we originally thought. I'd like to get some comments on what you think. If there are people who can, please step up. Bill.

MR. WILLIAM A. ADLER: Mr. Chairman, in reading this over I was trying to decide what it did. It explained apparently the stuff that made the sturgeon being endangered or whatever, but I didn't see any petition to delist it. I saw you should do this, you should do that, you should do, should do, which I would imagine any proposal given to someone about an endangered species would do. I thought we were going to

try to petition in some way to delist it for some reason, and I didn't see that. What did I miss? I didn't see that in the document.

MS. TAYLOR: The subcommittee met to discuss the data and the possible alternatives for each delisting or down-listing criteria. The amount of data and analysis that would go into getting to that determination was a substantial effort that the subcommittee could not complete within the two-month timeframe between the August meeting and this current meeting. That is why there are no recommendations at this time for delisting or down-listing by DPS because we haven't conducted that analysis as to what the appropriate recommendation should be.

MR. ADLER: So, in other words, this is like not done yet because you have to put the part in about therefore and wherefore we want you to delist it basically? All right, thank you.

CHAIRMAN ALLEN: That is correct. Jim Gilmore.

MR. JAMES GILMORE: Kate, was there any estimate or even a ballpark on how much time this would take because the other issue we have is some people that are on the – you know, the more important folks or some of the more experienced, whatever, may not be here for another six months and that is a big concern. Not only do we have to get good people on it, but we have got to get people that are going to be able to do it through the end. Is there even a ballpark on how long it is going to take?

MS. TAYLOR: That is dependent on the number of volunteers we have to help out with the subcommittee as well as who is allocated for the stock assessments. The fewer people we have on the subcommittee, the minimum representation by each DPS will take a substantial amount of additional time for the development of the petition.

MR. JOHN DUREN: Are the listing criteria a lot easier than the delisting criteria?

MS. TAYLOR: Actually to petition to list or delist, it is the same criteria. You just have to provide justification of why the petition action is warranted with those metrics that I included.

MR. ROBERT BALLOU: Mr. Chairman, you spoke of the need for some legal and policy

folks. I know what a legal folk; can you speak to what a policy folk is?

CHAIRMAN ALLEN: Well, maybe that is not the right choice of words, but that is what came to mind. We don't have legal representation in New Jersey doing different things. It is someone who may have spent some time working on the regulations or policies that we do and at least getting them in some sort of order that makes sense.

We do have legal people in the department, but they wouldn't be able to help out at this juncture, for sure. They might be able to review something once it is done, and that would be a big help. I don't think our technical people are very versed in this kind of stuff and maybe that would be helpful to – I'm not really sure if "policy" is the right word, but anybody like that who would be able to write some sort of petition; you know, maybe they craft some sort of legislation or things like that, which would help work on this. Louis.

DR. LOUIS DANIEL: I think the direction that we're headed is a good one. We're moving forward, Bill, to move this petition as quickly as we can. The frustration from my side of the equation is the fact that I believe our technical committee now is saying that they believe that we need to do an assessment before we actually petition to delist, so we're looking at a couple of years before we can even try to delist them.

But yet the National Marine Fisheries Service, we don't get anything from you. You still haven't provided us the information to justify the listing. The technical committee has asked for it, the states have asked for it. Everybody knows where the decision was made and that it was a unilateral policy decision. It didn't have anything to do with the science.

The leadership at NMFS seem to be apologetic for what happened, but yet we're in a scrape. We've got an endangered species now that we're having to try to deal with that shouldn't be listed in the first place, and yet we're still not getting anything from you guys, and that is frustrating. We need for NMFS to come in and explain to us the justification for the listing.

They still haven't done it. The technical committee doesn't know, so how in the heck are we supposed to petition to delist, number one,

when we don't think they should have been listed in the first place; and, number two, when you aren't forthcoming with the information? That is tough. It is sort of shooting in the dark.

That is the message I'd like to go back to the National Marine Fisheries Service but mainly to Dr. Lubchenco. She is the one I think that made the unilateral decision to do this. This wasn't Sam Rauch; this wasn't Eric Schwaab; this wasn't the scientists with NMFS because nobody can justify it. Yes, I'm on a high horse about it. We're in the bull's eye in North Carolina.

We've developed an observer program. I've cut programs to provide observer coverage in areas where we would not normally have to have observer coverage. We are seeing sturgeon. We did shut down some areas; limited gill net use in some areas, but we killing sturgeon and they're an endangered species.

Just so you know, we had recently closed the Pamlico Sound for two weeks during peak season for one dead Kemp's Ridley turtle. This stuff is going to get serious for all of us. I'm disappointed that we can't ask for a delisting without a stock assessment, but I understand that. I'm going to support our technical committee in what they decide, and I will offer up all the assistance ASMFC needs in staff and legal staff.

I hope other states will join me in that, but I've got general counsel; I've got attorneys general; I've got everything that we're willing to step up because this is a critical thing, but again I just cannot express enough the frustration that I have over the lack of the forthcoming of the data that we so desperately need to try to make this delisting. That's all I'm going to say about it. Thank you.

CHAIRMAN ALLEN: Thank you, Louis. I think you're right when you talk about not having the meat of why the sturgeon was listed in the first place. I think that is something we keep trying to get from NMFS. There is this disconnect somewhere, and I think we're going to continue to work on that through our technical staff and the stock assessment. I know they're going to be involved in the stock assessment so maybe that will help.

We appreciate being able to step up and put people forward to work on the delisting. It is

going to continue to move forward, for sure. I just don't know if it is going to be a pace that we're comfortable with. Representative Miner.

REPRESENTATIVE CRAIG A. MINER: Mr. Chairman, one of the concerns I had back when we first started talking about this listing was that the criteria didn't seem to match criteria used in the past for listing an animal. My concern now is that if this is allowed to stand, it will be the basis upon which others are listed.

I think it may very well be in our best interest to look at other animals that have been delisted successfully across the country and try and seek out those that have managed to move their way through that process. There have been some that have been delisted as a result of increased population and changes in habitat and whatever.

This isn't new but I do think we need to get to the right people sooner rather than later because just this meeting alone we've had other conversations about animals that seem to be threatened in one way or the other; and if climate change is the criteria that will be used to list something, I'm really worried.

I also want to say that I think there are probably partners that this group may find across the country in this effort. If it is that some people are on the move to use this process as a means to get at another goal – and I'm not suggesting that is the case; but if it is the case, then I think there is a similarity of thought amongst others who manage other species, perhaps land mammals and the like, and therefore there may be allies in both the scientific and the economic effort to try and overturn this decision.

CHAIRMAN ALLEN: I'll discuss that with Kate and maybe we can come up with some examples that are out there and put that together. Pat

MR. PATRICK AUGUSTINE: Mr. Chairman, following on with what Dr. Daniel said, the flip side of that is we're taking this time to develop the action plans for the DPSs. In the meantime, there are states, as I understand it, that are looking at developing the 7 and 10 permits. The question is how can staffs from those states that are involved with developing the rationale for delisting find manpower to do both at the same time, on a dual track.

Agreeing with what you're saying about we are not getting an answer as to why and how – well, we know why, but how and what can we do to -- and I guess you're pointing your questions at John down there – and he was put on the hot seat again, but I guess the real question is how do we do that, how do we go ahead and divide our staffs' time with all the other issues that they're dealing with right now for other species of fish and still complete this other exercise.

Where there is a will there is a way, but in reality it seems as though we should put again additional pressure on the Service to forge forward to get the answers we asked for; either satisfy us or dissatisfy us, whichever the case may be doesn't matter, but get a definitive, clear set of reasons of why, and is there something else we can do other than spending all this time and money and energy to develop either these other ways to go about our business.

Representative Miner is absolutely correct.

This whole process is setting the stage for totally destroying – and I'll tell you all and the world out there and the public to destroy the commercial fisheries. This starts with sturgeon, it leads into the gear types for monkfish and it attacks every other area where those kinds of gears are used, and it is an open abscess right now.

They, whoever they are, and we know who they are, the folks that want to do this have an open door. This thing with sturgeon is setting the ground rules. And I think like it or not, no matter what we've heard about the eel population from our fellow commissioner, Mr. Feigenbaum, there is movement to eventually move that to that endangered species list.

We're still caught in the middle of trying to manage river herring and shad, and we know what is going in that direction. If that is another to list, what is that going to do? Here we have some species that are absolutely fully recovered. Miscalculation on black sea bass, right, wrong or indifferent, I think there were some miscues made along the way, and now we're going to have to go back and try to redo and get seasons opened for recreational and so on.

The bottom line is misrepresentation of information – and we have the menhaden situation coming up – it seems like science is

being thrown in the bucket. It is emotion that is driving all of these decisions. And again back to the initial point that Dr. Daniel made, we've got to get NMFS to come up and try to clear the air as to why and how.

Is it true that this should be listed or is there another way of going about this rather than spending all the manpower, time and energy, that our staffs could be doing more valuable work for the commission and our fisheries and work with our rebuilt fisheries and so on. Thank you for allowing me that, Mr. Chairman.

CHAIRMAN ALLEN: Some good points in there, Pat. Ritchie.

MR. G. RITCHIE WHITE: Mr. Chairman, following up on Louis and Pat, it seems like we have asked nicely a number of times from a number of different avenues and have not gotten the information. Should we not consider now asking in a different manner, and do we have the right-to-know ability? I know that we do within a state.

I'm not sure we have that federally or not, but do we have the ability under right to know to try to get some of this information and how was it formed. The other option would be to go through our legislators to try to put pressure to get this information. It clearly seems like our only method of doing this in a timely manner and not spending a ton of money is to get this information. Should we not be looking at an avenue that we can force the Service to provide it to us?

MR. JOHN BULLARD: Thank you, Mr. Chairman, and it is good to be hear in my tenth week. I was here I think in my first week, and I'm surprised we haven't solved this problem in the ten weeks that I've been on the job. Let me also, as long as I'm here, congratulate Bob on being elected executive director.

My understanding is that we have provided all the reference materials to the technical committee. I know you're not satisfied with it and that we've met to answer questions. It may be that having provided all the information that we've used to make the decision, that your belief is that there has got to be more there and that there isn't. Now, I don't know how we resolve an issue if you think there is more information

and there isn't over a decision that has been made.

We can argue and we are arguing over the rightness of the decision that is now part of history, but that decision is part of history. We've got to go forward and you're going forward with the petition. We have provided the information that we have to the technical committee and we have met to answer questions. I don't know where we go from there.

What we're doing right now is a batch consultation on the seven federal fisheries to determine if there is potential for jeopardy, and that is taking more time than we thought it would be, but we think it is important that rely on the best information we can get from our science center. We think it is important so we're taking that time.

To the point that Dr. Daniel raised about legal exposure to fishermen from increased interactions because there are more sturgeon, that is something that we're concerned about and you're concerned about. My understanding is that in the case of North Carolina, Section 10 is being handled with headquarters. For the rest of the states, it is being worked on with between you and the regional office.

These are important because it is the way we reduce legal exposure for fishermen. That is a concern that you have and that's a concern that we have. It's really important that we, the regional office, or headquarters in the case of North Carolina get these Section 7s done so that we reduce legal exposure to fishermen.

I don't want innocent parties put at risk, and so we have to work together with you to make sure the Section 10s are done in the case of federal projects. We're going to work with you to get these done so that fishermen have protection because there will be takes; we all know that. That's one thing we have to work together on. That's it for now.

CHAIRMAN ALLEN: Thank you, John. One of the things that I know the technical committee has mentioned is they didn't receive the data itself from NMFS, but they got references to the data. That takes a lot of time to go through all those references, and I'm pretty sure there were a lot of references. I think that is part of their problem when they're having a meeting is they

have the references but not the data, so they weren't sure what has gone in there. I will defer to Dr. Fox on that if he has anything else he wants to say.

DR. DEWAYNE FOX: I guess the question here is when we asked – we sort of saw it as a three-part process. We knew what the proposal was going in from NOAA. We knew what the models that were used were and we knew what the final outcome was. The issue was we didn't know what parameters went into the models, and that sort of made our task difficult when we were asked to essentially assess if the listing decision or the final ruling was correct or not.

MR. GILMORE: Mr. Chairman, just to add one point, and I know some people are aware of this and it goes to actually what Representative Miner brought up and to Louis' point. I initially was in favor of not doing the assessment because it was going to take a lot of time and effort. Back in March when we had the state directors' meeting down in Alexandria and there was a section with Jim Lackey, who was still around for Protected Species, the question was posed to him about, well, sturgeon was attempted to be listed in the nineties and it wasn't listed even though everyone agrees that the population was significantly lower.

Now in 2012 the population – and I can very much attest to this in the Hudson from the number of fish we're catching, juvenile fish is like just on a steady increase and large numbers of fish relative to what we have had is going up. The population has increased and so what was the listing done now for if it wasn't done in the nineties, and the answer was because of additional threats.

And as Craig has said, the two threats were – or at least one of them was climate change and the other one was population growth. We could go through this entire assessment and find out the population is ten times the size; but if those are the criteria that are being imposed on this, then we're going to be right back to, well, it is going to be listed because the population growth I don't think anyone is going to disagree is going to continue, and climate change seems like it is going to continue also. We need to get a better answer on how that is being factored into the population estimates before we can really decide what the best course of action is. Thank you.

MR. AUGUSTINE: Mr. Chairman, back to the technical committee, is the technical committee satisfied, yes or no, with what you have got? Do we need more to make a more – well, maybe the same decision but to validate the position we're in. Then I have one question for Mr. Bullard.

DR. FOX: If I understand your question, are we able to address or are we able to evaluate the listing and delisting decision; is that what you're asking?

MR. AUGUSTINE: That's the question.

DR. FOX: At this time the technical committee felt that we were not in a position to do that; that some of the parameter inputs that went into the models, we didn't know what those were.

MR. AUGUSTINE: And a follow-on to that question; so there is no way then for the technical committee to officially say that the technique or method that was used to list sturgeon is correct or incorrect? The answer is, yes, we don't have the ability to say yes or no; we can just assume that it was the wrong information or the wrong database?

DR. FOX: The method that was used my understanding was a qualitative analysis, and so we're not really – the technical committee wasn't in a position to – we didn't feel we were in a position to strongly agree with or refute the final ruling, I should say.

MR. AUGUSTINE: And we are not any closer to that today than we were then; it is going to take a full assessment in order for us to get there?

DR. FOX: Yes, I think that is the key point. The technical committee feels pretty strongly that for us to move forward it is going to require a full assessment. One thing that hasn't been mentioned is that as part of that full assessment is an independent analysis of the population structure of these animals, and that is something that also needs to be done as part of the stock assessment. That full independent analysis of distinct population segments also needs to be done.

MR. AUGUSTINE: I don't mean to beat this to death but along this same vein, for what we know today compared to what we knew a year or two years ago and what we see as Mr. Gilmore

had pointed out in the Hudson River; have other DPSs seen similar growth, and in their mind's eye is there a sense that this population is moved up well enough so we would be in two years, after final review of the stock, we would move forward to delist?

DR. FOX: Well, I think that will be up to the individual DPS. If we're assuming that's it a five-DPS model, those decisions would be made by the individual leads on those DPSs. I don't think the general consensus – and this is just going back to the technical committee meeting and the subsequent conference calls that we have had; I don't think – I wouldn't expect at this point in time that you're going to see coming forward from the technical committee an overarching decision that every DPS should be treated equally. Not all DPSs on the same track. Again, I think that final decision is going to come from each of those DPS leads.

MR. AUGUSTINE: And a final point then; so that means that we aren't going to see anything really valid come out of your efforts for the next two years, roughly. In the meantime the listing is the listing and it looks like staffs are going to have to dedicate a lot of time to developing those Section 7 and 10 permits.

Dr. Daniel, I don't if there is any other out. We can beat the hell out of Mr. Bullard, but the fact of the matter is based on what we just heard from the technical committee we're just spinning our wheels with what we're asking for. We're asking for information and obviously it is not going to be available to us other than what we see with our own eyes on the water and our fishermen see. We're kind of in a Catch-22. Mr. Chairman, I'd suggest we just move on and drop this issue until we get a stock assessment. That is pretty subtle as a meat cleaver, but I don't think we have any other choices. Your opinion, Mr. Chairman.

CHAIRMAN ALLEN: I'm not sure you want my opinion, Pat. I think you make some good points about where we should move forward. The Hudson stock is not the same as the Delaware stock and they're in the same DPS, and that is a very big concern that we have. Louis.

DR. DANIEL: It is not meant to be a NMFS-bashing session. It is just frustration and it is a lack of coordination between the states, the ASMFC and NMFS on this issue. It has created

some serious problems and I think we're all aware of those problems. Getting back to what Mr. Augustine said, it is a tremendous amount of work to develop a Section 10 permit application.

We have been extraordinarily fortunate to be working with Nicole Le Boeuf with the Protected Resources Section on our turtle stuff; extremely collaborative and cooperative. It is working fabulously. I'm really concerned about the folks dealing with the sturgeon stuff, though. We don't seem to be getting that same level of communication and collaboration help.

I don't know why that is, but some of the comments that we've received back on the sturgeon issues; one of the folks on the conference call said, "Well, all those sturgeons are juveniles and we're not worried about juvenile sturgeon." We all kind of looked at each other like, well, holy cow! There seems to be this disconnect in the agency with the sturgeon folks.

We need them to help. They're going to have to work with us and work quickly with us to get these Section 10 permits done and to get these Section 7s done. I don't have a warm and fuzzy feeling about that right now, which worries me. But what I'm seeing right now is a million bucks a year to try to make this work, that I don't have, and recognizing and trying to go back to North Carolina and explain to my commission and my fishermen that it is at least three years out before we can probably petition to delist.

I mean we've got a stock assessment – I agree with you, Pat, I don't know what else we can do. We've got a 2014 assessment. That is going to be pushing it to get it done by 2014. I don't how we're going to do these individual DPSs. That is going to be a scrape. We're not doing a coast-wide assessment.

But again, that is where my frustration lies is that we've got these DPSs listed as endangered, one threatened, and it is going to take us three years to develop the information to request a delisting, and the same information wasn't used to list them. That is what is so danged frustrating, but there is nothing we can do about it unless we sue them, which all of our AG offices have said that – or at least the ones that I've talked to have said that we are very unlikely to succeed in a lawsuit.

For the record, I just want to make sure that everybody is aware that we're looking at 2015, probably, before we can even submit a petition to delist, and then that could be another year or more, so we're looking at four to five years of a million dollars a year analysis. We are, too, Jim, seeing increasing numbers everywhere, and we're seeing sturgeon all over the place. We're finding spawning sturgeon. The work in Virginia is really interesting; the numbers that are being seen up in the Virginia areas and fish jumping all over the place and adults. I mean, it just doesn't make any sense, but the frustration level is extremely high.

CHAIRMAN ALLEN: Thanks, Louis. From what I'm hearing from you guys is that maybe we should be holding off on this petition right now. I'm going to let A.C. go and then Ritchie and then hopefully come to some kind of decision to wrap this up.

MR. A.C. CARPENTER: Mr. Chairman, it seems to me that requests were made for information to be provided to the technical committee, and the technical committee is still saying that they haven't gotten the type of information that they're really seeking. Could this be as simple as the technical committee developing a very specific list of what they want and then asking for that through the Freedom of Information Act?

MR. WHITE: First I would like to say I appreciate John coming today to try to help us work through this difficult issue. I think we did hear a specific request of information that the technical committee needs and has not received, and I just wondered whether that is something you could help – the modeling parameters, if that is something you could help the technical committee receive.

CHAIRMAN ALLEN: Just to get back to AC's question, maybe the technical committee can put a list of things they need to get, and that is pretty easy to do, and maybe we can give it one more try informally before we do something like that; I don't know. After the last meeting, we talked about doing something. We really didn't ask for any additional information at that time, but maybe the technical committee could just draft up some issues that they have and maybe put that list together and send that through.

MR. CARPENTER: Yes, my only point is I've had these requests served on me, and they are pretty thorough. It is a lot of work to put together the answers and you've got to give them pretty much what they ask for. It's just a thought.

MR. ADLER: Mr. Chairman, I just wanted to see if I could ask Louis on the legal thing. We're beating the horse, I guess, but I don't know. Anyway, was that legal idea that wouldn't work, was that injunction to stall or something else legally? I was thinking in terms of an injunction to put off any action pending, and then that buys time. Is that the issue that your legal people said probably wouldn't work, injunction?

DR. DANIEL: Well, if you'll recall, we did submit a letter requesting a delay in the effective date of the rule and that was rejected. The discussions that I've had have been with a lawsuit to challenge the listing and not put in an injunction. I don't know if an injunction – that I would have to ask. I couldn't answer that question.

CHAIRMAN ALLEN: It was my recollection that an injunction wasn't possible in the case of trying to delist or even stop the ESA. I didn't think you were able to do that. John Bullard.

MR. BULLARD: A couple of things; one, I want to try and focus and strategy here. I'm trying to figure out your strategy on asking for our information. I'm making an assumption, which is always dangerous, that your request for information is so that you can, once you get our information, show that we are not interpreting it correctly so that you can then say our decision to list was incorrect because we either used the wrong information or interpreted it incorrectly and therefore you can make the case to delist.

If we show you we've given you all the information and there isn't anymore, then you might say, well, then you made this decision with not enough information, and that also might allow you to make a case that this decision was based on not enough information. If you get us questions like the model, we'll try and keep responding to that. I think that is what you're getting at, right; you're trying to build a case that we made the wrong decision and so that is what we're trying to do.

The second thing; maybe I'm naïve but the reason I'm here is because this issue is important to me, and I want to hear firsthand from you the impacts on this. We have excellent staff at the regional office. I don't want to get in their way, but in this case I want to come down here because I know this costs you money, it costs you time, it is frustrating to you, and I want to hear it directly from you.

That is why I came down here the first time and that is why I'm here again. I appreciate what this means to you and how much it eats into budgets of time and money that are already under severe strain. You may not believe this but I think we're on the same side here. As I said before, I am concerned about fishermen who are out there encountering sturgeon because there are more sturgeon, right, and it is not their fault.

There are going to be more encounters and we want to work with you to reduce the liability that they are under. With Section 10s or in the case of the federal government, Section 7s, to work with you to get these done; because as you said, Louis, it is going to take a number of years to solve this problem.

Whether it is done with delisting – and, believe me, if numbers show, whether they're your numbers or our numbers that population goes up to warrant delisting, we'll look at those numbers, too, all right? We'll look at those numbers, too; but in the meantime there are fishermen at risk and we know that, too. I don't think that they should be paying a price so we want to work with you to reduce their liability on that.

CHAIRMAN ALLEN: Thank you, John. I think Dr. Fox is going to give you some information on Point Number 1.

DR. FOX: John, I think everybody appreciates you coming here to talk about this. The task that was provided to the technical committee was to develop a petition to down-list or delist, and we addressed that in our July meeting. In the meeting we went forth – and I worked very hard with Kate and my Vice-Chair Bill Post from South Carolina DNR to develop sort of what we considered was a very non-confrontational meeting.

I assured NOAA that we were not there to badger NOAA. I can assure you that although some members of the technical committee came

in and they came in with preconceived notions and you could call it an ax to grind or whatever. There weren't a lot of those. Our job was – what we went in there to do was to essentially look at the pictures in the independent committee.

I didn't have – none of us or maybe a few of us did, had preconceived notions, but we went in there to try and get that information to come out with a decision at the end, as we were tasked by the management board. I don't think it is fair to say your first point that we were looking for information to counter you. If we had come up with the same issue, I think that recommendation would have come forward from the technical committee, and that is all I wanted to comment on.

CHAIRMAN ALLEN: Thank you, Dewayne. I agree; I think we were looking to see if the information there actually showed that it should be listed also. We were looking to see if, one, it could be delisted; or, two, it should have been listed, and that would have helped us frame our decisions a lot better. Jim Gilmore.

MR. GILMORE: Actually, Dr. Fox, was that a process – the thing that strikes me is I'm not sure how much of a dialogue there has been on this. I know we have been sending documents back and forth. The process you went through earlier; was there dialogue directly with the Service on that or was that simply back-and-forth letters?

Hold off one second, I wanted to get on the record, too, that I know we're talking about the impact to the fishermen, but the habitat issue has already raised its ugly head in New York because we've got two projects; one near and dear to my governor called the "Bridge Over the Hudson". The two people I had working on sturgeon are now being commandeered just for that one issue, so it is escalating.

Then we have some dredging projects off the south shore that are essentially sturgeon central, so we are having now habitat issues that we're going to have devote staff to because of this. I'm sure if you haven't gotten it yet, you're going to have the same problem. Anyway, again back to the dialogue; if that hasn't been included, I think that should be done; but if it has already gone to that point, then I'm not sure where we could go.

DR. FOX: Yes, there was dialogue back and forth, so it wasn't all handled via letters. I would

say with the Silver Spring office, I thought it was a very good meeting. We didn't get everything we asked for but it was a non-confrontational meeting and there was dialogue.

MR. THOMAS FOTE: John, you asked the consequences that we thought about. One of the first license plates in New Jersey that was put forward, when the first vanity plate was put forward by the New Jersey State Federation of Sportsmen's Clubs and Jersey Coast Anglers, and what it was is looking for a funding source for non-game and endangered species, because the hunters and the anglers were all supporting that.

You're also looking at agencies all here in their individual states that have listed species as endangered and basically done all the necessary regulations to impact that. When the state does it, they have to go through a stringent, stringent exercise with a stock assessment and everything else to do that, to prove that species needs to be done.

We all support that, every agency sitting around here, because we do it in our own states. The problem arises that the attacks on the endangered species has been nationwide for many years looking to do away and basically put holes into that program. We have been able to fight off those persons that would like to do away with the Endangered Species Act.

But when you start losing confidence in the system that basically creates the listing of a species, and we can't, as agencies and, you know, fisheries managers, can't wrap our heads around why it was listed over the objections of other agencies that are in the federal government or the agencies sitting around here or the commission or the councils and things like that, we think something is broken. That is not the way we want to proceed.

We do not want to put – I don't want to put logs on that fire from the national level that are coming against the endangered species. That is my concern. Yes, it is going to affect fishermen and everything else, but the overall – whether it's birds, whether it's snakes or whether it is any other species, if we start losing confidence in the way we set species into the endangered species, it adds fuel to fire that wants to do away with the program altogether. That is my concern and that is the concern I'm dealing with. Because you're

looking at 15 agencies that have a problem with what you did, this is being generated by the people that want to attack the system and that is what I'm afraid of. I'll leave it at that.

MR. ADAM NOWALSKY: Mr. Chairman, the technical committee was given a specific task to develop a draft petition, which they've provided us, a 12-page document. We've then gotten advice that they don't feel that it is the best way to proceed without a stock assessment. Then we sit here today and on one end we hear we've given you everything you have as far as data, and then we just heard from the front of the room that we didn't get everything we asked for.

The position that I'm in is I'd like to see that divide bridged, and the way to do that I believe is as a commission we need to formally outline what is missing from the Service and formally request it. We've had the meetings, but let's sit down and whatever the technical committee still hasn't received, let's formally request it. If we need that in the form of a motion, I'll be happy to make it, but specifically I'd like to see the technical committee outline what is still needed from them, what they haven't received, and us a commission draft a letter specifically requesting that information.

CHAIRMAN ALLEN: Thanks, Adam; I think we can just agree that the technical committee is tasked to do that. I don't think we need to put it through a motion, but I agree that's the way we should go. Doug.

MR. DOUGLAS GROUT: Adam made my point, and the only suggestion I have is that letter should come from you, Mr. Chair, with background information and the specific items developed by the technical committee. Clearly, the Service feels they have already provided it and the technical committee feels there is more; so if we outline them, they can specifically respond to where – if they feel still provided it, they can respond this is where it is; or maybe they'll be able to provide it. Maybe they didn't realize these are the specific items that we needed. So if it comes from you, I think that would be appropriate.

CHAIRMAN ALLEN: I'll try to wield that power as I can. Roy.

MR. ROY MILLER: Mr. Chairman, I would like to follow up on Adam's suggestion and

recommend that the technical committee prepare the request to NMFS either for the specific parameters they used to populate the model that justified the listing or other information needs that the technical committee feels is important and those needs have yet to be met.

At the same time I think we should put on hold our effort for delisting and instead devote our resources to the stock assessment and on an individual state basis working through the Section 7 and 10 permit processes. That is my recommendation to the board having listened to everything this morning. Thank you, Mr. Chairman.

CHAIRMAN ALLEN: Thank you, Roy; I think that is a good way to move forward. We have a couple more people to discuss this; but if everybody can agree to that, I think that is how we will move forward. Loren.

MR. LOREN W. LUSTIG: Many of you know that I'm one of the guys that takes kids out into the environment. I mentioned that the other day, sixth, seventh and eighth graders on the Chesapeake Bay. It is a great delight, a true privilege to tell the story of the recovery of bald eagles or to observe ospreys in significant numbers – that is a real delight – or to catch rockfish and describe for them the recovery of the rockfish. That is a real privilege.

I have been thinking about dealing with those kids and realizing that in 20 years it is those kids that are going to be sitting around this table making decisions, and I want them to have the passion of conservation well grounded. I'm wondering as this conversation develops whether we can agree that we have indeed worked together.

I would like to say, yes, of course, we're working together, we're all marching arm in arm toward goals of conservation, but I don't get that. I'm wondering whether we are using our resources in a wise and prudent manner. The students would expect that. They would say, of course, we want our leaders to use resources in a wise and prudent manner.

I don't know that I can say that is the case. I hear about a million dollar expenditure from Louis over here, and that is a lot of money that could be used really wisely in conservation, but maybe it is being siphoned off in an unwise way.

That makes me flinch as an environmental educator if I have to try to explain that to the students.

I'm wondering whether our decisions are grounded in both common sense and science and perhaps not. I think we need to remember some of those foundation blocks that we want to make sure are well in place so that we can look at the future leaders of this country and say, yes, we did our part; we didn't stumble in such important decisions and make those decisions on the basis of some sort of political mumbo-jumbo. Thank you.

CHAIRMAN ALLEN: Thank you, Loren; there are some good points in there, for sure. I think we'd all like to have that fuzzy feeling, as Louis put it. I'm going to call on Representative Miner and then open it up for the public if they have any comments.

REPRESENTATIVE MINER: Mr. Chairman, I'm happy to support the direction that this is moving at this time. I think it would be vitally important that your letter include a date to which the agency needs to work to supply that information. I'd hate to be a party of another meeting some months from now and find that we're still in the same dilemma.

I do think that a letter from us should be viewed differently than a FOIA request and certainly different than a legal action. Whatever the intention of our requesting the information is, it shouldn't be the basis for which someone doesn't supply it. I hope that your letter will include a deadline and we can move forward. Thank you.

CHAIRMAN ALLEN: Thanks; we will make sure we have a date on that. I will work with Dr. Fox and Kate and we will try to get that done. Louis.

DR. DANIEL: I want to respond to John directly, and I don't know that everybody understands the ramifications of this because a lot of folks haven't dealt with Section 10 permits. Where you run into a problem is when you submit your Section 10 permit and you get your numbers. Then you have to provide observer coverage to determine whether or not you've reached those numbers or not. You don't have to do that for the federal fisheries.

All right, you don't have to put observers out there and come up with a number. You get your Section 7 Consultation and you're done. The states are not in that same boat, and the problem that you're going to run into is that NMFS is going to require a certain percentage of observer coverage.

You want to want to try to get by with as little observer coverage as you can for cost-effectiveness, but the problem there is that if you've only got 5 percent observer coverage on a fishery, which is pretty high for MMPA-type issues and things, one dead sturgeon shuts you down because one interaction is equal to twenty interactions at 5 percent.

You're forced as an agency to try to do the very best you can to increase that percentage to minimize the impacts of a single interaction. That is the point I was trying to make with the Kemp's. We had one dead Kemp's Ridley that shut down the Pamlico Sound during peak southern flounder fishing season.

Those kinds of things are going to start happening because the numbers that we're going to be allowed are going to be very low. I think as far as the impacts, I can tell you precisely what they are for North Carolina. I don't know what they'll be for Virginia; they will be high. New York, they will be high.

You're not going to get 150 interactions in the Hudson River; you're going to get three or four, probably. I'm okay with the direction that we're headed; but one thing dawned on when John was speaking about the use of the data and I was over here nodding in agreement that we were trying to show that they made a mistake. That was my opinion.

I don't disagree with Dr. Fox's characterization of what they were intending. It sounded like to me that John said we may have not made the decision based on enough information. Well, this is just a thought, but we've got a lot of information out there that was not considered. Virginia has a tremendous amount of information. North Carolina has a lot of information.

We have submitted a Section 10 Permit Application. Would it not be reasonable since they were listed based on a lack of information; would it get the ball rolling if we were to ask for

a delisting and simply provide the additional information that we have now that they didn't consider? Otherwise, again, I'm very concerned about four or five years to even getting to the point of being able to request a delisting.

I agree that we need to continue to move forward. It would seem to behoove NMFS to work with us on the assessment. I realize you're not going to work with us on the delisting petition, but it behooves you just as much as it does us to get an assessment done. But just for thought, Mr. Chairman, there is a tremendous amount of information out there that is contrary to the listing decision, and is that enough information for NMFS to be able to consider a delisting. If you disagree, that is fine, but I had to make that point.

CHAIRMAN ALLEN: I think in the process as we're working for the stock assessment, that data will become a lot clearer as it is analyzed. The quicker we can do that, the better. I know the stock assessment subcommittee is going to be meeting in the beginning of 2013 and move forward with that.

I think there is going to be a data workshop probably by March, so maybe we'll have an idea of how to move forward. If that data does show us some things, maybe we can move forward at that point and maybe come back to this delisting and down-listing proposal. I know there have been a couple of people in the audience that may want to talk, so this is an opportunity for public comment. Kelly, make sure you keep it short.

MR. KELLY PLACE: I'll do my best. Kelly Place, Director of Research and Policy with the Virginia Watermen's Association. I intended to just mention four or five really positive things that I saw. I'm a little bit disturbed at the way the meeting is going now, so at the end I need to mention a couple of things in response to Mr. Bullard.

I just wanted to mention in a nutshell that the Chesapeake DPS is going through an unprecedented population boom. I have mentioned this to you all before, but the only researcher under the difficult permit conditions that is still able to do any research now has an unprecedented CPUE of adult sturgeon spawning in the James in the autumn, enormous population, at least twice the order of magnitude

of what the most optimistic estimate that NMFS had ever had of sturgeon in the Chesapeake DPS.

The doctoral candidate that is working on that should have his defense I believe in December, so I urge all the committees, the stock assessment committee and the petition committee to take special notice of the information that comes out from this graduate student at VCU. He has been working on this dissertation for many years. He is one of the partners in the sturgeon partnership.

I wanted to congratulate ASMFC for the moratorium they imposed, and I know that was difficult. I was here in 1998. From what we can tell in the Chesapeake and not just the James and the York but some of the other tributaries as well, the ASMFC management plan is a marked success. I have been watching sturgeon very closely for 32 years.

It was clear there was an inexorable increase even before the '98 moratorium this body imposed; but once that '98 moratorium came in, the incremental, inexorable increases that we were seeing have just become a veritable population boom. The genetic analysis of much of the 2,000 or so pieces DNA that we have collected on a shoestring will show that the genetic diversity is far broader than any scientist had previously imagined.

I quote Tim King, who is a prominent sturgeon geneticist, because he told us that many years ago. Also, as I think a lot of people here know, the congress has taken an interest in this and they have introduced a bill, knowing that a sturgeon stock assessment needs to be done, and they were also appalled that this listing took place without a stock assessment, so I encourage the commission and the people from different states to get your legislators to support this piece of legislation, because it is a significant amount of money that is specifically designated for a sturgeon stock assessment.

I think the congress is aware and needs to be made more aware of how stressed the ASMFC will be with personnel and money, so I would encourage everyone here to support that bill to take some of the strain off of the ASMFC and the other bodies that will have to deal with that stock assessment.

On the Endangered Species Act; coming into this meeting I was feeling really positive because if you look at the history of the Endangered Species Act, like we have had to do so much recently, typically these controversial listings where there are so many different stakeholders involved and so much money from different government agencies and others, it typically devolves into five to ten years of federal litigation and basically I guess the common wisdom is that no one wins except for the lawyers.

I came into this meeting really in a positive frame of mind that at least a process – the adults had come in the room, as the people had told me, and a process was started, no litigation had been filed, and I was kind of hoping that a lot of the criticisms that naysayers of the Endangered Species Act had leveled against the Act and those that enforce it, that it cost too much or that species are never delisted and all those things; I was real optimistic that with this body, that this particular listing, this might be a model of how the different entities could get together to be able to live under Endangered Species Act and to get things delisted when they should be, and everyone would come with an open mind.

I was assuming that our partners at NMFS would in good faith provide all the information that was asked for, and I'm sure that probably feel they have, but from our perspective – and this is the last thing I'll say – it is not necessarily just that many people around the table feel that NMFS has not provided the information that is asked for; our problem is the whole process we feel that NMFS just wantonly – and not the entire agency but, say, the Office of Protected Resources wantonly disregarded critical data that we generated over the years.

I've spent half my life savings fighting along with the Bay Foundation, the Sierra Club, and the Mattaponi Indians, as chair the alliance, an enormous project in Virginia that went on for 20 years and would have decimated the sturgeon spawning grounds in the York Watershed and the Mattaponi and Pamunkey River, specifically – it was a massive fight – the Fish and Wildlife and a lot of other agencies know about it – and we finally prevailed against the Corps and the EPA on my birthday, March 31, 2009.

The disturbing thing, besides the fact that we watermen and the Indians knew that this would

decimate the sturgeon spawning grounds, was that the National Marine Fisheries Service signed off on the project and denied that there were any sturgeon in that watershed, but we had direct empirical observation stretching over 30 years and with the Indians lifetimes, that they were there.

So, as part of the federal comment period I asked a number of questions in the lengthy comments that I gave – and I know that under the Endangered Species Act the agency is required to answer the questions that different stakeholders asked during the federal comment period. I think a lot around the table and especially us feel that the batched answers that they gave were wholly inadequate, incredibly inadequate. For years I noticed that NMFS had this long list of standing research, they need to mix stock analysis, they need the bycatch mortality estimates –

CHAIRMAN ALLEN: Wrap it up real quick, Kelly.

MR. PLACE: I would like to talk to you, Mr. Bullard, and outline the vast amount of data that we generated over the last number of years that we offered over and over and over to NMFS that showed a markedly different situation with sturgeon but that they either disregarded or ignored in one fashion or another. It is just shocking to us. I would like to see a path of least resistance where this body is able to effectively with all the partners come to a meeting of the minds and do a good scientific assessment.

CHAIRMAN ALLEN: Kelly, we need to move on. I would like to wrap this up right now. I don't see anybody's hand up so I think we can do that. I think we've got some good information to move forward. I think we can get the letter off to NMFS, and we can talk to NMFS and get a dialogue going again and hopefully by the February meeting have something in hand or at least be moving towards getting that in hand as we get towards the stock assessment workshop in March. If there is no further comment on that, I would like to move it over to – really, Pat!

MR. AUGUSTINE: Mr. Chairman, just a quick one. It was a reflection on what Dr. Daniel said about information from the states that have been shown the status – as Kelly had gone on and you cut him off, thank you very much – did our

technical committee submit or have with them the document from the states that have developed these profiles on the status of the stock to at least submit to the Service for consideration – do you follow what I'm saying?

In other words, if North Carolina, Virginia, Maryland, maybe New York, the data that the states have put together to show the continuing growth of the stock over the previous 20 years; has any of that information been packaged in a way that if the technical committee gets back in touch with the Service again, they can say, oh, by the way, we know these weren't considered and would you look at them as opposed to saying we want to use them for support in delisting; let them make that decision if they're valid or not valid without a threat to them. Have we done that or can we do that as a part of this letter that we're putting together?

CHAIRMAN ALLEN: I don't think it necessarily has to be part of this letter that is going forward because we're going to have the stock assessment workshop where all that data is going to be there in March and NMFS will be there as a part of that. I think that is the best way to move forward with that at this time. The status of the stock is our next agenda item, so I will let Dr. Fox take over from there.

ATLANTIC STURGEON STOCK ASSESSMENT PLANNING

DR. FOX: Just to kind of give you guys a brief outline of the plan moving forward, as everyone is aware July 25th through 27th we met in Baltimore essentially to discuss a task that the management board had put forth to develop a petition to delisting and down-list. As part of that, coming out we came up with three sort of action items.

One was that we decided to move forward with the petition to down-list and delist, and we have discussed that. The second was a request to move forward with a stock assessment. I guess I'm rather a neophyte at ASMFC, but it is my understanding and I found out in talking to Russ, which is fortunate, last night that the Policy Board has approved that and it looks like that is going to be moving forward, and then the independent genetic analysis, which I mentioned earlier.

The technical committee then met and we had a conference call on September 13th to discuss timelines, sort of identify some of the potential staff that could participate in this, as well as challenges sort of moving forward. As part of the July meeting, the technical committee sort of took the preemptive step to seek volunteers as part of the technical committee, hoping that we would get a nod from the management board to move forward with a stock assessment subcommittee.

We presently have thirteen volunteers that represent nine states. We're still missing some states and representation from some individuals. As sort of a general outline of where we plan to move forward, I think Russ had mentioned that in terms of our minds we hoped that we could have a couple of data collection workshops in, say, the spring and the fall of next year.

I think Russ had mentioned March; that date is still not set. The technical committee was somewhat optimistic that we could achieve that goal by the 2014 deadline that we had sort of put forward. Additionally, in moving forward – and I'd like to thank Kate for this and my vice-chair – is that we it would be prudent to go ahead and move forward and identify some potential challenges that we as the technical committee may face moving forward in conducting the stock assessment.

That information was provided prior as part of the supplemental materials, but just in brief we decided that one of the potential issues could be the analysis of bycatch data, especially in some of the southern waters where the Northeast Fishery Observer Program data doesn't cover that. It appears that in some of the southern areas that bycatch information may be missing or not very abundant.

We also thought that the genetics and stock structure of this animal could present a challenge. There is currently a large backlog of samples that haven't been analyzed to river of origin. Again, that sort of goes hand in hand with the independent assessment. The technical committee felt very strongly – we all work very closely with Tim King and Ike Wirgin, but we also felt very strongly that there is a need for an independent group, an independent scientist to come in and evaluate the stock structure of Atlantic sturgeon.

Also, one of the challenges that we may face as the technical committee is proprietary datasets. A lot of the data that has been collected has been provided by state and federal agencies, but power companies, some private institutions and academic institutions hold data, and we as the technical committee want to be to identify all those data sources moving forward to try and collect those data.

A couple of the other issues that we're going to be facing is as many of you are aware sturgeon don't follow borders and so these animals are moving across the Canadian border. There is still a commercial fishery in Canada, and the technical committee felt it important to bring in Canadian agencies to work with us to see how their data could assist in our assessment process.

Then the final issue that was brought up was a generalized lack of data. Some regions are very data poor; and the technical committee, we don't have that expertise – we don't have the technical staff at least in the members that had volunteered at this point to work with data-poor datasets essentially, and so we're going to have to request additional muscle from folks to come in and assist us with that. That is sort of a general outline of where we plan to move forward.

CHAIRMAN ALLEN: Thank you, Dewayne; I know there are some issues there and I know some people have some questions. Wilson.

DR. WILSON LANEY: Mr. Chairman, not so much a question but a comment to Dr. Fox and everyone else in that as the assessment is done, certainly the Fish and Wildlife Service stands ready to assist with that assessment. Dewayne is well aware of the data that we have from the Cooperative Winter Tagging Cruise.

I realize our methods are not comparable to commercial fisheries, but they still may provide some insight on the bycatch issue with regard to offshore trawling. Another thing I would suggest that the technical committee might want to do as you're going through this process is to look carefully at new habitat issues as they arise and probably some existing ones.

One in particular Louis sort of alluded to is that we recently – we being in this case Dr. Joe Hightower and his PhD candidate Gerard Flowers at North Carolina State University documented fall spawning on the Roanoke

River, and we seem to be finding indications that fall spawning is going on in at least a number of the South Atlantic rivers.

That poses then some questions about existing water flow regimes on those rivers and how those are being managed. For example, in the case of the Roanoke when we looked at water flows relative to the operation of John H. Carr Dam and Reservoir and also Dominion Power to dams downstream of John H. Carr, we didn't consider the fact that we might have fall spawning Atlantic sturgeon and how peaking operations, for example, might be affecting egg viability and deposition and all those sorts of things.

The other one point I wanted to mention, too – and Dewayne is well aware of this – is that we have sturgeon showing up in some places that we wouldn't have thought sturgeon would necessarily show up in such as Grays Reef National Marine Sanctuary off the coast of Georgia. There may be some habitat considerations that the technical committee might want to think about and provide along with the normal quantitative stock assessment.

Genny Nesslage just talked to the Habitat Committee yesterday about trying to work in habitat considerations to stock assessments as ASMFC does them, and I think that is a very important thing for us to consider. Thank you.

CHAIRMAN ALLEN: Thank you, Wilson. Does anybody have any other comments or questions about the stock assessment? I think they have a pretty good direction on where they're heading. It is going to take a while to get that data together, but I think it is going to be done in a very timely manner considering it is a short stock assessment schedule that they have trying to get this done by 2014. Seeing nothing else, we will move on to Item Number 6, the Draft Habitat Addendum, and I will turn that over to Kate.

DRAFT HABITAT ADDENDUM I FOR FINAL APPROVAL

MS. TAYLOR: A habitat addendum was developed for Atlantic sturgeon by the Habitat Committee. This was approved for public comment by the board in August. The addendum addresses the description of habitat by life stage, habitats of special significance and

trends for Atlantic sturgeon, habitat recommendations as well as research needs. The public comment period for the habitat addendum ended on October 9th and no comments were received. Thank you, Mr. Chairman.

CHAIRMAN ALLEN: Thank you, Kate. I'll entertain a motion to move this forward. Pat.

MR. AUGUSTINE: **Mr. Chairman, move that the board approve the Habitat Sturgeon Addendum – Kate were there corrections on that or just as presented? Move that the board approve the Habitat Addendum as presented.**

CHAIRMAN ALLEN: Second by Doug. A.C.

MR. CARPENTER: If we're about to approve a document on the habitat, recent evidence has been brought by both Virginia and North Carolina now that fall spawning is occurring in this animal. Is that addressed anywhere in this document; because I was going through here very quickly and don't see that. My question is, is that something that should be included in this or not?

MS. TAYLOR: To my recollection, the fall spawning is new data that has recently been acquired, and it is not specifically addressed in the addendum. I would have to go back and double-check that, but I don't believe it is.

DR. LANEY: Mr. Chairman, I had looked at it, too, A.C., and I didn't see it in there; and so, Kate, what I would suggest is maybe the Habitat Committee and the Technical Committee could just take a quick look at it and any significant new pieces of information relative to habitat use we could just add in to the document if the board would give us some editorial license on that.

CHAIRMAN ALLEN: That sounds like a good idea, Wilson. If the maker of the motion is okay with that, we can just add that in there.

MR. AUGUSTINE: It's fine, Mr. Chairman.

CHAIRMAN ALLEN: Anything else? Bill.

MR. ADLER: Mr. Chairman, first of all, I wanted to ask if this thing had gone to some type of hearing or at least 30-day something. I didn't know if you had received any comments on it. Secondly, the way I read this addendum is it

basically – it is different than another addendum. It doesn't really do anything, does it? I mean it points out various information, but it doesn't really do anything. I'm not against it, but were there any comments?

MS. TAYLOR: The addendum did go out for public comments and no public comments were received. I did not conduct any public hearings on it. You are correct, Mr. Adler, that no management options were presented in the document. This is strictly an addendum that addresses habitat. The Habitat Committee is attempting to update all the habitat information for all commission-managed species and this is the one they did for sturgeon.

DR. LANEY: Bill, if you recall, the board approved a process a while back of allowing us to make habitat section updates through the addendum process as opposed to having to wait until there was a major amendment coming along, so this is just a way to expedite providing that additional information. It doesn't contain any management measures. It was extensively reviewed. In this case the document was largely prepared by NMFS Habitat Conservation Staff in the southeast region, and it was extensively reviewed by both the Habitat Committee and the Technical Committee.

MR. CARPENTER: Table 3 does have a reference to the fall spawning; so maybe if you can add some of the text that go along with that.

CHAIRMAN ALLEN: Is there any need for discussion on the motion? Any objection? **So approved unanimously.** That brings us to other business.

OTHER BUSINESS

MR. BERNARD PANKOWSKI: **Mr. Chairman, I move to approve for the Sturgeon AP Board Michael Doebley from Delaware City, Delaware.**

CHAIRMAN ALLEN: Seconded by Mr. Augustine. Any discussion? I'll read it; move to approve Michael Doebley to the Atlantic Sturgeon AP; motion by Mr. Pankowski; seconded by Mr. Augustine. Is there any objection to this motion? **Seeing none, approved.**

ADJOURNMENT

Is there any other business to come before the Sturgeon Board today? If not, I would like to see a motion to adjourn. So done; thank you.

(Whereupon, the meeting was adjourned at 10:02 o'clock a.m., October 25, 2012.)



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MEMORANDIUM

February 1, 2013

TO: Sturgeon Management Board
Sturgeon Technical Committee
Assessment Science Committee

FROM: Kate Taylor, Senior FMP Coordinator

SUBJECT: Atlantic Sturgeon Stock Assessment Subcommittee Suggested Membership

The Sturgeon Management Board has initiated a benchmark stock assessment for Atlantic sturgeon that will begin in early 2013. As part of the ASMFC assessment process, an Atlantic sturgeon Stock Assessment Subcommittee (SAS) will be created to carry out the data and assessment work. The entire Sturgeon Technical Committee (TC) will have a chance to comment on the assessment when completed in late 2014.

ASMFC staff and the Sturgeon TC Chair reviewed potential members and recommend the following people for the SAS:

Mike Bednarski, Massachusetts Division of Marine Fisheries
Matt Fisher, Delaware Division of Fish and Wildlife
Dewayne Fox, Delaware State University
Kathy Hattala, New York State Department of Environmental Conservation
Andy Kahnle, New York State Department of Environmental Conservation
Laura Lee, North Carolina Division of Marine Fisheries
Christine Lipsky, NOAA Fisheries
Mike Loeffler, North Carolina Division of Marine Fisheries
Jerre Mohler, U.S. Fish and Wildlife Service
Bill Post, South Carolina Department of Natural Resources
Eric Schneider, Rhode Island Division of Fish and Wildlife
Dave Secor, University of Maryland – Chesapeake Biological Laboratory

If there are any additions or suggestions to this list, please contact me at ktaylor@asmfc.org or 703-842-0740.