

**PROCEEDINGS
OF THE
ATLANTIC STATES MARINE FISHERIES COMMISSION
ATLANTIC STRIPED BASS MANAGEMENT BOARD**

**December 16, 2003
Roosevelt Hotel
New York City, New York**

ATTENDANCE

Board Members

Lew Flagg, **Chair**, Maine DMR
Pat White, Maine Gov. Apte.
Senator Dennis Damon, Legislative Apte. (ME)
John Nelson, New Hampshire Fish & Game Dep.
G. Ritchie White, New Hampshire Gov. Apte.
Dennis Abbott, proxy for Rep. Blanchard (NH)
Paul Diodati, Massachusetts DMF
William Adler, Massachusetts Gov. Apte.
Vito Calomo, proxy for Representative Verga (MA)
David Borden, Rhode Island DEM
Gil Pope, Rhode Island Gov. Apte.
Jerry Carvalho, proxy for Rep. Naughton (RI)
Eric Smith, Connecticut DMR
Lance Stewart, Connecticut Gov. Apte.
Fred Frillici, proxy for Senator Gunther (CT)
Gordon Colvin, New York DEC
Pat Augustine, New York Gov. Apte.
Brian Culhane, proxy for Senator Johnson (NY)
Bruce Freeman, New Jersey DFG&W

Tom Fote, New Jersey Gov. Apte.
Dick Herb, proxy for Assemblyman Smith (NJ)
Dick Snyder, PA Fish & Boat Commission
Michael Doebley proxy for Fred Rice (PA)
Gene Kray, proxy for Rep. Curt Schroder (PA)
Roy Miller, Delaware DFW
Timothy Tagett, Delaware Gov. Apte.
Pete Jensen, Maryland DNR
Bill Goldsborough, Maryland Gov. Apte.
H. Russell Dize, proxy for Senator Richard Colburn (MD)
A.C. Carpenter, PRFC
Ira Palmer, DC F&WD
Jack Travelstead, Virginia Marine Resources Commission
Catherine Davenport, Virginia Gov. Apte.
Wayne Mclesky, proxy for Senator John Chichester (VA)
Preston Pate, North Carolina, DMF
Damon Tatem, North Carolina Gov. Apte.
Anne Lange, NOAA Fisheries
Jaime Geiger, USFWS

Ex-Officio Members

Gary Nelson, Technical Committee Chair
Stuart Welsh, Tagging Subcommittee Chair

Alexei Sharov, Stock Assessment Subcommittee Chair

ASMFC Staff

Bob Beal
Megan Gamble

Vince O'Shea
Lydia Munger

Guests

Bill Pruitt, VMRC
Martin McHugh, NJ DF&W
DK Russell, Writer, Boston, MA
John Hoenig, VIMS
Charles Lynch, NOAA
Victor Vecchio, NY DEC
Dick Brame, CCA
Bud Brown, CCA Maine
JT Holland, PRFC, Colonial Beach, VA
Gordon Birkett, PRFC, Colonial Beach, VA
Ida Hall, PRFC, Colonial Beach, VA
Kenny Keen, MD DNR
Bill Windley, MSSA/RFA
Gib Brogan, Oceana
Antoinette Clemetson, NY Sea Grant
Al Riston, The Star, Newark, NJ
Rick Robins, Chesapeake Bay Packing LLC,
Newport News, VA

Ed O'Brien, Maryland Charterboat
Kelly Place, Coastal VA Waterman's Association
James Price, Chesapeake Bay Ecological Foundation, MD
Tony Bogan, United Boatman, Brielle, NJ
Paul Forsberg, Montauk, NY
Matt Cieri, ME DMR

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MOTIONS

1. Move to accept the 2002 stock assessment report as presented.

Motion by Mr. Augustine, second by Mr. Calomo; motion carries without objection.

2. Move to approve the New York proposal as presented.

Motion by Mr. Diodati, second by Mr. Augustine; motion carries with one abstention.

3. Move approval of the Delaware proposal subject to Technical Committee review of the seasonal closure to ensure that it achieves a 33% reduction in harvest.

Motion by Mr. Colvin, second by Mr. Diodati; motion carries with one abstention.

4. Move that New Jersey stay status quo in 2004.

Motion by Mr. Fote, second by Mr. Doebley; motion fails (11 opposed, 2 in favor, 3 abstentions).

5. Move to postpone the above motion pending Technical Committee review of the New Jersey proposal.

Motion by Mr. Diodati, second by Mr. Geiger; motion fails (2 in favor, 12 opposed, 0 abstentions, 0 null).

6. Move that the option of the 40,624 fish for the spring trophy fishery be approved for the Chesapeake Bay.

Motion by Mr. Jensen, second by Mr. Pruitt; motion carries (10 in favor, 5 opposed, 2 abstentions, 0 null votes).

7. Move that Maryland deduct the overage in the spring trophy fishery in 2003 (2,866 fish) from the 2004 quota (40,624 fish), to result in a 2004 quota of 37,758 fish.

Motion by Mr. Jensen, second by Mr. Carpenter; motion fails (4 in favor, 9 opposed, 3 abstentions, 0 null votes).

8. Move that the next Addendum or Amendment to the ASMFC Striped Bass management plan include a provision to establish a single, biologically based size reference point standard for all areas (excluding the Albemarle-Roanoke stock). The staff and technical committee shall be charged with developing a series of options or alternatives, including an appropriate phase-in strategy that lessens any negative social and economic effects of the change.

Motion by Mr. Pope, second by Mr. Calomo; motion tabled.

9. Move to table the above motion until the March Board meeting.

Motion by Mr. Nelson, second by Mr. P. White, motion carries (11 in favor, 2 opposed).

10. Move that the staff begin preparation of Addendum I to Amendment 6 of the Striped Bass Fishery Management Plan to address providing protection of spawning areas.

Motion by Mr. Freeman, second by Mr. Miller; motion tabled.

11. Move to table the above motion until the March Board meeting.

Motion by Mr. Borden, second by Mr. Carpenter; motion carries.

**ATLANTIC STATES MARINE FISHERIES
COMMISSION**

**ATLANTIC STRIPED BASS MANAGEMENT
BOARD**

**Roosevelt Hotel
New York City, New York
December 16, 2003**

The meeting of the Atlantic Striped Bass Management Board of the Atlantic States Marine Fisheries Commission convened in the Terrace Room of the Roosevelt Hotel, New York City, New York, on Tuesday, December 16, 2003, and was called to order at 9:30 o'clock a.m. by Chairman Lewis Flagg.

WELCOME & INTRODUCTIONS

CHAIRMAN LEWIS FLAGG: Okay, could you please take your seats. It's 9:30 and we'd like to get started with the Striped Bass Board meeting. Good morning, this is the meeting of the Striped Bass Board.

We have a very substantial agenda, so we need to move right along. I would note for the record that we do have a quorum of board members present, and staff is circulating the roster so please sign in as the roster is passed around.

BOARD CONSENT

CHAIRMAN LEWIS FLAGG: You have before you an agenda. There are a couple of issues that I'd like to just mention briefly relative to the agenda. Under Item Number 4, after the stock assessment report, Bill Goldsborough would like to say a few words about striped bass health, so if you would include that in your agenda.

Also, I've been informed that Pete Jensen is on his way. Pete isn't here yet. If he has not arrived when we get to the Maryland proposal, we will postpone that until Pete does get here, if there are no objections.

Are there other additions to the agenda by any of the board members? Seeing none, then we'll proceed. You received in the mailing the minutes of the meeting of June 28th. Are there any errors or omissions to those minutes that need to be corrected at this time? Tom.

MR. THOMAS FOTE: I guess I usually have to go to one of my back- up things that we were talking about this morning. When we look under state proposals from New Jersey, there will be a proposal. I notice you've got New York, Delaware, Maryland. There will be also a proposal from New Jersey.

CHAIRMAN FLAGG: Okay, so you want to add a New Jersey proposal under Number 5?

MR. FOTE: Yes.

CHAIRMAN FLAGG: All right, any other changes? Okay, seeing no other hands, then we will proceed with the agenda as modified. Just for the record, since there are no errors or omissions noted in the minutes, then the minutes will stand approved as printed.

PUBLIC COMMENT

CHAIRMAN LEWIS FLAGG: At this time we will have an opportunity for comment from the public. We will try to engage the public as we proceed throughout the agenda.

Are there any members of the public that would like to make a comment at this time? If so, please come up to the mike. I would like to add where we do have a new recorder for this meeting, as you come up to the mike to speak, if you would please state your name for the record, it would be helpful. Thank you.

So, seeing there are no members of the public who wish to make a comment at this time, we'll proceed to the next agenda item. That is Agenda Item 4, the stock assessment report for 2002.

We have four items that we'll be taking up, the first being the tagging report, and Stu Welsh is going to make a presentation relative to the tagging report. Stu.

**STOCK ASSESSMENT REPORT 2002 –
TAGGING REPORT**

MR. STUART WELSH: Okay, what I'd like to do today is just give a summary of the tag analyses, the recent tag assessment. The striped bass tagging program is a tremendous effort initiated by the Fish and Wildlife Service back in the mid-80s. It's a huge program, a lot of cooperators, approximately 15 federal, state and university cooperators.

If you look at the numbers, you can see what effort has gone into this. The recent estimates, as of July 2003, show that over 400,000 fish have been tagged, and there have been over 70,000 recoveries.

Now, although there has been a number of programs involved with this, for the assessment purpose we look at eight programs and we split these into producer area and into mixed coastal stocks.

For the producer areas, these are represented by fish that are tagged in the Hudson River, Delaware River, Chesapeake Bay and in the Rappahannock River.

The mixed coastal stocks represent fish tagged off the coast of Massachusetts, the New York Ocean Haul Survey, New Jersey and then the North Carolina Winter Trawl Survey.

Now there are a number of uses for these tag data, and I'm just going to talk about the first five here today, which include looking at the distribution of the harvest, the proportion of fish released alive, stock-specific survival, coastal and producer area survival and also annual exploitation rates.

But some other uses would include estimation of commercial discards for VPA, estimation of partial recruitment vectors useful for VPA, some estimates on movements and as well as estimates of growth rate.

There are probably another 30 uses that I could come up with relatively quickly, but we don't really have time to go into those today, but I just want to emphasize the importance of this database and how useful that it is. But, again, I'm going to restrict my discussion to the top five.

Now with any analysis, you have to make some assumptions. In this case, we assume that the sample represents the population of interest. We assume there is no tag loss. We assume that the survival is not affected by the tags, and that recoveries are correctly tabulated.

For statistical purposes, we make the assumption that the fates of each fish are independent, multi-nomial and random. Then we assume that reporting rate, hooking mortality rate and natural mortality rate are constant at 0.43, 0.08 and 0.15, respectively.

So for the survival analysis, we used Seaver-based models to estimate survival. We use model selection which follows an information theoretic framework, and we convert survival to fishing mortality.

Now this is a relatively generalized description of the approach, which is quite quantitatively complex, but we don't have time to go into the details here.

I will say that our methods are supported by peer review and scientific publications. For annual exploitation rates, this is a relatively simple but important analysis, where we look at R over M ratios where R stands for the number of recoveries; M are the number of individuals marked.

We modify this slightly in the bottom part of the slide where you see that recoveries are separated into the number of fish killed, the number of fish released alive, and then we apply an 8 percent hooking mortality rate, and we apply a 0.43 reporting rate.

So what I'd like to do next is get into some of the results and first talk about the distribution of the harvest. There are several patterns that we see. This is an example from the northern part of the range.

These represent fish that are tagged by the New York Ocean Haul Survey. What you see is that if you look across time, these fish are caught in the summer months primarily in the northern part of the range, and so they move to the north, and then in the winter they move south to over-winter.

This is a typical pattern that we see in the northern part of the range. In the southern part of the range, we often see a slightly different pattern. This is representative of the data from the North Carolina Winter Trawl Survey.

You see the same dome-shaped group of fishes are caught in the north during the summer, but at the same time, there are also a large number of individuals that are caught in the southern part of the range, primarily in the Chesapeake Bay.

For the proportion of released alive, what we generally see is a trend of decrease across time. As you can see here, these data are separated out by a coastal and producer area average. What we see is that in the early part of the time series, the proportion of fish released alive was relatively large, but in recent years it is generally between 0.2 and 0.3.

So next I just want to summarize the survival estimates, which are converted to fishing mortality estimates, and, again, we separate this by coastal programs and producer area programs.

Here for the coastal programs, we have Massachusetts, New York, New Jersey and North

Carolina. You can see there is some variation in these independent estimates ranging from 0.05 up to 0.35, but the overall average; the unweighted average is 0.19.

Now for the producer area programs, again, there is some variation in the estimates among these programs, but you see a low of 0.07 for the Hudson River, but the Delaware River, Chesapeake Bay and the Rappahannock River are relatively similar, and the weighted average here is 0.27.

For exploitation rates, again what we generally see is some variation among the programs, and you can see a range of 0.09 to 0.33. Just in summary, I would like to emphasize that these estimates of tagged-based fishing mortality and exploitation rate are not excessive, by any means, in terms of reference points.

I think it's real important to look at this information in terms of trends through time. It's also very important to compare these tag-based fishing mortality estimates and tag-based exploitation rates with estimates that we are getting from the VPA.

Actually, I think Alexei will talk next on the VPA, and then Gary Nelson will actually summarize and look at these trends across time as well as the comparison between the tag estimates and the VPA. Thanks.

CHAIRMAN FLAGG: Okay, thank you, Stu. What I'd like to do, if you have questions, please hold those, and we'll proceed through the other two reports, and then we'll open the floor for questions from the board. At this time we'll have Alexei give the VPA report.

STOCK ASSESSMENT REPORT 2002 – VPA REPORT

MR. ALEXEI SHAROV: Good morning, everyone. I will cover the second part of the assessment presentation, which would be based on the age-structured model, which is called ADAPT VPA.

The model uses a variety of information, but in general we need a total catch at age, which would require continued information on landings in numbers, age-length keys, size frequency distribution of the harvest, weight at age to calculate biomass of the stock.

We use fishery-dependent and independent survey data to tune the model to estimate the fishing

mortality in terminal year, and we need an estimate of natural mortality rate. A few slides on the dynamics of the fishery in 2002, the recreational landings in numbers by state are presented here. Total harvest was about 1.8 million fish. If you compare the numbers with the 2001 season, you would see that for most of the states, the harvest in 2002 was lower compared to the previous year.

In terms of landings by weight, coastal states like New York, Massachusetts and New Jersey landed more fish in terms of weight, more biomass. Overall, recreational harvest has a trend of going up since the reopening of the fishery.

In 2002 our Marine Recreational Fisheries Service estimated that 1.8 million fish were caught. About 1.1 million fish were dead discards. This totals to 2.9 million fish of the total number of fish harvested by the recreational fishery.

The age structure of the recreational harvest, most of the fish that are landed are in the range of four to nine ages. Discards essentially fall into two groups; ages two to five that are representative of discards in producer areas; and five through eight, mostly the fish are discards in the coastal areas.

The commercial fishery by state, total landings of 654,000 fish with most of the fish landed, as always, in the Chesapeake Bay region.

The direct estimates for commercial discards were not available, so we used the ratio of tags returned by commercial fishery to tags returned by the recreational fishery and multiplied by the estimated recreational discards to come up with the estimate of the commercial discards.

For later years, the last four years we tried to improve the estimate and separated Chesapeake Bay and the coast and tried to use more detailed information to come up with the discard estimate.

The total discard for 2002 was estimated at 168,000 fish, and the landings, as I said, 684,000 fish. Here is the age structure of the commercial harvest coastwide. Most of the fish are in the range of four to seven years old.

Obviously, most of them come from the Chesapeake Bay region and that's the dominant age groups in the Chesapeake Bay area. The overall harvest by fishery, the split is 49 percent of fish harvested by recreational fishery; 17 percent, by commercial

fishery; discards and recreational are about 30 percent of the total number of fish harvested. And this is the age structure of the total removals. Compared to 2001, the catch at age, almost all ages was down except for two strong year classes, 1996 and 1993 year classes which were six and nine years old.

To tune the model, we used a variety of survey indices, which include fishery-independent trawl surveys, seine surveys, gillnet surveys, as well as juvenile surveys in a number of states; and as the fishery-dependent, also, the Massachusetts commercial catch per unit of effort, Connecticut recreational catch per unit of effort and the Hudson's shad bycatch data.

The committee has done a lot of work this time to look at the sensitivity of results, dependence on the variety of input parameters, and we've looked at the issue of the plus group.

That's the most important, as we presented to you last year, where the age structure of the fish was presumed to be better known after a certain age; and after that, the uncertainty increases.

So, we used the different plus groups for the analysis, which would include either 12 years old and older, 13 years old and older and so on.

We looked at different partial recruitment vectors, shapes of flat-top versus dome. The assessment model that we've used allows more flexibility and allows several methods to estimate full fishing mortality, fishing mortality on the oldest through age.

So, in total, for every plus group formulation, we did 24 different rounds of the model, so it would be in total, 24 times 4, about 100 different rounds that were done. This slide shows you the sensitivity of the model output to all those 24 variable combinations of the input parameters.

As you can see, in general, it's not that sensitive. The estimate of fishing mortality for ages 8 through 11 in the terminal year, which is 2002 ranged somewhere in the range of 0.32 to 0.37.

However, the age structure of the catch at age, the plus group that we selected had the greatest impact on the results of the assessment. As you can see, if you have the latest age group in the analysis of 12-plus, which means 12 years old and older, you get the lowest fishing mortality rates.

When you move up and you have 13-plus group, fishing mortality rates increased, and so it goes up with ages 14-plus and 15-plus. So, it is important for us to really figure out what is the actual age structure of the population in the range of the older fish, because that's critical to the estimates of the fishing mortality rate.

So, after they struggled, the committee selected the 13-plus age group formulation because the estimation of year ages uses uncertainty.

We have done some simulation experiments, and we've found that this particular age structure formulation came up with the lowest relative error, and it also better represented the exploitation pattern in the early years of the fishery.

So based on this, we present all the final results on the 13-plus group run. This is the fishing mortality rate estimate for fully recruited ages eight and older. You can see that it shows a high fishing mortality level in the early '80s, which is actually what indeed was happening with the stock.

Then it fell down to real low values, to 0.15. There was a continuous trend of increase. Our estimate of fishing mortality in 2002 was at 0.35, which is above the target of 0.3 but below the overfishing definition of 0.41.

In the previous assessments, we reported to you fishing mortality on the range of four through the maximum age, so in this case, it would be four through eleven, and the 2002 estimate of fishing mortality for that age range is 0.29.

Also, we presented traditionally F for ages three through eight, which represents the exploitation pattern in the producer areas. This one seemed to have a decline somewhat in the recent year and F for early 2002 is estimated at 0.21.

We've done the retrospective analysis which allows you to see whether the estimates change with the update of your information.

This analysis showed us that when we estimate the fishing mortality for the terminal year or the last year of the assessment, the model tends to slightly underestimate fishing mortality and overestimate abundance, but not in the large scale.

The estimates of the population size are represented here. As you can see, the overall trend for the numbers of fish in the population is a general

increase. The estimates of recruitment at Age 1 from the VPA model show several strong year classes in recent years, which would be 2000 and 2001 year classes.

The female spawning stock biomass, based on the model calculations, is at the highest level since 90-92. And as a summary, fishing mortality rate for fully recruited ages is at 0.35, above the target, but below overfishing.

For ages four through eleven, it's 0.29; for ages three through eight it's 0.21. The striped bass population remains at a high level of abundance.

Female spawning biomass is at record high level; the recruitment in recent years continues to be strong. I'll pass the discussion to Gary Nelson, who will conclude the assessment results.

CHAIRMAN FLAGG: Thank you, Alexei.

STOCK ASSESSMENT REPORT 2002

MR. GARY NELSON: I'm just going to summarize, basically, the information that Alexei and Stuart has just given, to show you some comparisons between the two studies.

What we found this year -- I don't know why we haven't shown this in the past -- is there is some good correspondence between the tagging and the VPA estimates of F. The way we compared the tagging results and the VPA was we used actually the VPA F weighted by abundance in the VPA.

We compared that to the tag-based Fs. That's simply because the tagging survival is generally weighted towards the abundant individuals. I'm also going to show you a comparison between the annual exploitation rates that derived from the tagging study.

To compare it to the VPA, I simply converted the unweighted VPA Fs to an exploitation rate assuming M of 0.15. In this graph it shows -- there are basically two groups that we could identify in the tagging-based estimates of F, one group that follows the VPA and one that doesn't.

This slide is showing the five program results that generally follow the same trends in the VPA F, which is shown in blue. They are the New York Ocean Haul Survey, Delaware River Tagging Program, the North Carolina Survey, the Maryland-Chesapeake Bay tagging and the Virginia Rappahannock.

There is some variation, particularly with the North Carolina Winter Tagging study, but they generally encompass the VPA Fs, and they roughly show the same magnitude.

The three programs that don't agree with the VPA F are the Massachusetts program, the New Jersey-Delaware tagging and the Hudson River. You can see in this slide, anyway, that those three programs are actually showing a decrease in F since about '96.

It's a little easier to see it if you take the averages of the Fs from the two groups. The blue here is the VPA F, and this upper solid yellow line is the average from those five groups that I showed you, showing very similar trends and magnitudes in the F, and then here are the three programs that do not show the same trends.

And these, again, are Massachusetts, New Jersey and Hudson showing a decline. These are the comparisons between the VPA- converted exploitation rates versus, again, those five programs, showing at least for most of the time series there is a correspondence between the two until about 1999-2000, where there appears to be a drop in the R over M estimates.

This could simply be due to a change in reporting rates or something like that. There is also a little correspondence between the VPA exploitation rate and, actually, the Hudson River until about 2000 again.

Then there is a drop. Of course, Massachusetts is very low and doesn't approach any of the VPA estimates. So, we had five out of the eight tagging program F estimates that showed similar trends of magnitude as the VPA.

Just for information, the unweighted VPA F was 0.33, and the average of that group that did follow the VPA was 0.31, so they're fairly close.

Then there were five out of the eight programs that basically had similar trends of magnitudes and exploitation rates up until about 2000, so there might have been some changes. We don't know why this might be occurring.

I'm just going to go over some of the concerns that the technical committee had. Of course, the thing we always discuss is the aging errors that are due to us using scales.

We had a workshop back in March in which we all talked about how to improve our scale impressions and things like that. However, we all agreed that generally after about age 10 to 12, there is an aging bias and essentially an under-estimation of the ages using scales.

This past July we formed a committee to try and address whether we could develop otolith conversion keys, if we could obtain some otoliths. We actually talked about starting to use otoliths as a primary aging structure.

Our report will be due, I guess, in March, March or 2004, I hope. We're still talking about this. We tried to correct some of it, using the plus-group, but it doesn't always work. The committee also, again, expressed concern about the mixed stock issue, using a VPA on a mixed stock.

People suggested other methods could be explored, and we need to do this sometime in the future. The issue is trying to identify the catches, and where the catches come from, and that's a pretty substantial problem.

Tagging programs, a lot of the results are quite variable, and some people on the committee would like to re-evaluate some of the tagging programs.

Some believe that they may be too localized, and they don't actually cover enough of an area to address the assumptions of the mixing and dispersion that are that are assumed in the tagging models.

They would also like to conduct more analyses on the 18-inch plus groups. There are some problems with some of the models, like the linear trend model, that people would like to look at more. One of the issues that was brought up this year was the potential increase in F on the smaller fish.

And, after considerable discussion, the committee agreed that they don't know if it's an increase in natural mortality or simply due to changes in immigration rates or even a model misfit specification problem, so we need to look at this more in the future.

There was a code change in the VPA program that we used, and I guess it fixed some of the problems that were in the FAC program that we used a couple of years ago, and now we're getting bootstrap results on the terminal F estimates that are quite variable and unbelievable.

So, we're having some problems and discussions about that, and we need to investigate some of the uncertainty surrounding those estimates.

Also, we've formed a small committee to look at that, so we're going to do that this year. Another issue that was addressed and suggested by the SARC was to reduce the number of the indices. There are approximately 58 indices used in the model now, and we've been trying to reduce some of the numbers.

We've been developing some criteria to use to judge whether an index should remain in the VPA or can be included in the VPA, and we'd like to hold a workshop next year to further some of these criteria, so we're still working on that. That's it.

CHAIRMAN FLAGG: Thank you, Gary. At this time we'll take questions from the board on those three presentations you've heard. Are there questions of the board? Bill Adler.

MR. WILLIAM A. ADLER: Mr. Chairman, I just wanted to ask on that chart that you showed the recreational catch, recreational discard and then the commercial catch and discard, how much of the discards in that pie chart do you consider to be discard mortality versus just live discard?

Do you have a formula or something for that? Like you said, like 30 percent — one of the things was 30 percent was discard of the total catch. Do you have a discard mortality rate, too?

MR. SHAROV: Yes, the discard mortality rate that is being used is 8 percent, that we're using. We take the estimate of the Marine Recreational Fishing Survey of the number of fish that are being released alive and we apply 8 percent to that number and that is based on the study by —

MR. ADLER: So if you were going to look at that chart up there and you said commercial discard 4 percent or recreational discard 30 percent, do you calculate in there that 8 percent of the 4 percent or 8 percent of the 30 percent is —

MR. SHAROV: No, the recreational discards, 30 percent of the total fish that were dead are the fish that died as a result of recreational discard. So, an overall estimate of the Marine Recreational Fisheries Survey is that approximately 13 million fish were released alive as discards, you know, like undersized fish.

So if you apply 8 percent to this number, it would be about 1.1 million fish. That is the estimate of how many fish died as the result of release in recreational activity. And that 1.1 million fish is 30 percent of the total number of fish killed in 2002.

CHAIRMAN FLAGG: Dave Borden.

MR. DAVID V.D. BORDEN: Thank you, Mr. Chairman. On that same chart, I guess my question would be on the commercial discard estimates, how many sea sampler or observer observations were used to derive that commercial discard estimate?

MR. SHAROV: Well, you touched a very serious problem. The direct observations, as I said in our presentation, are not available so we are using just a ratio of the tags that are being recovered or reported by commercial and recreational fisheries.

We use an estimate of the recreational discards and apply this ratio of tags returned by commercial and recreational fishery to the estimates of the recreational discards. So, there are no direct observations to estimate the commercial discards. We use indirect methods such as, you know, tag ratio.

MR. BORDEN: A follow-up question, then, and I'm not sure who I direct this to. I mean, we do a considerable amount of sea sampling up and down the coast.

My assumption would be that if there is an incidental bycatch of striped bass in any of those commercial fisheries, it's going to be noted. Is that an incorrect statement? It just seems to me that there should be some kind of independent verification of this.

MR. SHAROV: Well, if those data are available, then they should be submitted to the technical committee because the technical committee relies on the state report information that states provide to us. If such information is available, we'll certainly utilize it.

We do use the data on the age distribution of fish in the gears similar to those used in the commercial fishery. That information comes from different states, so we try to get the data as close as possible to the situation that the commercial fishery operates.

Like, for example, we're using the age structure in the commercial -- or I mean in the gillnet and experimental or survey gillnet fishery where the gillnet size is the same, the mesh size is the same as

the commercial fishery uses, so we this age data, for example, to apply to the estimates of the commercial discards.

CHAIRMAN FLAGG: I have Bill Goldsborough.

MR. WILLIAM GOLDSBOROUGH: Thank you, Mr. Chairman. I heard reference to some uncertainty by the technical committee about estimates of natural mortality -- believe that's based on something I saw in one of the documents on the CD but I can't find it on the hard copies I have right now -- the possibility that we might have increasing natural mortality in Chesapeake Bay and a reference to an analysis that Vic Crecco did.

I wonder if -- and if I'm not mistaken there was a recommendation made or a reference made to the need to look into that a little bit further, maybe by the technical committee, maybe it was the stock assessment subcommittee, I don't remember, I apologize, but I wonder if somebody could describe Vic's analysis and what we might do to look into that a little further.

CHAIRMAN FLAGG: I'm not sure whether that might be a bit premature at this time, Bill, because my understanding is that it hasn't -- at the last technical committee meeting they did not get an opportunity to review that report that Vic has put together.

I'm a little concerned about the fact that the committee has not yet reviewed it to provide some additional input to the board before we begin to discuss a report that hasn't yet been vetted through the technical committee process.

MR. GOLDSBOROUGH: Well, certainly at your pleasure, Mr. Chairman. I just saw a reference to it in one of the documents we were provided with, that's why I bring it up.

MS. MEGAN GAMBLE: I was just going to mention that Dr. Crecco submitted that paper to the technical committee and requested that they review it back in October, but the technical committee's agenda has been quite packed and they haven't had the opportunity to thoroughly review it. They did speak or touch on it at their last conference call but they really want an opportunity to look at it a little more in depth at their next meeting.

CHAIRMAN FLAGG: Bill

MR. GOLDSBOROUGH: Thank you. I'm satisfied if that indeed is the case, that they will be looking at it in more depth.

CHAIRMAN FLAGG: Thanks, Bill. John Nelson.

MR. JOHN I. NELSON: Thank you, Mr. Chairman. I was just curious on the tag-based F estimates for the various areas, the Massachusetts-New Jersey-Hudson as a group of three were relatively close to each other, and then the other five were relatively close to themselves and closer to the VPA estimate. I was just curious, have you looked at why those three are different from the other five, and why are they similar to each other?

MR. WELSH: This is an important point, I believe, and it's something that we did discuss at previous meetings. There are so many possible explanations for it and, you know, given that we're working with observational data, it's difficult sometimes to parse out the exact reasons, and so we really don't have a specific explanation.

I know we actually discussed it at the board meeting last year, and Paul suggested that the Massachusetts fish were a little bit smarter, but I mean there is a lot of potential reasons and we just don't know the exact cause. But, it is something that we need to look into further.

MR. NELSON: Yes, I think that's true. And what struck me was just the Massachusetts, the New Jersey and the Hudson where they are relatively similar results, I could see where they might be all over the place, and therefore you'd have some great difference in perhaps how it's being conducted. But where they're grouped so closely, it's just kind of interesting.

I would further note that I can't imagine that it's the Massachusetts striped bass that are smarter. It's the ones that get past Massachusetts to New Hampshire that are the smarter ones.

CHAIRMAN FLAGG: Gordon Colvin. Oh, I'm sorry, you wanted to respond, Alexei.

MR. SHAROV: Yes, just if I could add just one more comment to this. We are dealing with a mixed stock, and I think that the principal issue here is the distribution of the fish in different seasons.

That's probably the major cause of it. You may expect fishing mortality estimates to be the same in all the tagging programs if the fish are well mixed. If

they are not and you have certain groups occupying different areas, the spatial differences may cause a local difference in exploitation areas of fishing mortality, and that's what we probably are measuring.

CHAIRMAN FLAGG: Thanks, Alexei. Gordon.

MR. GORDON C. COLVIN: I wanted to address the concern that was expressed, the continuing concern about aging uncertainty for older fish. I see that we're expecting a subcommittee report upcoming or in early 2004 where we go with that.

I think it's going to be fairly self-evident that whatever the recommendations of that group are, there will be a need to access otoliths from a larger number of older fish than we've had in the past under any circumstances, whether to increase the use of otoliths for ageing more generally or to construct keys.

Is that probably true at this point? Do we anticipate that we're going to need to be getting at some more big fish otoliths?

MR. NELSON: Yes, that was one of the reservations that most people at the meeting had was getting otoliths from the big fish. Who wants to kill, you know, a 50-pound fish.

We talked about developing regional otolith keys, meaning getting different states and different regions to contribute a little bit if they can to otolith collection. In Massachusetts right now we've, for the last two years, we've developed a carcass collection program where recreational fishermen donate their carcasses basically from charter boats.

This year alone we collected about 225 pairs of otoliths. That would be a problem. I don't know if most states can do that. And another issue is processing, too. It takes a lot of effort to process otoliths, and we don't know where we're going to get the money from to buy saws and things like that so I don't know if that answers your question.

MR. COLVIN: Well, it does, and I appreciate that answer. I think that I just kind of wanted to bring it up because my suspicion is that many of us are going to need to think in terms of creating the kind of program that you mentioned in terms of outreach to - because we obviously don't want to kill fish because they have to be sacrificed to take the otoliths.

We need to get improved access to fish that are already killed, and that's going to take communication, cooperation with partners, and a different approach to collecting age data than we have in the past. I kind of wanted to bring that up and I see Megan has got her hand up. Maybe the staff has given some thought to coordinating that.

MS. GAMBLE: Yes. I, unfortunately, didn't bring the charge with me, but I know that the board did receive a copy at our last meeting. The charge is very specific and goes as far as to say that the subcommittee will provide estimates of the number of otoliths that would need to be collected per size range.

So, it will give the board an idea of how many would be necessary to collect. And also they are supposed to discuss different alternatives or propose different alternatives or avenues to collect those otoliths to help start the board's discussion.

MR. COLVIN: I appreciate that. I think it would be very important to engage our advisory panel to help us with that kind of outreach and to come up with specific outreach strategies and kind of a coordinated approach so we can share resources and strategies among the states that need to do it.

CHAIRMAN FLAGG: Paul Diodati.

MR. PAUL DIODATI: Yes, putting the level of the fish intellect aside, the fish that we tag off Massachusetts are caught in the fall offshore in the EEZ.

And, assuming that there might be some homing situation going on as we see with many fish, it may be that we get very low recover rates because the recoveries are not taking place in the EEZ. That might demonstrate a higher survival rate for the fish that we tag, possibly.

I don't think it's not a stock effect. We're not fishing on a particular stock because we have examined recapture rates that take place just in the spring time so you can see the spawning areas of the fish that we tag and recapture them on the spawning grounds. It's pretty well mixed so that's not the case.

My question, though, to you folks, and that was a nice presentation, is about the SARC recommendation to lower the number of tuning indices, which I agree sounds unusually high, up in the 60s was it or 50s?

Based on my knowledge of tuning indices, that's probably the higher number that I've ever heard of. But, is there a number of indices that was suggested that you should get down to because a lot of these quantitative models only use a half dozen or ten.

Ten would be a lot. So I'm curious, how would you pare that down if you were to take it down to six, and what would be the effect? Would that increase the precision of the estimates?

MR. NELSON: Well, that model can handle over 100, whether that's realistic or not depends on the information in the indices. What we need to do is try to get rid of or trim down the indices that have not as much information as they could, because a poor index doesn't help the model at all. It just makes matters worse.

There was no number that they recommended to get down to but they did recommend trying to develop a regional indices. For instance, the Maryland and Virginia Young of the Year Index are highly correlated, and that could be developed as one index, things like that. It wasn't quite clear. It just seems if there is a redundant index, it's probably not as helpful in the modeling process.

CHAIRMAN FLAGG: Other questions of the stock assessment presenters? Bruce.

MR. BRUCE FREEMAN: In the various charts, at least several of the various charts, it had the partial recruitment mortality and fishing mortality for various ages of fish, and it started out at 12 and then went 13, 14, 15.

And, the age 12 fish seem to be much lower, in the order of 0.1, and then the other age groups were up around close to 0.3. And my question is why is there such a discrepancy in just one year of age? Is there any thought as to why that would occur?

I mean, it would appear to me to be a gradual thing, as the fish got older, the Fs would go up, but there seems to be a large step from that 12 to 13 and older group. I was just curious as to why.

MR. SHAROV: Well, that is related to the strength of the year class because you're looking at different ages, but the age within a certain year, these are the different cohorts that were born in different years, so obviously — not obviously but more often the cohorts with the initially low abundance could have experienced a higher exploitation rate than the others.

And that's essentially why the difference is between the age groups are, you know, observed even to that extent. But that would be the principal explanation.

CHAIRMAN FLAGG: Other questions. Seeing no hands, I'd like to entertain a motion to approve the reports that have been presented. Yes, Pat.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman. I would move that we accept the report as presented with any additions or corrections.

CHAIRMAN FLAGG: Okay, we have a second by Vito Calomo. Are there any objections from any of the board members? Seeing no objections, the reports are accepted by the board.

At this time I know there are some that had suggested that we wanted to make a little presentation on the striped bass health, and I know Bill Goldsborough had interest so we will take up that item at this time.

STRIPED BASS HEALTH

MR. GOLDSBOROUGH: Thank you, Mr. Chairman. I just wanted to bring to the board's attention the circumstances we have in Chesapeake Bay right now. It's a continuation of a circumstance that the board has heard before, but I wanted to keep it in the board's consciousness.

Essentially we have a trophic imbalance of sorts in the bay that involves striped bass that has grown in severity over the last decade. There are numerous indications that striped bass are limited by the carrying capacity of the system right now.

Well, certainly it's partly at least a function of the tremendous recruitment we've had, the high abundance, but other factors are probably at work here as well. We see increasing length-to-weight ratios, skinny fish in the bay.

We see disease increases. Microbacteriosis infects roughly half the striped bass in the bay. One estimate from the Virginia Institute of Marine Science had it at 70 percent. This is a potentially serious disease we've brought to the board's attention before.

The board supported a motion actually to seek federal funding for research I believe last year, and there is research ongoing on that. I wanted the board to be aware that we do have this trophic imbalance, that the success that we've had in restoring striped bass appears to be somewhat compromised by the ability

of the primary nursery area, Chesapeake Bay, to support those numbers.

I'm not proposing a specific action right now but it does appear that both habitat, perhaps water quality, we know that DO has been a problem, hypoxia and oxia can in some years be severe in the Chesapeake and it was this year quite severe.

There are analyses that have shown that this affects striped bass health. Also the forage base appears to be limiting. Age six striped bass annually consume 38 percent less forage than they did in the 1950s, I'm now told, and they weigh approximately 40 percent less than they did at that time.

Striped bass in the last decade have shifted from menhaden, their traditionally preferred prey, and they focused on bay anchovies and blue crabs. Both of those stocks are now and have been for a few years hovering near historic lows.

And the blue crab, I should point out, is the most important fishery in Chesapeake Bay, so that's of local interest as well. But, this is something that may be growing in severity and may have implications for the coast, and I wanted it to be on everybody's mind.

Microbacteriosis, at least one strain, is known to be fatal. And in the light of Vic Crecco's analysis suggesting that natural mortality may be going up in Chesapeake Bay, I wanted to bring this to the board's attention.

I'm not sure that I'm suggesting any particular action -- maybe somebody has something to suggest -- other than the assurance that the technical committee will look into that analysis of Vic Crecco's a little bit further. That should help to some extent. Thank you, Mr. Chairman.

CHAIRMAN FLAGG: Thank you, Bill. Gerry.

MR. GERALD CARVALHO: Yes, thank you, Mr. Chairman. I'd just like to raise a question there. Are these fish getting sick because they lack enough food supply? Is that the answer to that question?

And if they lack the food supply, that means we've produced or we've instituted a management system that has produced more numbers of fish than our ability to feed them. But is the disease a result of lack of a healthy fish because of lack of food supply?

CHAIRMAN FLAGG: Thanks, Gerry. Bill.

MR. GOLDSBOROUGH: Well, that would be a key question, Gerry, of course. I don't know anybody that can tell you definitively which it is. There is some ongoing work on that trying to sort out those issues.

CHAIRMAN FLAGG: Paul.

MR. DIODATI: I think this is an important question for someone to answer, but I just want to bring it to light that some Massachusetts researchers recently published a paper -- in fact I was a co-author, and, Gary, I imagine you could make that paper available -- that examined the catch-and-release factor of striped bass and how that affects bioenergetics or the fish's ability to compensate, because the number of fish that are caught and released is extraordinarily high according to the statistics.

The paper demonstrates that just by a single hook-and-release incident where the fish survives, that fish does not continue to feed in the normal pattern; and just several days, especially during the feeding season, during the summertime months, does result in significant weight loss and an erosion of the physiological condition.

So the paper I think demonstrates that. All I'm saying here is there may be some other very important factors. A former striped bass researcher also, Phil Goodyear, who some of you may remember, published a paper recently that demonstrates that there might be some stunting in populations like striped bass.

Because of the size limits that we use to manage these fisheries, we constantly crop off the faster growing individuals in the stock leaving the less robust individuals to repopulate. There seems to be some effect in that that could lead to smaller growth overall per age in the population. So there's a number of factors to look at besides the food issues.

CHAIRMAN FLAGG: Thank you, Paul. Dennis.

MR. DENNIS ABBOTT: Yes, a question for Bill. I appreciated his input this morning, but I was wondering what the attribution is for all the information he has provided. Has it come out of the state agencies? Has it come out of your Chesapeake Bay Foundation? I was wondering who was doing some of these studies and providing you the information that you presented, Bill?

MR. GOLDSBOROUGH: Well, it's a variety of sources, Dennis. There have been a few bioenergetics modeling studies recently; one that looked at Maryland DNR data from the '50s, another that looked at more recent data and compared those two.

Those were the figures I cited so it's a couple of different studies. They were pulled together by the Chesapeake Bay Ecological Foundation. That's in a piece that I think was provided if not to this board then to the Menhaden Board.

STATE PROPOSALS – NEW YORK'S HUDSON RIVER RECREATIONAL FISHERY

CHAIRMAN FLAGG: Any other comments relative to this issue? If not, why don't we then move on. We have some state proposals and we're just almost on time staying with our schedule. We have a number of state proposals for consideration.

New York is the first one and my recollection is that at our last meeting when we approved numerous state proposals relative to the 2004 fishing season, there was an issue that was outstanding relative to the Hudson River fishery and the 18-inch minimum size limit that was going to be addressed. I believe that's the subject of this proposal so would you like to run through that, Megan, for us?

MS. GAMBLE: My plan here is to step the board through each of the proposals one at a time. I'll walk you through the proposal and then I will tell you what the technical committee's recommendation was, and then I will follow that with the advisory panel's recommendation on those proposals.

I wanted to first preface this by saying that this time around we asked the advisory panel to respond via written correspondence, and that didn't work out so great for us. We only had four AP members respond to that request for advice, so next time around we won't do it that way. We'll engage them in a more productive manner next time.

So the first proposal is for New York's Hudson River recreational fishery. As Lew stated, New York requested additional time to develop alternatives and gather stakeholder input. They requested an extension to March 15th of 2004.

While they asked for this extension, they also were approved to go ahead and implement one fish at 28 inches. Just as a reminder, their current regulations

on the Hudson are one fish, 18-inch minimum size, with a season of March 16th to November 30th.

This proposal was brought to the technical committee with a couple of different options, hopefully, looking for the board to approve each of those options, giving New York the ability to select among those options.

The first option is the one at 28 which they've been approved for. The second is the two at 28 which is required by the Amendment 6. The second option was 18 inches, 24 inches or 26 inches. That is a one-fish creel limit associated with that.

Just take a step back and for each of these that have a one-fish creel limit, New York is proposing or is saying that it may be that they will implement a prohibition on fishing after the first fish is reduced to possession.

So after they keep the first fish, they're done fishing. And the final option is a one-fish creel limit with a minimum size of 18-inches, 25-inches, 26-inches or 28-inches. They would use a seasonal closure with that.

The proposal included a conservation equivalency evaluation and they did that based on the percent maximum spawning potential. So the technical committee reviewed each of those, and they found that each of those options are conservationally equivalent to the standards that are in Amendment 6. They recommend the approval but they also would recommend that the board approve a partial spawning closure.

The advisory panel, in general, among the four that we heard back from did support the proposals, and in particular the technical committee's recommendation for the partial spawning closure. There wasn't a preference for any particular measure. That was quite varied among each of the members. That's it for New York's.

CHAIRMAN FLAGG: Okay, are there any questions of Megan to clarify the New York proposal? Yes, Bruce.

MR. FREEMAN: Just so I understand, the proposals 1, 2, and 3, numbered in this letter of September 4th, had no spawning closure. It was only Area 4 that had a spawning closure, that proposal?

MS. GAMBLE: Gordon is shaking his head vehemently with a yes.

MR. FREEMAN: That's correct?

MS. GAMBLE: Yes.

CHAIRMAN FLAGG: Paul.

MR. DIODATI: I'd like to move to approve the New York proposal as a package.

CHAIRMAN FLAGG: Okay, we have a motion from Paul Diodati to approve, a second from Pat Augustine for approval of the suite of measures proposed by the state of New York. Discussion. Yes, Gerry.

MR. CARVALHO: I'm a little confused there and I wonder if someone could explain. You have one fish at 28, two fish at 28, one fish at 18, 24, or 26. Does that mean in that second comma-ed group, that a decision be made whether it's one fish at 18 and above or one fish at 24 and above or one fish at 26 and above depending on the data?

CHAIRMAN FLAGG: Yes, I see New York nodding that is the case.

Any other discussion relative to this motion? Are there objections to approval of the New York proposal, any objections? Seeing — yes, Ira?

MR. IRA PALMER: It's not an objection to the question. What would determine which one New York actually picks? I mean, they have four different ones. What would make the deciding factor for them?

CHAIRMAN FLAGG: My understanding, Ira, is that these have all been approved by the technical committee as meeting the requirements of Amendment 6, and that this would give New York the option of going out to hearings within their own state to have the flexibility to adopt any of those approved options. It just gives them a suite of options for them to further consider relative to their constituencies.

MR. PALMER: Yes, I understand that.

CHAIRMAN FLAGG: I believe.

MR. PALMER: I was wondering which one they preferred, is preferred.

MR. COLVIN: If I could.

CHAIRMAN FLAGG: Gordon.

MR. COLVIN: Following the development of the initial proposals, we began an outreach process that is still underway. We've held two public information meetings in the lower and upper Hudson Valley with a variety of anglers and charter boat folks.

We have begun a series of follow-up meetings where we're actually meeting with individual county federations and sportsmen's clubs and smaller-level organizations. Once we have the output from today's meeting and we know exactly — up until now we've been basically telling them here's a series of things that might be acceptable to ASMFC, what do you think?

We have a lot of reaction to that. Now we can go back and say, well, these are acceptable to ASMFC, now let's boil it down and see what we should do. There is considerable support within the angling community on the Hudson for measures that are more conservative than the current one fish at 18 inches.

But there are also some people who would like to stick with that. We need to continue to build a dialogue and try to develop an informed consent among all those stakeholder groups for a course of action. That's what we'll do after this motion passes, hopefully.

CHAIRMAN FLAGG: Thank you, Gordon. Dennis Abbott.

MR. ABBOTT: Thank you, Mr. Chairman. For Gordon, I think he answered part of the question I will have, but under both of the asterisk I assume that this is what you will be proposing is to exclude prohibition of fish after reducing one to possession and also to limit one fish over 40 inches is the direction that you want to go, the department will be presenting?

MR. COLVIN: I think I can say this much so far, based on the input we've had to date from the stakeholders, Dennis, we will not be going to two fish at 28. We will be exercising one of the one-fish options, and that makes the second of those two issues moot.

The issue of prohibition after the first fish is reduced to possession did not fare well in public review and comment. We will probably not be implementing that.

CHAIRMAN FLAGG: Other questions relative to the motion? Okay, we do have a motion. I had asked previously are there objections to the approval of the

New York proposal as presented, and I see no hands, no objections, so the New York proposal is approved by the board. Next proposal.

MR. FREEMAN: Mr. Chairman.

CHAIRMAN FLAGG: Yes, Bruce.

MR. FREEMAN: You didn't mention anything about abstentions.

CHAIRMAN FLAGG: Are there abstentions?

MR. FREEMAN: We would abstain.

CHAIRMAN FLAGG: Okay, thank you. Are there others? Okay, then I would note we have one abstention, New Jersey. The next proposal.

STATE PROPOSALS – DELAWARE'S RECREATIONAL FISHERY

MS. GAMBLE: Okay, the next proposal is for Delaware's recreational fishery. The management board did approve Delaware for the two fish at 28 inches that is required under Amendment 6.

Delaware is coming back with a new proposal, and this proposal is for one fish between 24 to 28 inches and a second fish greater than 28 inches with a 33 percent reduction in harvest.

Just to explain a little bit about how Delaware came up with this, they used, again, a percent maximum spawning potential and they determined what that would be for the two fish at 28 inches. That's a 24 percent maximum spawning potential.

Because of the way they modeled this, they couldn't do the slot limit so they used a two at 24 and determined that it's a 16 percent MSP. And because of the difference between the two, then they have to take that 33 percent reduction in harvest. They are proposing to do that through an early seasonal closure or a delayed opening.

The technical committee reviewed their proposal and they said that with the 33 percent reduction in harvest, it is conservationally equivalent and they would recommend the proposal for approval.

The advisory panel, the four members that did respond had no clear consensus. There was one member that was strongly opposed to the 33 percent reduction and would rather have the Amendment 6 recreational measures put in place.

CHAIRMAN FLAGG: Are there questions of Megan relative to any clarifications of the Delaware proposal? Yes, Gil.

MR. GIL POPE: Thank you, Mr. Chairman. One thing needs to be made clear on a lot of these. When you say you're going to have a 33 percent reduction in harvest, especially in the way we do the recreational fisheries, it's an attempt to do it, because you can't really calculate as to how many anglers you're really going to have or the effort that is going to be put forth.

You could have more people fishing so it's basically an attempt at a 33 percent harvest, and it's not going to be really a real-time, something that can be done on a real-time basis. Thank you.

MS. GAMBLE: Right, Gil, that came up during the technical committee's discussion, and Des Kahn stated that they would base their 30 percent reduction in harvest on historical landings and catch patterns in order to shorten their season.

CHAIRMAN FLAGG: Ritchie.

MR. G. RITCHIE WHITE: To follow up on that, Megan, are the harvest rates fairly consistent through the season so that if a cutback in the beginning of the season and the end of the season will equal what the average harvest rate would be?

MS. GAMBLE: It definitely is not even throughout the entire year so that's something they would have to look at in order to ensure or in order to get an estimate of what duration would achieve a 33 percent reduction in harvest.

MR. WHITE: Okay, so it might be -- the cutback might not then be in the beginning or the end of the season? It might be during other times of the season as well?

MS. GAMBLE: The way the proposal is written it was stated that it would occur -- it would be a delayed opening or an early closure.

CHAIRMAN FLAGG: Okay, I have Gordon, Paul and Dave Borden.

MR. COLVIN: A question on process. I presume that once Delaware -- assuming the board approves the proposal, then I would presume that once Delaware selects a season closure, that that would be subject to technical committee review and approval

that it does in fact achieve the 33 percent reduction. Is that correct?

MS. GAMBLE: I think that's the board's prerogative, if that's the way the board wants to handle it.

MR. COLVIN: If that's not out of order, Mr. Chairman, I would move approval of the Delaware proposal subject to the technical committee's review and acceptance of the season closure as achieving the 33 percent reduction.

CHAIRMAN FLAGG: Okay, we have a motion and a second by Paul Diodati. Roy.

ROY MILLER: Roy Miller from Delaware. I just wanted to clarify, Gordon, that the methodology selected for choosing the 33 percent seasonal reduction is based upon the Wiable curve from Amendment 5 so it's a standardized method.

It's basically just counting down days through the table to come up with the 33 percent reduction. To give you an example, I think if it was the fall reduction, it would close somewhere around mid-October, as I recall.

CHAIRMAN FLAGG: Okay, any other comments or questions from the board? Are there any objections to approval of the motion presented? Are there abstentions? New Jersey abstains. Okay the Delaware proposal is accepted. Gerry.

MR. CARVALHO: Thank you, Mr. Chairman. Before we jump to the next item, if we could go back just one second, I have a question about the New York proposal.

Does that proposal include the recommendation that the technical committee -- because I don't remember making reference to it -- technical committee recommended conditions that there be changes made to the Hudson River recreational fishery and the spawning season closure for the Hudson River and so forth?

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: The technical committee did not make a preference or was not recommending one option over another. They did support the partial spawning closure, particularly if they implement a smaller minimum size than 28 inches. That was a recommendation from the technical committee.

MR. CARVALHO: Well, my concern is that's included in New York's proposal. The technical committee's recommended additional restrictions, are they part of that proposal?

MS. GAMBLE: It's not an additional. It is included in New York's proposal and the tech committee was just emphasizing that, yes, they like that part of the proposal and would prefer that's the way they go. That's from the technical committee.

CHAIRMAN FLAGG: Okay, Pete isn't here yet and so we're going to skip over the Maryland proposals for the moment.

STATE PROPOSALS – NEW JERSEY

CHAIRMAN FLAGG: I do have on the list of state proposals an additional proposal from New Jersey. Does staff have information relative to the New Jersey proposal?

MS. GAMBLE: I did not receive anything. The first notice I had was at the beginning of this meeting.

CHAIRMAN FLAGG: Do we have a presentation on the New Jersey proposal?

MR. FOTE: Lew, this is a proposal we submitted before. We're asking for reconsideration, that we basically did, we had it submitted to the technical committee. We never submitted a proposal for this year.

If you remember when New Jersey's proposal got submitted, New Jersey said we're not ready for it but another state moved forward our proposal. Other states voted on it. We voted against it because we weren't ready to submit a proposal because we had basically put three things forward.

We basically asked -- we went to the Policy Committee to ask for a review of this and now we're coming back to the board with our original proposal.

CHAIRMAN FLAGG: Okay, can we just have a brief description of that. My recollection, this has to do with the Delaware River or Delaware Bay issue, and I believe the recreational proposal was one fish at 24 to 28 and one in excess of 28. Is that my understanding, two fish recreational?

MR. FOTE: Yes, we have no producing area proposal. What we have is -- I'm having a hard time speaking this morning. What we have is a proposal that was basically consistent under Amendment 5 for

our coastal fisheries. That's what we're moving forward.

It was not a producing area proposal. Our plan has never been a producing area proposal. It was a coastal proposal to begin with. What we're basically doing is putting on the table what we were doing under Amendment 5, giving a reason why we think we should be status quo under Amendment 5 in Amendment 6 and looking for the board to either vote it up or vote it down.

CHAIRMAN FLAGG: Do we have a technical committee recommendation relative to this proposal? Could you enlighten us as to what that recommendation was?

MS. GAMBLE: The commission did in fact receive a proposal from the state of New Jersey, and there were four options included in that proposal. Let me just remind the board, the first option was two at 28 inches.

The second was the one fish between 24 to 28 inches and the second fish greater than 28 inches. The third option was the same as the second but with a season. What that season would be was not specified in their proposal. And then the fourth option was one fish between 24 to 32 inches and a second fish greater than 38 inches.

The technical committee could only forward a recommendation to approve the first option which was the two at 28 inches, and subsequently the board approved the two fish at 28 inches plus their bonus fishery.

CHAIRMAN FLAGG: Tom.

MR. FOTE: Remember when that proposal came up, New Jersey said we want to hold this off, we want to review it. We wanted to go back. We don't want you to vote on any proposal, but the board, over our objections, voted on it and went ahead and voted on the two, made a motion -- it was not New Jersey. It was another state, and another state seconded it.

We voted against it at that time. What we're actually coming in is with our proposal for our state plan. You have a technical committee report. We asked for that. We're asking to air the four proposals now, and the board can either vote it up or vote it down. That's all we're asking.

CHAIRMAN FLAGG: Do you have a motion to offer for the consideration?

MR. FOTE: Yes, I have a motion to offer; and after the motion is seconded, I'd like to explain why I'm making the motion. The motion is that New Jersey stay status quo in the year 2004, until the new addendum to Amendment 6 is basically done; that we straighten out the misconception or misunderstanding of what is going on with the producing areas; that in order to do this, we will basically leave all the rules that are in existence.

That includes the two-month closures in all of our bays and estuaries. That also includes the spawning area closures. It includes everything that we approved under Amendment 5 for our coastal fisheries.

MS. GAMBLE: Okay, Tom, that was kind of long. Would you mind writing that down for us?

MR. FOTE: Okay, well, it's the proposal we have already written down in there. Just give that to the person. That's in our proposal that we submitted. The reason I'm not writing it down, and I'm asking Bruce to do it is because my handwriting, nobody can understand but myself.

CHAIRMAN FLAGG: A.C.

MR. A. C. CARPENTER: I'm somewhat confused. When was the New Jersey proposal submitted to the technical committee meeting?

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: Let's see, the board reviewed all the proposals back in June, so the technical committee reviewed all the proposals in May.

CHAIRMAN FLAGG: Roy.

DR. MILLER: Mr. Chairman, if this proposal passes, Delaware would like to request permission to introduce a motion in regard to a fishery for next year as well.

CHAIRMAN FLAGG: Thank you, Roy. Okay, we have a motion on the board. Does this motion reflect your concerns, Tom? Does this address your issue?

MR. FREEMAN: Yes.

CHAIRMAN FLAGG: Yes, Bruce.

MR. FREEMAN: To give a background for this, the way —

MR. COLVIN: Point of order, Mr. Chairman. You don't have a second yet.

CHAIRMAN FLAGG: We don't, but, first of all, if we could, I want to make sure that the motion that we have is satisfactory to the state of New Jersey, so if you could just look at that. It's a satisfactory motion?

MR. FREEMAN: Yes.

CHAIRMAN FLAGG: Okay, we do not have a second yet. Is there a second to the motion?

MR. MICHAEL DOEBLEY: Second.

CHAIRMAN FLAGG: Okay, we have a second, Michael Doebly.

MR. DOBLEY: Michael Doebly, Pennsylvania.

CHAIRMAN FLAGG: Thank you. Okay, we have a motion on the floor. Bruce.

MR. FREEMAN: In order to give background for this, I would like to have Director McHugh essentially indicate the concerns we have in this, realizing that we raised this issue at the last — I can't remember — I think the August board meeting, raised it at the Policy Board, which referred this issue back to the management board for action.

In order to give a background for the reason for this motion, I think it would be much easier to turn this over to Director McHugh, have him give the background, and then we could take the vote.

CHAIRMAN FLAGG: Thank you, Bruce. Director McHugh.

MR. MARTIN McHUGH: Good morning, Mr. Chairman. Thank you for entertaining this this morning, and to everybody else as well. Obviously, New Jersey is very concerned with the interpretation of the motions of the management board regarding Amendment 6, and we have expressed this in the past.

It's our opinion that the board's deliberations culminated in a vote, which would maintain a recreational status quo with Amendment 5.

The key motion in question specifically stated that the coastal recreational measures would remain at the same level as that in Amendment 5.

But, following the board's discussions and the motions at the December 2002 meeting and the February 2003 meetings, the Chesapeake Bay and the Roanoke River were separated out from the rest of the coast, allowing a minimum size.

The actions taken on Amendment 6 allow North Carolina, Maryland, Virginia and the Potomac River, that have important spawning areas, to regulate fishing as they see fit, but the same provisions are not provided for in the spawning areas of the Delaware and the Hudson Rivers.

The issue that we have with Amendment 6 is that the public hearing process, as reflected in the public hearing documents, did not involve any mention of removing the protections to the spawning areas set out in Amendment 5.

On top of that, as I observed as the last meeting of the Policy Board in Virginia and in documents that my staff has access to, there are a number of interpretations regarding the motions in question.

It was interpreted by some board members that it was the intent of the motions to eliminate producing areas as set forth in the previous amendments and addendum.

The interpretation would allow any jurisdiction to open its spawning areas to directed fishing without having to obtain approval of the board.

This is a situation that we haven't seen since the plan was promulgated. So, therefore, we believe at this time that further consideration needs to be given to the issue of protecting spawning areas in the Delaware and the Hudson to provide incentives for the state to continue the protection of these areas.

This issue is obviously important. The fact remains that it was not mentioned in the draft Amendment 6 that went to the public, nor in the public presentation prepared by the council staff. We raised this to the Policy Board meeting in Virginia, and there it was agreed that the best course of action would be to deal with it through the next addendum to Amendment 6.

We understood that Chairman Nelson has stated that the budget doesn't allow for the development of an addendum. However, we think the board could identify the need for a striped bass addendum when approving the budget for 2004 at the annual meeting, and we'll support a delay in preparing an addendum as long as we can maintain our current recreational regulations, the status quo, until an addendum is

completed and implemented. I think Tom would like to add to that.

CHAIRMAN FLAGG: Thank you. Tom.

MR. FOTE: I know this has been a very difficult process for the board, and I really thank them for their indulgence on this, but this is an important issue for New Jersey, and it has been important all along.

2003 has been an interesting year as fisheries management goes in New Jersey. We went out with two fisheries management plans. One was weakfish. One was striped bass. We basically thought, as has always been under the process, that people are basically treated fair and equitable under the process.

It was interesting that we'd go to public hearings with a document — and I'll bring up weakfish even though it's not important, but it's germane to the whole overall scheme of things — is we go to the public hearings with a document saying these are the reasons we're doing an amendment to the plan.

After we complete the public hearings, after we make all the deliberations, a week before the meeting we say, "Oh, by the way, that's not the reason we're doing the addendum to the plan.

We did the addendum because the recreational table set up in '96 was supposed to accomplish a 32 percent reduction, and all they did was accomplish an 18 percent reduction on the recreational sector."

We had no problem with that. We're saying, "Okay, as long as that's fair, as long as that's equitable, we'll all take the same hit."

We asked and the board did give us a little indulgence by one extra fish at 14 inches. But, let's see what actually turned out from that addendum. 16 inches, ten fish, doesn't really do a reduction on paper.

Nobody is catching 10 fish over 16 inches or keeping them, so it's a paper reduction, as we do it sometimes for future gains. At 14 inches, which is what New Jersey's regulations were, we took a very dramatic reduction.

We went down by five fish. We went from 14 and 14 to 9 at 14. But what did we do in the south? If I understand mathematics right, and I looked at it — I'm not the greatest mathematician in the world, but I understand that if you're at 4 fish at 12 inches, and you're supposed to do a reduction of going from 18

percent to 32 percent, understand, how do you get to 7 fish at 12 inches?

That did not sit well with the governor and the citizens of New Jersey since they fought that argument real well. It seems that the only people that took a hit here were the people who were at 14 inches, which happened to be New Jersey, Delaware and the people fishing the Raritan Bay.

On top of that, we go out to public hearings now on the striped bass amendment. Here is the document we went out to public hearings with. This is the July document. In there, there's about -- I don't know the exact reference but there are about 100 references -- and somebody else will basically do the numbers -- to producing areas.

Between the December meeting and the February meeting, when we come to vote on Amendment 6, all references but about five get eliminated from the document. That's not what we agreed to. That's not what we went to public hearings with.

That caused a lot of problems. We understand that we must move forward, and we want to do that with the cooperation of the commission. But, this puts us in a very difficult situation, because we've done this before. Remember, we had two fish at 28 inches.

When there was an addendum to a plan, we wanted to stay at two fish at 28 inches and basically got turned down and basically was told you have to implement a slot fish. That was under Amendment V. That was for our coastal fishery. That was not our first choice. It was the board that basically voted to make us go that way.

So that was our plan approved on the coastal. Now, you're saying to us that our coastal fishery plan -- because it's not a producing area; it's a coastal fishery plan that has been approved and it's supposed to be status quo under Amendment V -- is being changed.

That is a very hard sell. I'm the governor's appointee. I have to go back and explain this to my governor. I have to basically take, as we all do, the abuse of the fishermen sometimes basically saying, well, you're not being fair; we're not getting treated fairly.

And 99 percent of the time I can basically explain that because, we're all being fair under tables and charts. This is how the technical committee has reviewed it. This is how we come up with this

position. I couldn't do that under the Weakfish Amendment.

I can't do that under the Striped Bass Amendment. That puts me in a very difficult situation, because then I have to go back to the citizens and basically say I don't think we were treated fairly.

I have to go to the governor, who I'm his appointee, and say we were not treated fairly, and we need to take recourse on this action.

So what I'm asking and I'm proposing on this is we will let New Jersey stay status quo, because, truthfully, the regulations we have in place right now, we're closed January and February. We don't have to do that.

It basically would -- if we opened that fishery -- and I'll guarantee you in 2000 and 2001, not in 2003, because it is mighty cold right now, but those two years we had big fisheries going on in the Raritan Bay and in the Delaware Bay.

They made up a large portion of our fishery. We shut them down. We also have fishermen that fish up in the Delaware River. We close them when the big fish are there, because we've always had a spawning area closure.

We want to keep that in place, but we have to leave them some recourse. I mean, the people in Pennsylvania and New Jersey and Trenton that fish up in that area there, they don't see big fish. They never do.

At least in the slot limit, it gave them an opportunity to keep a fish once in a while without going to producing area status and reducing it to 20-inch fish, because we could have done that years ago and we never did.

So what I'm asking truly here is for the board's indulgence for one year, just 2004. Even if the addendum to the plan is not straightened out, we will come in some of the regulations in 2005 to come in compliance with everybody else.

But I'm looking -- because the regulations in New Jersey are not handled by the Division of Fish and Game. I have to take this to the legislature, and the governor has to sign off on it. It's a legislative action.

It's one of the only fisheries in the state, because that's how important it is. You try to convince

legislators, when they think we're being treated unfairly, and the governor thinks we are treated unfairly, to implement a bill that will change to these regulations.

It makes my job very difficult. Again, thank you for giving me all this time. I'm sorry if I dragged it out.

CHAIRMAN FLAGG: Okay, thank you, Tom, for your comments. I'd like to ask, from a procedural standpoint, if Vince could give us some guidance relative to this particular motion?

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thank you, Mr. Chairman. Now, an action to amend or rescind a previous action by the board would require a two-thirds vote of the board members. So if this motion is the same as the motion that the board considered in June, then the motion to amend or rescind it will require a two-thirds vote.

CHAIRMAN FLAGG: Thank you, Vince.

MR. FOTE: Lew.

CHAIRMAN FLAGG: Yes, could I get to Gil first, and then I'll get right back to you, Tom. Oh, in response to that question, yes, Tom.

MR. FOTE: If I remember the motion, it did not cover New Jersey. The motion covered -- I'm trying to think what motion. Could you read the motion that was basically voted down?

MS. GAMBLE: The very first motion from the board's June 8th meeting is "Move to approve Option 1 and the bonus fishery from New Jersey's proposal." And that motion was approved. Option 1 was the two at 28.

CHAIRMAN FLAGG: Tom.

MR. FOTE: So to that point, we never voted New Jersey -- we didn't vote on New Jersey's proposal. It was ruled out of order at the time. New Jersey's proposal was never voted on, so it does not require a two-thirds vote. Sorry to disagree with the Executive Director.

CHAIRMAN FLAGG: Gil.

MR. POPE: Thank you, Tom, for clearing up some of that, but I got a little confused when you said that the board at one point had forced you to go from two fish at 28 to one fish at 24 and one fish at 28.

If you could go over some of that original reasoning as to how you can do that and whether you're talking about a combination of coast and the bay, or whether it's just the coast and so on. Thank you, Tom.

CHAIRMAN FLAGG: Yes, Tom.

MR. FOTE: Remember the addendum that we pushed through to basically protect the larger fish, which New York, New Jersey and a few other states voted against, but we were forced to come up with alternatives to protect the bigger fish, because there was concern under the higher mortality rate.

New Jersey came in with three proposals. One of those proposals, the first one which was our prime proposal, was to stay at two fish at 28 inches and to basically reduce our commercial fishery allocation by the necessary percentage to basically protect the big fish. That was turned down.

We put in a proposal for the coastwide -- we basically took coastwide, because in New Jersey we look at everything what we have to put in along the coast for law enforcement.

I can't have a separate size limit on the mouth of Sandy Hook, or I can't have a separate size limit on the mouth of the Delaware River, because it becomes unenforceable and Rob Winkle beats me over the head ever time I do that, so we put in a law that's enforceable.

The second proposal we put in was to allow us to go for two fish, one at over 28, one 24 to 28, with the understanding that we would protect the bigger fish, that we would basically do that. That is the proposal.

We looked at the thing and said, well, we'll see how the board votes on that. That was not our first option, but that's how the board voted. That's how we got to the slot limit. With that, Delaware basically came with the same proposal, so did Pennsylvania, and Connecticut put in a proposal that matched something like that.

But they were approved under for coastal. It was not for producing areas. New Jersey doesn't have any producing area status, because we never basically implemented separate regulations for a producing area.

All our regulations that are done are coastal, because we didn't want to go to 20 inches. We didn't want to go to the 18-inch fish. That's why we always did it that way. Does that answer your question, Gil?

MR. POPE: Yes, thank you very much. We should have all been just as concerned about you were about the bigger fish, and Rhode Island should have had that same option, I think. But that's water under the dam. Thank you.

CHAIRMAN FLAGG: A.C.

MR. CARPENTER: I'm about as confused as I can get, but that's normal for me. I don't know what "status quo" in New Jersey is. The only thing that I have before me here is the 2003 review that is put together, and that's based on the 2002 regulations.

Could you go to the 2002 regulations and then go through what 2003 are, so that I can write that down and try to figure out where I'm at in this thing?

MR. FREEMAN: A.C., what document are you looking at?

MR. CARPENTER: I'm referring to the 2003 review of the Atlantic States Marine Fisheries Commission's fishery management plan for striped bass dated November 2003, and on Page 12 through 14 are regulations for 2002.

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: I was just going to try and help out. A.C.'s referring to a document that we will be looking at later. In the back, it does have the 2002 regulations, which states that New Jersey's recreational regulations are one fish between 24 and 28 and then a second fish above 28 inches. In addition to that, they have a bonus fishery, which is, I believe, the regulations they have in place for 2003 as well.

MR. FREEMAN: Yes, that's correct, A.C. The regulations that are presented in that document are correct.

MR. CARPENTER: As status quo.

MR. FREEMAN: As status quo. As was previously mentioned, we do have a closure year round in our coastal areas. That is because we have had a fishery concentrating on over-wintering fish, where these were actually not caught by hook and line or bait.

They are essentially snagged in an effort to circumvent the regulations. It was a very problematic fishery, where large numbers of fish were taken. Those areas were closed. As indicated, also closed is

the spawning area to fishing in the Delaware River in combination with Delaware and Pennsylvania. So, again, those regulations, as presented in that table, are the status quo.

CHAIRMAN FLAGG: Dave Borden.

MR. BORDEN: Thank you, Mr. Chairman. Two points, one point is a procedural point. Normally, I don't raise these types of issues, but this issue is not on the agenda in terms of providing public notice that we intended to take this action.

Unless somebody can correct me on this, it isn't on the agenda.

I'm not sure how any member of the public would know that we were going to discuss this issue and potentially take action on it, so I would question whether or not it's appropriate.

I'm happy to be corrected if, in fact, there was notice, and I'm just not aware of it. Let's see, actually, I'll just stop there.

CHAIRMAN FLAGG: Tom.

MR. FOTE: To that point, we went to the Policy Committee and asked this to be put on the agenda. We made it pure and plain at the policy committee meeting that we wanted to review this and that's why it was kicked back to here.

Remember the letter that was in your packet from Marty McHugh at the Policy Committee asking for that request back then from our director.

CHAIRMAN FLAGG: David.

MR. BORDEN: I'm not going to debate with Tom. I appreciate that clarification, but that isn't the point I'm making. If that was the decision, then we should have distributed an agenda with this issue on the agenda. That's my point.

My concern here is not to argue pro or con the proposal, but I guarantee you, as sure as everybody is sitting around this table, there is going to be some constituency that is going to be impacted by this, and they're going to say, "Well, when did you do that, and let me see the agenda for that meeting." That's not on the agenda. I would just question whether or not we should take action at this point.

CHAIRMAN FLAGG: Well, I appreciate, David, those comments, but I know Tom brought this up at the beginning of the meeting and asked that it be included on the agenda, and we did include it on the

agenda, and there were no objections from the rest of the board members at that time.

I think that it's appropriate to deal with this issue. Yes, Gordon.

MR. COLVIN: To that point, Mr. Chairman, I would also point out that Agenda Item 7 appropriately addresses the charge, I believe, from the Policy Board to address the underlying issue.

It's a difficult issue for New Jersey, because we are almost in a "chicken or egg" situation between the discussion of the producer area issue generically under Item 7 and dealing with what they have proposed here by this motion at this time.

I do not find the motion out of order. I understand why they had to offer it now. I do have a couple of remarks on the issue, if it's timely, Mr. Chairman. Just a couple of points and, again, because of the underlying issue.

First, it is my opinion and my read of Amendment 6 - - and I'd like to see if the staff would agree with this - - that, in fact, while Amendment 6 clearly lays out a separate management approach for the Chesapeake that's based on an historic underlying model and bay mortality estimate-driven approach and a separate approach for Roanoke-Albemarle, and all of the rest of the coastal population is pretty much treated separately and the same, that the plan does not rule out the possibility that for a geographically defined unit within which a unit stock is largely confined such as Delaware River and Bay or Hudson River, that an approach equivalent to what has been done with the Chesapeake stock could not be developed and implemented for those geographic areas, should the management jurisdictions there choose to do so in the future. Am I right about that?

MS. GAMBLE: Let me ask for some clarification. Did you just say that it could not be implemented?

MR. COLVIN: I'm saying the plan does not rule out the possibility of doing so.

MS. GAMBLE: Absolutely, that's correct.

MR. COLVIN: That if, for instance, New York and New Jersey were to come up with a model-based approach to the Hudson stock within a defined geographic area within which that stock were confined, we could do so and seek approval under the conservation equivalency provisions of Amendment 6, for instance?

MS. GAMBLE: Correct. The argument is that the current Delaware stock, Delaware River, is all accounted for in the coastal migratory stock when we do the stock assessment.

MR. COLVIN: So we have an option. All I'm saying is it's not that the Chesapeake is permanently must be separately forever established. We could go another route if we chose elsewhere.

Second point, and this is the one that concerns me with respect to the long-term ramifications of where we go on this, it's been my understanding that all of the analyses in Amendment 6, from the get-go that assess the consequences or the effects of different management choices on our selected reference points, were based on a pooled data for all of what we have ended up referring to as the "coastal resource", which includes the Hudson, which includes the Delaware and which includes the fishery in the ocean.

I see staff nodding, and I see Alexei nodding, so I assume that I'm right on that. Now, what that means to me is that if we move -- and tell me if I'm wrong here -- if we move down a path that enables areas, whether it's the Hudson River or Delaware Bay or some other area, to institute a less conservative size limit than the two at 28 standard we ended up at, that, in fact, what it means is that any other area -- well, what it means is we'll exceed our projected reference points, and we'll have to compensate in other areas. Am I right about that?

MS. GAMBLE: Unless they submitted a conservation equivalency proposal that had the same percent MSP as the other states have done.

MR. COLVIN: All right, that's the concern. In other words, it's a zero sum game. If we ease up for whatever reasons, for whatever motivates us, if we ease up on restrictions in certain areas, we're going to have to compensate somewhere else. I just think that needs to be clearly stated before the board.

The third point I'd like to make is that I have just a little difficulty with the way the motion is constructed. It indicates that New Jersey would stay in status quo in 2004 until an addendum is completed to address New Jersey's concern.

But it begs the question -- and I think Tom spoke to this, but I'd just kind of like to get it clear on the record -- what happens in 2005 if we don't do an addendum? If we could get that clarified, Tom, for the record again.

CHAIRMAN FLAGG: Tom.

MR. FOTE: I'll clarify both points. One, if we could change the wording, what I said and I guess it got a little -- my motion basically says we will stay status quo in 2004. It did not basically hinge on the Amendment 5.

What I said after that got -- if the seconder will basically amend the motion, we'll just amend it to that. What I'm basically looking for is status quo in 2004. Let's see that the addendum process will come up with the appropriate regulations for 2005 that fits within Amendment 6, even if it's not what I want, even if it's not what New Jersey thinks is fair, but we will do that -- if the seconder will basically amend that motion to do that?

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: Tom, if you wouldn't mind, just look up at the board. She's about to delete those words. Is that exactly what you want to have happen?

MR. FOTE: Yes. To Gordon's second point, the question about did we appropriate all the fish necessary for all the regulations. What we appropriated under Amendment 6 is to allow every jurisdiction to go to two fish at 28 inches.

We're not going to two fish at 28 inches, because that's what we should allocate under that system, because that's basically what we had.

We also, at the last minute, amended the plan to basically exempt Chesapeake Bay, exempt Albemarle Sound, but also to exempt the commercial fishery of Delaware Bay to stay at a 20 to 26 inch slot limit.

We didn't ask for the same thing for our commercial fishery to stay at a 20 to 26, because we didn't have that for our commercial allocation. But that was done. I don't remember any stock assessment basically doing -- we're at a fully recovered fishery. I don't think one year is going to make a difference.

Plus, Amendment 6 calls for everybody to go to two fish at 28 inches, if that's what Massachusetts and everybody else want. Also, there was an increase in the fishery, in the commercial fishery at 43 percent.

Are you saying that you allowed the increase because you basically raised the size limit in New Jersey, Delaware, Pennsylvania, which New Jersey and

Pennsylvania have no commercial fishery, to basically handle that in our recreational. I mean, that's part of it. I don't know if that answers all of Gordon's questions.

CHAIRMAN FLAGG: Thanks, Tom. I have one question about this revised motion, and that is does this mean that New Jersey will not take advantage of the increased commercial quota allocation for its recreational fishery?

It's a little unclear here, and I might make a suggestion, if I may, to include in that motion -- I think it gets at the heart of the issue -- move that New Jersey stays status quo in 2004 with respect to the New Jersey-Delaware River and Bay recreational fishery. Is that where we're at, just to be specific.

MR. FOTE: I mean, status quo is status quo, that we keep exactly --

CHAIRMAN FLAGG: To that component.

MR. FOTE: -- commercial fishery, everything else.

CHAIRMAN FLAGG: Yes, thank you. Yes, Dennis.

MR. ABBOTT: Thank you, Mr. Chairman. Backing up just a little bit, you know that I would never disagree with Gordon Colvin. I've always said that he's the man to agree with, but I think that the difference in looking at Agenda Item 7 in a broad discussion of the producer areas is far different than Agenda Item 5, where we place this New Jersey proposal, which is requiring board action. I side with David without doing this the right way, that we're really not where we should be.

CHAIRMAN FLAGG: Tom, I wanted to get back, if I may, did you want to have us include that additional language, which I had suggested, or would you rather have it stay as it is?

MR. FOTE: You can include the additional language, but status quo means status quo. So if you want to put it in for the commercial fishery also, I have no problem doing that. We would not take advantage of any changes in Amendment 6.

We would stay status quo for 2003 and carry all our regulations forward. That means we would not take the -- what was it -- 90,000 to 100,000 pound increase in our trophy tag program.

CHAIRMAN FLAGG: Okay, if that's --

MR. FOTE: Understand, we are going to basically save 90,000 pounds there. We're going to keep the bays closed for the two months, and we're going to keep the spawning area closures in place, because under Amendment 6 we're not required to do any of those. So if we changed our regulations, we'd open up for two months, we'd take off the spawning closures, and we'd take full advantage of the increase in the commercial allocations.

CHAIRMAN FLAGG: Okay, thank you, so it will remain as it was prior to my suggestion. Yes, Ritchie.

MR. WHITE: Just so I can be clear, the technical committee looked at these regulations and said that they would not be in compliance with Amendment 6, so we would be voting on allowing regulations that do not meet the requirements of Amendment 6 to be promulgated under Amendment 6?

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: Correct, that's absolutely correct. The status quo regulations for New Jersey do not meet the standards of Amendment 6, according to the technical committee.

MR. WHITE: A follow-up.

CHAIRMAN FLAGG: Ritchie.

MR. WHITE: Would we be then creating a state out of compliance?

CHAIRMAN FLAGG: Would you like to respond to that?

MR. ROBERT E. BEAL: I don't know if "like to" is necessarily the word I'd use. A motion like this that creates or allows a state to implement regulations that don't achieve the standards in the fishery management plan, which is what the technical committee review is saying, the boards have done that in the past, but only linking it to other changes that are coming down the road.

In other words, the way this motion was previously worded was that the board would allow New Jersey to stay status quo while we're developing an addendum. But now that it's just staying status quo in 2004 and something else may or may not happen, I think that creates a process inconsistency that Ritchie White is referring to.

No, we're not -- the board can't create a system or can't approve something for a state and they implement it, and they call them out of compliance later, but it creates an inconsistency with allowing one state to do something that's not consistent with the fishery management plan that is currently implemented.

CHAIRMAN FLAGG: Tom, to that point.

MR. FOTE: To that point, I go back to weakfish. The technical committee did not approve seven fish at 12 inches. The board basically took that because that did not basically do the reduction, and we objected to that, and it went through, anyway.

CHAIRMAN FLAGG: Paul.

MR. DIODATI: Just a question for New Jersey. Relative to your comments about the spawning closure regulation, are you implying to the board that you're only interested in maintaining a conservationally responsible measure if this board forces you to?

MR. FREEMAN: If I could answer, Paul.

CHAIRMAN FLAGG: Bruce.

MR. FREEMAN: We're very much concerned that allowing any type of fishery on the spawning areas is essentially detrimental to the stock, the reason being we have a large population in the area very close to the spawning location, for example, the metropolitan Philadelphia area, Camden area.

We've had problems -- originally, we had a closure in the spawning area, Paul, where people were fishing, not for striped bass but for other species, and, by and large, catching striped bass.

We put in a regulation that prohibited the use of bait in those areas. We require circle hooks. We now restrict the size of hooks you can use, so if you fish for another species, such as white perch, you'd use gear that will usually not catch striped bass.

But, it's a continuing problem. We had undercover operations where people were catching striped bass illegally, hiding them in the weeds, and it required a substantial effort by enforcement people to stop that.

We believe that allowing a fishery in that spawning area is going to be very detrimental. We'd like not to see it, but as it has been interpreted under Addendum 6, we essentially could allow it.

So, yes, we could have a very aggressive fishery but, from our standpoint, feel it's the wrong thing to do. While I have the mike, let me just indicate that the issue that New Jersey presented several alternatives, we were turned down, not that these alternatives weren't valid, but we didn't substantiate the conservation equivalency.

We did not calculate that. Therefore, the technical committee indicated that since we didn't substantiate those other alternatives, the only one they approved was two fish at 28, which was the base for the plan.

CHAIRMAN FLAGG: I have John Nelson and then Tom.

MR. NELSON: Thank you, Mr. Chairman. This is an attempt to help get us over this hurdle here. I know New Jersey wants to do the right thing as far as the stock.

Bob has mentioned as far as the timeframe for addressing something -- and we have run into it before where other states have said, well, we have a legislative process going on, and we would not be able to meet the deadline until March, June, some date in '04, for example, here.

Perhaps you've covered this already, Tom, in saying that -- I don't know, I'm sorry, I couldn't remember whether you said you already had initiated legislative action; or, if you haven't, what would be the timeline that you would have a plan back to the technical committee for consideration so that you would be in compliance with Amendment 6?

CHAIRMAN FLAGG: Tom.

MR. FOTE: No legislator has moved forward to do any kind of bill on changing the rules and regulations, so far. We have a new legislature that just came in session -- it will come in session in January.

So they have to introduce a new bill starting in January, and it has to go through the process that it goes through. But, there is no legislator, that I know, that is moving forward with a bill that does this, because of their concerns of what is going on here.

Again, it's going to be a process to see what happens. It has to be a bill that the governor will support, that the senate will approve and the assembly will approve, and they're getting a lot of voices from their constituents saying why are we doing this, and there

are other alternatives, as you well know, that we could do this, and I'm not saying anything like that, but that's really what we're looking at right now.

We need to address this problem one way or the other today, and then I have to go forward. Marty has to go forward, and we have to decide what our next step will be. We are still thinking this board could address this problem and address our concern.

Again, we're not asking for, I don't think, any real special consideration. What we're asking for is a time period because even if you think of the process with this, we're just asking for 2004, and let's be realistic with what goes on and how the system goes.

MR. NELSON: Well, I think it would have been helpful if you had come in and said we have pushed the issue and we have -- I think you could find a legislature that was willing to be bold enough to come forward and say we want to do what we need to do to be in compliance with the plan.

I'm sorry, I'm not sure that I can agree with that statement of you can't find somebody. However, again, this is an attempt to try to get over this hurdle here, because, quite frankly, I can see how the vote is going to go -- at least I can visualize how it is going to go.

Since the technical committee did not accept status quo, do you have a sense of what you could give up from status quo? The agency should be able to give up, through regulatory process, in order to make this as compatible as possible with Amendment 6. Bruce, do you have an answer to that?

CHAIRMAN FLAGG: Yes, Bruce.

MR. FREEMAN: John, I really can't answer that, only because it's controlled by statute, not by regulation. As Tom indicates, all our other fisheries, including lobster for the first time in 50 years -- several years ago we have regulatory authority, but we do not on striped bass. So I can't, and we simply can't tell how the legislature would perceive this.

MR. FOTE: To his point.

CHAIRMAN FLAGG: Okay, to that point, Tom.

MR. FOTE: Dick Herb is here representing Assemblyman Smith, and Assemblyman Smith has basically expressed his -- because usually, the legislative appointee -- when Senator Bassano would put the bill in -- Assemblyman Smith has expressed

his concerns with me with what happened on weakfish, and now what's happening on striped bass. I'll let Dick --

MR. DICK HERB: Yes, thanks, Tom. I really can't predict what the legislature is going to do, but I can tell you, as Tom said, that the Assemblyman does not feel we've been treated fairly on this issue, and he agrees with the amendment.

CHAIRMAN FLAGG: Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. That's a hard comment to follow, but I'll try. I reviewed the minutes of the last meeting, and I've got Mr. Nelson's comment on the board here and it says, "If we can't resolve this problem in any other way, we'll have another action plan voted in this fall, and if the commission is willing to appropriate funds to do an addendum for whatever items associated with striped bass, that would be what the commission discusses and votes on. If they agree to start an addendum in '04 and allocate staff resources and funds, then that's what would happen."

It seems to me we're at an impasse. If we allow this situation -- I'm sorry, I didn't mean situation. If we allow this change to occur, I think we're abdicating our responsibility as board members and to what the fishery is all about.

It's unfortunate that Delaware and New Jersey got caught up in the situation; however, the technical committee did support what they thought was the right decision, and it just seems to me we're spinning our wheels again.

We're not going to resolve it today, so I'm going to make the following suggestion and that is, one, that we take a vote on this, and I would hope it doesn't pass; and that, two, that Mr. Fote or New Jersey would follow up with another motion that creates a situation where we can move forward to working on an addendum for 2004 to resolve both the Delaware and the New Jersey issues. With that, I call the question.

CHAIRMAN FLAGG: Jaime, you have the last word.

DR. JAIME GEIGER: Thank you, Mr. Chairman. I want to be very clear on this. This motion, if approved, would put New Jersey out of compliance with Amendment 6, yes or no, for the record, please?

CHAIRMAN FLAGG: If the board approves it, no, they would be in compliance. If the board wants to approve this proposal, then they would be considered to be in compliance. But Gordon brought up a very good question, that if, in fact, it doesn't meet the requirements in terms of effort control, then there is going to have to be tightening down elsewhere.

DR. GEIGER: Thank you, Mr. Chairman.

CHAIRMAN FLAGG: Yes, Paul Diodati.

MR. DIODATI: Mr. Chairman, I'd like to make a motion to postpone until the state of New Jersey provides enough technical information to the TC to review and provide some guidance back to the board.

DR. GEIGER: Second.

CHAIRMAN FLAGG: Jaime, second. Yes, Megan.

MS. GAMBLE: Today's date is January 26th. These regulations are supposed to -- or January 16th. These regulations are supposed to be -- 17th, darn it.

Anyway, what I'm trying to say is we've got about two weeks before these regulations are supposed to be in place. I guarantee you I can't get the technical committee back together, never mind have New Jersey together a proposal for the technical committee to review before January 1st so there is a problem in terms of timing.

CHAIRMAN FLAGG: Ritchie.

MR. WHITE: Thank you, Mr. Chairman. I'd like to go back to the out-of-compliance issue. My view would be that New Jersey would be out of compliance with Amendment 6, with these regulations, but we would be allowing that. Our vote would allow New Jersey to be out of compliance, but these regulations clearly are --

CHAIRMAN FLAGG: I think that's correct, Ritchie. Yes, I stand corrected. I want to get back to Megan's comments concerning Paul's motion. I feel it's very well intended, and I wish there were more time to be able to work this thing through via the technical committee, but I think we do have a real problem time-wise in terms of a postponement being able to meet the deadline for implementation of these new measures. That's my only concern. Paul.

MR. DIODATI: Well, I think the intention here is until the technical committee has an opportunity to

review the proposal, then New Jersey's regulations would have to be consistent with Amendment 6, until the proposal is reviewed.

CHAIRMAN FLAGG: I think as a matter of course, though, in terms of striped bass, a state can bring forth a proposal at any time to have a conservation equivalency to whatever regulations they may currently have in effect, so I'm not sure that it really does anything more for us than memorialize what states are allowed to do anyway in terms of bringing forth a proposal, which would be considered by the technical committee for conservation equivalency purposes. Paul.

MR. DIODATI: Are you asking me to withdraw the motion?

CHAIRMAN FLAGG: No. Well, I'm just suggesting that I'm not sure what it really gains for us. And, no, that's certainly your prerogative. If you want to leave the motion on the board, we'll vote on it. It's your prerogative. A.C.

MR. CARPENTER: Mr. Chairman, it seems to me that New Jersey's proposal was submitted, I understand, back in March or April of 2003. It was voted down. Only the two at 28 was approved. All of the other options, which include status quo, were rejected because they did not provide conservation equivalency.

Bruce, himself, suggested that they didn't provide the technical justification for any conservation equivalency. It seems to me that New Jersey had the opportunity from March or April, when their proposal was not approved, to put together the technical expertise that they needed to, the justification for the conservation equivalency.

We've just done one with Delaware, where they took a 33 percent cut in the season. New Jersey certainly had that option. There was a technical committee meeting back in October where that could have been vetted and placed on the agenda for today's action. I think that is the course of action that we should have embarked on. For that reason, I'm not going to be able to support New Jersey's motion or Paul's idea that has not been seconded yet. I think it's time to call the question.

CHAIRMAN FLAGG: Thank you, A.C. Do we have a second for Paul Diodati's motion? Is there a second? Jamie Geiger, thank you. Okay, we have a motion on the floor, and I'd like to move along, if we may.

I don't think there is a lot of discussion we need to have with respect to this motion. So if you would all caucus with your individual states, and we'll take a vote.

We're voting on the second motion which is move to postpone the above motion pending technical committee review of the New Jersey proposal. Okay. Yes, Tom.

MR. FOTE: Before you caucus on this vote, you should let Pennsylvania and New Jersey at least discuss what you're asking us to do, because we basically have made the position to this board very clear.

We don't think that — we think that we are approved for this under Amendment 6, because we're status quo under Amendment 5. The director very clearly read the motion, and basically that's how we interpreted it. Basically, that is what we're doing.

We are not coming before you asking for conservation equivalency on this. We have never done that, and we have not asked to do that. So you're basically telling us something that we have not said we were going to do or not. I mean, I want to be clear on that and understand that.

There are also some of the members of the public that have come up especially for this, and I hope, before we vote on this, we at least give them the opportunity, since they basically took the time and effort to come up here to basically express their concerns.

CHAIRMAN FLAGG: Thank you, Tom. Could we caucus at this time. We're getting along to 12 o'clock. We have a number of agenda items on the agenda yet to be dealt with. We can't leave these items unattended to but in deference to Tom's suggestion, are there any members of the public that came here to speak specifically on this issue?

And if there are more than one, could we have one spokesman for that group? Yes, I see there is one person so please come up; and if you could be to the point and fairly brief, it would be appreciated. Thank you.

MR. TONY BOGAN: Thank you, Mr. Chairman, Tony Bogan from United Boatmen of New York and New Jersey. I know "brief" is not normally in my vocabulary. I'm going to try damn hard. Just pass a few of these down, please.

I was going to originally bring this up when it came to the discussion of the addendum and the producer area, but, obviously, this is all directly related to it. Most of you around the table are completely familiar with the arguments that we've made in the past, and I think Tom just brought something up that's very important.

All of the delay -- the suggestion by Mr. Carpenter that New Jersey had the opportunity to do this, well, New Jersey has been taking the opportunity to work on this by repeated discussions at every single meeting of the Striped Bass Management Board as well as the Policy Board, bringing up the fact that staff's final interpretation of the removal of "producer area" from Amendment 6 is what we disagree with.

That's where all of this comes from. This whole motion is predicated on the fact that by loss of our producer area status, we would be forced to go to two at 28.

What I'm handing out -- and I'm sorry there are not enough for one for everybody, so some states will have to -- just one for each of the three members. I only made 30 copies -- is a copy of the administrative record going all the way back from December right through the present with comments in quotes that far exceed in number, volume and content what is in the staff review that was given at the last meeting in August as far as their interpretations of what happened with Amendment 6.

I had wanted to go into this in detail, but, obviously, we're running really short on time, so I'm going to ask that perhaps while the caucus is going on, all you have to do is flip through it and see some of the comments to really show where New Jersey has been coming from right from the state, which was the interpretation that Amendment 6 requires New Jersey to change its regulations is incorrect.

We do not agree -- and when I say "we" United Boatmen --; obviously; I can't assume to speak for the state. The state I think has done an excellent job at doing that themselves.

But just a couple specific examples is that I have a number of board members, again, far in excess of the one board member that is quoted by the staff analyst of Amendment 6, that are saying from as far back as December to as recently as the February meeting, that it was not their intent for states regulations to have to be more stringent under Amendment 5, that there are

discussions far in excess of the one comment from Page 30 of the December minutes in Rhode Island that staff uses to justify the fact that allocation was "status quo."

That's all that status quo meant was allocation where I have a number of different references of board members saying "status quo" in relation to mortality, in relation to regulations and in regulation to allocation.

So all of this comes down to the same thing. It is our opinion there is far more administrative record that has been put together by the state, by United Boatmen, by RFA, that is in conflict with the interpretation that Amendment 6 would require New Jersey to have to go to two at 28.

So that's really where it all comes down to, it all comes down to starting with the July version of the draft document which, by the way, Tom, it was 144 references to producer areas that was in the first document, including the public presentation that was given by Mr. Beal, which I have a copy of, which "producer area" is rampant throughout every aspect of this document.

It was pointed out to me by Executive Director O'Shea at a previous meeting that there were actually options in the draft version of Amendment 6 that did not list producer area.

There were also just as many that did list producer area, and I would point out that the motion that Director McHugh read earlier, that sets the coastal regulations at two at 28, does not make any mention of any of the specific options that would either remove or not remove producer area status.

So, I really hate to have to rush through it, but I know everybody is pressed for time. I think you all got my point. I really appreciate you letting me take this time. Thank you.

CHAIRMAN FLAGG: Thank you for your comments. Now, if we could take a moment to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN FLAGG: David.

MR. BORDEN: I have a question of process so I understand, so if this motion passes, it will go back to the technical committee, and I assume, if the

technical committee approves it, then it will come back to the board for a, what, fax poll approval?

CHAIRMAN FLAGG: Yes, I would assume that would be the process, yes. Is everybody ready to vote on this? We're voting on the Diodati-Geiger motion to postpone the above motion pending technical committee review of the New Jersey proposal.

All those in favor, signify by raising your right hand, two in favor; those opposed, twelve opposed; abstentions; any abstentions; null votes. The motion fails on a vote of 2 to 13.

We're back to the original motion, and I'm not sure whether this comes back to the discussion we had earlier about the ground rules relative to this issue, but I think we need to clarify that.

My sense is that when we voted originally to allow New Jersey a two fish at 28 inch minimum size in the Delaware Bay fishery, we did not specifically reject any of the other elements. We didn't take them up, so I don't think that this is a situation where we're looking at a rescission of a previous action by the board.

Therefore, a majority vote on this issue would carry, not a two-thirds, just to be clear on that. If anybody has any objections to that, please state them now. I do feel that New Jersey is correct, we never did take those issues up and specifically reject them.

So, we have the New Jersey motion, which is to move that New Jersey stays status quo in 2004. If we could now caucus. Tom, just very briefly, please.

MR. FOTE: Paul asked a question before, and I wanted to answer it and let me answer it now. Paul asked that wouldn't you keep the spawning area closures in place in the Delaware River -- and Pennsylvania wants to say something, because it affects Pennsylvania, also -- it's very difficult to put closures in the area and keep spawning area closures.

One of the reasons we got around it and never went to the 28-inch fish is by putting the slot limit in place, because those people up in that area, including Pennsylvania and New Jersey, do not see big fish.

So they were willing to give up the big fish and have the opportunity to once in a while take one fish home to eat. That was really what we did here.

If you put in what is required under Amendment 6, and we push them up to 28 inches, the only time they see a fish above 28 inches is -- which Maryland and the Potomac River and Washington, D.C., has made that point numerous times before this board and so has North Carolina and the Albemarle Sound -- is during those spawning areas.

That's why the producing area was basically put in the plan in the first place to allow those jurisdictions to have the opportunity to catch a fish. But if you're going to require us to go to 28 inches and do the same thing to us along the coast, then I'll have -- that's why we'll have to reconsider it.

CHAIRMAN FLAGG: Okay, I think we've had enough discussion. Take a short caucus and then we'll call the vote.

(Whereupon, a caucus was held.)

CHAIRMAN FLAGG: Everybody ready? Okay, all those in favor.

MR. FOTE: Ask for a roll call vote, please.

CHAIRMAN FLAGG: Okay, we've had a request from New Jersey for a roll call vote. I'll ask Megan to call the roll.

MS. GAMBLE: The state of Maine.

MAINE: No.

MS. GAMBLE: New Hampshire.

NEW HAMPSHIRE: No.

MS. GAMBLE: Massachusetts.

MASSACHUSETTS: No.

MS. GAMBLE: Rhode Island.

RHODE ISLAND: No.

MS. GAMBLE: Connecticut.

CONNECTICUT: No.

MS. GAMBLE: New York.

NEW YORK: No.

MS. GAMBLE: New Jersey.

NEW JERSEY: Yes.

MS. GAMBLE: Delaware.

DELAWARE: Abstain.

MS. GAMBLE: Maryland.

MARYLAND: No.

MS. GAMBLE: Pennsylvania.

PENNSYLVANIA: Yes.

MS. GAMBLE: Washington, D. C.

WASHINGTON, D. C.: No.

MS. GAMBLE: Potomac River Fisheries Commission.

POTOMAC RIVER FISHERIES COMMISSION: No.

MS. GAMBLE: Virginia.

VIRGINIA: No.

MS. GAMBLE: North Carolina.

NORTH CAROLINA: No.

MS. GAMBLE: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Abstain.

MS. GAMBLE: U.S. Fish and Wildlife Service. Can you please state it on the record.

U.S. FISH AND WILDLIFE SERVICE: Abstain.

CHAIRMAN FLAGG: Okay, the motion fails on a vote of 11 against, 2 for, 3 abstentions so the motion does not carry.

STATE PROPOSALS - MARYLAND

CHAIRMAN FLAGG: At this time I would like to get back to a couple of the state proposals, which have not been heard yet, and I note that Pete Jensen is here and so at this time we will take up the two Maryland state proposals, so I'll turn it over to Megan.

MS. GAMBLE: The first proposal is for the Chesapeake Bay spring trophy fishery. There has been a harvest cap for this trophy fishery since it was reopened in 1991 after a six-year closure. Over the years that harvest cap was established through negotiations between board members and has been continually set at 30,000 fish since 1996.

So, while the trophy fishery was not included in any of the Chesapeake Bay implementation proposals under Amendment 6, based on the technical committee's recommendation, the board established that a 30,000 fish harvest cap for the fishery should be approved.

This proposal before you right now was submitted by Maryland on behalf of all three of the management entities in the Chesapeake Bay. This is an annual spring fishery on the coastal migrant striped bass.

The proposal indicates that the annual harvest cap would be based on the projection of the number of age eight-plus striped bass in the population, and that's using the ADAPT VPA, the virtual population analysis, that the stock assessment subcommittee does every year.

This harvest cap would be recalculated annually and come back to the board. So for the 2004 spring trophy fishery, the proposal would like to set the harvest cap at 40,624 fish.

I just have one other note, that the harvest cap was exceeded in the 2003 fishery. They landed a total of 43,490 fish, so they exceeded the harvest by 13,490 fish. That's something that will be brought up again during the FMP review.

The technical committee said that this is a scientifically acceptable proposal. They do have a couple of points they wanted to make which is that these projections should not be done beyond one year.

They should not be done for multiple years. It should come back to the board every year. There was some concern for relaxing the regulations in order to meet this increase in the cap.

There is also the concern that the virtual population analysis produces mixed stock estimates and this is a single stock in the bay, and then that the 2002 VPA indicates that the F is high, and as you heard earlier the VPA tends to over-estimate the population size in terminal years.

And then, finally, the technical committee had some discussion about concern over the cumulative impacts of increasing the fishing pressure on the coastal migratory population.

CHAIRMAN FLAGG: Any questions of Megan relative to this proposal? Yes, Paul.

MR. DIODATI: That one concern about it being a mixed stock, the VPA is looking at mixed stocks. Doesn't that suggest that the target would be over-estimated because you're looking at mixed stocks versus the single Chesapeake stock? I'm not clear on what the implication is, but I would intuitively think that you're over-estimating the quota.

CHAIRMAN FLAGG: Gary, would you like to respond to that?

MR. NELSON: That would definitely happen because you're assuming you're getting more fish than are actually out there on the VPA. So, definitely there is a potential for harvesting more fish than you actually should be able to, if there was an independent estimate of abundance from the Chesapeake Bay.

CHAIRMAN FLAGG: Paul.

MR. DIODATI: Nevertheless, the TC feels that this method is more scientifically acceptable than using the tag-based?

MR. NELSON: No, it wasn't -- it was acceptable. We didn't say it was better than the direct enumeration.

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: I don't want to confuse people. There was a handout sent out and I think that's on the second proposal. We're talking only about the spring trophy fishery right now, which has nothing to do with the tagging estimates. This is entirely different.

CHAIRMAN FLAGG: Paul.

MR. DIODATI: Then let me reask my question. The trophy fishery quota in the past, was that just set as an arbitrary level? How was that set?

MS. GAMBLE: Yes, as I stated earlier, it was set based on discussions amongst the board members and was not based on a technical analysis. What was it? Thirty thousand fish since 1996.

CHAIRMAN FLAGG: Dave Borden.

MR. BORDEN: Yes, thank you, Mr. Chairman. The fourth bullet down, I'm just curious, the issue is over-estimating the population size. There is a general tendency to do that in the VPA.

To what extent does that actually take place? How much of an over-estimate is there? I mean, there's a pattern. That's what was pointed out in one of the earlier presentations, so how much over is that retrospective pattern?

MR. NELSON: We don't have the raw numbers offhand, but it's a small percentage. It's really not that great.

MR. BORDEN: Is it a small percentage single-digit; double-digit small percentage? I'm just trying to think what the --

MR. NELSON: Single digit.

MR. BORDEN: Single digit, okay.

CHAIRMAN FLAGG: Other questions? Ira.

MR. PALMER: Given the fact that they overfished, I guess, almost nearly 50 percent -- if you said, about 50 percent, what's going to happen as a result of the fact that they overfished this past year?

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: Well, I'm jumping ahead a little bit. What you'll see in a few minutes is an FMP review that both Amendment 5 and Amendment 6 require that if a state manages a particular fishery using a quota, they are required to deduct it from the subsequent year's quota.

So, depending on which quota the board approves today, whether it be 30,000 or the forty-thousand-some-odd fish in this proposal, the Chesapeake Bay will be required to deduct the thirteen-thousand-some-odd fish from whatever that quota is.

CHAIRMAN FLAGG: Pete.

MR. W. PETER JENSEN: I'll move adoption of the 40,624 cap for 2004.

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: He just made a motion.

CHAIRMAN FLAGG: We have a motion from Maryland. We'll get it up on the board in a minute. Pete, could you repeat your motion.

MR. JENSEN: I move adoption of the 40,624 cap for Chesapeake Bay in 2004.

CHAIRMAN FLAGG: Okay, we have a motion. Is there a second?

MR. WILLIAM A. PRUITT: Second.

CHAIRMAN FLAGG: Second by Bill Pruitt. We'll get this motion on the board in a moment. Is there discussion? Yes, Gil Pope.

MR. POPE: My question is for Pete. Is this the first year of an increase from the 30,000?

MR. JENSEN: On the cap, yes, but I would also mention it's the first year that we have taken it to the technical committee for an opinion. Up to now, it's been simply what can only be described as a "negotiated" number around this table.

MR. POPE: Can I follow up with one more question?

CHAIRMAN FLAGG: Go ahead, Gil.

MR. POPE: Is this the first year of an overage that you can calculate, or have there been overages in the past?

MR. JENSEN: I think there might have been an overage back in 1995 when, again, an arbitrary limit of 5,000 was placed on the bay. I don't think there have been any overages since then. Five thousand back in '94 or '95. It would have been '95, I guess.

MR. POPE: I remember the first number, for some reason, as being 25,000 fish, and it was a target. It wasn't really a cap. It wound up being like 100,000 fish or something, and then after that we changed that, because we wanted to make it a cap rather than a target, and it went to the 30,000 number.

MR. JENSEN: Well, you're right about that. The 30,000 was, in fact, the first cap that was imposed, yes.

CHAIRMAN FLAGG: Other comments on the proposal? Yes, Paul.

MR. DIODATI: I guess I just wasn't clear on technically how this 40,000 was calculated. They

used the coast-wide VPA for eight-plus, and then you somehow adjusted that to assume for just the Chesapeake portion?

MR. SHAROV: The calculation is actually very simple. We have an estimate of eight years and older fish total abundance in 1996.

In that year the cap was established at 30,000 fish. So we are saying that we want to maintain the same ratio every year of the stock size of eight years and older and the cap of the fish of the migrants caught in the Chesapeake Bay.

So if the stock goes up compared to 1996, if it goes up by 50 percent, then the cap goes up by 50 percent. If the stock goes down by 50 percent, then the cap will go down by 50 percent. So what we want is a proportional increase or a decrease of quota that would follow the changes in the size of the stock. But we are talking about only the eight years and older fish.

CHAIRMAN FLAGG: Gil.

MR. POPE: Yes, I have a question about that. Is it all right if I ask Pete a question? What is the current size limit on the spring fishery now?

MR. JENSEN: Twenty-eight.

MR. POPE: It's 28 inches, okay. Thank you, because I was wondering if you're calculating with the eight year and over, how that correlates to the 28-inch fish. Thank you.

CHAIRMAN FLAGG: I'd like to just bring to the board's attention that we have to be done at 1:00 sharp, and we have a number of agenda items, so I hope we can move things along. Ritchie.

MR. WHITE: Is there a penalty associated with this if there is an overage in a given year?

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: Yes, as I stated earlier, both Amendment 5 and Amendment 6 state that if a state chooses to manage a fishery using a quota, TAC, cap, and that is exceeded, then the amount over will need to be deducted in the subsequent year's fishery.

CHAIRMAN FLAGG: Other questions? Are we ready to vote on this motion? I'm going to read the motion, and then you can caucus, and then we'll take a vote.

For the record, the motion is move that the option of the 40,624 fish for the spring trophy fishery be approved for the Chesapeake Bay. Motion by Pete Jensen, second by Bill Pruitt. Yes, Roy.

MR. MILLER: Mr. Chairman, it isn't clear to me what happened to last year's overage in relation to this motion.

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: We have not dealt with it. We will be dealing with it further in the agenda. This should not impact your decision on this proposal, the overage.

CHAIRMAN FLAGG: Ira.

MR. PALMER: Well, I guess Pete said he's going to address it next, but wouldn't it come off of this number here? If the amendment requires a reduction, it would come off of this number.

MS. GAMBLE: Yes, I'm sorry. Yes, I didn't look carefully at the way the motion is worded. My suggestion would be that it would be appropriate to approve the methodology while that number may be - the board may want to modify that number later in the agenda.

CHAIRMAN FLAGG: Paul.

MR. DIODATI: How does Amendment 6 treat coastal states in this regard? Are the coastal states going to get annual adjustments to either quotas or trip limits?

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: No, the coastal quotas are fixed in Amendment 6.

CHAIRMAN FLAGG: Okay, any other comments relative to the motion? Has everybody had a chance - shall we take just a moment to caucus?

(Whereupon, a caucus was held.)

CHAIRMAN FLAGG: Okay, all those in favor, signify by raising your right hand, 10 opposed, 5 opposed; abstentions, 2 abstentions; null votes; no null votes. The motion carries. Are you all set for the next proposal?

MS. GAMBLE: Yes, the next proposal was also submitted by the state of Maryland on behalf of the Chesapeake Bay.

CHAIRMAN FLAGG: Yes, Pete.

MR. JENSEN: I think we ought to address 2003 before we move on.

CHAIRMAN FLAGG: You want to address 2003?

MR. JENSEN: Yes, the alleged overage.

CHAIRMAN FLAGG: Okay, yes, can we have some discussion?

MR. JENSEN: I think there are several things the board needs to be reminded of or be notified of. First of all, we did not propose that cap. That cap was imposed at a meeting without prior notice.

You remember, Mr. Chairman, I objected that I thought it was not appropriate to adopt it in that form. Secondly, it was done at a June meeting when, in fact, our spring fishery was all over with. We only caught a few hundred fish from June on.

So if you choose to penalize us for an overage in 2003, you will be retroactively applying a condition that was imposed in June back to the first of the year, and I think that's inappropriate.

Now what I would propose to do, in order not to have a long discussion of this, is we would be willing to deduct the four-thousand-plus that we went over the 40,000, because if we had had opportunity to take this proposal to the technical committee before it was voted on, it would have been 40,000 instead of 30,000.

So I think we're willing to say that we will deduct that four-thousand plus that we went over 40,000 from the new cap in 2004 in order to settle this issue and move on.

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: My only comment is that the implementation of Amendment 6 is January 1, 2004. The only part that was exempted from that implementation date was the coastal quota.

MR. JENSEN: Yes, but the 30,000 cap was not in Amendment 6.

MS. GAMBLE: Right, it was a separate action.

MR. JENSEN: Right, it was a separate action. It did not take place until June of this year --

MS. GAMBLE: Correct.

MR. JENSEN: -- at what point we didn't even have opportunity to change our regulations. I would also remind the board that we have left in place, in Maryland, those provisions to protect the big fish that were put in place several years ago and then, based on some improved advice from the technical committee, everyone else removed them.

We left them in, and so we already had in place a two-fish limit, but only one could be over 28 inches. I don't think that we should be penalized when the 40,000 fish pales alongside the million or so big fish that are caught along the coast. We went along with the 30,000 with good intentions.

In this case, since we didn't even have a chance to address a way to control it until after the fishery was all over with, I don't think we ought to be penalized in 2003.

CHAIRMAN FLAGG: Megan, do you want to comment on that?

MS. GAMBLE: I would just state that, as was stated earlier, states always have the opportunity to submit proposals to change their methodologies and request conservation equivalency, because it wasn't done before then, I think that you guys were still under the 30,000 cap. There was no action taken, and I think that you're retroactively trying to change what was in place.

MR. JENSEN: No, we came in with a proposal which did not include the 30,000 cap or any cap, because it was not in Amendment 6. It was imposed on us in a separate motion so we did not choose the cap, and that's what Amendment 6 says, "if we choose to use caps", but we didn't choose it. It was imposed upon us after we had opportunity to even control it in June.

CHAIRMAN FLAGG: Pete, do you wish to offer a motion relative to this issue?

MR. JENSEN: Yes, I would move that we deduct from our 2004 overage that was just adopted, the amount that we went over 40,000 in 2003. I think those numbers are 43,490, so it would be 3,490 deducted from the 40,624.

CHAIRMAN FLAGG: Do we have a second to that motion? A second by A. C. Discussion on the motion. Yes, Ritchie and then John.

MR. WHITE: Megan, I'm still not clear. When we adopted Amendment 6, was the 30,000 pound TAC part of Amendment 6 at that point -- 30,000 fish, I'm sorry.

MS. GAMBLE: The trophy fishery is not addressed specifically in Amendment 6. It is indirectly with the statement that jurisdictions have the opportunity to manage a fishery with a cap. I will state, however, that the 30,000 cap was in place under Amendment 5, through board action, for their spring fishery in 2003.

MR. WHITE: So, without a change, that regulation would carry, without a new application?

MS. GAMBLE: Correct.

CHAIRMAN FLAGG: Other comments on the motion. John.

MR. NELSON: Just a question for Maryland. Did they take any action to liberalize the regulations that dealt with controlling the cap for '03 that, therefore, was in anticipation of having a higher cap, or were the regulations the same and it did just go over the quota?

MR. JENSEN: No, we kept in place the size limits and possession limits that we've had in place in prior years in the spring fishery.

CHAIRMAN FLAGG: Ira.

MR. PALMER: The 30,000 cap was part of the condition of approval of the spring trophy fishery; is that correct?

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: The 30,000 cap is something that was negotiated by the board in the past for the spring trophy fishery, correct.

CHAIRMAN FLAGG: Other comments on the motion? Gil.

MR. POPE: Pete, could you give me a quick, off-the-cuff -- can I ask Pete a question -- a quick off-the-cuff calculation as to what you feel your new figure would be minus the overage? Thank you.

MR. JENSEN: It would be about 37,000.

CHAIRMAN FLAGG: You're all set, Gil? Yes, Bruce.

MR. FREEMAN: I just want to raise the issue. It's somewhat ironic that the motion that we asked that was defeated just a few minutes ago, this is an issue that's outside Amendment 6; nevertheless, the board now is negotiating to vote on an issue that's outside the amendment.

So, the argument that many of you used about not supporting the motion we made that it was outside the plan's condition, this is another example of what we're doing.

CHAIRMAN FLAGG: Other comments? It's my understanding, and correct me if I'm wrong, Megan, but it's my understanding that the board had originally -- the most recent action relative to the spring trophy fishery was that the board put a 30,000 fish bay-wide cap on the spring trophy fishery.

That was the last action that was taken prior to, obviously, the development of Amendment 6, which doesn't really address this specific issue, as I understand it, and that last year the fishery in Maryland, 2003 -- the overage above 30,000 was 13,490 fish.

The point that Maryland is making is the fact that if they had had -- they feel that a 40,000 trophy fish quota for that period would have been more appropriate, and so, therefore, in effect the overage that would be paid back would be 3,940 fish. Is that correct?

MS. GAMBLE: I don't wish to put words in Pete Jensen's mouth, but from what I heard, he said that had they submitted the proposal earlier and had the technical committee reviewed it, they would have approved the 40,000; therefore, they should only have to deduct 3,490 fish because of what could have happened.

CHAIRMAN FLAGG: Ritchie.

MR. WHITE: I guess that's saying that it's okay to go ahead and fish on regulations that you're going to propose that you think the technical committee are going to approve; and if you catch that much, later on you don't have to pay it back. I don't understand that.

CHAIRMAN FLAGG: Pete.

MR. JENSEN: Well, I would disagree with that. Amendment 6 did not have the 30,000 cap in it. So when we came forward with our regulations, we didn't feel compelled to put a 30,000 cap in there.

So we didn't propose it, and we didn't make regulatory plans to limit it any more than we already limit it. In the meantime, the stock had grown substantially. We had not had the opportunity to ask the technical committee to do it in a proportional way. When we did have an opportunity, then they agreed.

CHAIRMAN FLAGG: Other comments?. Yes, Tom.

MR. FOTE: I'm trying to understand this. Under Amendment 6 we approved and we exempted Maryland, Virginia, Potomac River and Washington, D. C., to stay as a producing area. There is no where in Amendment 6 did they mention the winter seasons and the whole bit. This is all exemptions to Amendment 6.

I know it's past history, but I just remember us getting voted down for past history of things that were approved under Amendment 5, and it really puts me in a strange position here. I'm trying to understand what rules we play by.

CHAIRMAN FLAGG: A.C.

MR. CARPENTER: Well, I think Pete's right. I think the timeline is what you really have to keep in mind here. Under Amendment 5 there was a 30,000 pound cap. Under Amendment 6 there was no cap on the spring trophy fishery.

We submitted plans to start the 2003 fishing season in January and did not supply anybody a proposal to deal with the trophy fishery. We all kept the same regulations that we had in place. It was not until June, a month after the season had closed, that this board then imposed a 30,000 fish cap on a fishery that was already closed.

Pete's point, and I think my reason for supporting this motion, is that if we had presented the 40,000 pound quota proposal last year, then we should pay back the overage of the 40,000, not the overage from a number that didn't exist until after the season was closed.

CHAIRMAN FLAGG: Thanks, A.C. Megan, and I'll get to you, Roy.

MS. GAMBLE: Let me just make one more point in terms of the timeline. Amendment 6 was approved in February, which is prior to the spring fishery. Amendment 6 says that all the states will hold their regulations from 2002 into 2003.

The only thing that will be changed is the coastal commercial quota. That means you guys had the 30,000 fish cap in place for 2002, so that means for 2003 you were supposed to hold your 30,000 cap -- 30,000 fish cap.

MR. JENSEN: That may be a post-interpretation. That certainly was not clear at the time.

CHAIRMAN FLAGG: Other comments? Roy.

DR. MILLER: I'd agree with Megan. I thought it was pretty clear that we were supposed to hold our regulations in 2003 the same as they were in 2002; namely, status quo. That's my recollection as well.

CHAIRMAN FLAGG: Ritchie.

MR. WHITE: If this doesn't pass, then would the overage over 30,000 automatically go into play? In other words, would their quota be -- their 2004 quota have a deduction of all the overage over 30,000 in 2003?

CHAIRMAN FLAGG: No, this would only account for 3,940 fish, right?

MR. WHITE: I'm saying if this doesn't pass, is there an automatic deduction?

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: The plan requires that it is deducted in the subsequent year's quota.

MR. WHITE: So if this fails, then there will be a full deduction?

CHAIRMAN FLAGG: Yes. Pete.

MR. JENSEN: Well, I would simply argue, Mr. Chairman, that makes no management sense at all. It isn't consistent with the way we've managed this fishery, maintaining an F. This was an arbitrary number to begin with, and now we've been caught up in a process where we're being penalized simply because we may have misinterpreted the regulations.

But, we did not put it in our proposal. We did not choose to do it, and so we're willing to be reasonable

about it, but I don't think we ought to be penalized that many fish in our spring fishery, because it doesn't make any management sense in the context of the plan.

There is nothing in Amendment 6 about caps on big fish in Chesapeake Bay. There just isn't anything there. In fact, we had talked a lot about how we were going to add extra protection for the big fish, given the advice we were getting.

It was on the board earlier that the F on the big fish coastwide is high. So now we're being told "cut your fishing back", when everyone else keeps on catching a million or so big fish. It just doesn't make any sense in a management sense.

CHAIRMAN FLAGG: Other comments? Pat Augustine.

MR. AUGUSTINE: Thank you, Mr. Chairman. I'm just reviewing the document here. I wish I knew what the page was. It says, "2003 review of the ASMFC fishery management plan for Atlantic striped bass" -- it goes on to talk about Section 4.2, recreational fisheries, Page 31.

While the overage, their overage, occurred in 2003, the 2004 spring trophy fishery will be over, as stated, by the next FMP review. Table 3 shows the penalty for 2004 spring trophy fishery with the current 30,000 fish quota as well as the penalty for the proposed quota of 40,624 fish.

I guess maybe this got thrown out. The baby got thrown out with the water, because down in Table 3, it says, Chesapeake Bay's spring trophy fishery overage and 2004 quota adjustment -- Chesapeake Bay 2003 quota, 30,000 we say isn't right; 2003 harvest, 43,490, overage 13,490 fish; adjustment, 2004 quota, 30,000 fish, ends up as 16,510 fish.

But then we have the adjusted 2004 proposed quota, 40,624; the net being a fish count for 2004 of 27,134 fish. Now this is all very interesting. I don't know how that relates to this. Is this old information?

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: No, you're jumping ahead, Pat. I was hoping to do this under the FMP review. You're looking at the FMP review document. Same issue, same issue. So, you guys just approved a forty-thousand-some-odd fish for their cap, so now Pete is proposing the number of fish to be deducted.

MR. AUGUSTINE: I understand. Thank you for that clarification, I appreciate it.

CHAIRMAN FLAGG: Okay, I think we need to move on. We need to take a vote, because we've got a number of other issues still to deal with. I'd like to have folks caucus for a few minutes and then we will take a vote on this motion.

(Whereupon, a caucus was held.)

CHAIRMAN FLAGG: Okay, we've had enough time for caucusing. The motion before you is move that Maryland deduct the overage in the spring trophy fishery in 2003, 2,866 fish from the 2004 quota of 40,624 fish to result in a 2004 quota of 37,758 fish. Motion by Pete Jensen, seconded by A. C. Carpenter.

Okay, all those in favor of the motion, signify by raising your right hand, 4; those opposed, 9; abstentions, 3 abstentions; null votes, no null votes. The motion fails on a vote of 4-9-3. Okay, shall we move on to the next issue?

MS. GAMBLE: The next proposal submitted by the state of Maryland on behalf of the Chesapeake Bay is a methodology change for the estimation of the bay-wide fishing mortality rate.

The Chesapeake Bay is required to annually estimate the bay-wide fishing mortality rate to determine if an adjustment needs to be made to the fishing effort to control the total removals and avoid overfishing of the Chesapeake Bay stock.

The bay-wide fishing mortality rate is currently estimated using a direct enumeration methodology, which employs data from fish tagged during the summer and fall. This proposal is, rather than using the direct-enumeration study, to use the spring spawning stock survey mark and recapture data.

Currently, this survey is used as an independent estimate of the resident bay population, and it is Maryland's intention to discontinue the direct enumeration study, if the board approves this proposal, and that is to free up some resources for other striped bass work.

Let me just give you the technical committee's recommendation, which is that this proposal is a sound methodology for estimating the bay-wide fishing mortality rate.

They should adjust the formula to account for the proportion of tags recovered in and out of

Chesapeake Bay. There are tags that are recovered in Delaware Bay and along the coast from the Chesapeake Bay, so there is concern about the fishing mortality rate being under-estimated.

Then there was one member of the technical committee who felt that both Maryland and Virginia spring tag data should be used to estimate the bay-wide F and the quota.

CHAIRMAN FLAGG: Okay, comments? Jack.

MR. JACK TRAVELSTEAD: Thank you, Mr. Chairman, a couple of comments on the proposal. The proposal is by Maryland to eliminate fall tagging as the method to directly measure fishing mortality and move to the use of Maryland spring tagging to estimate F for the whole bay.

It's not stated in the Maryland proposal, but Virginia would be under the assumption, and perhaps we need some clarification from the board on this, is if you approve this proposal, then Virginia also would be relieved from tagging striped bass in the fall.

It makes no technical sense to eliminate Maryland fall tagging and not eliminate Virginia fall tagging. It would serve no purpose if you're moving to the use of the fish tagged in the spring.

So we would like some clarification from the board if, in fact, you move forward to approve this. Secondly, Dr. John Hoenig, who is here today from the Virginia Institute of Marine Science, just recently took over responsibility for monitoring striped bass in Virginia, and he will be conducting all the work necessary for Virginia to comply with the plan in terms of monitoring.

He has expressed some concerns to us about this change in methodology that the technical committee was not aware of at the time they reviewed the proposal, and we would hope that you would allow him a few minutes on the agenda to express his concerns. There is a handout that John has put together, and I think he could go through that fairly quickly.

CHAIRMAN FLAGG: Thank you, Jack. Other comments? Is Dr. Hoenig here? Dr. Hoenig, would you like to come to the microphone over here by Jaime Geiger and give us your thoughts?

DR. JOHN HOENIG: Thank you, good afternoon. It has been a long morning. In a nutshell, I believe it's a bad idea to approve this change at this time,

because neither the Maryland DNR report nor the technical committee evaluated the existing program to see what would be the impact, what would be lost if the program were eliminated, nor did they evaluate the new proposal adequately in terms of precision and predictive capability. They didn't consider alternatives.

I'd like to review the current program, briefly. The current program is based on calculating what are called "R over M" ratios. These are simply the number of fish recaptured divided by the number marked. You heard about that this morning.

They tag seven times per year. This results in an upper right triangular data matrix. In my handout, R13, for example, would indicate the number of tags that were released in tagging event 1 and recovered in tag recovery period 3.

The current procedure uses just tag returns obtained immediately after the release of a batch of tags. That's shown in yellow on the main diagonal of this matrix.

Everything else shown in red is ignored for the purposes of calculating the fishing mortality. This discarding of a massive amount of data is grossly inefficient, and it results in a loss of precision.

But it does more than that. Because they're throwing away those data in red, they lose the ability to estimate the tag reporting rate from the recovery matrix, so they have to rely on some external estimate of tag reporting rate.

In a study reported in 1994, High Reward Tagging Study, the tag reporting rate was found to be 75 percent. In 1999, there was another High Reward Tagging Study, and it was found to be 64 percent.

So what they have done is assume that the tag reporting rate was 75 percent up through 1998, and then it suddenly dropped to 64 percent and has remained constant ever since.

They assume that despite the fact that the only information available indicates that the tag reporting rate has changed. When I started to look at the summer-fall tagging program, I realized that there was a tremendous potential that was not being used.

I came up with at least five things that could be done with the tagging data. First, we can use all of the data to estimate the fishing mortality rate. We would do this by fitting a Browning model to the data. This

is the same model that's used to analyze the spring tagging data.

Stuart Welsh called it a "Seaver" model this morning; that's just another name for it. That gives us estimates of a parameter called "little f", and the R over M ratio is simply trying to estimate this parameter little f.

Because we're using all of the tagging data, we can get a better estimate of this parameter, and then we would transform it into a fishing mortality rate, using the exact same procedure that is being used in the current procedure or that would be used in this to analyze the spring data.

This is an advantage because it uses more data, but it would still require you to assume a tag reporting rate. However, there is a second improvement we could make, and that is that we can recognize that the Browning model also gives us estimates of survival rate S, and this can be transformed into a fishing mortality rate directly.

You don't need to know the tag reporting rate to do this, so this is a tremendous advantage. But if you think about it, if you have two methods for estimating fishing mortality rates, one of which does not require an estimate of reporting rate and the other one requires you to assume a tag reporting rate, then you have a way to estimate the tag reporting rate.

You simply have to find the tag reporting rate that makes the two methods equivalent. So that means that we could look at the ten years of data that have accrued and estimate the tag reporting rate for every year and see if it is highly variable, does it have a trend, do we have a problem or don't we have a problem?

A third improvement would be to fit an instantaneous rates formulation model. This was published five years ago so the theory is established. The advantage is that it allows you to look at the residuals so you can test assumptions.

Particularly, you can look for evidence of non-mixing and for immigration. You heard this morning that there is concern about non-mixing. If non-mixing turns out to be a problem with the instantaneous rates formulation, you can construct a model that allows for a period of time when the fish are not fully mixed on the assumption that eventually they become fully mixed.

Also, because you're using all of the data, you can get an empirical estimate of the variance rather than a theoretical one, so you have a more realistic estimate.

The fourth thing we could do is we could analyze all the data at one time, simultaneously. Currently, each year is treated in isolation from all other years. We could get better precision, another estimate of the annual mortality rate, the possibility arises of having another index for tuning the VPA, and, again, we can get a better estimate of variance.

And the last thing that we could do with the existing program is we could be estimating angler selectivity by simply comparing R over M ratios by size group. Stuart Welsh mentioned that this morning. He talked about some of the uses for this, particularly in improving the specification of the partial recruitment vector.

Now I'd like to talk about the new proposal. The Maryland DNR analyzed the spring data, using two different methods. They presented their results with the spring data versus time and also the current method versus time.

That's shown in the graph in my handout. The green line represents the current procedure. The blue and the pink line are the new procedures. They said that because the three methods seem to agree, they could get equivalent results using two to the fall --

CHAIRMAN FLAGG: Dr. Hoenig, if I might, I don't mean to interrupt. I know we are short of time, and I think you've raised a number of very good points. My suggestion is what we should do relative to this particular issue is I would like to have the technical committee meet again with you and go over all these issues.

I'd like to redirect this issue to the technical committee and have you attend with them to iron out some of these issues, so that we can get a better recommendation back from the technical committee after you've had an opportunity to have this discourse with them.

If the board has no objections, because of all of these various issues that have been raised, it seems to me that's the appropriate way to go. This will kind of expedite this process. Jack.

MR. TRAVELSTEAD: Just one question. I agree with your returning to the technical committee, but I would ask that you also ask the technical committee to evaluate the situation. If they approve of using the

Maryland spring tagging process, does it make any technical sense to have Virginia continue the fall tagging?

CHAIRMAN FLAGG: We will have that direction to the technical committee. Thank you, Jack. If there are no objections -- and I appreciate, Dr. Hoenig, I didn't mean to cut you off, and I appreciate your coming and doing all this work. I'm hoping that and I'm sure that you will continue to work with the technical committee on these important issues. Thank you very much.

DR. HOENIG: Mr. Chairman, referring it back to the technical committee was exactly what I was hoping for.

CHAIRMAN FLAGG: Okay, thank you very much, sir. The next item that we have is the plan review team FMP review. Yes, Pete.

MR. JENSEN: What about our proposal?

CHAIRMAN FLAGG: What was the question?

MR. JENSEN: The agenda item was an item for action where we propose to make a change in the way we monitor and measure F on the Chesapeake Bay stock.

CHAIRMAN FLAGG: Well, yes, we had no motion before us, and my sense is there are enough issues about this that it would be appropriate to return this to the technical committee.

I asked if there were any objections from the board and I didn't hear any, and so I assumed that we were going to remand this to the technical committee with input from Dr. Hoenig, to come back to us at a subsequent board meeting to further deal with this particular issue.

MR. JENSEN: Well, can we make sure that this happens in a timely way, so that we know how to plan next year's monitoring efforts? When is the next board meeting?

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: The next board meeting is the second week in March.

MR. JENSEN: Is when?

MS. GAMBLE: The second week in March.

MR. JENSEN: Okay, well, I was simply urging that this be done in a timely way, so we know how to conduct our monitoring.

CHAIRMAN FLAGG: Thank you, Pete, your comments are noted. Now on to the plan review team FMP review.

FMP REVIEW FOR 2002

MS. GAMBLE: I'm going to try and do this in record time, which means that I'm going to skip over a lot of the stuff in the beginning of the FMP review, because it's a lot of background information, and actually you heard some of it this morning from the stock assessment report.

There is a review of the research and monitoring requirement. The section I want to draw your attention to is on Page 6, which begins, "A list of issues", and I will begin with the Massachusetts and Rhode Island coastal commercial quota overages.

These were already brought to your attention at a previous meeting in the PRT's compliance report. Just for the sake of being thorough, it's put in the FMP review as well.

So, it just points out that Massachusetts exceeded their 2002 commercial quota by 122,870 pounds; therefore, they have to adjust -- they were to have adjusted the 2003 commercial quota. Rhode Island exceeded theirs by 1,466, and they were to have adjusted their 2003 commercial quota as well.

The next one was actually already discussed, and that's the Chesapeake Bay spring trophy fishery. Again, that was an overage of 13,490 fish. Based on the approval of the 40,624 fish, that overage will be deducted from that amount.

The next one deals with the Roanoke recreational fishery overage. You will note that this is a table listing the allowable harvest from '96 to 2002 as well as the actual harvest from this fishery, and then the third column is the overage in this fishery.

North Carolina is currently working on a revised management plan for striped bass, so the PRT is recommending that no action is taken on this at this time, but that the PRT and the board subsequently should review North Carolina's management plan to determine if further action is required.

The next issue deals with the Albemarle-Roanoke stock again, and there is a relatively new Oregon

Inlet recreational fishery. There is concern, because tag returns are indicating that at least some of the fish taken in this fishery are from the Albemarle-Roanoke stock.

That harvest is being attributed to the coastal migratory stock. It's my understanding that the North Carolina plan development team recommended a seasonal closure to reduce the mortality on the brood stock for the Albemarle-Roanoke stock.

At the time that the FMP review was written, the approval of the North Carolina management plan was still pending. So the PRT recommends a charge to the technical committee to analyze the tag returns and to determine the origin of fish; and if necessary, recommend a course of action for appropriate accounting and protection of the Albemarle-Roanoke stock.

The next one are two bullets on law enforcement issues. It was pointed out in the law enforcement's report that there is a black market for untagged, illegally caught striped bass sold in restaurants and other retail markets.

I don't have any other information other than that on the issue. Second, the law enforcement report just wanted to inform the board that there may be increased mortality on the stock because there is a catch-and-release fishery where the power plants are discharging warm water.

Next is juvenile abundance indices. The 2002 JAI declined in New York, New Jersey, Maryland and Virginia. This is being pointed out because in Amendment 6 it states that if any JAI shows recruitment failure for three consecutive years, the board will review the cause of the recruitment failure and determine the appropriate management action.

So the PRT is just stating that they will continue to monitor these JAIs and inform the board if there are further recruitment concerns.

Next is the Hudson spawning stock survey. New York is responsible for annually conducting a Hudson River spawning stock survey. This was not conducted in 2002; therefore, there were no reported results.

Okay, finally, last slide, are the management triggers. The Amendment 6 triggers do not require the board to take any action if the F is greater than the target fishing mortality rate, but it is less than the fishing

mortality target and greater than the spawning stock biomass threshold.

The 2002 assessment indicates the F has met or exceeded the fishing mortality target every year since 1997. The plan review team is recommending another technical committee charge to evaluate the significance of exceeding the fishing mortality target and then report that back to the board.

CHAIRMAN FLAGG: Are there objections from the board to acceptance of the plan review team report? Pete.

MR. JENSEN: Are any of those issues identified compliance issues in the plan?

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: I'm not sure I understand the question.

MR. JENSEN: Well, for example I think – not to pick on New York, but there was a note that they were required, it said “required” to do a spawning stock survey but it hasn't been conducted. That's my question, are any of these compliance issues?

CHAIRMAN FLAGG: Gordon.

MR. COLVIN: I don't know if it's a compliance issue or not Pete, but it's moot now because what happened is we lost staff that year, stuck with a hiring freeze. We were finally able to replace them and the survey was done in 2003. We expect to do it hereafter now that we're staffed back up.

I know it was done because Mr. Augustine and I had an opportunity to accompany the crew, and you'll all be glad to know that we wore his butt out pulling that seine through the river to the point that he spent a six-hour car ride with me and slept through the whole thing and never said a word.

MR. JENSEN: So, are there no compliance issues involved in that list of issues, then?

CHAIRMAN FLAGG: Megan.

MS. GAMBLE: The overages, just that those need to be deducted in the subsequent fishing year.

CHAIRMAN FLAGG: Gil.

MR. POPE: Thank you. I know that we had a small overage of about 1,400 pounds or something, but this

year we're probably going to have about a 4,000 to 6,000 pound underage, it looks like. Our traps couldn't catch the fish.

CHAIRMAN FLAGG: Thank you. Other comments. Are there objections to accepting the plan review team report by the board? Okay, it's done.

DISCUSSION OF AN ADDENDUM

CHAIRMAN FLAGG: Next item is discussion on the development of an addendum.

And as you may recall at our last meeting, there was interest on the part of some of the board members to look into the possibility of establishing a single biologically based minimum size standard reference point.

The issue of producer areas also came up and the concern about prohibition of fishing in spawning areas. What is the board's desire relative to this particular agenda item? Any comments? Yes, Gil.

MR. POPE: Thank you. I'd like to move right to a motion just to make it very quick and we'll dispense with this as quickly as possible.

CHAIRMAN FLAGG: Okay.

MR. POPE: I move that the next addendum or amendment to the Striped Bass Management Plan include a provision to establish a single biologically based standard-size reference point for all areas, excluding the Albemarle-Roanoke stock. The staff and the technical committee shall be charged with developing a series of options or alternatives including an appropriate phase-in strategy that lessens any possible negative social and economic effects of the change.

CHAIRMAN FLAGG: Okay, we have a motion by Gil Pope. Is there a second? Second by Vito Calomo. Okay, yes, Vince.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, what I thought I had him say was “including” and what we have up there is “excluding” which was -- what was provided in writing to the staff was “excluding.”

CHAIRMAN FLAGG: It is excluding, okay. Discussion. Roy and then Jack.

DR. MILLER: A question for the maker of the motion. This would encompass the Chesapeake jurisdictions as well, Gil?

MR. POPE: Yes.

DR. MILLER: It means exactly what it says.

CHAIRMAN FLAGG: Jack Travelstead.

MR. TRAVELSTEAD: This motion is quite disturbing to Virginia. It is clear to Virginians that this motion is nothing more than an attempt to reallocate the striped bass resource away from the Chesapeake Bay jurisdictions to the other states.

This board spent three years agonizing over the development of Amendment 6 that proposed a number of reallocation alternatives, all but one of which would significantly negatively impact the bay jurisdictions.

And for that reason alone, I think this reason should be defeated. There was a table that was included in one of the draft versions of Amendment 6, Figure 33, and it showed the affects on allocation of various size limits.

I think this motion is made partly out of a lack of understanding of what the effect of various size limits will have on the allocation of the resource in Chesapeake Bay and a lack of understanding of what the effects of both Amendment 5 and Amendment 6 have had on the quotas in Chesapeake Bay.

Figure 33 that was part of one of the drafts of Amendment 6 showed that the historic allocations of this resource were about 60 percent to the Chesapeake Bay and 40 percent to the coastal areas.

Amendment 5, which we willingly supported, dropped that allocation from 60 percent to 45 percent. We supported that. Amendment 6 was proposed, which Virginia willingly supported, and it required the bay jurisdictions to utilize the harvest control model and the direct enumeration of fishing mortality to establish it's quotas.

In 2004 Virginia's quota will go down by 20 percent. It will be reduced from 3.4 million pounds to 2.7 million pounds, about a 700,000 pound decrease. That amount is more than the entire catches in most of the coastal states and yet we willingly gave that amount up.

If one compares the 1997 to 1999 harvest in the bay with the most recent three years, you'll see that our harvests in Virginia have decreased about 2 percent over that time period. During the same time period, the coastal states harvest increased 56 percent.

Now, we are reaching a point where we can't give up any more. This is reaching the point of being ridiculous. Raising the size limits in Chesapeake Bay, in Virginia alone raising the size limit to 22 inches will decrease our harvest by 50 percent. Fifty percent of our catch last year was less than 22 inches. Sixty percent was less than 24 inches. We have reached the end of the road when it comes to allocation of striped bass. We have willingly all along supported these various amendments knowing that in spite of that our share of the resource is going to be decreased.

And to now propose yet another scheme that will allocate resource away from Virginia is absolutely unacceptable. We have never supported this. We don't support it now and we will never support it in the future. Thank you.

CHAIRMAN FLAGG: Thank you, Jack. You make a lot of good points on reasons for opposing this motion. I would like to ask, for purposes of moving this process along, if we have one member who would now like to speak in favor of this proposal and then we're going to caucus and take a vote. So, is there somebody that wishes to speak in favor of this proposal? Bill Goldsborough.

MR. GOLDSBOROUGH: No.

CHAIRMAN FLAGG: Tom Fote.

MR. FOTE: Mr. Chairman, I know we're short on time but this motion needs to be fully aired. There has been a lot of controversy going on this. I can understand having more sympathy for Virginia and Maryland on this if it wasn't for the previous vote.

They had no problem reallocating our producing areas to the coast, and we have always, in New Jersey, supported one size limit for all as long as it was fair and equitable along all the producing areas and all the bays, because we insist on having the same size limits in New Jersey whether you fish inside the bays or out in the ocean.

So, I mean, this is a way to move forward. Then if they want to do conservation equivalencies as everybody else has to do under this plan, I have no

problem doing that where they want to go to the 18 inch.

This proposal, the way we've done Amendment 6 and if New Jersey implements Amendment 6 the way you're proposing it, it will mean a dramatic reduction in our catch and that will come out of our producing areas. There was very little sympathy from the bay states over that so I have to support this motion.

CHAIRMAN FLAGG: Thank you. Yes, why don't we take a few moments to caucus then we're going to vote on this.

(Whereupon, a caucus was held.)

CHAIRMAN FLAGG: Okay, before we vote, I know there are several people in the audience and I'm -- okay, we'll get to John and Ritchie. John Nelson.

MR. NELSON: Mr. Chairman, recognizing that there are a lot of folks that might want to weigh in on this and also recognizing the fact that we are totally out of time, we are intruding upon another board, I move to table this until the March board meeting.

MR. PATTEN D. WHITE: Second.

CHAIRMAN FLAGG: Okay, move to table. And we have a second by Pat White. All those in favor, signify by raising your right hand, 11; opposed, 2 opposed; abstentions, no abstentions; null votes, no null votes. The motion carries 11 to 2 so it is tabled until the March meeting.

NOAA FISHERIES UPDATE OF STRIPED BASS ACTIVITIES RELATED TO AMENDMENT 6 RECOMMENDATIONS ON THE EEZ

CHAIRMAN FLAGG: NOAA Fisheries update of striped bass activities related to Amendment 6 recommendations on the EEZ, and I think Anne is going to give us a very brief report.

MS. ANNE LANGE: Yes, it will be very brief. I've cut out some of the updates. Basically, as you all know, Amendment 6 included a recommendation to the Secretary of Commerce to remove the moratorium on the EEZ, to implement a 28-inch minimum size limit for both commercial and recreational fisheries in the EEZ, and to allow states the ability to adopt more restrictive rules for fishermen and vessels licensed in their jurisdictions.

To date, the National Marine Fisheries Service has published an advance notice of proposed rulemaking, an ANPR, which requested information and issues that the agency should consider in addressing the commission's recommendation.

We held two 30-day comment periods on that ANPR. All comments, if they aren't already today, will soon be published on our state-federal Website.

Since we're short of time, I won't go over a list of the types of comments that we got for our ANPR, but just very briefly, we had comments both in favor and opposed to opening the EEZ and also had various issues that should be evaluated in the process.

We felt, at that point, that there were enough issues, both in favor and against it, that it was appropriate to go forward with the NEPA process, National Environmental Marine Policy Act.

For that, we held scoping meetings in nine states from Maine to North Carolina. Scoping meetings are under NEPA to identify additional issues and management alternatives that should be considered in development of the environmental impact statement, which will be used in the decision-making process by the agency.

The current alternatives that we're looking are the status quo, keep the EEZ closed, and the specific ASMFC recommendation. In scoping, we're looking for any additional comments or alternatives that individuals, the states or the commission, the councils may have for us to evaluate.

A summary of all issues that were raised at each of the state scoping meetings is also available on our Website. Written scoping comments will be accepted through 5:00 p.m. on December 22nd, which is when the scoping period ends.

Again, I won't go over, because of shortness of time, the types of comments that we've received, but needless to say, there was tremendous support for following through with the process, for taking the time to look at the issues and to evaluate the impacts of various issues people had concerns with.

Again, each of those types of things are summarized on our Website. The next step will be to develop the draft environmental impact statement, which will include socio-economic analyses as well as the biological and other issues.

Under the regulatory streamlining process, we have developed a fishery management action team, which includes representatives with expertise in biology, stock assessments, economics, sociology and communities, management, law and NEPA, as well as habitat and protected resource concerns.

Once that draft EIS is completed, we'll publish a notice of availability in the Federal Register, which will include a public comment period.

After that time, we'll hold public hearings on the draft EIS and any associated alternatives that we wind up including in that draft. From that point, we'll make a determination as to whether or not we'll go forward with the proposed rule.

Again, updates are on our Website. We have press releases relative to the summaries. We've got copies of all the letters and faxes in response to the ANPR. There is a copy of the scoping document that we used in our public scoping meetings.

There are summaries of each of the issues that were raised at each meeting so people can get a flavor for differences of concerns from north to south.

Also, as the process moves forward, I'll continually update that site so people can be aware of just where we're at and the types of things that are occurring. I skipped a lot of stuff as far as details go, but again, it's all on our Website.

CHAIRMAN FLAGG: Thank you, Anne, very much for that update. I apologize for the lack of time, and we appreciate all the time and effort you and your staff are putting into getting this information out and having these public meetings to get input from the public. Thank you very much, again.

MS. LANGE: I would like to thank the members of the board and the commission and the states and industry, recreational and commercial individuals that were very supportive during the process.

CHAIRMAN FLAGG: Dennis Abbott.

MR. ABBOTT: A quick question for Anne. What would be the timeline for reaching a conclusion on this matter, roughly?

MS. LANGE: I can't say. Again, we're going to go through a very deliberative process in developing the draft environmental impact statement. I have no set timeline on that, although I don't anticipate, and,

again, I don't know, but I don't anticipate a final decision before January of '05.

Please don't hold me to that. That's basically what we're looking at as an initial target because of the analyses and everything that need to go into the EIS.

CHAIRMAN FLAGG: Okay, other business.

OTHER BUSINESS

CHAIRMAN FLAGG: Thanks, Gordon. I know we have Jim Price. He had requested an opportunity to speak just briefly. Jim, are you in the audience? Would you please come forward?

MR. JIM PRICE: Thank you, Mr. Chairman. I passed out a report that was put together for the Secretary of the Maryland Department of Natural Resources that gives an overview of the health conditions in regard to striped bass in the Chesapeake Bay and some of the problems with our declining forage base.

On the back of this report that I passed out, you will see that there is a special issue of the U.S. Atlantic Coast striped bass issues with a recovered population journal that's published in Fisheries Management and Ecology.

There are about ten papers that deal with the health issues, including the disease issues in striped bass in the Chesapeake Bay. So you can go online and get a copy of this journal and look at any of these papers.

I wanted to provide that to the board, because in the past I have told you about some of the concerns that we have in the bay.

You can look, also, at that last page, and it will show you the declining forage base and the status of the menhaden age zero to two population using the new forward-projection model that the Menhaden Board is going to approve, I guess. Any questions?

CHAIRMAN FLAGG: Thank you very much, Jim, for that. I'm sure, if you're going to be around, there will be some folks that will be interested in talking to you afterwards. Thank you very much. And now Bruce Freeman.

MR. FREEMAN: Thank you, Mr. Chairman. Just to tie up a loose end, we had considerable discussion on Amendments 5 and 6 and what we feel are some of the deficiencies, but I offer a motion.

I move that the staff begin preparation of Addendum I to Amendment 6 of the Striped Bass Plan to address providing protection of spawning areas.

The intent of this motion is to give direction to staff to start that preparation.

CHAIRMAN FLAGG: Is there a second to this motion? Is there a second?

DR. MILLER: I'll second it.

CHAIRMAN FLAGG: Second by Roy Miller. Okay, yes, David.

MR. BORDEN: Mr. Chairman, like the issue that got tabled before, I think that this issue probably warrants some additional discussion, which I'm not sure we have the luxury of time to entertain at this point. I'd move to table this until our next meeting.

CHAIRMAN FLAGG: Move to table. A.C.

MR. CARPENTER: Second.

CHAIRMAN FLAGG: Okay, we have a move to table this motion. All those in favor, signify by raising your right hand, 14; opposed, 1 opposed; abstentions; null votes. Okay, the motion to table passes on a vote of 14 to 1.

Other business. We are way over our time, and we are adjourned.

(Whereupon, the meeting adjourned at 1:20 o'clock p.m., December 16, 2003.)

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