

**PROCEEDINGS**  
**of the**  
**ATLANTIC STATES MARINE FISHERIES COMMISSION**  
**BUSINESS SESSION**

**February 10, 2005**

**Radisson Hotel**  
**Alexandria, Virginia**

## ATTENDANCE

### Board Members

Lew Flagg, proxy for George Lapointe, ME  
John Nelson, New Hampshire F&G  
David Pierce, proxy for Paul Diodati, MA  
Bill Alder, Massachusetts Gov. Apte.  
Eric Smith, Connecticut DMR  
Lance Stewart, Connecticut Gov. Apte.  
Gordon Colvin, New York DEC  
Pat Augustine, New York Gov. Apte.  
Brian Culhane, proxy for Sen. Johnson (NY)  
Martin McHugh, New Jersey DFG&W  
Bruce Freeman, New Jersey DFG&W  
Tom Fote, New Jersey Gov. Apte.  
Ed Goldman, Proxy for Robert Smith, NJ  
Mike Kaufman, Proxy for Douglas Austen  
Eugene Kray, proxy for Curt Shroeder, PA

Roy Miller, Delaware DFW  
Bernard Pankowski, proxy for Robert Venables,  
DE  
Pete Jensen, Maryland DNR  
Bruno Vasta, Maryland Gov. Apte.  
Larry Simms, proxy for Richard Colburn, MD  
Jack Travelstead, Virginia MRC  
Preston Pate, North Carolina, DMF  
Damon Tatem, North Carolina Gov. Apte  
John Frampton, South Carolina DNR  
Robert Boyles, South Carolina Leg. Apte.  
Gil McRae, Florida Fish and Wildlife Cons.  
Comm.  
Bill Cole, USFWS  
Anne Lange, NMFS

### ASMFC Staff

Ruth Christiansen  
Bob Beal  
Tina Berger  
Vince O'Shea  
Julie Nygard  
Vince O'Shea

Lydia Munger  
Brad Spear  
Nancy Wallace  
Mike Howard  
Toni Kerns

### Guests

Douglas Grout, New Hampshire Fish and Game  
Tom Meyer, NMFS  
John Merriner, NMFS  
Marta Nammack, NMFS  
Ralph Lopez, NMFS  
Richard Christian, USFWS  
Michael Doebley, RFA  
Peter Eldridge, NMFS  
Mary Hope Katsouros, MK and Co.

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## **Summary of Motions**

**February 10, 2005**

**Move on behalf of the Winter Flounder Management Board to approve Amendment 1 to the Interstate Fishery Management Plan for Inshore Stocks of Winter Flounder.**

*Motion Made by Mr. Augustine. Motion carries (11 in favor, 1 abstention).*

The Business Session of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Radisson Hotel, Old Towne, Arlington, Virginia, Thursday, February 10, 2005, and was called to order at 11:10 o'clock a.m. by Chairman Preston Pate, Jr.

**-- Welcome; Introductions --**

CHAIRMAN PRESTON PATE, JR.: The normal agenda, if you will pay attention to what you had mailed to you, would show that we're going into the Policy Board meeting now, to be followed by the Business Session.

But because of the impending bad weather conditions in the Northeast and some early flights that some of our commissioners have, I'm flip flopping the Business Session with the Policy Board so that we can get into the discussion of the proposed adoption of the Winter Flounder Amendment.

Hopefully, that will proceed quickly enough where we can finish with the Business Session and take a break for lunch and reconvene for the ISFMP Board meeting. Welcome everyone to the remainder of the day's session and the conclusion of this week's business meeting.

I'd like to welcome Dr. Bill Hogarth, who has been invited or actually asked for an opportunity to come and address the Commission today on the President's Ocean Policy Plan and he will be doing that at lunchtime.

**-- Approval of Agenda --**

You should have before you an agenda for the business meeting. I received no requests for any amendments to that proposal; so if I see none now, with consent I will consider the agenda approved.

**-- Approval of Proceedings --**

Next on the list is approval of the minutes from the November 11<sup>th</sup> meeting. Pat Augustine, I recognize you.

MR. PATRICK AUGUSTINE: Thank you, Mr.

Chairman. I move to approve. There has been one correction, and it was the last motion that was made was by myself. Mr. Adler seconded it. It was reversed. Not a problem; if we leave it that way, it's acceptable to both of us. I would move to accept.

CHAIRMAN PATE: Thank you, Pat. Seconded by John Nelson. Without objection, the minutes are hereby approved.

**-- Public Comment --**

Anyone from the public wish to comment? Seeing none, next on the agenda is the Administrative Oversight Committee report.

**-- Administrative Oversight Committee Report --**

We met the night before last to consider the two items that are on the agenda. One is the expanding role of the legislative and governors' appointees commissioners and the allocation of the additional ACFCMA funds approved for this upcoming fiscal year.

George LaPointe is the chairman of that committee but had to leave early, and I've asked John Nelson, as a member of the committee, to present the report on the committee's behalf. John Nelson.

MR. JOHN I. NELSON: Thank you, Pres. As Pres said, the Administrative Oversight Committee had an opportunity to go over these two items the other night.

One is certainly something that we've been looking at for some time; and if I could, since there are some new commissioners in the mix here, just give a little bit of a history.

A few years ago it was only the state directors that were voting members of the Commission, and we were looking at how to utilize the expertise and talents of the governors' appointees and legislative appointees to really further the cause of the Commission.

And after we had an opportunity to look at that

in some detail, we arrived at the present approach to the Commission; that is, use a bigger table and make sure that everyone has an opportunity to vote, and that's why we have that -- all the commissioners are on the same status as being able to have a vote.

I think that is working out very well. Since my two comrades are no longer here -- they hustled back to avoid the snowstorm -- I can say that they usually will listen to me and it goes along fairly well.

I'm sure they would go just the opposite of that point of view, but nevertheless it still works out all right. But at the same time, the legislative and governors' appointees really aren't being tapped as far as we feel -- I think everyone feels, they included -- they're not being tapped to their full talent and expertise.

And we wanted to look at different ways in order to try to expand that role and look at the areas that we might be able to fulfill that. So that's really going to be the focus of an upcoming meeting for the legislative and governors' appointees. I think we've scheduled it for May, or the chair is certainly looking at scheduling that for May.

And the intent of that will be to have a good amount of time allocated to that meeting, maybe a breakfast meeting that goes into the all-morning type of thing that allows for exploring of different ways to have the legislative and governors' appointees be able to tackle whatever they happen to feel is the guiding principle for furthering the reputation, if you will, or helping the Commission achieve its overall goals and objectives.

So, there's various ideas that we were kicking around, but I think that in essence it boiled down that we wanted to have that meeting take place, and that, as I said, is going to be scheduled for the May meeting.

I think, Mr. Chairman, unless you had something else to add on that, I'll leave my comments at that and see if there are any comments associated with it.

CHAIRMAN PATE: That's fine, John, thank you. You described it very succinctly and well. Any questions of me or John on that presentation? Seeing none, we'll move to the next part of the AOC report, which is the allocation of additional ACFCMA funds for the FY-05 fiscal year.

You are already aware, I suspect, that Congress did approve a \$2 million increase in ACFCMA money for fiscal year '05, and I think that's reflective of the confidence that Congress has in the Commission's ability to produce expedient and meaningful results for its fisheries management responsibilities.

We have a chance to reinforce and strengthen that confidence with the proper utilization of these increased funds, and we want, to the extent that we can, to capitalize on this opportunity with the hope that these funds can be continuing for the future and increased as an even better scenario.

So we've been working to put together a proposal for allocation of those funds for the upcoming year, and that proposal was part of the AOC meeting two nights ago. I've asked, again, for John to make that presentation on behalf of the committee.

MR. NELSON: Thank you, Pres. You all have a handout that's entitled the "ASMFC Response to \$2 Million ACFCMA Increase Fiscal Year '05." If you don't have it staff, can get copies to you so just raise your hand if you don't have it.

All right, let me just wait for a second or two so that they can distribute that to those folks that have raised their hands. While that's being distributed, let me reiterate a little bit about what Pres has just said.

We had initiated a strategy on the part of the Commission. We had a discussion about it last year on how to try to get some additional funding. We came up with five key areas that we would basically lobby Congress in order to achieve those additional fundings.

One was dealing with the lobster stocks in the northeast, menhaden issues, red drum, the various states have near-shore trawl surveys and then work on eel, sturgeon and shad. The Commission endorsed that approach, focusing on those key areas.

We were looking for \$2 million, and we were able to get that added to the ACFCMA allocation. And what we on the AOC are suggesting to the Commission is to look at that as really a special allocation for this year.

Obviously, we're going to try to look for level funding with that as the -- with the total of \$9 million plus for the future years. But that \$2 million was specifically lobbied for five key areas.

We wanted to try to come up with an approach that allowed those areas to be targeted for that amount of money. In order to do this in a timely fashion to have programs that would provide results as soon as possible so that we can show that we used the money for the areas that we said we were going to use the money for, and that we were going to be able to show results from the applicable or applying monies to those problems that are out there.

So we came up with an overall approach to doing this. Let me just say, before we leap from the \$2 million, that there are various rescissions and overheads that are applied to funds. We've looked to minimize that for this block of money.

We are assuming that the service would be looking at a slight overhead, and that leaves roughly \$1.85 million for the focus of those key areas. We'll talk to the service a little bit more. There are different ways of us perhaps handling those funds through ASMFC that may minimize the service's overhead even further, but I'm not going to focus on that other than just what I've said right now.

So, under the discussion portion, we listed basic principles that we were looking for, so that we could have proposals that were going to be responsive to the issues that we had outlined and would provide common benefits to probably as

many states as possible.

Now, when I say that, we looked at a variety of ways of doing this, and it was interesting, of course, with the variety of ways of doing it. But we looked at distributing funds to the individual states and having them come up with projects.

And, ultimately what we are going to suggest is that we have a process in which the ASMFC, working with the staff, working with the technical committee chairs, would develop the first draft or proposed programs, which would then be passed by the various state directors for either their comments associated with those ideas or additional ideas to be included.

So you might get some that are not considered as important by the state directors, and they might have some others that they feel were not included in that first draft. And then we would prepare a list.

The staff would prepare a list that would look at the proposed allocation in accordance with that list that would have been reviewed. And then assuming we're using \$1.85 million, then that would be presented to the executive committee for approval.

And, again, the timeline is we're trying to do this in a fairly timely manner, and so we'd be looking at the executive committee, probably by correspondence, approving them by the middle of March.

The principles that we used were that we were looking at projects that could address issues for the common good; that is, again maximizing the benefits for multiple states. The theory behind that is various states like the New England states could certainly be looking at a certain problem.

I'll use this example from my comrades from the northeast. It might be the state of New Hampshire that can do it the best because of the resources and expertise that we had within state and, therefore, we would agree that this is a problem that we want to address, this is how we would address it and we would apply the funds accordingly to do so.

I thought that was an excellent example to use, and we'll certainly use that thought process as we go through this. Obviously, we want to use the existing science and look at where the management data needs are the most.

We'd like to have it as able to be done in 2005, because what we really would like to do is have a high probability of providing results so that the congressional folks can see, again, how the funds were used and that indeed they got results from those additional monies that they allocated to us.

We were also looking at existing state programs that might be constrained by resources and, again, reflect those key areas that we have outlined and we all agreed upon previously. Perhaps there could be some leverage with existing programs for the states to be looking at for these funds.

Two other areas that we'd like to have, but we're obviously not making it mandatory, we would like to see if these funds could be, again, enhanced by either matching funds or attracting additional dollars to the program from outside groups or other entities that might see that this is a good approach and, therefore, they would like to put some funds to help achieve a particular goal that we have listed in those five key areas.

So that's the basic outline of what we had come up with, Mr. Chairman. I suspect we'll probably have some questions associated with it, but that would be the recommendation from the AOC.

CHAIRMAN PATE: Okay, thank you, John. Any questions on it? Pete Jensen.

MR. W. PETER JENSEN: If I understand you, John, this additional money would not be allocated down to the states under the existing formula, that it would remain at the Commission level for further decisions; is that the intent?

MR. NELSON: That was the intent for this year, Pete, yes.

MR. JENSEN: Okay, my other comment is that

if you're looking for ways to involve the legislative and governors' appointees, give them an opportunity to look at it, too, rather than just state directors. I know that we're all omnipotent in our judgment, but they might have some good ideas, too.

MR. NELSON: Excellent point. Thank you, Pete.

CHAIRMAN PATE: Okay, thank you, Pete, that is a good point. Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: I think the intent, when we were doing this, was that the state directors would consult with the LGAs, in other words, just to streamline the consultation process. It was never the intent to exclude that group.

CHAIRMAN PATE: Bruce.

MR. BRUCE FREEMAN: We -- I guess yesterday, it's hard to remember, we've been here to long -- had a long discussion relative to collecting biological samples for weakfish, for example.

And, it seems to me that many of the impediments that we were facing could well be overcome with additional funds, and that may be an excellent use of this. Nevertheless, that aspect or that particular species was not listed in these bullets here.

Was there thought given to going beyond these particular aspects? You're suggesting they should be confined to these specific issues?

MR. NELSON: Bruce, we had lobbied on these specific key areas, and that's what we had agreed upon. I think where we had that bullet in there, as far as one of the principles, was the leverage of existing state programs.

If you have a certain amount of funds that could be reallocated from one of these key areas, for example -- and let me just use menhaden for you -- so if you had some programmatic funds that were going to menhaden, maybe you could shift those to your dealing with the weakfish issue,

and these new funds would substitute for the menhaden funds that you transferred.

I think that's a reasonable approach to dealing with that issue and yet keeping us true to what we had agreed to use these funds for.

CHAIRMAN PATE: And that's the important principle underlying this strategy, Bruce, is that we try and allocate these monies consistent with the basis on which we lobbied for it and provide the deliverables that the supporters are expecting.

MR. FREEMAN: Under that scenario, I could see application on the near-shore trawl survey in these other items we have some interest in, but, quite frankly, that probably has the greatest bearing on us, and we could certainly do that, take money and shift it into something else. That would be very useful.

CHAIRMAN PATE: Thank you. Jack Travelstead.

MR. JACK TRAVELSTEAD: I was just curious if we had any feel for whether or not an additional \$2 million would be available in future years. It seems to me if this is a one-time allotment, that's going to seriously affect the types of work that you do and limit its benefits if you're only able to conduct a particular survey or something for one year as opposed to multiple years.

MR. NELSON: Yes, Jack, you never know, and that's why we want to try to have results from these additional funds, so that we can go back to the Hill and say, "Look, this is what we said we were going to do with the funds; this is what we did with them, here's the results." It benefited the entire coast and addressed some of the thorny issues that we had and that their constituents had facing them.

And then we make the pitch that we'd like to have level funding, which meant that you had the 7.25, which we were getting through ACFCMA, plus the 2 additional million, so it would be funding almost up to the full allocation for ACFCMA. But at that point, we'd be able to

point out that we would be looking for level funding, which would be 9.25.

CHAIRMAN PATE: Gordon.

MR. GORDON C. COLVIN: Thank you, Mr. Chairman. I'm going to use a New York term on you. I need to "kvetch" a minute here. I'm concerned about the direction we've taken here because I don't think it is sufficiently sensitive to the needs of our 15 state partners.

I'm well aware of the strategy that we employed to secure this increase in the appropriation and was consulted on it and strongly endorsed it and was delighted to see that it succeeded.

That said, I had hoped that our strategy for implementing it would include setting aside a substantial portion of the increase to be distributed to the states pursuant to the existing formula, which I can assure you was developed very carefully and through an extraordinary effort of the Commission members and staff to craft something diplomatically that worked and satisfied everyone on condition that the supplement would be available to states to do new work in these five focus areas.

And that's unfortunately not what I'm seeing, and I'm only really learning this now. As I suggested yesterday during the weakfish discussion -- and this is consistent with what many others have said -- the years since the ACFCMA appropriations have begun and have been set at their prior level have seen huge increases in our state operating costs and the expectations of the Interstate Fishery Management program, new compliance requirements for data collection, such as the weakfish example, tautog, striped bass and others, extensive indication as I mentioned a little while ago about the need to expand observer coverage and discard monitoring, new fishery management plans and programs that didn't exist when that money was appropriated such as horseshoe crabs that brought new workload with them -- all this occurring in a context when our state budgets and their purchasing power are all, every one of them, on a downward slide, coupled with skyrocketing

fringe benefit rates.

And we're all well aware of it as we construct our budgets. We need some help and we had hoped that we would be getting some help out of this appropriation, and it appears that at least in the first year we're not going to.

Again, I understand the thinking, but I'm wondering if the AOC could think some more about what I had hoped would be happening as an alternative.

I also think Jack Travelstead made a very good comment. You know, it's going to be hard -- I mean, I can't imagine what we can do on a near-shore trawl survey that could be implemented and delivered to Congress as a finished product in 2005 when we will start the project selection process sometime after March 15<sup>th</sup>.

I don't think that's in the cards, certainly not in the fiscal year and probably not in the calendar year. So, there are some logistical problems I see here, too, in terms of accomplishing what we've set out to do.

Well, I've kvetched enough. You know, the Commission will decide what it will, but I wanted to express my concern and the fact that I think we need to try harder to find ways to help meet our needs. Thank you.

CHAIRMAN PATE: Thank you, Gordon. Now I know what a kvetch is. Thanks for enlightening me. I would call it something else, but I'd have to apologize for it.

MR. COLVIN: That would not be a New York term, but maybe Brooklyn term, I suppose.

CHAIRMAN PATE: The AOC did discuss those comments and the soundness of the strategy that has been selected, Gordon. It was pretty much quickly and universally recognized that in most cases it's going to be impractical for the projects that are funded to produce any final results during this fiscal year.

The hope is that we can at least get the proposals approved and the implementation of the projects

far enough along to be able to show some progress that is consistent with the base for lobbying for these funds.

And we also recognize and looked at the option of proportioning this money according to the existing formula that had been so carefully thought out and has worked so well for our base level funding, but thought that the strategy of keeping the proposals limited to the five basic points is sound; and for a one-year basis, that if successful, will give us the opportunity for having an increased budget and proportioning that increase according to the existing formula and achieving the results that you've noted, which I don't know that anyone would disagree with your points and the need to expand funding for such programs as better collection of data on weakfish and many, many others. John, do you have anything to add to that?

MR. NELSON: No, I think that does cover it, Pres. I would just reiterate again that we did have a wide-ranging discussion. We did look at what Gordon had proposed. Obviously, the states are going through a lot of budgetary issues.

We looked at whether we should just distribute these and have the focus by each state. But, when we looked at the concept of having it as grouped problems and perhaps one state actually might be able to solve two or three states' dilemma, we thought we'd give that as an opportunity to try that out the first year.

I think the intent was from the AOC that after this year -- as Pres has mentioned, the intention was to distribute the funds, if we could get them in the future, through the normal formula that we have used over the past number of years.

But for this first year we thought we really wanted to try to focus on those key areas and get as much bang for the buck as we possibly could, and so that's why we've come with this type of recommendation to the Commission.

CHAIRMAN PATE: Vince.

EXECUTIVE DIRECTOR O'SHEA: Thanks, Pres. The package that you have in front of you,

folks have mentioned the ACFCMA distribution formula, the last page shows how the '05 funds for 7.25 would be distributed per the existing formula.

With regard to the comment made about do we have a read on the ability to continue this level of funding in subsequent years, I think there is -- speaking frankly, I think there's two things that are going to drive that.

Number 1, if the people in the appropriations process hear back that this money was successful and helpful from the states is Number 1. And, Number 2, I think it's going to be a function of how hard the states engage in the '06 budget negotiations and what the dialogue is between their delegations and the members of the appropriations committee. Thank you.

CHAIRMAN PATE: Dave.

DR. DAVID PIERCE: I'll just echo what Gordon said. I think he said it extremely well. The AOC had some difficult choices to make, difficult job to do, and you made the choice that you felt was appropriate, and that's fine.

John, you've just indicated that for the second year, assuming the funding is there, the AOC would likely -- putting words in your mouth, perhaps -- would likely go in the direction of the proportionate allocation of funds to the different states so that we could undertake specific tasks that are critical for the assessment process, the management process, such as the bycatch information, and, of course, very appropriately enough and mentioned by Gordon the concern about weakfish.

So, if that's the direction in which the AOC is going for the second year, assuming funds are there, using the success of the first year as a way to do that, then, okay, I'll support it. But I just had to say that Gordon was right on target.

MR. NELSON: Yes, and, David, that was the discussion that took place. Again, we were trying to use these funds to really focus on those key areas for this coming year, so that we could go back and use that as the ammunition, quite

frankly, because I know we're going to have good results out of the use of these funds, to show why we should level fund ACFCMA, which meant 9.25.

And as I recall -- and it was a couple nights ago so I'm having problems remembering what day it is, too -- but as I recall, it was the intent of our discussions that after the first year and if we could get that incorporated into the baseline of ACFCMA funding, that it would then be distributed to the states on the formula that we currently use.

And if any of the other AOC members have different points of view or thoughts on that, I invite them to point that out, but that was my recollection of our process. I think Pres has confirmed that in one of his earlier statements.

CHAIRMAN PATE: Okay, Vince.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, I think there is sort of another issue here, and that is regarding the next year's funds. I think when we go up on the Hill for '06, you outlined one rationale for the number that we're going to be arguing for, and that would be that, well, Congress supported the '05 9.25 and that's "the new number for ACFCMA", based on Gordon's comments that you all may want to tinker with that strategy a little bit and put things in that specifically talk about how states would more broadly benefit with that 9.25.

But I think the key thing is that what you say before you get the money has to somehow connect with what you do after you get the money.

CHAIRMAN PATE: Okay, any more questions on this point? A.C.

MR. A.C. CARPENTER: Mr. Chairman, I appreciate you recognizing me. I'm not a member of the Commission and I should be sitting in the audience, but since you switched the business meeting with the ISFMP Policy Board, I appreciate the opportunity.

There are two jurisdictions that are receiving

these funds that are not states, and we don't have a representative on the AOC, but I would like to support the idea that the funds for '05 would be used in the fashion that they have crafted the proposal.

But, if they are available again in '06, then we should revert to the original formula, and we can use the funds just as well as any of the other jurisdictions can. Thank you.

CHAIRMAN PATE: Thank you, A.C. Any more comments on this? Eric.

MR. ERIC SMITH: Thank you. I also support the proposed strategy. I understand the other points of view that I've heard, and I agree with them to some extent, but when we started this process last year, the two things we said was if we just say give us more money and we'll decide what to do with it later, we won't be successful.

And if we say just give us more money and we'll dole it out the way we've doled it out in the past, we won't be successful. So this was a very deliberate strategy and we picked our priorities and let's live with that, and I will.

My question is on the proposal process at the end if we go forth with this. Is it premature for you to be looking to us today for some ideas on priorities within the five key areas? That would seem to bog us down.

I'm not sure if you're asking for that. I have heard a few comments around the table, and I have my own views, but if you'd rather have that more methodical, in writing and then sift through it later, I'll be happy to do it that way, too.

CHAIRMAN PATE: I think doing it offline after the meeting would be a more productive use of our time. And remember in John's presentation and in the handout, we are using the technical committees to help identify what the funding priorities in those five key areas are, and you'll have an opportunity to review those and supplement them at your will. Gordon.

MR. COLVIN: Following up on that last point, Mr. Chairman, two of these points. The health of Northeast lobster stocks and near-shore trawl surveys don't dovetail perfectly with our current technical committee structure.

I would urge that the Lobster Health Steering Committee be consulted on the former issue and that the -- I'm not quite sure on the trawl surveys, but certainly in the Northeast there is the NEAMAP group that ought to be consulted in that regard.

CHAIRMAN PATE: Thank you, Gordon, that will be noted. Pete.

MR. JENSEN: Well, I guess I do want to talk a little about action we took yesterday to initiate an immediate research program on menhaden. Would this money be applied to that action we took yesterday?

CHAIRMAN PATE: At least in part, but a research need for menhaden could use up very quickly the \$2 million and more if we had it, but according to the list of priorities that result from the staff and technical committee review, it would be expected that some of this money would go to satisfy the needs of those projects.

MR. JENSEN: Yes, and I wasn't talking about all \$2 million. I was talking about an appropriate proportion of that to be applied "immediately".

CHAIRMAN PATE: Any more questions? Well, thank you for your comments in support of this idea. The agenda shows us moving next into the discussion on the winter flounder amendment, but I've gotten an indication that may take some time.

Dr. Hogarth is here, as I said earlier, to be our lunch speaker and he is on a pretty tight schedule. I thought originally about going ahead into winter flounder and delaying lunch a little bit, but it looks like now we need to keep on schedule with our lunchtime anyway. So at this point we'll break the Business Session, have lunch and come back in here to eat and Bill will address the Commission.

(Whereupon, the meeting recessed for lunch.)

**-- Review and Consider Approval of Amendment 1 to the Winter Flounder FMP --**

CHAIRMAN PATE: Can we come back to order, please. Okay, we are going to go back to the Business Session agenda and take care of the Winter Flounder Amendment 1. To begin that discussion, I'll ask Bob Beal to bring us up to date on how we got here and what we need to do.

MR. ROBERT E. BEAL: Thank you, Pres. Just as a quick background of development and approval by the management board of that document for the members of the Commission that are not members of the Winter Flounder Management Board, the Winter Flounder Amendment 1 has been under development for about 18 months-2 years.

It started with the peer-reviewed stock assessment in 2003. The final meeting and approval of the Winter Flounder Plan by the Board was in the middle of January this year, about a month ago. It was off cycle to allow the states time to go home and start implementing the program, so it was held out of a normal Commission meeting week.

During that meeting in January, the states selected the management measures for the Gulf of Maine and the Southern New England/Mid-Atlantic stocks for the commercial and recreational fisheries in particular.

There was a third round of public hearings prior to that January meeting that presented the options that were developed by the technical committee, and earlier in January the states got together and reviewed public comment and selected the management measures included in the final version of the amendment.

The recreational management program that was selected for the Southern New England/Mid-Atlantic stock was selected by the management board based on input that was received at public hearings as well as the options that were

presented at the public hearings.

The suite of management measures for the Southern New England area wasn't identical to any of the options that were taken out to public hearing. It was within the range of options that were taken out, and it was also in response to the considerable public comment that was received during the third round of public hearings.

Following that meeting, the technical committee was asked to characterize the reduction associated with the Southern New England management program for the recreational fishery.

And the options that went out to public hearing, there wasn't a strict percentage associated with the options that went out. They were characterized as a small, medium, or large reduction in landings.

The option that was selected -- I've spoken with the tech committee chair and he said he would characterize the reductions associated with the management program that was selected for Southern New England as a large reduction.

So, in the public hearing document a large reduction essentially means a reduction associated with ending overfishing and a reduction large enough to initiate rebuilding of that stock. That was one of the outstanding questions following that meeting and I just wanted to kind of give everyone a quick background on how we got to where we are.

CHAIRMAN PATE: Okay, Vince, do you want to do the next item on the recommendations to the service?

EXECUTIVE DIRECTOR O'SHEA: Thank you, Mr. Chairman. This might be presumptuous of what action this business meeting is going to take here.

One of the issues that was consistently raised in public comment was that this action was directed at the recreational sector only, and the response to that, as discussed in the public information document, was that the Commission

strategy is counting on a significant reduction in mortality on the Southern New England stock due to implementation of Amendment 13 by the New England Fishery Management Council and to achieve the reduction on the commercial side.

And it struck me it may be appropriate, in view of the dependence on that action taking place, for the Commission to express that concern to the Secretary of Commerce, as well as the New England Fishery Management Council, to basically encourage them to continue in their program and let them know that the Commission is counting on their action to address the reduction needed on the commercial side.

So while it wasn't built into this amendment, I know it may be appropriate, at this business meeting, to give direction either under my signature or your signature as chair to communicate those concerns to the Secretary and the New England Fishery Management Council. Thank you.

CHAIRMAN PATE: Thank you, Vince. That's good advice; and with your indulgence, we'll hold any further discussion on that until after we complete the discussion on the plan approval, but don't let us forget to come back to that. I would like some guidance from the Commission on the best way to handle that. Next I'll recognize Pat Augustine as chair of the Winter Flounder Board.

MR. AUGUSTINE: Thank you, Mr. Chairman. I must confess we had an extremely large amount of comments from the public. Lydia did a fantastic job in putting it together in a profile for us and presenting it to the board.

The advisory panel did their work. At the end of the day -- even though there were only a few members there, at the end of the day we came to consensus and came up with the following motion that Lydia will put up there.

I want to thank the board for having allowed this process to move forward as quickly as possible. So with no further ado, I would like to read the motion into the record:

**Move on behalf of the Winter Flounder Management Board to approve Amendment 1 to the Interstate Fishery Management Plan for inshore stocks of winter flounder. Motion by myself on behalf of the Winter Flounder Management Board. Thank you.**

CHAIRMAN PATE: Thank you, Pat. Opportunity for discussion on the motion, and I'll recognize Bruce Freeman.

MR. FREEMAN: Thank you, Mr. Chairman. Let me first introduce again Marty McHugh. Most of you met him at other functions and other meetings. But, because of the importance of this particular issue, Marty wanted to make certain he was available for the discussion and help us represent New Jersey's position on this.

Let me just, before I turn it over to Marty, indicate that we are a member of the board. The vote on this particular motion was one dissention, and that was us, and we do have some concerns.

We would like to be able to vote in favor of this particular motion at this time, but we need some issues to be clarified, and hopefully then we could move forward together with the other members in approving this. Let me turn this over to Marty.

MR. MARTIN J. MCHUGH: Thanks, Bruce. Bruce always, in his diplomatic ability, uses the word "concerns." I am here today to express we have very serious concerns regarding this in the state of New Jersey.

I came down here, as Bruce said, specifically to participate in this discussion because we are going to have major impacts as a result of this amendment. We had a meeting. We convened a meeting, as you well know, and a hearing in Belmawr. Three hundred people turned out.

I think a lot more would have spoken if we had had a larger room. Congressman Saxton and Pallone have both expressed their major reservations with what is happening with this particular species, as well as the governor and the DEP Commissioner, Brad Campbell.

I have been dispatched down here, and I want to be here to oversee this discussion because it is an extremely serious issue for us. It could result in a 60 percent reduction in New Jersey, which is going to have major implications for our fishermen and our economy, as you well know.

So, I would request that you entertain our discussion on this issue. I'm going to turn it over to both Bruce, Tom and Ed, who are representing the state as well, because they have much more detail than I do. But, it is extremely important to us that you hear us out on this and take our suggestions seriously.

MR. NELSON: All right, thank you, Marty. Bruce, are you going to provide your discussion points here?

MR. FREEMAN: Yes, I will, John. I'll try to be brief. The plan imposes coast-wide measures, and this is an active decision by the board because of the difficulty it found in determining reductions by individual states by taking different management actions dealing with either the size limit, the bag limit or seasons.

I think from the standpoint of the resource perhaps a sensible move, but as usual when you look at a single coast-wide measure, it has major implications in one area and less so in other areas.

I think a good example of this is what we tried to do with summer flounder. We found there is no one system that meets all the states' demands, and therefore we've gone to a state-by-state action.

There are two difficulties in this. One is that as we see it, the federal fishery, the fishery beyond three miles, is controlled by the New England Council, and they put in what is called Amendment 13, and those of you, John, in New England are very much aware of this amendment.

You've been dealing with it for several years now, and the consequences obviously are very extreme on New England fishermen. But based upon the technical information, they estimate

that there will be a reduction in the winter flounder fishery of somewhere between 37 and 49 percent.

They can't say precisely. There are some expectations it will be within that range, but time will only tell what impacts will occur because of the plan. And, basically those impacts are because of the restriction of the days at sea and also minimum mesh sizes in the net. That's the basic reason this will be a reduction.

The problem we have is that there is no similar percent reduction on the recreational side. There are just actions that need to be taken concerning season, size and bag limits.

And in our instance, with the action taken by the management board and based upon catch rates that we use from MRFSS and others, we're looking at at least a 60 percent reduction, so it's considerably out of phase with what we're going to see on one side and the other. This inequality has created a tremendous problem.

There is a provision in the plan under Section 4.3.2 called "management program equivalency" which allows alternate state proposals, and this really is our conservation equivalency and other plans basically the same.

The plan review team has the authority to move on this with the technical committee to have a state come in with alternate plans and make a decision whether they have equal conservation equivalency.

So, in our instance we see this as absolutely necessary in order to overcome some of the impediments, and that is what we propose doing -- we just want to make sure we bring this forth to the Commission so there is no misunderstanding -- is that we believe it's reasonable to take that 37 to 49 percent reduction.

If you average those two, it comes up with a 43 percent reduction. What we propose is to use this as a standard so that we have something to judge our actions by.

The other problem we have is that there is no provision in the Commission's plan to deal with a commercial fishery in state waters. It's a desire of the plan and of the board to take actions to reduce the commercial fishery, but there are no provisions.

There is nothing to judge it. We have a fyke net fishery in our state which we have reduced when we reduced the catch on the commercial and recreational side, but there is really no way we can set a standard for how do we deal with that, how do we reduce that fishery so that everybody comes up with the same reduction.

And as a result, we believe it's reasonable to take this average between these two extremes in the federal plan and use that as a standard. And if people agree that's a reasonable approach, then I think with those two provisions we can accommodate the needs of our fishermen.

One last issue I'd like to raise is that we definitely see a need to reduce fishing mortality. There's no doubt. It's not a situation where we believe we need to continue where we are. Many of the comments that the board heard from New Jersey was status quo.

The reason that came about is because of the various alternatives that were taken out to public hearing. None of them would have not had a tremendous impact on the fishery. So the fishermen looking at the alternatives, picked the one they thought was the most reasonable, and it was do nothing.

But, in our minds we definitely need to reduce fishing mortality. We're certainly committed to do it, but we need to do it in a fair and equitable way, and that's really our concern at this point. Tom may want to comment or Ed, but those I think summarize what the issue is facing us.

CHAIRMAN PATE: Vince.

EXECUTIVE DIRECTOR O'SHEA: Yes, procedure here, Mr. Chairman. Congressman Pallone from New Jersey sent us a letter on this issue addressed to you. We have that here, and we did not distribute it when this topic came up

mostly out of concern for making sure that everybody was directing their attention to New Jersey.

I mean, copies of the letter are here in the room, and I've put that out as an issue for either your decision or perhaps New Jersey's as to whether or not they'd like staff to distribute that letter to the members.

CHAIRMAN PATE: Okay, thank you, Vince. Bob, it might be helpful if you could briefly explain the implications of the current conservation equivalency language in the plan and how it relates to what Bruce want to achieve.

MR. BEAL: As Bruce mentioned, the plan does have the provision for conservation equivalency, so a state can come in with an equivalent program and modify their regulations from the stock-wide standard.

The difficulty and I think what Bruce is really getting at is equivalent to what. As I mentioned in some of my opening remarks, the suite of measures that were taken out for public hearing were characterized as reductions.

The reductions associated with those measures were characterized as small, medium or large. And a large reduction, again, was felt by the technical committee to be somewhat consistent with the reduction needed to end overfishing and initiate rebuilding of the stock.

And, again, the suite of measures that was selected for Southern New England did have a large reduction associated or expected with those regulations.

So, the technical committee, due to a number of uncertainties in the data and uncertainties associated with what season the states may select and those sorts of things, they weren't able to characterize whether the suite of options or the management measures that were selected, if that was, whatever, 25-35-48-52 percent reduction, they just weren't able to make that determination.

So, the way the conservation equivalency process works in the newly approved conservation equivalency guidance document that was approved about a year ago, it essentially puts the burden of proof on the state.

If a state would like to implement conservation equivalency or modify their regulations, that state has the burden of developing the analysis, essentially presenting their case as to this new proposal is equivalent to the standards that the state must meet.

And, again, that process is included in the amendment, and New Jersey does have the ability, or any other state, for that matter has the ability to employ that approach.

CHAIRMAN PATE: Would they have the opportunity to make reductions in the commercial harvest as a part of that conservation equivalency approach or is it limited strictly to the recreational fishery?

MR. BEAL: The plan is silent on essentially tradeoffs, in other words, taking a larger reduction in a commercial fishery to offset a reduction in your recreational fishery. Amendment 1 is silent on that issue. And from what I've heard anyway in discussions I've had with Bruce, I don't think New Jersey is proposing to do that.

CHAIRMAN PATE: Tom.

MR. THOMAS FOTE: To that point, what we said is that the council plan dealt with the commercial fishery. The Atlantic States plan only dealt with the recreational fishery and didn't put any real reductions in this part of the amendment on the commercial side.

What we're saying is we're not only going to implement the reductions, if I read Bruce right, but we're going to put it on the commercial side even though you don't require it. We're not looking to outweigh one off the other, but we figure if we're going to do a reduction, we should be fair and equitable on both sides.

CHAIRMAN PATE: And I understood that, Tom, thank you. And my question was whether

or not, under conservation equivalency, that sharing of the reduction between those two sectors in state waters is allowed.

MR. BEAL: The plan does include commercial management measures. There is a minimum size and a minimum mesh size in state waters, so there are some measures associated with that. I believe the states have to maintain their current closed commercial seasons if they do have one in place.

And the other option within all of our plan is a state can be more conservative on its commercial or recreational fishing industry, if that's what it selects.

CHAIRMAN PATE: Okay, Gordon, has had his hand up.

MR. COLVIN: I'd like to address a few points that are I think relevant to this discussion, Mr. Chairman. First of all, quickly on the issue of the effect of the amendment on inshore commercial fisheries, the plan, as recommended by the management board, includes a substantial increase in the minimum mesh size primarily in trawl fisheries.

It does not, as Bruce pointed out, address specifically the smaller fixed gear fisheries. But I can assure you that the commercial fishermen in New York, and I suspect from what I've heard in Connecticut and Rhode Island, regard that change in the mesh size as very significant to their fisheries. And if you don't believe me, I'll show you the whip marks on my back on that one.

A couple of points. The concerns that were identified by the folks from New Jersey's recreational fishermen at their public hearing were very much echoed by anglers and recreational fishing businesses from New York in public hearings and public comments that we held as well.

We had a substantial turnout of very concerned and upset fishermen at our public hearing as well, in particular fishermen from Western Long Island and New York Harbor, those who fish in close proximity to the folks from New Jersey, in

many cases in the same bodies of water in the New York Bight and New York Harbor.

I think their concerns were largely for some of the same reasons that you've heard. At the end of the day, several representatives of those folks attended our board meeting at which the final recommendations were compiled.

There were several folks particularly from the open boat businesses and fishing tackle groups from Western New York who participated in both the advisory panel and the board meeting and the very lengthy, intense, and day-long deliberations that accompanied the final actions and recommendations of the board for inclusion in the management plan.

And by and large, the feedback I got both at the time of the board action and subsequently coming back home was that the actions that were incorporated could be supported by New York. They felt that they were fair and defensible and tough.

And they were far from happy, but they were prepared to go along with them because they felt, as I said, that they were fair. But there was a concern, and it's the same concern I think you heard from New Jersey, and that is that a lot of what we're doing inshore is predicated on assumptions about the effect of Amendment 13 on the offshore exploitation of winter flounder.

This was discussed at the board meeting. I believe that we do need to ask the National Marine Fisheries Service and the New England Council to closely track and provide us with information, an accounting, if you will, of the effect of the new groundfish regulations on exploitation of offshore winter flounder stocks.

I don't think any of us wants to continue to maintain the degree of impact on inshore fisheries that Amendment 1 will have unless we are quite sure that the federal groundfish regulations have achieved equivalent effect on the offshore fisheries.

I very much share New Jersey's viewpoint on that, and I think that the board needs to continue

to focus on getting that kind of accountability back to us. That said, Mr. Chairman, I can assure you that New York is prepared to vote in the affirmative on the motion.

I do think the detailed issues with respect to how we might develop and implement conservation equivalency calculations, procedures and so forth is really not a matter that the Commission can decide, but one that needs to be undertaken at the board level.

In fact, I believe it's consistent with our procedure that a motion of this nature before the Commission is simply available for us to approve, disapprove or remand at this time, and we cannot in good order modify or add details to the fishery management plan content as brought forward from a board.

CHAIRMAN PATE: Thank you, Gordon. I was going to make that same observation of what constraints are on the board for this action, and I hope everyone will keep that in mind as we go about making our decision on approving of this motion. Tom.

MR. FOTE: Yes, thank you for the time. It was one of the few public hearings that I've ever had with a number of people when it was more controversial that I missed. I was sitting in Hawaii at the time when they had the public hearings in New Jersey, and it was a shame I missed 300 people screaming and yelling at Bruce and everybody that was up there.

We're not asking you to basically change it. We're just asking to make sure that because the plan calls for conservation equivalency and it calls for allowing to do that, that we're able to do that. I don't think this is a modification. I don't want to be told, as I've been told in other things, that what I assumed is not true.

But if the plan calls for conservation equivalency and we come in good faith to bring in a plan that will accomplish that and show it to the technical committee that we have that right and option according to what the plan says, that's all the question we're asking. We're not asking for a modification, but we're making sure

that's in the plan.

CHAIRMAN PATE: Okay, thank you, Tom. David Pierce.

DR. PIERCE: Regarding the New England Fishery Management Council and what's happening with winter flounder, I am the current chairman of the Groundfish Committee. At our last meeting we discussed what was happening with regard to assessment of all the different stocks, winter flounder, of course, being one.

And we were advised that we will have this year, likely by late August-September, updated assessments on all of the multi-species, including winter flounder. We will then be in a better position to estimate where we stand relative to stock size and fishing mortality.

There's a complication, of course, in that Amendment 13 was implemented in May, and that means that at least for the entire calendar year there was time when Amendment 13 rules were not in place.

Anyways, that work will be done, so this policy board and, of course, the species board will get that information relative to what is going on with the commercial fishery.

Relative to New Jersey's clarification as to what they can do; that is, seek some sort of conservation equivalency for their recreational fisheries measures, certainly, I feel that's appropriate.

If they care to do that, then they need to move forward and have their specific proposals reviewed by the technical committee, and that makes sense because they are a big producer. They are responsible for over now recently 50 percent of all the recreational landings for winter flounder.

Massachusetts will do the same thing. We will bring forward some suggestions for the technical committee for conservation equivalency. I say that largely because of the nature of the board vote regarding Amendment 1, the fact that we're of a mind, I'm of a mind -- not necessarily my

colleagues, but I'm of a mind that the particular measure that was adopted for Southern New England/Mid-Atlantic did not go to public hearing.

It's not even within the range of the suite of measures that we could have entertained. Nevertheless, the board opted to go with a 10-month closure of the recreational fishery, Southern New England/Mid-Atlantic.

I didn't bring the Winter Flounder Plan Amendment 1 to public hearing in Massachusetts. I did not request it because I thought that the measures that we brought forward to public hearing could easily be handled by me by a simple notification of the public in Massachusetts that these are the options and I solicit your comment.

If I had known that indeed we were going to close down the recreational fishery for ten months, I would have said, yes, I need a public hearing, a formal ASMFC public hearing in Massachusetts. It did not happen.

But, because New Jersey has been "Johnny on the spot" and has identified that indeed there are conservation equivalency options here and they intend to pursue those options, we'll do the same thing with the intent to, of course, require through what action we take a large reduction in landings in Massachusetts, although there aren't many to reduce.

We have less than 5 percent of the overall landings now, Southern New England, Massachusetts in contrast to over 50 percent for New Jersey. So, clearly, with their conservation equivalency being I suspect justified and they'll make that case, we'll do the same thing since our fishery has relatively little impact at this point in time.

We're all seeking to rebuild this resource. Certainly, in Massachusetts we need to get our recreational fishery back to the way it used to be. It's a shadow of its former self. I mean, it's just absolutely deplorable. So, we will achieve a large reduction.

The technical committee did say in their document that was reviewed by the board at our last meeting that around 48 percent is a large reduction, but again that's squishy. They didn't give us anything specific. So, New Jersey's suggestion regarding the forty-some-odd percent, I forget what you said now.

MR. FREEMAN: Forty-three.

DR. PIERCE: Forty-three, that certainly seems to be a reasonable percentage for them to try to achieve. The technical committee, of course, will comment on that, and we'll in Massachusetts attempt to achieve somewhere around the 43 to 48 percent, bring it forward to the technical committee.

They'll see our conservation equivalent measures. They'll review it, as they will New Jersey, and then the Winter Flounder Board will have an opportunity, whenever it meets -- and I'm not sure when that is -- to determine if indeed these conservation equivalent proposals are conservation equivalent and therefore the Winter Flounder Management Board can approve them.

CHAIRMAN PATE: Vince.

EXECUTIVE DIRECTOR O'SHEA: Thank you, Mr. Chairman. I think Dr. Pierce made my point about the standard -- that the issue of what the standard is going to be for the equivalency needs to be determined by the technical committee and reviewed by the board, that there was not a commitment being made around the table here today to buy into a specific number or formula to get that equivalency, that that's going to be determined by others. Thank you, Mr. Chairman.

CHAIRMAN PATE: Thank you. Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Based on the comments that Gordon had made and others around the table have made, as long as Vince or you, Mr. Chairman, are going to author a letter to go to the Northeast Region to verify and validate what our concern is and that they will do their best to come up with the

changes that they indicated in Amendment 13, so we are kind of in lock-step and they are on the record, I think we should be able to move along.

If I understand correctly, I guess we'll be looking for the technical committee to review the numbers, as to whether it's 43 percent or whatever that number is, and we'll be back at it in May. I hope this will be on the agenda in May for final approval or disapproval or a rescission.

CHAIRMAN PATE: Okay, thank you, Pat. Bruce.

MR. FREEMAN: Thank you, Mr. Chairman. Just two minor points, well, two points, I'm not sure they're minor. One is that we have asked the technical committee to come up with such a number, and they're saying it's a board decision so relative to the comments Vince indicated, we're going in a circle here.

It appears to me that the board is the one who will, in consultation with the technical committee, make the decision, but the technical committee is apparently not of the mind to do that by themselves.

Our intention was to bring these issues to the full Commission. We have an ambitious schedule for the plan in that proposals for the states I believe are due in March 15<sup>th</sup> -- is that correct, Lydia -- and then implementation by July 31.

So, we didn't want to be put in a position of coming through with some people may have thought were just outlandish requests in order to complicate this issue, and we thought it would be better to bring it forward at this time.

We know it's a compressed time schedule, but we wanted the Commission to be fully aware of what we're doing, doing it in the light of examination by everybody. We didn't want to be accused of doing this behind the scenes, so we do appreciate you taking the time. And from the discussion here, I'm certainly satisfied that we'll be able to accommodate our needs through the action of the board.

CHAIRMAN PATE: Okay, thank you, Bruce, for stating that satisfaction; and unless there are some other issues that we haven't discussed or any other matters that the Commission wants to bring forward relative to this plan, I'd like to move ahead with the vote.

If there are no more comments, then, we'll take a minute to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN PATE: **Okay, all in favor of the motion, please signify by raising your right hand; all opposed; null votes; abstentions; one abstention. The motion passes 11 to 0 with 1 abstention.** Thank you very much. Roy.

MR. ROY MILLER: Mr. Chairman, I'm just wondering if it wouldn't be wise on the part of New Jersey or perhaps Massachusetts, considering the timing of how this is all supposed to work, state proposals are due March 15 with implementation by July 1<sup>st</sup>, I'm wondering will we have time to discuss the conservation equivalency issue prior to the states having to have their proposals in? I don't think so, right?

CHAIRMAN PATE: I don't know what the schedule for the next board meeting is, if there is one planned for May.

MR. MILLER: If I could just follow up on that, just a suggestion, maybe those jurisdictions might want to consider two suites of proposals, one that would be in strict compliance with the existing plan and a conservation equivalency proposal just so they have one just in case.

CHAIRMAN PATE: Tom.

MR. FOTE: What complicates the issue, do you want us to do one at 43 percent or use the reduction that the commercial fishery is using as 47 percent or 48 percent, whatever that is -- I mean, 37 to 48. So there is a range there.

What we did was take that to be fair and equitable on both sides of the table. I mean, we

could prepare a table for that, but there is no percentage reduction on the recreational catch, and it is actually the suite of regulations would have been a different reduction for each state depending on where it was, so it wasn't consistent.

It wasn't where every state was taking a 37. Some were only taking a small reduction. New Jersey and New York were taking a larger reduction because they were catching more fish, so that's difficult.

That's why we looked at the percentage of the commercial fishery to work off of because that's the only reference point we have. Now we could put together in the -- that's why we suggested the mid-range of that 43 percent.

We could put a proposal together of 43 percent. After the technical committee and the board decide in May that doesn't really meet the requirement, we can go back and tweak it again. But at least that gives us a guideline to start from, and that's all we were looking for.

CHAIRMAN PATE: Right, and I think you understand what the timeline is and what the procedure is past this point, so just use your own judgment on what you want to submit. Eric.

MR. SMITH: I think Roy Miller's point was to be protective of your own state's position, one plan ought to be what the measures were that were passed. Ignoring all percents or arguments over equity or whatever, the plan has what it has, then conservation equivalency, depending on what the moving target is.

And it's not moving very far, quite frankly. We're talking from the low 40s to the high 40s; and if you want to do conservation equivalency, I think Roy's point was design your alternative strategy around that.

And if I took his point correctly, I think that would give the board at the next meeting, whenever that is, the opportunity to say conservation equivalency meets the test; or if not, you default to what was the base plan.

Now having said that, you have to appreciate when we started and went through August last year to November, when we were at the annual meeting, we anticipated having all of this in effect for 2005.

The outcome of the January board meeting, when we really bent way over backwards to accommodate the concerns that New Jersey and New York had voiced, the strategy we came up with meant we couldn't do that in the spring of '05, which is when the heart of the winter flounder fishery occurs.

So, the state plans for March 15<sup>th</sup> and then implementation by August 1<sup>st</sup> in reality the implementation is mostly for size and bag limits, but the effectiveness of the season is really going to be captured in spring of '06.

So I think that gives you a little leeway. Particularly if a state's plan is not going to deal too much with size limit or creel limit, it gives us some time to see what we get in May, get a technical review of it, even if it has to be a conference call and e-mails, and if you slide then to August to really decide something in final form, I don't think we're missing the mark that we're setting much.

Where we missed the mark that we had hoped to hit, which was '05, was because in November we blinked for a very good reason. We stopped ourselves and said we need to get public comment on these things.

Because, if you recall we were about ready to pass the plan without having gotten public comment on either of these options, and I can't tell you how much fun that would have been if we had done that to ourselves.

So, my view is Roy's right, two plans, look at them in May. If we need to maneuver around them a little bit, fine. You know, in the May to August horizon, I think we can come to closure on this, and hopefully we can satisfy the concerns that we've heard. Thank you.

CHAIRMAN PATE: Okay, thank you, Eric. Vince.

EXECUTIVE DIRECTOR O'SHEA: Thanks, Mr. Chairman. It seems to me about a year ago I think it was the Policy Board adopted a concept that penalties for delayed implementation would be built into our management plans, and that would be done sequentially as we developed different amendments.

And, to my recollection, there is not a penalty or proposal for penalties for delayed implementation in this Amendment 1. I was wondering, Bob, if you could confirm that and explain why we're not going forward with the delayed implementation.

MR. BEAL: Your recollection is correct. There is not a penalty for delayed implementation in this version of the plan. The course that the Policy Board set up about a year ago is to develop delayed implementation penalties with summer flounder, scup and black sea bass as the kind of the guinea pig, the test case for that approach.

That has not been done yet. There is a draft. The technical committee is still working on it. The Summer Flounder Board is still working on it. And once that test case is done, then it will move on to other plans.

CHAIRMAN PATE: Okay, thank you. Getting back to the point that Vince raised about notice to the National Marine Fisheries Service, unless I hear objections, I would like to have the Commission's approval to work with Vince in sending that notice.

Seeing a lot of heads nod around the room, I'll take that as approval to move forward, Vince, if you will keep that on the agenda of things to do. Any other business to come before the Commission? Pete.

MR. JENSEN: Are you talking about only on winter flounder or everything?

CHAIRMAN PATE: Well, everything on the Commission's business agenda. Now we're going to go into the ISFMP Policy Board meeting. Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman, one final comment here. I think it's imperative to let you all know that without Lydia's dedication to putting this effort in that she put in, we would not have gotten here in such a timely fashion. Her effort she put in was just absolutely astronomical. You are to be commended and congratulated on your efforts in doing this. Thank you. (Applause)

CHAIRMAN PATE: Eric.

MR. SMITH: Mr. Chairman, I know we're in a rush, but no good deed should go unanswered, and the efforts of our chairman have been equally impressive, and we owe him a debt of gratitude. (Applause)

CHAIRMAN PATE: Now I'll declare the Business Session adjourned.

(Whereupon, the meeting was adjourned at 1:45 o'clock p.m., February 10, 2005.)

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