

P R O C E E D I N G S  
of the  
ATLANTIC STATES MARINE FISHERIES COMMISSION  
56TH ANNUAL MEETING  
ISFMP POLICY BOARD MEETING

October 22-23, 1997  
Hershey Lodge & Convention  
Center  
Hershey, Pennsylvania

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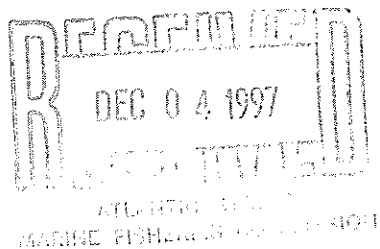


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ATLANTIC STATES MARINE FISHERIES COMMISSION

56TH ANNUAL MEETING

Hershey Lodge & Convention Center Hershey, Pennsylvania

October 19-23, 1997

INTERSTATE FISHERIES MANAGEMENT POLICY BOARD MEETING

WEDNESDAY AFTERNOON SESSION

October 22, 1997

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The Wednesday Afternoon Session of the Interstate Fisheries Management Policy Board Meeting of the 56th Annual Meeting of the Atlantic States Marine Fisheries Commission convened in the Cocoa Ballroom of the Hershey Lodge and Convention Center, Hershey, Pennsylvania, October 22, 1997, and was called to order at 4:25 o'clock p.m. by Chairman Paul Sandifer.

CHAIRMAN PAUL SANDIFER: All right. I will call the meeting of the Interstate Fisheries Management Policy Board to order. My name's Paul Sandifer. I'm chairman.

Let me ask George Lapointe to call the roll. I'd ask the audience to please be seated and the conversations to cease.

(Whereupon, the roll call was taken by Mr. George D. Lapointe.)

MR. GEORGE D. LAPOINTE: Mr. Chairman, you have a quorum.

CHAIRMAN SANDIFER: Thank you.

Before we move to the new agenda that's been distributed to you, I'd like to call on Senator Jill Goldthwait for just a moment. Jill.

SENATOR JILL GOLDTHWAIT: Thank you very much. I just wanted to say a public thank you to Commissioner Alden for all of her hard work on this body, and she represents to me the very finest in fisheries management in terms of both a tremendous commitment and dedication to the harvesters and also the guts to do the right thing in terms of the resource.

So I just want to say thank you for Robin, and the State of Maine owes you.

CHAIRMAN SANDIFER: Amen! The ASMFC also owes you. (Applause) Speech.

MS. ROBIN ALDEN: I'm just going to say thank you. It's very hard to leave, particularly this body, which I think is approaching these difficult issues

very constructively. I've been honored to be part of it, and it's very difficult to leave. Hopefully, I'll still be involved in the periphery.

CHAIRMAN SANDIFER: We look for you coming back. It's been a pleasure to work with you, and I wish you the best, all of us do, in your new endeavors.

MS. ALDEN: Thank you.

CHAIRMAN SANDIFER: All right. George has distributed a new and improved version of our agenda to you. Are there any changes to that agenda? George.

MR. LAPOINTE: I revised it, but I didn't revise it well. I have Patty Jackson down for two reports, so she probably doesn't want to do the Item Number 12.

And I left off -- I just put it as Item 9.a; you can put it where you will. I have copies distributed to Board members of the National Marine Fisheries Service report on overfished fisheries. I want to talk about to the Policy Board about how the Commission will deal with that issue.

I have handed out quite a number of items. Bring them back with you tomorrow, because I put extra

copies and I hope that audience members get them. There is an FMP status report; there is the report on overfished fisheries. There is a draft document on -- a hearing statement for how we run hearings. I want to discuss that under the section on ISFMP Process Issues. And there are a couple of items on Pfiesteria for the discussion under Agenda Item 6, and Dianne gave me something on habitat as well.

CHAIRMAN SANDIFER: You've heard the modifications to the agenda, which essentially is to delete Item 12 and to add an Item 9.a on overfished fisheries.

Are there any other changes to the agenda? Can I get a motion to approve the agenda, then, as revised?

MR. JOHN NELSON: So move.

CHAIRMAN SANDIFER: Second?

VICE-CHAIR DAVID V.D. BORDEN: Second.

CHAIRMAN SANDIFER: All in favor. Passed.

Okay. The next item is approval of our minutes from the May 1997 meeting. The minutes are behind Tab 14 in your briefing book.



VICE-CHAIRMAN BORDEN: Move approval, Mr. Chairman.

CHAIRMAN SANDIFER: Motion by Mr. Borden to approve. Is there a second?

MR. NELSON: Second.

CHAIRMAN SANDIFER: Seconded by John Nelson. Any discussion? All in favor; all opposed. The Ayes have it. Motion carries.

The ISFMP Policy Board is now open for any general public comment. Is there anyone from the audience from the public who would like to address us on any issue related to the ASMFC's fisheries management programs?

Seeing none, we'll move on to Agenda Item Number 5. Patty, it's perfect timing.

MS. PATRICIA A. JACKSON: Thank you, Mr. Chairman. Tina's bringing in copies of just the recommendations, but I'll go ahead and start and tell you what the Advisory Committee discussed this morning.

I guess the major issue that the Advisory Committee talked about was the need for Advisory Panel chairs to feel like they are being adequately heard by their Management Boards. There was some frustration

expressed by the chairs that in some cases they feel their Advisory Panel meetings in terms of the timing of those meetings related to the Management Board meetings and the information timing in terms of being provided to the advisors have in some cases not been what the AP chairs have thought to be adequate.

So we had quite a bit of discussion about this and resulted in a motion suggesting that the Advisory Panel chairs be made voting members of their respective Management Boards. And I think -- and this was passed unanimously by the Advisory Committee. We had, I think, eight members present, so it was a pretty significant showing.

And I think it basically reflects the concern that the advisors feel somewhat that this is still a fairly new process. They feel that their input representative of the user groups is very important, representative of the public is important, and I think wanted the Board to be particularly aware of how seriously they feel about this to ask that this recommendation go forward.

We recognize that it would mean a Charter

change for that to occur, but that's the recommendation of the Advisory Committee.

We had some other discussion items and also some action items. Under discussion, there was some concern about authorization for Advisory Panel chairs to be represented at all the Management Board meetings, and also at their respective Technical Committee meetings, and so we asked Jack Dunnigan to give us a memorandum to the Advisory Committee clarifying that authorization for representation at those meetings.

And there was also an interest expressed in having the Technical Committee chairs available to come to the Advisory Panel meetings, and that that would be helpful. Or, if they couldn't come, to have a representative of the Technical Committee be there, so that we could have the benefit of having some exchange of information about issues that the Technical Committee's presenting to the boards.

So I think basically both of these issues pretty much reflect the sense that there needs to be a lot of coordination and communication between the Advisory Panels and the Technical Committee as well as the

Management Boards.

Another discussion item that we had had to do with the lack of attendance by some Advisory Panel members. Some chairs indicated that they have some states that are not represented on a fairly regular basis, and that it's not fair to those states to not be represented, but also it does make it difficult sometimes to take action as an Advisory Panel without having adequate representation.

So we suggest, as an action item, that if an advisor or his or her alternate misses two meetings in a row, that that would trigger the staff to notify the respective state that is not represented to think about perhaps appointing another representative to the Advisory Panel or making sure that they do have an alternate appointed who could be representative, so that that state does have a voice in the Advisory Panel process.

We asked that the Advisory Committee members agree to assist the state directors in this process as well, so that in addition to a reminder from the staff about these particular items, there would also be a reminder coming from the staff to appoint Advisory

Panel alternates. I think to date Tina said there are only about three advisors who have appointed alternates, and the Charter says that the alternates shall be appointed by the same mechanism that the advisors are appointed. So we're going to have a reminder to the state directors about appointing alternates, and the Advisory Committee agreed to assist with that process by encouraging their individual Advisory Panel members to assist the state commissioners in the selection of alternates.

And what we thought we'd do is each of us would send a note to our Advisory Panel members with a copy of the staff memo or letter saying that in regard to this letter about selecting alternates, that we would encourage each member to suggest someone and to fill out a nomination form for an alternate.

So what we're concerned about is that if we don't do this in advance, if someone is unable to attend a meeting that it's kind of late in the process to be able to get somebody who could come in your place to an Advisory Panel meeting. And if you don't have somebody already lined up, that then you essentially lose that

vote. Because we've had previous discussions, as you all may recall, about proxy votes, and we have pretty much said that it's pretty much one vote per person. So if you cannot be there, that you need to send an alternate, but rather than just selecting an alternate, there had to be somebody selected by the state who could represent you.

So we're asking the advisors to take some leadership in that and to try to identify who might be good alternates for them to represent them at these Advisory Panel meetings.

Let me back up, because this is not the same order that my notes were. The other issues that we had are discussion items. I've talked about the motion and the action items, so I'll back up, now that you all have a copy of these notes, to discussion items. There has been some discussion about adding some language -- that should say "adding restoration language" -- to the Advisory Committee Charter to reflect some of the more recent management policies and philosophies.

We had a little bit of discussion about this at our May meeting. We didn't have enough time to adequately address it, so we decided to table it till this

meeting. We didn't have a lot of discussion about it today because our Charter for the Advisory Committee tracks that we are to advise the Board on your Charter, and so we can't really change the Charter for the Board without going through a significant process.

So we tabled this action, and we're going to bring it back up, if anyone's interested in bringing it back up, to add some particular language to our Advisory Committee Charter only. So it might be an addition of some language about restoration as one of the charges that we're looking at.

We also discussed the use of video and tele-conferencing for Advisory Panel meetings. There was some concern by some members of the Advisory Committee about how difficult that is, especially if you have a very difficult issue or contentious issue and a great number of people, that it's often difficult to do that over a tele-conference. But we recognize that it's difficult also to have a lot of additional Advisory Panel meetings.

So we basically urge the staff and the chairs of the Advisory Panels to use discretion when planning such meetings and to take into consideration the

seriousness of the decision-making issues that were on the table and the number of people participating. Sometimes these things have to be done face to face.

There was a great deal of concern expressed about the timing of the Advisory Panel meetings. Some meetings recently have been the morning prior to the board meeting in the afternoon, and the advisors have not received information in a timely manner in order to be prepared to make rational or valuable recommendations to the Management Boards. And they have felt that this was unfair to them and unfair to the Management Boards, that it was not an adequate opportunity for them to have input.

And so they want to make sure that they receive documentation from the staff in a timely manner so that they can make appropriate recommendations in time for the board to take action. And so I think you can tell that that was sort of the predominant theme of our meeting, that getting the information in a timely manner, having the meetings in a timely way that they can actually -- that we can actually make a significant impact on giving information or reflecting our positions to the Management Boards. And I think it culminated in this



motion about having the Advisory Panels be voting members so that they felt like they could be heard.

So that was pretty much the gist of our discussion this morning, and if anyone has any questions, I'll be happy to answer them, Mr. Chairman.

CHAIRMAN SANDIFER: Thank you, Patty. Any questions on the Advisory Committee report? Comments? Looks like you're getting off easy today, Patty.

MS. JACKSON: Thank you.

CHAIRMAN SANDIFER: We receive it as information. I will certainly pass along the request for more timely materials and better meeting schedules to staff. They heard this, and we'll take a look at it.

MS. JACKSON: Thank you.

CHAIRMAN SANDIFER: Let me now digress from the agenda for just a moment and ask Jack Dunnigan to make some introductions.

MR. A. MANUS: Just a procedural item on that. Should we have a motion to adopt this report with the recommendations so we can have a report back on how they've been implemented?

CHAIRMAN SANDIFER: Andy, this, I think, is

received as information. There's a specific action item they requested here regarding voting rights on the Management Boards, and I'm not prepared to accept that as an action of this Board, of the Policy Board, as receipt of this report. If somebody wishes to move a specific item here, that's fine, but otherwise I'd receive this as information, request and advice from the Advisory Committee.

If somebody has a motion they'd like to make relative to any one of these items, I think we need to take them separately.

MR. MANUS: I'm just asking from the standpoint of procedure. If we should have to adopt the Advisory reports, I just want to ensure that the input is tracked and we get some sort of feedback at a subsequent meeting as to how they were addressed. That's my only intent.

CHAIRMAN SANDIFER: Mr. Dunnigan.

EXECUTIVE DIRECTOR JOHN H. DUNNIGAN: I don't have any problem with that from the staff's standpoint, except for the first item, which I think is a rather significant recommendation that has come to us from

the Advisory Committee and is not something that staff can do without getting some sense of where the Board wants to do. So I would hope you wouldn't just drop that.

But the other things wouldn't be a problem. We can follow up on any of those and make proposals to you for those where you need to take action in the future. But that first item is a fairly significant one. They spent a lot of time on it, and I think we owe it to them to talk about it.

CHAIRMAN SANDIFER: Ms. Shipman.

MS. SUSAN SHIPMAN: Yes. Actually, in a side-bar conversation I was asking Patty to further discuss that for me, because I wasn't real clear on that, and perhaps that would be beneficial to other Board members to hear a little bit more about that first recommendation.

CHAIRMAN SANDIFER: Patty, I think it probably would be helpful for you to elaborate just a little, if you would.

MS. JACKSON: Are you referring to the motion or the first discussion item?

CHAIRMAN SANDIFER: The motion. The

Advisory Panel chairs to be voting members.

MS. JACKSON: We were talking about the discussion item. That's why I just wanted clarification. I think the Advisory Committee is expecting some action by the Board, because I think it does reflect -- the fact that we had a motion recognizes that it would entail a Charter change. It does reflect, I think, the seriousness with which the Advisory Panel chairs felt that they need to have a voice on these respective boards, so that when we go through either a vote on each Advisory Panel or a consensus on a position -- there was a feeling that in some cases that's presented to the respective Management Board, and we're thanked for our report and somewhat dismissed.

And not to be complaining, but I think we felt that, you know, these are folks who are knowledgeable about these issues, we've been asked to spend time working on these issues as advisors to the Management Boards, and yet we present a report, the report's accepted, and oftentimes no further action is taken on that.

And there was a feeling that in order to actually reflect on the record where the Advisory Panel

is, that the chairs would like to have a vote in order to be able to show, to go back to their respective panels and say, "Well, I voted for what you said." Whether it was voted up or down, at least that they would have a recorded vote on that issue.

So I think we are looking basically for the Board to take some action on this. Now, whether you're prepared to do that today or not, I don't know. But I think it does reflect how important this is, and that this was the predominant theme of our meeting was that in some cases the advisors don't feel that they're being listened to to the extent that they would hope.

In looking at our Charter, we're charged with advising the Board on these respective items, and some of that -- I think some of that is reflected because of when the Advisory Panels are meeting, if they're meeting at all, and with respect to the Management Boards and what information they're being given in advance in order to make valid recommendations.

CHAIRMAN SANDIFER: Thank you, Patty.

I think George had a comment.

MR. LAPOINTE: I've got a couple of

comments. One is process and getting information out in advance, and that's certainly one of the things we've been struggling with, and we will continue to work that. I mean, unfortunately, Patty, that's not just you; that's Board members as well. Look at the number of materials I just handed out at this meeting.

The second is, if I'm not mistaken, this issue has been brought up before, and the LGAs, I think, voted against voting status for the advisors on the species boards.

And then the last is just an observation on my part. I view the advisors and the Technical Committee as people who give input to the Boards. I mean, on a similar level, yours, based on your knowledge of the fisheries in your states, and the Technical Committee based on their technical expertise. So that's just kind of how I see the process working.

CHAIRMAN SANDIFER: Comments from any Policy Board member? Robin.

MS. ALDEN: The only thing -- I think we need to have a discussion in some forum at some point, whether it's a future meeting of this or the Executive

Committee or whatever it is. We shouldn't just not discuss this and not deal with it.

CHAIRMAN SANDIFER: Dr. Geiger.

DR. J. GEIGER: Mr. Chairman, I agree fully with Robin. I think the issue does need to be discussed, but certainly I think there's a lot of issues that need to be encapsulated in the discussion. When does an Advisory Board not become an Advisory Board and part of a management decision? What do you do, for example, with an Advisory Board that has a 5-5 or a 5-6 vote, and how does the chairperson make that determination on voting on one side or another of the issues?

These are things that I think both the advisory groups need to discuss internally with themselves, flesh out a little more details about these "what if" scenarios, as well as the Policy Board. Thank you.

CHAIRMAN SANDIFER: George, you had a comment?

MR. LAPOINTE: We're jumping down on the agenda, but under 9.d, we have had a request from the Councils to consider having a Council member as a voting

member on the boards. And I would suggest, because there's a lot of issues involved, that perhaps a subcommittee to report back to this body at -- when are we meeting? -- next spring on both these issues. Because they're both substantive issues.

I could put together -- the subcommittee could meet at the February or April meeting to consider the various issues that come up, the various perspectives, and then the Board could consider it more fully at that point based on the recommendations from that subcommittee. I haven't really thought about membership at this point.

CHAIRMAN SANDIFER: A.C.

MR. A.C. CARPENTER: Well, the law enforcement community has as much a function with the regulations or the rules that we pass. Do we extend them a vote? And how do they fit into this equation? You've also got the Technical Committee chairperson that serves ex officio now. You can keep expanding this thing to be fairly large.

CHAIRMAN SANDIFER: Mr. Manus.

MR. MANUS: In the interest of time, and if it's appropriate, I would make a motion that we move the



acceptance of the Advisory Committee report, specifically discussion items and action items to be tracked by the Commission, and a subcommittee to be established to review the motion passed by the Advisory Committee, and to be reported back during the spring meeting.

CHAIRMAN SANDIFER: Is there a second to Mr. Manus's motion?

MR. THOMAS McCLOY: Second.

CHAIRMAN SANDIFER: Any discussion on the motion? Mr. Colvin.

MR. GORDON C. COLVIN: I would suggest, Mr. Chairman, that should this motion pass and a subcommittee be appointed, that it would be most important for the subcommittee members to look behind the motion itself to the underlying issues that motivated the motion, and ascertain what range of measures might help address those underlying issues.

CHAIRMAN SANDIFER: Before I call for the question on this, call for the vote on this one, Andy, does the sense of your motion include this item that's further down on the agenda, that the subcommittee would also address the Council's request so we can perhaps, if

this motion passes, we can have one subcommittee deal with all the requests for voting seats?

MR. MANUS: In the interest of efficiency, yes.

CHAIRMAN SANDIFER: Thank you. Does the seconder accept that?

MR. McCLOY: Yes.

CHAIRMAN SANDIFER: Any further discussion? Jack, do you have a comment?

EXECUTIVE DIRECTOR DUNNIGAN: I would recommend, Mr. Chairman, when you form the committee that you include maybe two members from the Advisory Committee as a part of this group.

CHAIRMAN SANDIFER: Thank you for your advice.

All right. All in favor of the motion as stated, say Aye; all opposed, Nay. Any abstentions? The motion carries unanimously.

It will be addressed, Patty. I'd appreciate it if you'd report that back to the Advisory Committee.

MS. JACKSON: I will. Thank you, Mr.

Chairman.

CHAIRMAN SANDIFER: Thank you.

Let's move on to the introductions. Mr. Dunnigan.

EXECUTIVE DIRECTOR DUNNIGAN: I just wanted to take this opportunity -- many of you know that the staff of the Atlantic States Marine Fisheries Commission has picked up a couple of new responsibilities in the last couple of months, basically assisting the National Marine Fisheries Service in the implementation of the Sustainable Fisheries Act, and we have the staff that has been working on that project here today, and I just wanted you to know who they are, and I'm going to ask them to stand up as I recognize them and call their names.

Pat Moran is working on a lot of international issues. John Risenwebber is working with Sustainable Fisheries Act. Mark Chandler has done the red snapper work down in the Gulf of Mexico. Jonathan Kreger is also working on some international issues. All these people are working on a number of things, but I'm sort of highlighting their major areas.

Alison Morgan, a dear friend, been with the

Commission for a long time, is responsible for the outreach and the SFA newsletters that we've been seeing. And there's also Bob Beal, who is working on the Fishery Investment Study. That's half-time, and then he's half-time with the regular staff working for Lisa Kline. Not with us today is Liz Lock, who's working in the highly migratory species area, and also Karen Green, who is home being a mother. As soon as she finished the list of overfished fisheries that you've all gotten, she went off and had a baby.

So it's a wonderful group of people, and I can tell you that the National Marine Fisheries Service is extremely pleased with the work that they've been doing under this contract. And they're certainly a benefit to the Commission. Thank you very much.

CHAIRMAN SANDIFER: Thank you for the work you do, and we appreciate you being here with us, Jack. Thanks.

Let's move now to Item 6 on the agenda, which is a discussion item, and I turn it over to George. You're first?

MR. LAPOINTE: I'm going to be first, but

shortly. First, I'll tell you I don't know how to spell Pfiesteria. I just noticed that on my agenda.

I got a call from Dr. Geiger about -- what, Jamie, a month, month and a half ago? -- saying is the Commission going to play a role with fish health issues like Pfiesteria. And my normal staff response, of course, was, "Hell, no!" Because I didn't know where that was going to go. I didn't know what kind of role the Commission could play.

I talked to other staff members. Having said that, we put it on the agenda for discussion, because we wanted your views on what kind of role the Commission could play. And we've had discussions in the office that should there be a role, is it an ISFMP role, is it a habitat role, or is it a research and statistics role? And so, that's about as far as I've gone on the issue.

I've talked to other people who say, well, if you deal with issues like Pfiesteria, it should be broadened into the effects of issues like this with micro-organisms on fish broadly, not just Pfiesteria.

And with that, I'll stop. Jamie, you can give an introduction, and then I know Jack and Paul have

some ideas as well. So it's just to get your views on should the Commission get involved, and if so, how?

DR. GEIGER: At a recent briefing of Congress, some of the questions that came up is, what would be an appropriate management entity that would coordinate issues relating to such situations as Pfiesteria. And again, of course, if we consider Pfiesteria a health and human safety issue, then that obviously would be the Federal Food and Drug Administration. Some of the other state human health organizations would be involved, as probably appropriate liaison.

As we went through the various lists, it came, if the issue relates to fisheries management, all right, then what would be the appropriate management entity to be involved and be consulted and be involved in coordination issues? And especially dealing with issues such as the zero to three-mile limit.

Certainly from my perspective, at that point in time I mentioned it would appear that we have a viable management entity on board. It's the Atlantic States Marine Fisheries Commission, and they would appear

to be well suited to fulfil a role like this.

The second point is, many other commissions, i.e., the Great Lakes Fisheries Commission, has standing Fish Health Committees, and these address issues relating to fish health on a variety of different forums and provide advice to the various commissioners and managers that compose the Great Lakes Fisheries Commission.

My intention is primarily to bring this issue to the Board and suggest that, should the Board consider this, the Management and Science Committee may be one that the Policy Board may charge to develop such an overall Fish Health Subcommittee to allow both the state managers as well as ASMFC to play a role in not only issues such as Pfiesteria, but other broad-based fisheries health issues.

Again, if we take great time and effort in trying to restore fisheries populations and we have the potential of a disease or a disease-like situation having the potential to devastate a restored fishery, I think certainly this body would be one to be involved in that process. And that's why I mentioned it to George; that's

why I'd like to bring it to the attention of the Policy Board. Thank you.

CHAIRMAN SANDIFER: Thank you, Dr. Geiger. Comments, questions, suggestions from the Policy Board? Gordon.

MR. COLVIN: Well, I think Jamie's got a real good point, and it's interesting to see that there's a model out there with the Great Lakes Commission. I just, you know, thinking from my chair here, I couldn't help but wonder if it wouldn't be advisable to turn to the Management and Science Committee -- this really looks like something that would really fall smack within their brief -- ask them to look at that model and any others that they can see of an equivalent nature, and make some recommendations to us about what an appropriate vehicle might be, if any, for the Commission to look to to address and coordinate fish health issues.

CHAIRMAN SANDIFER: Any others of you have any thoughts? Dot or Jack, in particular, I'll put you on the spot because your states have had a fair amount of press, shall we say, recently on this. Would it be helpful to have Management and Science of ASMFC get



involved?

MS. DOROTHY LEONARD: I think it would, Paul, particularly if you look at it from a fish health viewpoint. I think we have to be very careful that as fishery managers, we don't step into an arena that is not one that we should be in. And that's one of the problems we faced as a state, and I'm sure that Andy and certainly Virginia, we have all suffered from this. North Carolina first, and then the rest of us.

Now, I think we have to separate the issues, too, because every time we refer to it as Pfiesteria, we really aren't necessarily referring to a fish health issue. So I just want to make that clear from my viewpoint.

But if you could have the Management and Science Committee consider a subcommittee or a group of people who would be of assistance when we have fish health problems like this, I think that would be a tremendous help to us, because we're stretched very thin trying to cope with this particular problem.

CHAIRMAN SANDIFER: And your point is well taken, Dot. It is, one, we're not in the public health

business, we're in the fish business; and two, it is not limited to one micro-organism or even a group of micro-organisms. There are much broader fish health issues.

I'd ask Jack first, then I'll get to you, Ed. Jack.

MR. JACK TRAVELSTEAD: I think Gordon's suggestion is an excellent idea. I would strongly suggest that if your individual states have not put together some type of task force, whatever you want to call it, to get up to speed on this animal, that you do so as soon as possible. We thought we were moving well in advance of this thing occurring in Virginia. In fact, we were several months in advance of any kind of activity. And even now we're being accused of not acting quickly enough.

So I would really encourage each of the states to avoid some of the pitfalls that we've experienced and get up to speed on this thing very quickly.

CHAIRMAN SANDIFER: I know that Delaware has -- we're working in that regard, and unfortunately, like most states, if you look I expect you'll find that you have the organism. We do. We have some problems.

We're dealing with them. But your advice is well taken.

Ed Conklin.

MR. EDWIN J. CONKLIN: Pretty much echoing what the other speakers have said, we in Florida just recently formed a Harmful Algal Bloom Task Force, which is the way we characterize the circumstances. And in our particular circumstance, we utilize the Department of Health in the state as our co-chair, because it crosses the lines between fisheries management, the environment and health.

If in fact we do get into this in some manner, I would assume, and I would recommend that the Management and Science Committee consider that linkage as being a necessary one as potentially the linkage with whatever environmental regulatory agencies are appropriate. In our particular state, we happen to also, my agency happens to also be the Environmental Regulatory Agency. That may not be true elsewhere.

But the three respective areas of jurisdiction seem to be necessary. Environmental regulation to consider the aspects of pollution, if there are any. The environment, health and fisheries all seem

to be part of the equation. And again, we characterize it as harmful algal blooms, rather than Pfiesteria. We've had harmful algal blooms in Florida for a long time, and actually that's our biggest concern.

Of course, our concern here specifically with Pfiesteria was because of all the problems that it created, or at least the threat of it created elsewhere. Our particular folks have a special biological capacity to help in this regard so we can bring some people to bear on this problem.

CHAIRMAN SANDIFER: Other comments? Phil.

MR. PHILIP G. COATES: Thanks. I think Gordon's suggestion is a good one. The Science and Management Committee has been the recipient of other related issues. I think there was a resolution that related to fish and human health last year that's been addressed by that board, so I'd support that.

CHAIRMAN SANDIFER: If somebody wishes to make a motion, I'll certainly be happy to hear it, but I believe we have consensus that this is something I as chair should refer to Management and Science Committee and ask them to take some appropriate action. I'll work out

the right charge to them. But one of the more important things for them to be doing, as I read this, is to make sure that all of the states are up to speed with what each other are doing, and the various approaches that are being used, contact points, those sorts of things, because inevitably, all of the states are going to have some kind of harmful algal bloom problem in its relation to fish health and other things.

So your points are well taken. I will so make that assignment to Management and Science.

Is there anything else we need to discuss on this item? Jamie, anything further that you need to bring before us?

DR. GEIGER: Mr. Chairman, that satisfies my concern, and I think a well-directed charge to that committee will go a long way to get us involved in the issues ahead of the issues and pro-active of the issues evolving. Thank you very much.

CHAIRMAN SANDIFER: Would you be willing to put a few words on paper to help me in the next day or two?

DR. GEIGER: Yes, I'll be glad to assist.

CHAIRMAN SANDIFER: Right. Thank you.

All right. Let's move on to the Habitat Committee report. Bill.

MR. WILLIAM GOLDSBOROUGH: Thank you, Mr. Chairman. The Habitat Committee met earlier this week, and I'll be brief. I'll just report on the major items of interest to the Policy Board. First of all, you are familiar with our Submerged Aquatic Vegetation Policy. We are finalizing an implementation plan for that policy. I think we're very close to the final draft of that and will be getting a copy out in the mail to the Policy Board to get any final input from you folks on that. The committee feels pretty good about that implementation plan.

You recall that the committee is forming a Habitat and FMPs Committee under the Habitat Committee in which we can bring in expertise from other agencies, state and federal, to assist the committee in developing effective habitat sections for FMPs. It's been a long road identifying those individuals that would effectively serve on that committee, but we're pretty close right now and we've scheduled the first meeting for December 11th and 12th of the Habitat and FMPs Committee.

On essential fish habitat, two things to report. The Commission hosted a workshop for the Northeast to attempt to facilitate the use of state fishery data in the development of the background information which will be used for ID'g EFH, and that was a very effective workshop. I can report that NMFS and the councils were very appreciative of the cooperation the states showed in making their data available.

And finally, we did not have enough time to complete our agenda and a couple of other items involving EFH, in particular some more discussion about the Commission's involvement, had to be put off, but what we've decided to do, since we have a third meeting scheduled for 1998, is devote our next meeting to essential fish habitat, and particularly the Commission's role therein. And that will probably take place in the February Commission week.

And that's my report, Mr. Chairman.

CHAIRMAN SANDIFER: Any questions or comments for Bill? Bill, there was nothing that required action by the Policy Board at this point? I congratulate you on your progress and really appreciate the efforts

going into the essential fish habitat. That's probably the biggest single agenda item any of us have got to deal with, and you guys are wrestling with it very, very well, and I'm sure that the Service is very appreciative of the efforts.

MR. GOLDSBOROUGH: And I would reference as well for the Policy Board that there was an update on that involvement that was passed around.

CHAIRMAN SANDIFER: Right.

We're making splendid progress. I'll pause for just one second to note that we must be out of this room by 6:00 o'clock this evening. There's another function in here, and all of the electronics and so forth have to be moved out. So we will recess at 6:00 o'clock and then continue in the morning. Definitely going to recess at 6:00 o'clock.

George, are you ready for the FMP status report and work plan?

MR. LAPOINTE: Yes, I am, Mr. Chairman. I have handed out, as I have the last number of Policy Board meetings, something called "The Fishery Management Plan Status Report." It's about 40 pages long. It covers our



fishery management plans for each plan, the states under jurisdiction, the FMP status, status of committees, a work plan for 1998, and then I've tried to include law enforcement and habitat issues, major issues in the fisheries, issues that we saw coming for the next year. And this is just kind of a running year. It's October until September now. In May it'll be May to April again. And then compliance issues as dates.

We can go through this in whatever detail you want. While we try to get that up, that was the FMP work for the coming year. I'll go through just the Table of Contents now and tell you how I see these things going. The first issue is not in the Table of Contents, and that was at yesterday's Eel Board meeting the board made a recommendation to split horseshoe crabs away from eels and prepare a Horseshoe Crab Management Plan.

The discussion yesterday -- and anybody can pitch in in just a minute -- would be that a Horseshoe Crab Management Plan be completed by next year, and one of the things I've said in doing this is that we would need a plan coordinator and a plan writer, a combined person to get the work done, because staff frankly, as has been said

a number of times, can't do more. They can't coordinate another AP, they can't coordinate another Technical Committee. So this would require another person.

We've got a number of commitments, and we'll follow through a discussion on a commitment for that person and funding for the program as well, because you've heard me talk about budgets as well.

So this is something that's not on there. It's certainly an issue that's been before us all, particularly in the Mid-Atlantic, and it's spilling over into other areas now, the impacts of the bait fishery on horseshoe crab.

Should the ISFMP Policy Board decide to go this way, I would recommend, because there won't be a board put together until February, that we can discuss how it would be budgeted, how it would be staffed, and that an acting chair and vice-chair be appointed so that we could get some work done. I don't want to wait until February, because we'd lose months in doing that.

I'll just go down the Table of the Contents now, and again, I'll take any questions you want later. I believe our American Eel Plan is still scheduled for

completion in October of 1998. Is that correct, John? I don't see him here.

Under Lobster, I have completion of our plan in December of this year. Our Lobster Board met yesterday, and we are still working on completing a plan. I believe right now we're scheduled for a board meeting in November, and we talked about having a full Commission meeting to approve that plan in conjunction with the ACCSB Council in December, likely around the time of the New England Council meeting, which I believe is the 10th and the 11th. So this would mean that the full Commission would meet on the 9th or the 12th.

Should the plan be completed, discussions with the National Marine Fisheries Service and implementation will still take a lot of time. This will remain Frank's major, major work.

Under Atlantic Croaker, I've talked to a number of members in the South Atlantic, and I've allocated money under the budget that we'll talk about tomorrow to finally get the Croaker Plan going. We haven't had a lot of emphasis in the South Atlantic, and this is a species that we need to get going. This would

involve in the first half of next year work primarily by the Stock Assessment Subcommittee and the Technical Committee.

And I will have Joe Desfosse doing the staff work on that in staff, in house, so we'll be in fairly good shape there.

Under Atlantic Herring, we are working with the New England Fishery Management Council on a Herring Plan. I believe the Council now has a date of May of 1998 to get that Herring Plan complete. That's a very ambitious schedule. We will be busy. I'll be happy if it's done in that manner, but that will be quite good.

Menhaden, I don't see any major changes in the plan. The Atlantic Menhaden Advisory Committee will continue to meet probably twice a year, and the board once a year.

Atlantic Sturgeon we discussed earlier today. Right now we have the finish date of October of 1998. Something that we discussed during the Sturgeon Board meeting was accelerating that to the spring meeting, but should that be done, the major measure in the plan would only be a moratorium on harvest, and having that

moratorium be a compliance measure as well, which it is not now.

And I would again, should that course of action be taken, propose that we use adaptive management, the addendum process, to deal with the issue of recovery targets, because that I think will require a lot of discussion and work, and also bycatch in other fisheries.

Black Sea Bass, I don't have any work scheduled, but collectively fluke, black sea bass and scup will continue at a fairly active pace. The Black Sea Bass Plan now contains a quarterly quota, quarterly coastwide quota, and so should we change that, that will require a lot of work.

The Scup Plan -- I've bounced around because these three are connected. The Scup Plan remains problematic in bycatch and in the quota management process.

And yesterday the Fluke Board met. They did not approve Amendment 11 which was the readjustment of the quota allocations based on the proportion of landings under 14 inches. But we had been working on discussing what we then called Amendment 12 and will now call

Amendment 11, and that is looking at long-term management of fluke and whether we could be served better by something other than -- there's two issues. Whether we could be served better by something other than the quota management system we have now, and because those are joint council plans, they will all require amendment under 2 to stay in compliance with the Sustainable Fisheries Act.

Bluefish I have scheduled for -- I mean, I just have written here that we're trying to get this plan done by next year so that perhaps we'll have new management measures to use for the 1999 management measures. We are having a meeting next week with the Mid-Atlantic Fisheries Management Council to discuss how to get this beast moving again.

So if we keep with this schedule, we will go to public hearing early in the next year. I mean, we'd have to go in February or March, I would suspect, to public hearing, and that would require quite a bit of staff work and a fair amount of board work as well to finish up for the middle of the year.

Northern Shrimp we have had on our amendment track -- do you want --

MS. SHIPMAN: Before you leave bluefish, you say, "We are having a meeting." You don't mean the Board?

MR. LAPOINTE: I do not. I'm sorry. I apologize, Susan. The Council -- I believe this came from Jim Gilford. He said he wanted to get people together, Commission staff, Council staff and the chairs to get together to figure out what we're going to do and when we're going to do it by. It'll be a two-hour meeting, and we'll report back to board members. John Nelson is busy, but he is going to write a memo to board members just to give his views as board chair to that process. But it's just trying to get the draft or the amendment ready for public hearing.

MS. SHIPMAN: Thank you.

MR. LAPOINTE: Northern Shrimp. We'll discuss declaration of interest probably tomorrow morning, but we've said this has been under amendment but we've done nothing because of other pressing issues. It's still -- well, particularly in light of this year's overfishing and the need for more management measures in that plan, I don't think -- I've got some meetings to begin that

process. It won't happen before midyear, but there's certainly a strong interest on the part of Maine, New Hampshire and Massachusetts to update the Northern Shrimp Plan.

Red Drum. I don't think we'll have anything in 1998, because the trammel net surveys that have been ongoing will just be coming in next year, and I suspect towards year's end or in 1999, the Red Drum Plan will speed up.

Shad and River Herring we've discussed. We're trying to get ready for approval in May of '98. We are going to -- the stock assessment was completed. We've got some major questions on that, but we are going to use the peer review process that was approved by this Policy Board, specifically the second option to set up an independent pan to look at that stock assessment, particularly using, or using in particular stock assessment people who are familiar with anadromous species, because we want this amendment done by next spring, and if we tried to include shad and river herring in the SAW/SARC process we would likely not get it done until next fall at the earliest.



Spanish Mackerel and Spot, I see no new activity on. Likewise, Speckled Trout. Striped Bass we're all aware that we are -- Striped Bass is going to the SAW/SARC process this fall. Following that report in January, we will take Addendum II out to public hearing to set the final management measures for 1998.

Summer Flounder, as I mentioned, we will be working on Amendment 11.

Tautog I see not a lot of work on, and Weakfish, I think, will just be pro-forma work as well.

Phil. I recognize that's a very fast report, but I want to get to people's specific questions.

MR. COATES: Right. Well, if you're going to do it generally specific questions, I just wanted to note on the Tautog update there is, I think, some actions that took place that tied the F equals .24 targets, the reaching of those targets coincidentally with both north and south to four one ninety-eight. And moving back of the last bullet, F equals .15 back to four one 00. I believe those actions were taken.

MR. LAPOINTE: They were taken. Thank you.

CHAIRMAN SANDIFER: Other comments? Dave.

VICE-CHAIRMAN BORDEN: Thank you, Mr. Chairman. I just note on the subject of Lobster, it may be necessary to move the meeting date up earlier than the one that George listed, which is in the first week in December. If in fact the Commission wants to have input into the National Marine Fisheries Service process, it will be necessary to have that input at an earlier date.

CHAIRMAN SANDIFER: A couple of other items that are partner to this program and to the work plan. I assume this is the appropriate place to do this. Tell me if I'm wrong, George or Jack. There was a motion from a board yesterday to split the Eel and Horseshoe Crab Plan. As I understand it, that motion basically was to split it, but it was contingent upon outside funding being provided to support an additional ASMFC staff person to act as plan coordinator. And once such funding was in place, to fast-track the Horseshoe Crab Plan.

Is that something that this Policy Board needs to act on, and wishes to act on, and to add to the work plan for the year? Mr. Manus.

MR. MANUS: I did say, if you'll give me till Thursday I'll see what I can get in the way of

financial commitments, but I can tell you pretty much what I've got right now. George gave me a draft budget which he just so happened to have in his hip pocket that dealt with what it would cost for a plan coordinator, equipment, stock assessment workshop and travel for the board, Technical Committee and Advisory Panel travel.

I can tell you that we do have a commitment from the U.S. Fish and Wildlife Service through the regional director's office, Ron Lambertson, for a plan writer. How that's going to play out -- George and I have been talking about the roles and responsibilities of the plan writer and maybe some need for some scheduling staff or assistance or whatever at the Commission. And we're prepared to work with George on that.

I had a conversation last evening with Bob McDowell, my counterpart in New Jersey. He's with New Jersey Game Fish and Wildlife. And Bob has assured me that he will be finding the dollars to help accelerate the development of this plan, and we were talking line items last night where we might be able to contribute from our respective organizations to fund this plan.

I can also tell you that we have in hand

\$12,000 right now for the stock assessment workshop, that when I get back to Dover -- and I haven't been back in Dover in a couple of weeks -- I will be happy to look at ways to try to transfer that to the Commission so we can get the ball rolling on this.

I can also tell you that out of the goodness of his heart and in the interest of sound fisheries management, my good friend, Bruce Freeman, has agreed to offer himself as a chair of this board.

That's what I can report to date, Mr. Chairman.

CHAIRMAN SANDIFER: Andy, again in the interest of time, since we are on this agenda item a little earlier than I'd anticipated, if you could craft a motion that would provide the right contingency clause, it would be nice if we could go ahead and get something on the floor for discussion and perhaps approval, and then allow the States of Delaware and New Jersey to work out the details with the ASMFC.

MR. MANUS: Okay. I would make a motion that we accept the American Eel/Horseshoe Crab Fisheries Management Board recommendation to split into two FMPs,

and that the States of New Jersey and Delaware and other interested parties will work with the Commission to find the financial resources to get that job done.

CHAIRMAN SANDIFER: Is there a second to that motion?

MR. PETER COLANGELO: I will second it.

CHAIRMAN SANDIFER: Seconded all over the place here. Pete Colangelo seconded. Any discussion on the motion. Robin.

MS. ALDEN: There is one additional idea in the Eel/Horseshoe Crab Board motion which was that the Horseshoe Crab Plan, once separated, should be developed in conjunction with the Eel Plan, and there was discussion about -- in order to make that real, there was talk about having the advisors continue to meet as a group with some additional horseshoe crab advisors.

And so that concept needs to be included in the planning of this.

CHAIRMAN SANDIFER: Thank you.

Tom.

MR. McCLOY: I just want to reiterate what Andy said about Director McDowell's comments, and also

extend an invitation to those other states around the table that have an interest in horseshoe crabs and coming up with some commitment financially to help this plan move along, because, believe me, if you think that Pfiesteria hysteria was bad in certain states this year, you haven't been there with horseshoe crabs yet. It's been a miserable four months for me.

CHAIRMAN SANDIFER: Andy.

MR. MANUS: I would take as a friendly amendment to the motion the notion of collaboration with respect to the development of the two plans in trying to find a mechanism for the advisors to continue the dialogue.

CHAIRMAN SANDIFER: Pete.

MR. COLANGELO: Yes.

CHAIRMAN SANDIFER: I'm not going to get too formal with going through the amended motion and then the motion here. I think we all understand what we've got before us.

Is there any further discussion on this motion? All in favor of the motion, signify by saying Aye; all opposed, Nay. Any abstentions?

George, do you have a comment now that it's passed?

MR. LAPOINTE: Pretty much. One of the things we'll need to continue is a declaration of -- I mean, we're going to discuss the declaration of interest sheet under Agenda Item 9.a, and so states should think about -- I mean, I would think they could take until February, but we largely probably know which states will be involved and which ones won't. And so I encourage folks, if they can, to tell me when we discuss the declaration of interest summary, to declare their interest on the Horseshoe Crab Board as well.

CHAIRMAN SANDIFER: Mr. Manus.

MR. MANUS: I understand from George that a declaration of interest now requires a check for \$10,000 per state participation. (Laughter)

CHAIRMAN SANDIFER: All right. George.

MR. LAPOINTE: Just one final thing. Adding another active plan certainly impacts staff, but it also impacts you and your staff and your travel as well. You've got a meeting week this week when we've got meetings starting at 7:30. I know I've driven boards

until 9:00 at night a few times, which doesn't make for happy staff or board members.

And so we'll need to think about that as we prioritize meeting weeks next year. It will remain incredibly busy, and this will be one extra board to meet during that time. That's just a heads-up, and I'm sure it's something you all realize, but it's important to reiterate as you see our schedules for the upcoming year.

CHAIRMAN SANDIFER: Understood.

Dr. Geiger.

DR. GEIGER: One other comment. I think also implicit in this motion is certainly the concern on the Board that both the American Eel and the Horseshoe Crab Management Plans move forward expeditiously and both are not delayed by this process. And certainly the decision was contingent upon that this is going to result in some effectiveness and efficiency, and both management plans will then be able to proceed and be completed hopefully by October '98, if I remember rightly.

CHAIRMAN SANDIFER: Correct. As I remember the discussion -- and that's why the motion, I think, was appropriately crafted -- that the action of splitting



these is in fact contingent upon getting additional staff support and other resources necessary for the ASMFC staff to conduct the work. The idea was that a new coordinator could spend a great deal of time on the horseshoe crab issues and allow the current coordinator to spend more time on the American Eel Plan, thereby accelerating both of them.

So I think all of that's very clearly encapsulated in what we've done here today.

We had one other issue that I think should come under this category, and that's the Sturgeon Board had an action related to its breadth of responsibilities, and since I'm in the chair here, Susan, would you be so kind as to bring that one up? Because it does have to do with the planning process.

MS. SHIPMAN: Yes, Mr. Chairman, I will. The Sturgeon Board moved to recommend to the ISFMP Policy Board that the Atlantic Sturgeon Board be expanded to become a Sturgeon Board, and the intent of that motion is that we would address not only Atlantic sturgeon but short-nosed sturgeon as well.

MR. NELSON: Second.

CHAIRMAN SANDIFER: Moved by Ms. Shipman, seconded by John Nelson. Any discussion on that particular motion? All in favor of the motion, say Aye; all opposed, Nay. Any abstentions? Passes unanimously.

George, your work is growing by leaps and bounds.

MR. LAPOINTE: That does not surprise me.

CHAIRMAN SANDIFER: Mr. Schaefer.

MR. RICHARD SCHAEFER: Mr. Chairman, relevant to the issues before us, regarding black sea bass and scup, as we all will recall, this Commission found the States of Maryland and Massachusetts out of compliance with either one or both of these plans. My memory doesn't serve me well on that. The National Marine Fisheries Service has been assured by Ms. Leonard and by Mr. Coates that the states will be back into compliance, if not already done so.

Now, my recollection of the language of the Atlantic Coastal Act is that this Commission has to find those states back into compliance. We have the paperwork done ready to move if it needs to move, but I don't think we can do anything until this Commission finds the states

back in compliance again and let's us know that.

So I don't know if this is the appropriate time to address it or not, but something needs to be done.

CHAIRMAN SANDIFER: This question came up at the Management Board meeting, but I will call on Jack Dunnigan to answer it again for a broader audience.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you, Mr. Chairman. Under the Commission's rules, a state that has been determined to be out of compliance is instructed at that time on those measures it needs to take to come back into compliance. If a state takes those measures and reports that to the Commission and gives evidence, the chairman is authorized on his own accord to withdraw the determination of noncompliance. If a state takes other action that it wants to argue is equivalent, that matter has to come back to the Management Board.

In this instance, I understand that both the Commonwealth of Massachusetts and the State of Maryland believe that they have done what they were asked to do and have submitted that documentation to us. We at the staff have not had an opportunity to fully review it yet. We will be over the next week and getting --

assuming that they've acted appropriately, hope to get a notice of withdrawal from the chairman to you very shortly.

MR. SCHAEFER: Thank you, Jack. The sooner, the better. So we'll be looking forward to hearing from you at a very early date.

Mr. Chairman, a second item. As you know, there was a lengthy discussion yesterday regarding the Service's concerns for not only the timing of but the content of the developing plan for American lobster and the interstate and federal action that's required to bring this into effect. I don't know if this is the appropriate time on the agenda to have some further discussion on that issue.

We could discuss it under the part of the agenda that deals with overfished resources or other business, as you choose. But we do want to have it on the table for discussion.

CHAIRMAN SANDIFER: Mr. Schaefer, I think the appropriate time is now. We're discussing the work plan for -- the fishery management plans and the work plan for '98, and certainly now --

MR. SCHAEFER: All right. Thank you, Mr. Chairman. Then based on that, I'd like to yield my chair to Dr. Rosenberg who's our responsible manager for this fishery.

CHAIRMAN SANDIFER: My only request is for us to keep in mind that at 6:00 o'clock we do have to break or recess until tomorrow morning at 7:30. Andy.

DR. ANDREW ROSENBERG: Thank you, Mr. Chairman, and I certainly don't intend on taking nearly that amount of time. As Mr. Borden noted, there is a serious problem in terms of the coordination now between the actions the Commission might take and the need for federal action on lobsters. That arises because of language in the Sustainable Fisheries Act on a number of fronts, and it also primarily, importantly in some ways, arises because of the concern about overfishing of the lobster resource.

Of course, lobsters is on the list of overfished fisheries, and I know you'll be discussing that under an additional agenda item. I'm very concerned because it does not appear under the schedule proposed in the work plan that we will have a recommendation from the

Commission prior to developing public hearing draft and going out to public hearing with federal regulations for the American lobster fishery.

There was a conference call prior to this Annual Meeting. I think certainly on that conference call it was very clear that that was the situation, and I believe in our correspondence prior to that and all through the past year we've tried to make that clear. I just want to make sure that the Policy Board realizes that there is a disconnect now between the actions of the Lobster Management Board and the actions that the National Marine Fisheries Service needs to take with regard to meeting both the intent of the law as well as the need for conservation for American lobster.

I had hoped and had heard many expressions from members of the Board that we were pretty close to resolving the issues. I believe and certainly hope that we have been very clear, we the Service have been very clear about our needs and requirements under the federal standards for lobster management. But unfortunately, I don't believe that the Board has been able to move forward, and that does cause a serious coordination

problem.

Finally, I just point out, as I think we've stated in a number of Board meetings and Council meetings, for that matter, I am extremely concerned about this resource and the risk to the fishery from continuing to move forward so slowly in terms of lobster management action. I know that individual states have taken actions, and certainly am not saying that that is not positive. It certainly is positive to the extent that individual states have taken action.

But I'm very, very concerned that there is not an overall comprehensive plan at this stage. This is the most valuable fishery in the Northeast, probably employs more people than any other fishery, and it is in a risky condition. I'm not predicting dire consequences. I'm telling you it's in a high-risk condition, and I think it is our job as managers to ensure that we don't take such risks.

So I just want to make sure that the Policy Board is aware of that. Obviously, the Lobster Management Board has heard these comments before. Thank you very much.

CHAIRMAN SANDIFER: Thank you, Dr. Rosenberg. Most, I think, of the members of the Policy Board are fully aware of the disconnect, as you put it, and the difference in the mandates of the National Marine Fisheries Service through the Magnuson-Stevens Sustainable Fisheries Act and other mandates that both the states and the Atlantic States Marine Fisheries Commission have.

Let me ask Dave Borden who chairs the Lobster Panel to respond.

VICE-CHAIRMAN BORDEN: Thank you, Mr. Chairman. I think, as Doc Rosenberg knows, the Management Board intends to meet in the middle of November and hopefully finalize the details on the program. The issue that is somewhat problematic is that it had been our -- and I think it is still -- intent and preference to have a Commission position on the issue and then recommend that Commission position to the Service.

And the original intent was to do that prior to December 1st, so that the Service would have full input from the Commission before it has to move forward with its rule making. The date that George referenced in the earlier discussion clearly would eliminate that



possibility. The Service would have to move forward.

I think the issue that we have to weigh around the table is, do we want to have a special Commission meeting at the end of November so that we'd provide that input to the Service? Do we want to let the Policy Board simply go forward, formalize its position and then recommend that directly to the Service as a position? And it's somewhat -- the Policy Board cannot speak on behalf of the entire Commission, I recognize that. So we're almost forced to have a full Commission meeting.

Let me just add to it further. It would be my preference for the Commission to go on record prior to the date that the National Marine Fisheries Service needs it and specifically recommend certain actions for this fishery. I think it's incumbent upon us to finalize a position and give them a recommendation.

CHAIRMAN SANDIFER: I expect there'll be some other comments. Ms. Alden.

MS. ALDEN: I agree with David about the need for this Commission to go on record with specific recommendations to the Service. I think it's of highest priority for the same reasons that Andy spoke of the

importance of this fishery.

My question is, Andy, if you could explain your timing requirement specifically and what actions under what auspices you're in the process of starting to take now?

DR. ROSENBERG: Mr. Chairman, if I may, to respond, there are a number of requirements on the Service with regard to management of all these fisheries, but in particular with lobsters under the Sustainable Fisheries Act, there is a primary requirement, of course, to address management for any overfished fishery, and that is certainly the case for lobsters. The lobster fishery is currently under a Magnuson-Stevens Act plan, and at the request of the Commission and the Council we had published a proposed rule with intent to withdraw that plan and replace it with Atlantic Coastal Cooperative Fishery Management Act Regulations some time ago now.

We have not so withdrawn that plan because we have been working with the Commission and the Board to try to develop what those regulations would be under the Atlantic Coastal Act. Our requirements in terms of the standards that the regulations need to meet are the same,

whether it be regulations under Magnuson-Stevens or Atlantic Coastal Act. We must meet the national standards that are contained in the Magnuson Act.

Now, that's the background that I think you all are aware of. In addition to that, there was a requirement in the Sustainable Fisheries Act to promulgate regulations for the American lobster fishery in federal waters by date certain, March of 1998, actually to propose those regulations by January for implementation in March, or a default management measure on the nontrap sector only would apply.

We therefore need to take a number of actions. We need to certainly consider management prior to that March deadline for implementing federal regulations. We certainly need to address overfishing, because any management proposal that we put forward has to again pass the test of the national standards. And we need to do that, in my view certainly, since I do not want to manage by the fact that we didn't meet a congressional deadline, we need to do that by March.

On top of that, since lobsters is on the list of overfished fisheries, there is a requirement for

the councils within one year to develop -- the Council, New England Fishery Management Council, to develop management measures should we still have a Council plan at that point.

I'd point out that in the list of overfished fisheries, it does not actually make any difference whether the plan is under Council or ASMFC authority. It's within the geographical area of the Council's authority. So the requirement to meet that overfishing standard is again clear on the list of overfished fisheries.

So it's my view that the time line we need to meet is to implement regulations by March. That means that we have to go to public hearing in December. That means that we have to have a public hearing draft in mid-to late November, so that we can have those public hearings. That's the time line we've been working to all along and I believe is as clear as these things get in law, and I believe we've also been clear about the need to do something by the end of the year with regard to the Board. Thank you.

CHAIRMAN SANDIFER: Thank you, Dr.

Rosenberg. I believe I understand the time line a little more clearly now, but I'll ask your indulgence to consider a slight postponement in your schedule. It appears to me that if the Lobster Management Board can meet again in November and hopefully come to some resolution on this issue, that I believe the Commission could meet not later than the second week in December.

We do not have the dates certain at this point, but we are looking at dates for an ACCSP, Atlantic Coast Cooperative Statistics Program meeting anyway that many -- the coordinating council for that -- many, if not most of the commissioners would be attending, and would give us an opportunity to piggy-back a full Commission meeting and perhaps be able to deal with this issue.

That would come very close to the time line that you have in mind, assuming that the Lobster Board comes up with a set of recommendations to present to the Commission. Could you live with it?

DR. ROSENBERG: Mr. Chairman, I understand the intent here. I'm afraid that our statutory time lines for producing the plan may preclude that. However, the Commission finalizing recommendations in mid-December,

certainly we can still work with because, of course, we would be going to public hearing on a proposed a rule. So that would, of course, not be a final rule, but I think if the Commission stayed to that time line then we would have to view the Commission's recommendation as essentially comment on the proposed rule, and we would be able to consider that in developing a final rule.

I do need to point out, perhaps unnecessarily, but I do need to point out that, of course, those recommendations are most helpful if they do meet the standards that we're working to to end overfishing under the national standards in the Magnuson-Stevens Act. So I don't want anyone to have the impression that a recommendation from the Commission doesn't require us still to meet the national standards. Of course we do, irrespective of what the Commission recommends.

But I'm urgently seeking the Commission's recommendation to end overfishing for this resource. Thank you.

CHAIRMAN SANDIFER: Dr. Rosenberg, I clearly understand your concerns and the time line. I again ask for a little bit of forbearance in that we would

be able to get the information to you in time for the document, not as comment on a proposed rule, and I would suggest that it would be very, very helpful to the Commission's deliberations and probably to the Lobster Management Board as well to have a final document from you of the definition of overfishing and what standards will be applied to this, so that the Lobster Management Board and then the full Commission can be sure that we are addressing what we are supposed to address.

Is that document and those standards available at this moment?

DR. ROSENBERG: Yes, Mr. Chairman, it is. We're still working to the -- using the recommendations that have come from the peer review that the Commission and the Service jointly commissioned two years ago now, I believe, which made recommendations in terms of their review of the overfishing work. I think that the Board has been well aware of the existing definition of overfishing that came out of that peer review, and we've been working with it consistently for several years now. We will continue to work with that information and the most recent stock assessment information from the SAW

process. The national standards, of course, are well documented.

With regard to the timing, I certainly will do everything I can to enable the Commission to come to completion, but I am very constrained by the statutory time lines that have been put in place.

CHAIRMAN SANDIFER: Understood.

Any comments or questions from any member of the ISFMP Policy Board? Robin.

MS. ALDEN: I'll just reiterate that I think that if it is possible in any way to coordinate our respective time lines so that we can make our recommendation to the Service during the development of their public hearing document, rather than after, we should strive for that.

CHAIRMAN SANDIFER: I concur with you entirely. I will be talking with Jack, and one of the other options -- whether it's possible or not, one of the other options for consideration would be for the Lobster Management Board to meet one day and the Commission to meet the following day within November. I don't know whether that's possible or not. I mean, everybody's



schedules get a little bit more than difficult now.

But we will certainly consider any possibility, meeting possibility that we get this matter resolved and the information to the Service prior to the time they have to finalize their documents.

Any other comment? Either I will, in my role as chairman of the Commission, or Dave Borden as vice-chair, will be getting in touch with every commissioner to urge attendance in dealing with this problem once we've worked out what kind of schedule we can best live with. Okay?

Thank you, Andy. Anything else you'd like to --

DR. ROSENBERG: If I could just make one final comment, Mr. Chairman. I do believe that we've again written to the Board and tried to be as clear as possible about what we think might be the most workable proposal. I do not actually think that we're very far apart in concept. So I really do think this issue is resolvable in a short period of time.

I urge you to look at that proposal very carefully, and we'll try to answer any questions that come

up. And I thank you for your attention to the matter.

CHAIRMAN SANDIFER: Thank you. I assume that was really directed at the Lobster Management Board. They're the ones who've got to look at it first and then bring a recommendation to the Commission.

Anything else on this FMP plan, work plan, outline and so forth? Have we got enough on our plates?

George, would you like to continue with the ISFMP process issues, and let's get through a couple of these short things before we break for the afternoon.

MR. LAPOINTE: Behind Tab 14 and immediately behind the minutes is a declaration of interest sheet for September 1997. I requested of Policy Board members to do a declaration of interest or to review this in July, and this is a document that needs to be approved by the Policy Board, something I'd neglected to do in the past.

And so I ask that people look through this and we make the necessary changes. Jack Travelstead had to leave, and he said that we had Virginia as having a declared interest in Atlantic herring, which he said is not the case. So there's one error that's in this

document. But I ask that states look through this.

Also, I had just mentioned, if in fact states were willing to do that, to tell me whether you're interested in the Horseshoe Crab Board or not.

CHAIRMAN SANDIFER: John Nelson.

MR. NELSON: Thank you. George, where states had declared for the American eel, and it was a combined program before, FMP before, do you want to go through that iteration again or is it satisfactory that if they declared for the American eel, that they were also declaring for horseshoe crab?

MR. LAPOINTE: I think there were a couple of states that weren't interested in being on the Horseshoe Crab Board. So, I mean, if we just want to -- I think Susan wasn't interested. And I didn't know how New Hampshire would react. So I mean, if we can just get people to say who's not interested, that's fine, too. I can complete the list either way.

MR. NELSON: We're interested.

MS. SHIPMAN: We're not.

CHAIRMAN SANDIFER: New Hampshire is; Georgia is not. I got that information.

Dave Borden.

VICE-CHAIRMAN BORDEN: Rhode Island is not.

CHAIRMAN SANDIFER: Rhode Island is not interested. Anyone else wish to declare? Robin?

MS. ALDEN: Maine is.

CHAIRMAN SANDIFER: Maine is. Ernie.

MR. BECKWITH: Connecticut is.

CHAIRMAN SANDIFER: Connecticut is. Pres.

MR. PRESTON PATE, JR.: North Carolina is not.

CHAIRMAN SANDIFER: North Carolina is not interested in horseshoe crabs. Phil.

MR. COATES: Massachusetts is.

CHAIRMAN SANDIFER: Massachusetts is. Dot.

MS. LEONARD: Maryland is.

CHAIRMAN SANDIFER: Maryland is. Gordon.

MR. COLVIN: New York is.

CHAIRMAN SANDIFER: New York is. A.C.

MR. CARPENTER: I'd like the opportunity to review it with my commission and report back at a later date. We were interested when it was a joint plan. I don't know the level of our interest after --

CHAIRMAN SANDIFER: Seems reasonable. Ed.

MR. CONKLIN: Similar circumstances for us. I'd like to review it with staff to see whether or not -- and the Marine Fisheries Commission -- to see whether we've got an interest. We certainly have plenty of the animals, but I don't know if we have the same concerns.

CHAIRMAN SANDIFER: South Carolina is. Fish and Wildlife Service is.

Dick Schaefer, I'm going to assume the National Marine Fisheries Service might have --

MR. SCHAEFER: It could be we are.

CHAIRMAN SANDIFER: Might have a lingering interest.

MR. SCHAEFER: Some people have brought it to our attention.

MR. LAPOINTE: Thank you. And the Board needs to approve this declaration of interest sheet.

CHAIRMAN SANDIFER: Is everybody familiar with it, comfortable with the interest sheet as modified with these changes on horseshoe crabs? Are we ready to entertain a motion to approve the declaration of interest form? Susan.

MS. SHIPMAN: Move approval of the state declaration of interest.

CHAIRMAN SANDIFER: As modified?

MS. SHIPMAN: As modified. And I would give states the opportunity if they see any other corrections needed to provide those to staff.

CHAIRMAN SANDIFER: And seconded by Dave Borden. Discussion on the motion? All in favor, say Aye; all opposed, Nay. Any abstentions? The Ayes have it.

MR. LAPOINTE: There's one more item before you leave, and that's that Lisa Kline had a number of materials she wants to hand out. We're unloading all our paper. There's a couple of draft resolutions and some other things that she wants to give to Board members before tomorrow morning's meeting so don't -- let staff hand those out, please, before you leave. Thank you.

CHAIRMAN SANDIFER: Dr. Geiger.

DR. GEIGER: Mr. Chairman, I believe I made this comment before, but again I think it would be beneficial if we could add a column to the declaration, have the Fish and Wildlife Service, since the Fish and Wildlife Service does not have a declared interest in all

the species, only selected species. And I think the table would be very beneficial to show that with the Service involved.

MR. LAPOINTE: We can do that.

CHAIRMAN SANDIFER: Staff says they will make that necessary change.

Doug.

MR. DOUG GROUT: (Away from microphone): In connection with that information, the Management and Science Committee report -- you have a report from the Management and Science Committee for you to look at overnight so that you'll be prepared for tomorrow. Also I was informed that the peer review prioritization for the Board is under Tab 4, Section 6 and a memo from Lisa Kline to the Policy Board -- (inaudible). We're going to have to ask you folks to take action on that prioritization, the peer review process. (Inaudible)

CHAIRMAN SANDIFER: Thanks, Doug.

And we will continue with this agenda starting at 7:30 in the morning unless you all disabuse me of that terrible notion. The real agenda had us starting at 7:30, and that should allow us to complete our business

and hopefully complete the rest of the Commission's business tomorrow in an expeditious fashion.

Please review these materials. We will complete the Agenda Item 9 first in the morning and then we'll have the report from Management and Science. There are obviously some items that will need our attention. So please plan to be back here fully prepared to go at 7:30 in the morning.

(Whereupon, the meeting recessed at 6:00 o'clock p.m., October 22, 1997.)

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THURSDAY MORNING SESSION

October 23, 1997

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The Thursday Morning Session of the Interstate Fisheries Management Policy Board Meeting of the 56th Annual Meeting of the Atlantic States Marine Fisheries Commission convened in the Cocoa Ballroom of the Hershey Lodge and Convention Center, Hershey, Pennsylvania, October 23, 1997, and was called to order at 7:40 o'clock a.m. by Chairman Paul Sandifer.

CHAIRMAN PAUL SANDIFER: Ladies and gentlemen, good morning, and we are back in session, the ISFMP Policy Board, and we shall continue. George.

MR. LAPOINTE: Shall we call the roll?

CHAIRMAN SANDIFER: Go right ahead.

(Whereupon, the roll call was taken by Mr. Lapointe.)

MR. LAPOINTE: You have a quorum.

CHAIRMAN SANDIFER: Thank you. And we should be on about Item 9.b, "Staff Attendance at PID Meetings."

MR. LAPOINTE: There's a number of items I

want to just bring to people's attention on this. First is, my staff has been going crazy with PID meetings and public hearings, and there was discussion about whether in fact staff was necessary at the PID meetings. We have talked about states being able to run the hearings on their own. And so we're just looking for Board direction on how to handle that.

Obviously, from a staff travel and budgeting perspective, if we could run public information meetings with a minimization of staff in traveling up and down the coast, that would help. And I'm just looking for the direction of the Board on that issue.

The other issue that comes up under public hearing is, I handed out some opening comments we used in the summer flounder hearings. I took these largely from some stuff that was sent to us by the South Atlantic Council. We have had less structured hearing comments in the past, and some of our hearings -- the staff's done a fine job, but we have had hearings where we don't have state agency members sitting at the front table with staff. And I think it sends the wrong message.

And so what staff is intending to do,

unless you object, is to continue asking that state members run those hearings and that staff just provide technical support, and that we use a statement like was provided to you yesterday as an opening statement just to standardize the comments that are made at the hearing. And anybody's comments on the draft opening remarks are welcome.

So I've kind of brought two issues. Phil.

MR. COATES: Other than the desire by some meeting attendees to have fresh meat at these hearings, I have no problem whatsoever with acting on behalf of the ASMFC, since in fact we are ASMFC, and conveying that perspective. I think that sometimes gets lost. I know at some of the hearings I've been to, some of the PID meetings and hearings, there's been a desire to see the ASMFC person. And it comes to the fore, particularly with some of the more vexing and controversial issues. But I think that's something we can certainly accommodate.

As far as the agency, particularly the agency head conducting the hearing, I don't understand that. Why would they not be at the front of it?

CHAIRMAN SANDIFER: Dave Borden.

VICE-CHAIRMAN BORDEN: Thank you, Mr. Chairman. I concur with Phil's perspective. I think there's a difference, at least from my own perspective. I think it's incumbent upon the states to take the primary responsibility for conducting PID meetings, which I really view as scoping meetings and very preliminary, and there's no final action, and a whole host of other things.

When you get around to public hearings, I think it's very important on contentious issues to have someone from the Commission there at the meeting. But the state representative should chair it. They know the players. They know what the names are. They know who to call on in the audience and so forth. It would just make for a much more fluid situation there to allow the state representative to chair the meeting.

CHAIRMAN SANDIFER: Robin.

MS. ALDEN: I concur with both Phil and Dave. The one thing I'll say about PID meetings, we just had a round of them for herring, and I think most of those were chaired by -- did not have Commission staff, or certainly some of them didn't. And one of the things I think might be worthwhile is for the staff and the Board

prior to those meetings to decide the general format in which they want the comments so that there's some consistency in the notes and the outcome of that information.

And I will just add that having -- we did eight lobster hearings just recently, and I think Commission staff was able to be at five of them. It was tremendously helpful to have the staff there. It was okay to do them without them, but it was really very good to have the staff there.

And I firmly believe that the agencies should take the lead, the state agency should take the lead in running all of those, both PID and hearings.

CHAIRMAN SANDIFER: A.C.

MR. CARPENTER: I know that when we had the striped bass hearings, we had John Field come down. We set the hearing up in terms of all the arrangements. John gave an excellent presentation and answered a lot of the questions. I think there's also some advantage to having, particularly hearings that are going to span a large geographic area, to have one person -- in the case of striped bass, John -- travel the coast. He's able to give

you a fairly succinct report and a fairly consistent opinion of what went on at each of the hearings.

If each of us provide our own report as to what went on, you've missed that continuity of a single person having attended those to give you an overall viewpoint. So I think there is some advantage, in cases of controversial issues, to have that person see the whole spectrum.

MR. LAPOINTE: We specifically discussed it in terms of the PID meetings and not the draft amendments, just because they tend to be a lot more general. When you get into more specific information, more complex and more technical, obviously somebody who's in touch with all those issues is critical to keeping the hearing running well.

CHAIRMAN SANDIFER: Anybody else wish to be heard? It sounds to me like we are giving fairly general guidance to staff to use their best judgment, and that is, where possible, a Commission staffer should be present to assist with the PID meeting, certainly should be present for the hearings on controversial issues. State agencies should take the lead in setting up these meetings and

making sure that they're run properly and sit with the staff person.

In those circumstances where it is either inconvenient for the Commission staffer to come for PID meetings or there's simply too many to get handled in a reasonable way, then the state agency should simply take over and handle it.

That's the kind of consensus I think I'm hearing from this group.

Robin and then Dave.

MS. ALDEN: What I was actually saying was I think we could make as a policy that staff does not need to try to be at the PID meetings.

CHAIRMAN SANDIFER: Okay. Dave.

VICE-CHAIRMAN BORDEN: I agree with that, and the other point that I would make is that I think it's helpful for the state staff to do the minutes of the PID meetings and some of the public hearings. They know the players, they know the names. And I think it's easier for them to capture it. Obviously, that all has to be funneled through the staff so you get some consistency on the format and so forth.

CHAIRMAN SANDIFER: Anybody care to make a motion to these effects, or is this sufficient direction? George, are you happy with this, it's sufficient?

MR. LAPOINTE: Yes.

CHAIRMAN SANDIFER: All right. Let's then move to Item 9.c., which talks about emergencies.

MR. LAPOINTE: I have two things on emergencies actually. In your binders behind the declaration of interest sheet -- you'll remember that at the spring meeting we approved a change to the length of emergencies. The Charter in the past has read that emergencies would initially be 90 days with up to two additional 180-day periods. And we changed that, you changed that to an initial period of 180 days with up to two one-year extensions.

And there is draft language in the Charter which reflects those changes. So that's for folks' information and inclusion in the Charter. I think we should look at that.

The other issue is not so easy, and that is -- and this came up in the context of the Eel Plan for both elvers and for horseshoe crabs, as to whether the



emergency provisions of the Charter allowed emergencies on plans under development. And I've talked to Susan about this, and it was her thoughts that when they were drafting the Charter that this would be allowed, and then other people have said, "No, we should have a plan before we do emergencies."

And so I'm looking for some guidance to the Board on how to proceed. Jack gave me two reads yesterday when we were talking about eel. I don't think it's clear at this point. Certainly from a staff perspective, the idea that -- to kind of get the record on a roll, it makes sense to me that we not use emergencies before plans are in place, and that we not just use manage by emergency.

But again, I'm looking for direction. Should the Charter be changed or clarified to deal with this issue?

CHAIRMAN SANDIFER: Comments? Susan.

MS. SHIPMAN: Back when we were developing the standards and procedures, I seem to recall -- and I can go back, I have all of that record -- I wouldn't dare throw it away -- and look at it. But it seems to me the issue in the absence of a plan had to do with a public

health emergency. You may have those situations arise that, you know, involves a public health emergency and you don't have a plan. And I think that's the context within which we contemplated doing something in the absence of a plan.

CHAIRMAN SANDIFER: Dr. Geiger.

DR. GEIGER: Mr. Chairman, this did come up in the American Eel Management Board, and I guess I still think we need some additional clarification again. You know, the executive director did give his definition in that particular Management Board, but again, the Charter is clear in terms of definition of emergencies.

And as Ms. Shipman said, yes, it occurs under those circumstances which public health is impacted, or the conservation of coastal fisheries resources, or the attainment of fisheries management objectives has been placed substantially at risk.

I see this section as allowing this Commission to have the adaptive management flexibility to deal with the unexpected. And I think the definition of emergencies is very clear, very explicit. And again, I guess I would like this Board to make some kind of a more

definitive definition. Do we have capabilities to initiate emergency action in the absence of FMPs or not?

I mean, I think it's either Yes or No, and if it's Yes, under what circumstances? Thank you.

CHAIRMAN SANDIFER: Other comment? John.

MR. NELSON: Well, to follow up on what Jamie said, the converse of that is why wouldn't we have that type of ability? If there's some emergency that comes along, what's the negative of having that ability to declare an emergency? What were the two reads that Jack had? Jack, what were your two reads on the pro and con of how this is worded?

EXECUTIVE DIRECTOR DUNNIGAN: Well, the question really was what was the intention when it was drafted, and you have to determine that by looking at the language that was used. And there is some indication, I think, in the way the language is put together that the intention was for emergency actions to act as amendments to FMPs, and that the implication thereby would be that you would have to have had a fishery management plan that previously addressed the fishery before you would be able to take the emergency action.

Sort of the underlying policy considerations that you need to look at here are, first of all, are we going to use the emergency authority for more than we ever wanted to once it's there? We need to be very careful that we don't take advantage, undue advantage of a procedural mechanism that we've made available and end up managing fisheries substantially by emergency for significant periods of time. We've already changed the Charter once to significantly extend the length that emergency actions can stay in place.

Emergencies are not a good way to do business. We ought to be managing according to well-thought-out plans that have been brought to public hearing and have been fully integrated with all of the considerations in the fishery and with other fishery management plans and our partners in other agencies and the Federal Government as well.

The problem with emergency authority is it's just too tempting to use all the time, and we're not unique. The federal management process runs up against that policy consideration as well.

So, John, those are some of the thinking

that went behind here. The advice I gave to the Eel Board yesterday was that at this time I wouldn't tell you that it's absolutely impossible to do, but I'm not sure it's a very good idea, and it would be better if you could limit the use that you put this emergency authority to.

CHAIRMAN SANDIFER: A.C. first, and then I'll come back to you.

MR. CARPENTER: Well, I think the definition of an emergency refers to the attainment of fishery management objectives, and if you haven't written a plan, you obviously don't have fishery management objectives in place yet. So I don't know how they could be changed or adversely affected.

The other is the coastal fishery resource is in need of conservation. We wouldn't be attempting to even write a plan if it wasn't already in need of some kind of conservation. And the third instance is public health, and I think that's well outside of the Commission.

So I don't think you have the authority under the definition of an emergency to act without a plan already in place.

CHAIRMAN SANDIFER: Jamie, then Susan, then

Dave.

DR. GEIGER: Mr. Chairman, I think the crux of this issue is -- and if I could summarize it again -- is I think we either need clarification on Section 10 emergencies -- and again, I think the critical issue is can we initiate emergency action in the absence of a fisheries management plan? That's the clarification I think I am looking for in Section 10. I think the definition of emergency is well laid out. I think it's appropriate, and I think it covers a lot of contingencies that have faced this Board in the past and probably will face this Board in the future.

I think that's the clarification I think I'm asking the executive director for clarification.

CHAIRMAN SANDIFER: Susan.

MS. SHIPMAN: Yes. In 6(d), I guess, (iii), on Line 5, it says "provided the Board has initiated action to prepare an FMP." I think we clearly contemplated there might be a circumstance in which we didn't have a fishery management plan. That's the way I read this language. I'd be happy to go back and pull out the archives from the development of this. I do have the

transcripts.

But I totally agree with Jack. I do believe it ought to be used very judiciously. In all of our discussions of drafting this, that was the way the task group contemplated it.

CHAIRMAN SANDIFER: Dave.

VICE-CHAIRMAN BORDEN: Susan actually made a portion of the point that I was going to make. But the other aspect that I touch on is that emergencies are implemented through the powers of the state. When we go back after we vote, we have to go through an emergency procedure in the state. And in my case, I have to go through an APA process that's dictated by the state. So to some degree, there are safeguards on it.

The other point that I'd touch on that's related to that is I think it's appropriate to actually do it in the absence of a plan for an unanticipated event where you really have a biological crisis. But once you deviate from that, I think we're really on tenuous ground. If you've had a situation where the biological stock condition has been deteriorating over a series of years and you essentially haven't done anything about it and

then suddenly someone comes to a meeting and says, "This is a crisis situation," that is not unanticipated, in my own view, and is not a good reason to violate the APA process.

CHAIRMAN SANDIFER: Jack.

EXECUTIVE DIRECTOR DUNNIGAN: Dave's hitting a good point. The question is, are you using this authority for crisis or convenience? And without meaning to specifically talk about any particular action, that question frankly is raised in my mind with respect to the current emergency for Atlantic herring. Emergency actions are a quick way to get business done, but that isn't the only reason that you have for using them.

And I think that the record -- my recollection of the preparation of this part of the Charter was that the intention at the time was really to use it only in very limited instances and not get caught up in the situation where the Federal Government found itself where they were running to use emergency action under the Magnuson Act quite frequently.

But to get back to Jamie's question, at the risk of sounding like a lawyer, my question back to you



is: What answer would you like to have? Don't ask me to give you an abstract definition of what this is. I mean, I think the issue for the Policy Board is, how do you want your process to operate? And we can craft the language that will do that.

CHAIRMAN SANDIFER: Jamie, and then I've got Andy in the audience.

DR. GEIGER: Since I'm a biochemist by training, Jack, I'll ask you the question on the laws of thermodynamics that we see crisis and chaos increasing at an exponential rate. I'd prefer not to have the answer to the question really. What I'm trying to do again is to get some read on policy.

And again, it came up in American eel, and I don't mean to be argumentative in the process, I just would like to know what the position is on policy. I get the sense that under rare conditions and under the definitions of emergencies, this Board at the guidance of the ASMFC would consider that option. And I think again, I'm looking for flexibility related to the process.

Again, preparation of new fisheries management plans is a long and laborious process. We are

embarking on the American eel. We just bit off the horseshoe crab. There are other management plans that are behind schedule. The process is stretching out. And I can foresee situations coming up where we may want to avail ourselves of some mechanisms by which we can show and make appropriate management decisions in a shorter period of time. Thank you.

CHAIRMAN SANDIFER: Thank you, Jamie.

Andy Rosenberg.

DR. ROSENBERG: Thank you, Mr. Chairman.

I think Jack has pointed out a lot of the problems that we've had, the National Marine Service has had with regard to using emergency action and the need to try to be very, very specific of the circumstances under which emergency would be considered. And really, for us, the circumstances are when there is clear justification that the problem is so dire that you should avoid -- you have a good reason to avoid the public process, not that you should avoid, but you can't afford the time for the public process to take place.

And I presume that the Commission wants to have the flexibility in such dire circumstances when you

need to move forward that quickly that you don't have time for a full public process. But those should be extremely limited.

I think the principal point -- and it comes up in the example Jack used, I think, with Atlantic herring -- is that the emergency authority, as I read in the text, says you will provide compliance dates. Now, if you're not going to have compliance criteria in the emergency authority, then emergency authority really is not all that interesting, frankly. I mean, if it doesn't mean that you've all agreed that you're definitely going to do something immediately, then don't take emergency action.

And there was great confusion for us, because I was trying to answer questions from congressional staff about what your emergency action meant on herring. Did it mean that all the states had taken an action? And the answer was Yes or please No. I mean, it was just very hard to figure out what the actual action was.

So it would seem to me the fundamental question is, would you be willing to move forward with an

action without a public process that has clear compliance criteria with very, very short time frame for compliance requirements so that in fact the management measures are assured of going into place? If you state it that way, it's hard for me to imagine that without an FMP you'd actually take such action, that any states would be able to come into compliance with such action.

Just to repeat, the fundamental property of emergency action, it seems to me, is that in fact it means compliance by all coastal states, so that you have taken positive action, not just stated you think there's a big problem.

And, you know, I'm not as familiar with the eel example, but certainly there was quite a lot of question about the herring situation. Thank you.

CHAIRMAN SANDIFER: Thank you, Andy.

This is a fairly complicated issue, and it seems to me that the better way to handle this, since I have yet to hear a motion -- we've had 20 minutes' worth of discussion, and there's no motion on the floor -- that we either have a motion on the floor or, at the very least, if the Policy Board wants to pursue this issue, we

instruct staff in the general direction that we would like to go and ask them to come back to us at our next meeting with draft language, in fact, to circulate it prior to that next meeting so that we will have something concrete to look at that would answer the questions that Jamie has raised. Under what circumstances could we or would we contemplate taking emergency action in the absence of an approved fishery management plan? That's one way to do this.

And Robin, I think you had your hand up, or Jamie, or both of you. I'm not quite sure.

MS. ALDEN: Mr. Chairman, if it's guidance to the staff, do you want a motion or just -- I'm prepared to say that my advice would be, and I'll put this in a motion if necessary, that the staff do generate a set of conditions that we could consider at the next Policy Board meeting for taking emergency action in the absence of a plan.

I think there are a couple of streams of thought that have been talked about here, the fact that the conservation emergency is unanticipated or was unanticipated. That's the standards that we're held to in

our state process for conservation emergencies. Can't be for bureaucratic foot-dragging. And it seems to me that if we can find a constrained enough way to retain the ability to move fast if we need to, it would be very good. But we obviously have to put some safeguards in it because the temptation to use it too often is obviously something that we all would be subject to.

CHAIRMAN SANDIFER: I think there's been sufficient discussion. I don't really know that we need a motion. But I'm trying to get the sense of everyone. It seems to me that's a very logical way to go about doing business.

And I'd like to ask Susan if she would check the archives and provide that input to George here so that he will know some of the background for the previous discussions, and then if George and Jack can come up with some recommended language. It sounds to me like the consensus is that this Board would like to consider expanding the emergency authority of the Commission a bit but with very carefully crafted constraints.

And that's the issue. I don't believe we're prepared to vote on anything to do, because we don't

know what the wording or the constraints would be on those authorities. Is that a fair statement of where we are?

Jack, are you and George willing to take that on? And it would be very helpful if we could have it circulated well in advance of the next meeting so that those people who have special interest can take a look at it, and all of us can run it through our legal offices to be sure that it doesn't conflict with our administrative procedure in the various states. We could be able to actually use it to our advantage instead of finding ourselves caught a little later on. Okay? And then perhaps we can act on it in the spring.

Dave.

VICE-CHAIRMAN BORDEN: There was another component to what Jamie suggested, which was to look at the overall problem from the perspective of maybe there's some other alternative that we could utilize between an emergency and full FMP development, whereby we could take steps on some interim basis on some expedited time schedule to try to avoid a deteriorating biological condition. And it may be helpful to have the staff just do some brain-storming on that and see whether or not

there is some range of alternatives that they could bring back to the Policy Board.

CHAIRMAN SANDIFER: Seeing Jack's head shaking in the affirmative -- Joe has problems hearing that. I don't. I can hear the rattle. We will proceed in that direction.

Mr. Schaefer.

MR. SCHAEFER: Thank you. Just an observation. Not in any way questioning the good faith and intent of any individual state to take appropriate action under a finding of an emergency situation as the case might be, it just strikes me that whether you have a plan or you don't have a plan, that probably by the time that the Commission informs the Secretary a state's out of compliance and we were able to declare a moratorium, the emergency, determination of the state of emergency would be over.

And I just wonder how that system would play out. I realize it's a stretch and hopefully would never happen. But I just think under this situation, if a state, for one reason or another, intentionally or unintentionally couldn't take appropriate action, I doubt



that there's very much that the Federal Government could do to force the situation.

CHAIRMAN SANDIFER: Dick, I'm not sure how to respond to that. I think it is an observation. And it will depend on a state-by-state evaluation of a given situation and their abilities, and the abilities of states to implement emergency actions differs now. I don't think that what we would do would change that ability, but it might provide a little bit more weight or a little bit more emphasis or impetus for a state to move ahead.

Let's go ahead on our agenda. We've actually already dealt with the request for a Council seat on species management boards. That will be dealt with in the subcommittee that --

MR. LAPOINTE: That's correct.

CHAIRMAN SANDIFER: -- we've got to appoint yet.

So we're at tele-conferencing meetings and public input, George.

MR. LAPOINTE: This is again giving a report and asking for some guidance. We discussed, I believe in the spring or perhaps last fall, how Board

meetings by tele-conference should occur, and I believe Paul gave the suggestion that there should be notice like other meetings and that members of the public should be invited to come to the office of state or board members to participate in those public meetings.

And we have since had -- well, we've found that's easier said than done, and we've had three circumstances, two board discussions, and those weren't board meetings, and then we had the Summer Flounder Board meeting when we approved the public hearing draft on Amendment 11. And the time frame under which that occurred was fairly short, and the public notification wasn't good. And I'm just looking for direction from the Board or some further discussion or perhaps just reporting to you if you have no other ideas.

I think we set up that meeting in a couple of weeks, and because of the short time frame, staff had recommended that board members call their advisors and invite them into the meeting, and the public wasn't notified in the normal board sense. So I'm just looking for direction on whether, in the future, we should just not allow those to occur. I mean, that will slow down our

planning process at times.

That's about all I have to start with.

CHAIRMAN SANDIFER: Dave.

VICE-CHAIRMAN BORDEN: I think it's critical to the Commission process to be able to utilize tele-conferencing, but I also think it's critical to the credibility of the Commission to develop a specific protocol. And when you can use that and how you can use that, and how the public will have access to it, and all of those specifics, to my knowledge, have not been specified.

In the case of lobster, we used it, and I did get a few calls from industry representatives after the meeting saying, "How was I supposed to know about it? How was I supposed to have input to it?"

My suggestion here is I don't think we need a lot of discussion today, but I think we either need a subcommittee to develop a policy or the staff to develop a policy and come back with some kind of written guidance on it.

CHAIRMAN SANDIFER: Other comment? I personally was not involved in either of those situations,

but I recall my remarks before, my intent was for there to be clear public notice, and by that I meant news releases that went into the news media, calls to fishermen's organizations, the normal processes of letting the public know even on a fairly short time line, but letting them know what was going to happen and where they could participate. If it meant sitting around a conference room table with a speaker phone, whatever the circumstance was, that they could be notified that they had an opportunity to come and hear and to participate.

Perhaps we do need some written guidance. Anybody got some additional thoughts on that? I think, rather than trying to do this by Board members, commissioners, we'd be far better off having staff draft a straw man that we can circulate and then comment on, and hopefully perfect at another meeting. Okay?

George, you've got another assignment. I know you like to write.

All right. I have a 9 capital A, overfished fisheries.

MR. LAPOINTE: The National Marine Fisheries handed a document out yesterday, and the cover

letter is to Jim Gilford, and the National Marine Fisheries Service, pursuant to the Sustainable Fisheries Act, one of the many requirements of the Sustainable Fisheries Act, issued to the Congress a report on the status of fisheries and the identification of overfished stocks. That document is, I think, 70-something pages long.

And I wanted to bring it to the attention of Board members for you to look at, not necessarily to comment on today. It was my intent to write for the Commission comments back to the National Marine Fisheries Service. And at this point -- I haven't gone through the entire document, but the document doesn't recognize, for instance that northern shrimp has been found overfished, because they used older information, and so just updating the document in that regard. And it doesn't acknowledge those plans for which we have joint management authority with the Mid-Atlantic Fishery Management Council.

I mean, we could comment on other things. I heard somebody mention the status of dogfish. I talked to Andy Rosenberg yesterday, and he said it was appropriate that we send those comments in and that the

document be updated. And I just want comments from Board members on specific things in the plan or in the report, and we can do that over the course of the next couple of weeks, and to get other general comments as well. Because it is a pretty significant document, and it drives a lot of actions on the part of the Council and the National Marine Fisheries Service.

CHAIRMAN SANDIFER: Any comments by members of the Policy Board? Andy, do you want to speak?

DR. ROSENBERG: Thank you, Mr. Chairman. It is a very important document. I would note that it is not a proposed rule. That doesn't mean that you shouldn't make comment on it, but it's not as in a formal rule-making procedure with the proposed rule and then a final rule that will be issued.

I think actually my comment to George yesterday was that the list can be updated at any time during the year. It's not as if we will only do this in October. So if we receive new information during the year, we can modify the report in light of that information, for example, northern shrimp or dogfish.

The standard that was used in developing

the report is that there be a published document, the most recently published document with regard to the status. That's why northern shrimp was not included because at the time the report was prepared, the shrimp assessment was not finalized in the SAW process. Similarly, dogfish probably will be revised in the coming SAW. Well, I expect it will be revised in the coming SAW.

There's the possibility then that the list could be modified by additionally informing Congress that a stock is now to be considered overfished or is no longer overfished, or whatever the case might be.

The other issue relates to -- there's a column in the report that indicates essentially who has the lead of various stocks, which may cause some confusion. It's not there as a matter of legal requirement. It's there just indicating who probably has the lead on a management plan.

I believe the joint plans are included, George. You said they weren't, but I believe they are.

MR. LAPOINTE: They're included, but I don't think acknowledged. For scup, black sea bass, fluke and bluefish, it just talks about the Council and doesn't

talk about our involvement, Andy.

DR. ROSENBERG: Okay. I don't have the report in front of me. I thought it was Mid-Atlantic Council/ASMFC.

MR. LAPOINTE: I'll check that.

DR. ROSENBERG: But it is important to realize that the law requires us to report on fisheries within the geographical area under Council purview, not stocks that the Council is managing or the ASMFC is managing or anybody else is managing. It could be the case that neither one actually has a management plan in place or is actually pursuing a management plan. If it's in the geographical area, though, we are required to report.

And then the law states that the Council has one year to prepare a management plan or the Secretary must. Now, obviously, in some circumstances, the Council and ASMFC may agree that ASMFC is going to prepare the management plan or there's going to be a joint plan, or whatever. But in any case, if one year expires and neither body has completed a management plan to end overfishing, then we must, and obviously "must" is the key



phrase here.

So I think that that column that indicates area of authority may be causing a little bit of confusion. There is a direction to the Councils. I don't believe there is a direction to ASMFC in the law. But even a direction to the Councils is just setting a time limit.

CHAIRMAN SANDIFER: Thank you.

Any other comments on this document? It sounds to me like it's provided to us for information and review, and we should provide our comments directly back to the National Marine Fisheries Service.

MR. LAPOINTE: You want the Commission not to comment then?

CHAIRMAN SANDIFER: Oh, no.

MR. LAPOINTE: I mean to write a letter. Yes?

CHAIRMAN SANDIFER: Yes.

MR. LAPOINTE: Okay. I was going to draft a letter, but I wanted to discuss it with the Board first, and will circulate that to Board members before it's sent just to make sure it includes people's thoughts.

CHAIRMAN SANDIFER: Anything else on this one?

If not, Doug, Management and Science Committee report.

MR. GROUT: I'm going to start off with the peer review process, so if you'll turn to Tab 4, Section 6. Thank you, Mr. Chairman. Under the management scientists' overview or oversight responsibilities for the peer review process, it's our task to have you prioritize which species management plans or stock assessments are going to be peer reviewed.

The original peer review document gave several criteria for you to use. The priorities should be Number 1, assessments for new FMPs; secondly, assessments where major changes have been made to the stock assessment model; 3, assessments for existing FMPs undergoing amendments; and 4, assessments updated annually. And just as a reminder, there are four priorities for conducting the reviews, either the SAW/SARC process, an external Commission panel, use of existing organizations, or an internal Commission review.

Dr. Kline sent out this memo to you at the

beginning of October. It identified on Table 1 the species that are managed by ASMFC, and Table 1 shows whether a stock assessment is being conducted. There was one error in that table that you should note, and that's that northern shrimp should be a Yes. A stock assessment was conducted, and in fact it was reviewed just this past year under the SAW/SARC process.

And on Table 2, what happened this year, because the stock assessment review procedure had just been adopted in the spring, a survey was sent out to the various species board members to get their input on whether and under what process their particular species stock assessment should be reviewed. That's in Table 2. The results of that survey are in Table 2.

I should let you know that in future years, now that we have a little more time, the intent is to have the boards take it up at one of their meetings, this particular issue up at one of their meetings, and to reach a consensus on it, rather than going out and having individual surveys. So that the Board as a whole would have a priority as to which stock assessment peer review process should be used, and if it needs to be used in the

current year.

It was generally the intent, under the peer review process that was approved, that all stock assessments would have a major peer review once every five years.

These are the results you can see in Table 2 from the survey that was sent out, and it is the Policy Board's job to prioritize these and decide which ones will be given the highest priorities and exactly which peer review option will be used. And this is supposed to be done on an annual basis.

So, Mr. Chairman, I guess I turn that over to you at this point.

CHAIRMAN SANDIFER: Well, ladies and gentlemen, you have -- I guess Table 2 is the operative document for us really to look at, both for setting of priorities and for choosing of options. Is anyone prepared to make some recommendations on priorities?

MR. GROUT: I can make a note. I was informed that the Shad and River Herring Board approved a motion to have the shad stock assessment sent out for external panel review just at their meeting here, and that

was because they wanted to have the plan amendment approved by this spring and the SAW/SARC process was already filled up to the extent that using the SAW/SARC process would have delayed plan amendment till the fall.

I guess the other note -- again, northern shrimp needs to be added to the bottom of this table, and again, that was just peer reviewed, the DeLury model was just peer reviewed this past year by the SAW/SARC process.

CHAIRMAN SANDIFER: George.

MR. LAPOINTE: I was going to mention shad as well. The other thing I think that's worth discussing -- and I don't know what we'd call it exactly -- is we discussed sturgeon yesterday, and given the fact that our Technical Committee is going to submit information to be used in the ESA review process, is that rigorous enough to constitute an external review? I mean, it seems like it would be, but never having gone through it, I don't know.

CHAIRMAN SANDIFER: George, I would, just for the sake of argument, say it may very well be rigorous enough, but it probably does not constitute a substitution, that we should probably stick with our own process for peer review and not expect to be able to

consider somebody else's process to accomplish it.

I think we ought to just go ahead and do our own peer review, and then we'll also get comments from whatever review the ESA process brings to the table.

Doug, I'm not quite clear on these priorities. Perhaps you can -- can we get all of these done, I guess, in one year, or are we not going to be able to get them done, you know? Can we move with two, three, ten? What's the deal?

MR. GROUT: I would look at it as you would prioritize it this year, and obviously the top ones would be knocked off, and I'd find it very surprising if we get a peer review for every single species management, or stock assessment. As you'll see on here, there are already three, weakfish, Atlantic sea herring and striped bass, which are already scheduled for review by the SAW/SARC process. So those are already going to be taken care of under the process.

CHAIRMAN SANDIFER: I'm assuming that that means they can be removed from our priority list because they're already --

MR. GROUT: They're already there.

CHAIRMAN SANDIFER: -- there. We've already given them priority in the past, so no need to worry about those.

Jamie.

DR. GEIGER: Mr. Chairman, as we just heard, the American shad and herring review, we've committed, at least the Management Board has recommended to this body that we commit to an external review on that one. So I would say that has already been, in that case, prioritized.

MR. GROUT: And the Policy Board would have to concur with that as one of the top priorities.

CHAIRMAN SANDIFER: I don't know about the priority, Jamie, but certainly the option has been, a preference for an option has clearly been identified.

Gordon.

MR. COLVIN: Mr. Chairman, I think it's also fair to say that the four species which are managed jointly with the Mid-Atlantic Council, that is, bluefish, summer flounder, scup and black sea bass, will be through the SARC process in 1998, that will happen. And I know that the Council and the SARC process are prepared to

accommodate that at some appropriate time. So you can probably regard those as committed. I'm not sure where that leaves us.

CHAIRMAN SANDIFER: Give me those species again?

MR. COLVIN: Bluefish, summer flounder, scup and black sea bass.

MR. LAPOINTE: And how about, Susan, the South Atlantic species? Red drum and Spanish mackerel are listed. Those are updated annually as well?

MS. SHIPMAN: Well, red drum is awaiting the conclusion of the multi-state project, and that won't finish, I don't believe, until the end of next summer. So the actual assessment won't even be updated until late in the fall. So I'd say that's an early '99 review.

Spanish mackerel is done every year by the Southeast Region of NMFS with input from the states. So that one's handled.

CHAIRMAN SANDIFER: It sounds to me like by default we are going to end up with shad and river herring and sturgeon as being top priorities here. What about the winter flounder or northern shrimp?



MR. LAPOINTE: Northern shrimp was just done, and we're in good shape there. And I would expect, as has been done in the past, that will move to an annual update mode, because that's the process in the shrimp fishery, is it not, Phil?

MR. COATES: Yes, I think that will be an annual.

CHAIRMAN SANDIFER: John, you had a comment to make, John Nelson?

MR. NELSON: Yes. I think the one on the shrimp has been answered. The assessment is looked at on an annual basis.

But the winter flounder, especially in the Gulf of Maine, is one that we have been looking for to have some type of assessment done on that, and I think that's probably still lacking. Southern New England or Georges Bank area, I think, has a process in place for the review, and I'm not sure when that takes place. But if we could get some insight on that, I'd appreciate it, on both the Gulf of Maine and also the Southern New England for winter flounder.

CHAIRMAN SANDIFER: Gordon, you've got a

comment?

MR. COLVIN: Yes. To follow up on flounder, I guess Eric has left but --

MR. LAPOINTE: No, he's here.

MR. COLVIN: Eric, I think it's really important that we talk about what we need on winter flounder to update and complete our addendum. Could you do that?

CHAIRMAN SANDIFER: Let me remind you that the heading of this table says that these assessments will be completed during 1997-98, so we shouldn't be dealing with things if we're not going to have an assessment. This is the issue of reviewing assessments, not deciding whether to do assessments.

MR. COLVIN: I'm about to make the case, after Eric speaks, to make winter flounder a very high priority among these that we have not yet already accounted for.

CHAIRMAN SANDIFER: Eric.

MR. ERIC SMITH: Thank you. Eric Smith from Connecticut, chairman of the Winter Flounder Board. We have this fall scheduled a Technical Committee

reassessment or revision or an update of the VPA assessment for the Southern New England stocks. That was postponed because of the striped bass need that came up in the fall. But it's expected to be done in December.

The Georges Bank assessment is done in the SAW process, and that I believe was this fall? December. It's scheduled for this December's assessment.

The Gulf of Maine data is insufficient to do a VPA, so what we have done is the next best level of assessment, evaluation of fishing mortality rates, using the more scant data to try and evaluate where that stock is. It would be nice to also be able to do VPA, but I think the Technical Committee has repeatedly said they just don't have the type of data set necessary to do it.

Normally when our committee does an update of an assessment, they try and do as much as they can with the Gulf of Maine short of the VPA, so that they do both of the stock areas that the Commission's plan covers, which is Southern New England/Mid-Atlantic combined and Gulf of Maine. And I would expect they would probably do that this fall, but it won't be a VPA.

And the point John makes is a valid one.

That leaves us with less information available to drive management decisions to recover that stock.

So Southern New England is scheduled for this fall. Georges Bank is scheduled for this fall, but there are different processes. And the Gulf of Maine has to follow along the best they can do.

CHAIRMAN SANDIFER: Okay.

MR. COLVIN: You say they're scheduled. You're talking about a Technical Committee update?

MR. SMITH: Yes, of the Southern New England.

MR. COLVIN: And that begs the question as to the need for peer review of that VPA update. Considering that we are overdue to complete our addendum to take us to the next step in our mortality reduction schedule under the FMP, I believe we've delayed doing the addendum pending this update. And, you know, that's --

MR. SMITH: Well, I guess the question --

MR. COLVIN: -- critical.

MR. SMITH: -- is, the Technical Committee does the assessment, and then the results of that come to the Board, and they develop a plan to meet that F 40

target. Whether that also needs a peer review or not, that hasn't ever been before. It's the Technical Committee's assessment, and then the Board deals with the outcome. If you want to change that, that's fine, but --

MR. COLVIN: Well, I think the point is that this process changes all that, and I would be personally prepared to ask if we could suggest that an update, that a peer review of that winter flounder work be put on the list here, be plugged in.

CHAIRMAN SANDIFER: Let us stop for just one second and make sure what we're talking about. It sounds to me that we have four species that we really have to prioritize today. That's the shad and river herring, the Atlantic menhaden, the Atlantic sturgeon and winter flounder, that those species are the ones which have not yet been placed into a priority. And we also will need to decide what kind of review process to use.

Have I missed anything? It seems to me that, Gordon, if somebody is willing to make it a motion that would provide some listing of priorities for discussion here, it would be in order first, and then secondly, species by species what process that we would

recommend for use.

Jamie.

DR. GEIGER: Mr. Chairman, I would just speak, you know, again on behalf of the American Shad and River Herring Management Board. The Management Board has made a recommendation --

CHAIRMAN SANDIFER: I understand.

DR. GEIGER: -- that we do an external review, and I think, given the issues discussed at that Management Board, I think, given of all those species -- of course, Atlantic sturgeon also having significant priority -- I'd certainly push to have the American shad one at least approved by this Board as a priority.

CHAIRMAN SANDIFER: Thank you.

Doug.

MR. GROUT: I'd also like to point out to the Board that on Page 2 of Lisa's memo, it indicates that there is a possibility that one or more of the Commission species could be included on the spring 1998 SARC, so there's space for that, and that the June SARC could potentially address one or two Commission species. So, with the SARC still being the preferred method of our peer

review process, there's a space for one or two and possibly three species on the SARC process.

CHAIRMAN SANDIFER: Andy, do you wish to speak?

DR. ROSENBERG: Mr. Chairman, I've been involved with the SARC process for some time, including as the chairman for two years. And the SARC at this point is probably more overloaded than any of the other groups, which are all overloaded within the management process. The idea that you're going to put three species on the spring SARC is frankly a nonstarter. Forget it. There's no chance that you can review that many within the SARC process.

The SARC is undergoing some revision now to try to separate out the different kinds of assessment in the same way as described in your documents. And I think that the species that Mr. Colvin listed that are jointly managed with Mid-Atlantic Council, most of those will only be a review of an update with no change, not a major new assessment. There's one question there, and that is on summer flounder, whether that will be done by an external review or not.

But all of those species were just reviewed. The only possibility that I can see right now is that there may be an update, using the new information, an update of projections, not a major new assessment. I think it's going to be extremely difficult to accommodate very many species on the spring SARC. The 1998 fall SARC, I don't think the species have been settled yet.

The problem here is that there's just not enough time or people to go around to either do the assessments or review them. And I think that if you're going to address this issue of peer review, as I believe you should, probably the biggest question facing you is not the priority of the species but how you're going to bring more resources into the process. And I'm not sure what the answer to that is, but there does need to be additional resources into the process as opposed to -- because I think we'll all be disappointed if you simply request more species to be reviewed under the SARC process.

I think that also applies, of course, to the assessments themselves. I mean, in order for the SARC to productively use its time, there has to be a really



tight assessment, an assessment documentation that go into the peer review. And frankly, that has been a major problem in the past, and bluefish is probably the best example of that. Bluefish was just reviewed. Right now I'm not sure that there's any additional work. And the document that was reviewed for bluefish was not what I would call a clean or tight assessment document, which means that it takes an inordinate amount of time to work through an assessment review, irrespective of whether there's changes or not.

So I'm very concerned about the resources that we're bringing to be bear here, more than just the priorities for species to be addressed, both by assessment working groups and then subsequently by peer review. And this Board needs to come up with some means to augment those resources where we're actually going to accomplish more reviews, which I certainly think everybody would like to do.

CHAIRMAN SANDIFER: Andy, your points are well taken. I'm not sure that we can do a whole lot as a Board with the resource issue, but we have a clear responsibility to set priorities and make choices amongst

the options. The lack of resources is something else we as a Commission need to address, but I've got a responsibility to make sure we take action on these things today, and that's what I've got to deal with first.

George.

MR. LAPOINTE: One of those species you mentioned, Mr. Chairman, was Atlantic menhaden, and there's an annual update done by the AMAC on that, and I would recommend that of the four that that be a low priority and kept as an internal Commission review.

And Joe is going to have AMAC meet mid-November? Next week. And he can ask AMAC, and then the Menhaden Board whether they in fact want the menhaden assessment to be completely redone and reviewed in the future. So that just shortens your list to three.

CHAIRMAN SANDIFER: I had taken the liberty of some notes here, that it appeared to me that American shad and sturgeon are all related because of bycatch issues, and perhaps with all the discussion we heard in the last day or so, that perhaps those should be 1 and 2; winter flounder, 3; and menhaden, 4.

We had a recommendation from the Shad and

River Herring Board that review be done by external panel. I think that would be the appropriate way as well to handle the Atlantic sturgeon. I don't know about winter flounder. And we've just heard that the internal Commission review policy would be -- internal Commission review would be the way to handle Atlantic menhaden.

So that's what I think I'm hearing here, and if we could get somebody to formalize a motion or a different version of this, we will go. Gordon.

MR. COLVIN: I'll take a stab at it, Mr. Chairman. I move that of the four species for which peer reviews need to be prioritized and requested, that the Policy Board establish priorities as American shad and river herring, Number 1; Atlantic sturgeon, Number 2; winter flounder, Number 3; and Atlantic menhaden, Number 4. And that the recommended options for peer review are respectively, for American shad and river herring and Atlantic sturgeon, external panel; for winter flounder, SAW/SARC; and for Atlantic menhaden, internal Commission review.

MR. COATES: Second.

CHAIRMAN SANDIFER: Discussion on the

motion. Seeing none, all in favor of the motion, say Aye; all opposed, Nay. Any abstentions? Ayes have it. Carries unanimously. Thank you.

Doug, do you want to continue?

MR. GROUT: Yes, and if you'll look at the report that was handed out to you last night entitled "Report of the Management and Science Committee," we'll continue on highlighting some of those bullets. I guess, since we're on the Commission peer review process, I'll start with Number 3 and then go back up to 1 and 2.

One of the other charges within the peer review process to the Management and Science Committee was to develop some standard protocols for review of Commission stock assessments. Now that you have approved two species for an external panel review, that task is going to be even more important to have some standard protocols and guidelines. And we have a subcommittee which is listed there in your report that is going to be tackling that, and we'll try and speed up the process, hopefully in time for these two external panel reviews.

Also under the subject of peer review process, when we brought the peer review process document

to you, our subcommittee had identified several ways in which the actual stock assessment process could be improved, and we brought that forward to you and you accepted that, and we wanted to ask you, via this motion, to instruct staff to modify their actual annual management plan reviews by adding a new section to it.

And this, we feel, is very important in light of the fact that we now have a peer review process. And that new section would be titled "Status of Assessment Advice." And again, that would be added to each of the annual plan reviews. It would have such information as: Has a quantitative assessment been done recently? What is the date of the last assessment, the type of model that is used? What are some of the sources of uncertainty with the stock assessment? Has it been reviewed and, if so, who reviewed it and when? And also to include this Board's latest prioritization for a particular peer review for that individual species.

So, with your approval, we'd like to request that you instruct staff, starting with the 1998 FMP plan reviews, to add that section to it.

CHAIRMAN SANDIFER: Comments on the

recommendation from Management and Science? What's the pleasure?

MS. SHIPMAN: I think it's an excellent recommendation. Do you need a motion?

CHAIRMAN SANDIFER: I like motions.

MS. SHIPMAN: Okay. I would move that we accept the recommendation from the Management and Science Committee to include a section in the annual plan reviews concerning the status of the stock assessment review.

MR. NELSON: Second.

CHAIRMAN SANDIFER: Any discussion on the motion? Is this going to unduly burden staff?

MR. LAPOINTE: I've had discussions with a number of people. Plan reviews have been one of the hardest things to keep on our platter, just because of workload and whatnot. And I had the idea yesterday, and I talked to Susan about this, of expanding the FMP status report -- I don't know how substantially at this point -- to make that a plan review document so we don't have another series of documents to do.

And we could certainly include this information. It includes habitat information now. It

includes law enforcement information. We could put a section on, you know, just PRT determination on compliance status to make that the document people could look at for finding out what plans are, just because it's been such a hard thing to try to keep the plan reviews coming consistently and uniformly between and among the species.

CHAIRMAN SANDIFER: I don't think the motion on the floor has to do with this particular recommendation. It's a good recommendation. I want to see if it's something that staff can handle.

Jamie.

DR. GEIGER: Mr. Chairman, a question. What time for completion of this?

MR. GROUT: Normally, the plan reviews have been completed each year as of the Annual Meeting. And as you see, there's probably eight of those plan reviews in your briefing document.

CHAIRMAN SANDIFER: Any further discussion on the motion on the floor? All in favor of the motion, say Aye; all opposed, Nay. Any abstentions? The motion carries unanimously.

Continue along. Doug, you've got a

freight train running here.

MR. GROUT: Okay. I just also wanted to note at least the feeling of the Management and Science Committee, the importance of these plan reviews. And there was some concern by a couple of the members when they only say eight of them in the briefing document. And I guess there was some difficulty, at least a perceived difficulty in getting copies of the '96 reviews that they were -- a request was made to have them in some kind of bound, or -- at one point every third year they were published. But if they were all in a collective binding, then it could be sent out to either the Policy Board members or people requesting the plan reviews. Because we do feel they're quite valuable and are used extensively. I still pull them off the shelf quite regularly.

I will move forward now to Number 1, which was tag and coordination activities. This issue came up as a result of a proliferation of private organizations that wanted to conduct tagging programs, and one of the organizations actually ended up distributing some tags that were very similar in color to some of the U.S. Fish and Wildlife Service internal anchor tags and also had



some similar numbers that we were concerned -- the concern was brought up that some of the citizens tagging programs, without some kind of guidance from the states and the federal agencies, could end up causing some problems with some of the state tagging programs that are very valuable to the stock assessments and collection of biological information.

So as a result, we have developed a resolution which is attached to this report, and it's a resolution that we have brought to the Resolutions Committee, and we want to inform you of it. It's titled, "Resolutions Concerning the Citizens' Tagging Programs."

Do I need to read this? It's basically -- I can give you an outline or I can read it in full. But we have sent it to the Resolutions Committee and they have that on their docket.

CHAIRMAN SANDIFER: It was distributed last evening to everyone here, and I assume that will be reported out by the Resolutions Committee --

MR. GROUT: Yes, to the full Commission.

CHAIRMAN SANDIFER: -- to the full Commission. It seems to me this is the appropriate time

if anyone on the Policy Board has a question of you concerning either the resolution or the background for it. I see nothing -- Doug, we'll deal with it when it comes to us from the Resolutions Committee.

MR. GROUT: Okay. Very good.

Item 2 was concerning fisheries independent data collection. This task and discussion was prompted by letters from Dr. Sissenwine to both John Nelson, chairman of the Northern Shrimp Section, and also a letter to Jack concerning the fact that the Gloria Michelle, which is a very integral part of the northern shrimp summer survey, and also used by the State of Massachusetts for their nearshore trawl survey, may be nearing the end of its life expectancy, and there is a need to look at alternate vessels or an alternate way of conducting the survey.

And this issue prompted a lot of interest from the Management and Science Committee concerning not just the immediate issue with the Gloria Michelle, but also looking at it on a long-term basis of coordinating these nearshore surveys -- and I emphasize the nearshore surveys, because many states already have their own nearshore trawl surveys and also their SEAMAP that occurs

in the South Atlantic -- and also filling some of the gaps. For example, north of the Massachusetts border, there is no nearshore trawl survey in the Gulf of Maine.

So there is a committee that's been working on this. The general direction we're looking at is the potential of a joint meeting with NMFS and the Fish and Wildlife Service and interested states to develop a planning document for a coastwide coordination of nearshore surveys, and to also develop program goals, objectives, etcetera. And the National Marine Fisheries Service has offered to host that meeting.

The coordination again, will include development of a program to fill the gaps in data collection and identify existing programs. And SEAMAP again is already in place and may be a guidance for us.

It also begged a bigger question, and that is to make sure that the Commission as a whole is committed to a long-term coordination of a fisheries independent, a broad-based fisheries independent data collection program. And, as a result, the committee developed a resolution, this particular subcommittee developed a second resolution. Again, that's attached to

your report here, and it's entitled, "Resolution For the Development of Coordinated Fisheries Independent Sampling Program."

And again, you had a chance to look that over. If you have any questions for me at this particular time, I'd be glad to entertain it. But it has been forwarded to the Resolutions Committee, and will be brought up at the full Commission meeting.

CHAIRMAN SANDIFER: Questions or comments for Doug on this? I see none, so, Doug, keep moving.

MR. GROUT: The last page essentially gives you some updates on some of the other things that we're addressing in the Management and Science Committee so that you're aware of it. Item Number 4 again was a referral from when the SAV policy was approved by the Policy Board at the spring meeting. One of the items asked the Management and Science Committee -- you directed the Management and Science Committee to develop standards and guidelines for potential gear impacts and SAVs and also to develop potential mitigation strategies for SAVs, and that committee was formed on Monday and is listed there, and we hope to have a report for you on that at the spring

meeting.

Finally, as with many of you here, we've been actively involved with ACCSP development, and we've been addressing basically two topics, one the idea of Meda Data or unusual events that may affect the data. We have a subcommittee that's coming up with a definition for that and some guidelines for it, and that's going to be fed into -- given to the Ops Committee and also forwarded to the Coordinating Council once that's developed. We anticipate having that completed by the first of the year.

Also, at the Bycatch Workshop which was ASMFC put on in September with the intent of developing a coastwide bycatch data collecting program, several members of the Management and Science Committee were in attendance there, and it seemed that there was one need that the Bycatch Workshop had identified, and that's actually getting a list or a report on what kind of fisheries by gear and by target species are actually on the Atlantic coast.

And we felt that Management and Science Committee members would be an appropriate body to be able to come up with all these different little gears

coastwide. And so we are preparing a survey for our members to complete, and this will feed into development of a prioritization process under the ACCSP to trigger collection of more detailed and higher resolution data on the bycatch monitoring program, and also essentially give them an idea what's out there.

So that's my report, Mr. Chairman. If there's any other questions, I'll be glad to entertain them.

CHAIRMAN SANDIFER: Thank you, Doug. Susan.

MS. SHIPMAN: Just a comment on the charge related to developing standards and procedures for gear impacts related to SAV. The other day during the Habitat Committee, discussion arose that really that might be a little bit broader than just gear. We talked about mooring fields and all related to fishing activities. So we would hope that the committee could perhaps just broaden that to look at fishing activities, recreational vessels, anchoring mooring fields.

MR. GROUT: Mooring fields related to fishing activities.

MS. SHIPMAN: Yes. Recreational fishing in

particular.

CHAIRMAN SANDIFER: Other comments?

Doug, as usual, it's an outstanding report. The Management and Science Committee continues to make major contributions to this Commission, and we appreciate the effort that you all put into it throughout the year. Thanks very much, and we'll deal with the other items when they come up from the Resolutions Committee.

MR. GROUT: Thank you, Mr. Chairman.

CHAIRMAN SANDIFER: Is there anyone here from the Law Enforcement Committee to make the report? We'll skip ahead. I have several items here from the Law Enforcement Committee, but if they're typing the report, we'll wait for them for a few more minutes.

Then let's move to the Take Reduction Team report, if Donna is ready for us. Thank you.

MS. DONNA WEITING: Thank you very much for giving me the opportunity to update you on the status of the Marine Mammal Take Reduction Teams. For those of you that don't know me, my name's Donna Weiting, and I'm with National Marine Fisheries Service Office of Protected Resources in Silver Spring, Maryland.

What I'm passing around and what's also in the blue sheets on the back table is a summary of the plans to date and the recommendations. I don't intend to go over the specifics of any of the plans right now, but more to just let you know where things stand, and particularly what you all can expect on maybe seeing in the next year with regard to the Take Reduction Teams and plans.

This is a little background to remind everybody that the Take Reduction Team process came about from the 1994 amendments to the Marine Mammal Protection Act, and the whole idea is to develop Take Reduction Plans for strategic stocks. Those are stocks that are endangered, threatened or depleted, or being taken above a sustainable population level, particularly by Category 1 and Category 2 fisheries, those that frequently and occasionally interact with marine mammals.

So that's really the focus, and the goal within those plans is to try to reduce the take of marine mammals below their biological removal level within six months of the plan, and then also to have continuous meetings of the teams to review information and to adjust



those plans as necessary.

I want to make sure that I thank the states and the Commission for all the strong support and participation they've had in the team process to date. We've had -- a tremendous amount of information has come from the states, and their support in putting together these teams and these plans has been an integral part of the process. And I hope that will continue, and we look forward to that.

So far we've had five plans, five teams meeting starting back in February of '96: The Gulf of Maine Harbor Porpoise Team, Pacific Offshore Citation, Atlantic Offshore Citation, the Atlantic Large Whale Team, and the Mid-Atlantic Harbor Porpoise.

As it stands now, the Pacific Offshore Citation, they have got their final rule in place. And this is interesting for you all here, the Atlantic Offshore Citation Plan, they should be coming out with a draft plan and proposed rule in the near future, hoping within the month. The Atlantic Large Whale Team plan, as all of you are well aware, final rule going into effect in November, and the gear requirements as of January of '98.

The Gulf of Maine Harbor Porpoise Plan, though, the proposed rule and draft plan was published in August of this year. The comment period has closed on that, but the team will reconvene in December, it looks like December of this year, because they're to review the spring pinger experiment -- there's a lot of information that came out of that -- the Harbor Porpoise Survey data that has been going on, and also information from the Mid-Atlantic that has just come out. So it looks like they will be reconvening to review that information.

The most recent team and plan to date is the Mid-Atlantic Harbor Porpoise. If you remember, when the Gulf of Maine Harbor Porpoise Team met, there was at that time very little information on what was occurring in the Mid-Atlantic area. And so that part of the Harbor Porpoise Plan was deferred for the specific team to deal with the Mid-Atlantic.

And they sent a report to Rollie Schmitten in August. It was not a consensus report, but the substance of the plan and the recommendations were consensus, and right now we're putting together the draft plan, the proposed rule, and let's keep our fingers

crossed, hopefully within a month -- that seems to be the key word -- for those recommendations to be out for public comment.

When the Mid-Atlantic Team met, part of their charge was to look at bottle-nosed dolphin take, and when they met, at that time they realized that there really wasn't enough observer data and information for them to develop recommendations at that time. And so that part of the Mid-Atlantic Team, that part of the plan has been deferred until January of '99 is when they're hoping to meet.

So that gives us this coming year, and that's the one where we'll be needing a lot of information from the states and from Commission help on that to gather as much information as we can in the next year, so when the team does meet in January of '99, they'll have some information to go on to be able to develop recommendations for bottle-nosed dolphin take.

I believe that's all I had to present and update you at this time. As I said, if there are any questions, I'd be happy to take them, but I hope not to go into the details of the plans at this time. I'll leave it

at that.

CHAIRMAN SANDIFER: Comments or questions for Donna? Bill.

MR. WILLIAM PRUITT: Donna, why is there a difference in the dogfish float-line length in New Jersey and the rest of the Mid-Atlantic?

MS. WEITING: That was part of what the team had developed as their options, and I'd be happy to talk to you at some point about that. I'd prefer not to get into the background of it right now. But the report is available, and I'd be happy to send you that report of the team's deliberations.

MR. PRUITT: Thank you. I just wanted to know in case we're asked.

CHAIRMAN SANDIFER: The question's on record, and Donna, I assume you will provide that backup information to Mr. Pruitt.

MS. WEITING: Yes.

CHAIRMAN SANDIFER: Other questions or comments? Thank you very much.

MS. WEITING: Thank you.

CHAIRMAN SANDIFER: Now, the Law

Enforcement Committee, you gentlemen are ready. Wayne, you or Tom or both of you?

MR. WAYNE BREWER: The Law Enforcement Committee convened its meeting at 1:00 p.m., October 21st, and we ran all day yesterday. All state and federal agencies were present, and that's not a first. Actually, that's usually the rule now and not the exception, and in part due to the Commission financing our travel for those that have fiscal problems, and it shows a willingness on the law enforcement units across the Atlantic states to want to be involved in the management plans.

Under fishery management plans, the Law Enforcement Committee believes the Number 1 priority is to participate in the management board process. To that end, the Law Enforcement Committee reviewed each of its members' reports and concerns on enforceability of proposed action from the fishery management plans or amendments. The Law Enforcement Committee drafted a response to the Lobster Management Plan indicating several areas that are difficult to enforce which may ultimately affect the success of the FMP.

The FMP Enforcement Subcommittee has

reviewed each state's enforcement response to each current FMP. The subcommittee has compiled an enforcement analysis spreadsheet. It is the intention of the Law Enforcement Committee to have this enforcement analysis spreadsheet utilized as a guide for the development, funding and implementation of FMPs. A final report will be presented at the spring meeting.

The Atlantic Coastal Law Enforcement Workshop final report has been compiled, and the Law Enforcement Committee will begin utilizing the workshop's results. And I believe you're going to receive those in a minute. Correct, Tom?

Under ACCSP, Connie Young-Dubovsky presented an update on the ACCSP with Law Enforcement Committee input incorporated. A subcommittee has been formed to develop and incorporate a law enforcement component to the plan.

Websites. The contract for the website will be issued by Atlantic States Marine Fisheries Commission on January 2nd, 1998. The first phase will be to locate each state's marine fisheries regulations and to develop ways to access them. What we're looking for is,

an officer into a market, let's say the Fulton Market, and comes across a certain species of fish from Florida, Oregon, wherever, that officer can, by radio, contact his office, her office, and find out whether those fish are regulated in the state that they came from.

As it is now, by the time we find out, the fish are gone, they're moved. And that happens quite often at the Fulton Market, the bigger fishery markets.

Measuring fish. A subcommittee continues to research ways to standardize the way each state measures species of fish and other marine species. Again, what we're looking at is one state, the procedure for measuring weakfish might be pinch tail, close mouth, and another state might be open tail and you don't pinch the mouth. Well, you're talking about up to a quarter of an inch difference in length when you do that.

So what we're trying to do is come up with a standardized measuring method and technique again along the Atlantic states.

The National Marine Fisheries, U.S. Fish and Wildlife, U.S. Coast Guard continue to emphasize their cooperation and providing interjurisdictional enforcement

support in the areas of manpower, equipment and training.

Tom Meyer presented the response from NOAA's general counsel for enforcement and litigation to three interjurisdictional enforcement questions on who can enforce state and federal regulations in the EEO under several scenarios. General Counsel will be asked to attend the spring meeting to address further concerns.

Members of the Law Enforcement Committee would like to thank the ASMFC, the state fishery managers and the commissioners for the opportunity to be more involved in the management process and thereby ensuring that law enforcement concerns are addressed in a timely manner.

I'd like to personally thank Laura Leach, Linda Schwab and staff for their help at this meeting, because they did a lot of typing for us, made a lot of copies, and we really appreciate it.

This is my last thing as chairman for the Law Enforcement Committee, and I can't remember ever coming to a meeting that I wasn't secretary or chairman, so it's going to be a good break, and maybe I can be one of the agitators that sits at the side of the table, not



the front.

But I want to give you an idea of where we've been and where we're going. I'm probably one of the -- believe it or not, I've probably been going to these longer than a bunch of you. My first one was in 1978. I forget where it was. It was in the fall. I was a lieutenant from New York City. We met Sunday afternoon for about two and a half hours, and I really think that was the end of the meeting.

The big concern then was where did you get the best martinis and Manhattans. I was elected chairman or secretary, I don't know which, and that started my career in the Atlantic states. Since then -- and at that time, the big concern was communications, wanting to be part of the process. And we really came a long ways, but we've got to go further.

I see the biggest problem -- one of the bigger problems we've got to overcome is the states, the law enforcement unit, the directors, the commissioners, aren't communicating enough within their own states. When we can come up with spreadsheets on funding, and the law enforcement director in our committee doesn't realize that

he didn't get any of this funding -- like Gordon tries to hide it all the time. But seriously, I really think that that's something that we have to overcome, and really it's -- you know, back 20 years ago I think there was an attitude that we're a bunch of dumb game wardens.

My last academy, I put through three attorneys, two or three people with PhDs, and a four-year degree was common. And that's the type of professional, you know, we have now in law enforcement, and it's only going to increase. I think we have to look at the fact that we are part of the team, and most of you realize that, and we're a real vital part of that team.

So if I can make any point, we've got to communicate and continue to communicate. Thank you.

CHAIRMAN SANDIFER: Thank you, Wayne. We all appreciate very much your efforts and those of the Law Enforcement Committee in particular, but your continuity and just being here to make sure we pay attention to law enforcement issues.

I will note for the record that most of us will now be able to understand that law is pronounced with an "r" in it.

Tom, did you have anything to add to this report?

MR. TOM MEYER: I want to say the committee really appreciates all that Wayne has done for the committee, and we've thanked him many, many times, but he's been a real solid person in there, and he's kept us on the right track. I think we're doing a lot of good things. I'm really proud to be a member of the committee and hope to stay for a long time.

So thank you, Wayne, very much.

MR. BREWER: Well, I have to thank Tom. Getting Tom on the team has been really great, because, you know, every once in a while I'll get in the office and Tony will go, "Tom called." I go, "Oh, Jesus!" He's there to make sure that we get stuff done, and it's really worked. So having him on our team has been an asset. And we'd like to have him there full time instead of off doing these other things for the NMFS, but --

MR. SCHAEFER: It ain't going to happen.

CHAIRMAN SANDIFER: We do appreciate it very much. I was very appreciative to come into the Law Enforcement meeting and find the room absolutely jammed.

That's not the way it used to be. We were lucky if three or four states were represented. And now to have all of the states represented and the federal agencies, it's quite remarkable.

Robin, I'd be glad to recognize you, and then I've got three items that I would like to bring up that were given to me by the Law Enforcement Committee and not covered in their report.

MS. ALDEN: I just wanted to make a quick comment, since this is my last meeting. The State of Maine, we're lucky enough to have enforcement in the Marine Resources Department, so that we have a dedicated force from Marine Resources. And one of the things that I have done in the last three years is incorporate enforcement into -- well, basically, we were faced with a major down-sizing shortly after I came on board, and we recognized that we didn't have the personnel to have people dedicated to, let's say, a given species.

So we reorganized in order to work on things with sort of ad hoc teams within the department. We added enforcement to all of those teams in the development of regulations and the development of

regulation, since much of our management is done through the Legislature.

It has been invaluable. Enforcement has risen to the challenge, has really greatly broadened their role, and what it has given us is the in-the-field, on-the-ground information at the early start of developing plans. It's been very valuable. And I just think it's very constructive that the Enforcement Committee is becoming such an important part of the Commission.

CHAIRMAN SANDIFER: Thank you. I agree entirely.

There were three items that were -- actually four items that were provided to me. One dealt with recommendations from the Law Enforcement Committee regarding the Lobster Plan and enforceability of certain provisions. I've provided that to Dave for the Lobster Management Board.

A management issue that has been sent to us for the ISFMP Policy Board's consideration is a recommendation from the Law Enforcement Committee that ISFMP Policy Board not approve any fishery management plans that include allowing the use of fish picks for

culling out sublegal fish or allow filleting at sea.

I'm not sure that we are ready to take any action on these, but I would like the record to show that this has been brought before the Board and recommend that any of you who are chairing fishery management boards, specific management boards, would take this information to those boards and consider it.

Any comment or question while we've got Law Enforcement here? I'm sure they could answer any questions related to this.

Two other communications I received from the Law Enforcement Committee had to do with funding in general. The first one of these communications is fairly general, notes that the Law Enforcement Committee, just as we've been talking about, is getting much more involved integrally in the fisheries management planning process, as we would like them to be. They do have to review the enforceability of the various provisions.

They've also formed a subcommittee to work with the ACCSP. And they note that there is a lack of funding to allow those subcommittees to work the way they would like to, and they request that the ASMFC dedicated

additional funds to the subcommittees to allow them to meet in addition to the spring and fall meeting.

And I bring that mostly before Jack for his consideration when staff prepares budgets.

Finally, for all of us, the Law Enforcement Committee strongly recommends that state law enforcement units receive 20 percent of the state's portion of Atlantic Coastal Fisheries Management Act funds, and I take that as advice as a state director and just pass it along to each one of you as advice we've received from the Law Enforcement Committee.

I don't think this is something that we as a Board -- we cannot dictate to the states, I do not believe, how they use their individual allotments, but it's certainly good advice from the Law Enforcement Committee, unless somebody wants to make motions along this line.

That information is provided to you for your consideration.

Is there any other business to come before us this morning? Mr. Schaefer.

MR. SCHAEFER: Mr. Chairman, there is one

item. I'm a little fuzzy on this, so forgive me if I mess it up, and I might ask Dr. Rosenberg to help me out. But I think about a year ago at a meeting of this Board, an issue came up with respect to certain language in one or more of the management plans that deals with the issue of joint management with the Federal Government when there's a quota system and the EEZ is forced to close, is there an obligation on the part of the states to do the same thing at the same time.

Now, I think that's the general context of the issue. As I say, I'm fuzzy on this, and if I'm not reading this right, I apologize, and I'll need help from George Lapointe or from Andy Rosenberg. But there was a discussion, I think, or a debate between David Pierce and Dr. Rosenberg to some extent regarding the impact of that disparity of interpretational language as it affects scup, sea bass quotas and things of that nature.

My understanding is that the staff of the Commission was going to look into this matter to try to clearly identify what the language did say and what the, if you will, official interpretation of that language is. I'd sort of like to know where we are on that.



George, can you help me out? If I've messed it up, straighten it out for me.

MR. LAPOINTE: I'll straighten out as best I can. At last fall's Policy Board meeting, this issue came up, and the Policy Board passed two motions, I believe, that are pertinent, and that was that the states -- if an FMP contains provisions for a quota, that the states have the ability, and that our plans contain the ability to close as a compliance measure.

And then you'll remember at that time, I was talking about work load, and we said as plans were amended, that was going to be incorporated.

Do you know where John Carmichael is, because he looked at this?

I think there's a question of what the plan said and interpretation, and then the intent of the people who crafted the plan that you're talking about. And I think it's certainly the intent of the people who developed the plan that when the quota's reached, the states close. I mean, that's the bottom line.

And there's some -- clearly there's been some different interpretations of that, and I believe that

staff -- can you just sit right over there, John? We're talking about the Scup Plan specifically, and the specific language that's been interpreted a couple of different ways about whether in fact the plan requires closing and what I guess the Plan Development Team or the Plan Review Team has recommended to make sure that we all interpret that the same way.

MR. JOHN CARMICHAEL: The Plan Review Team hasn't had a chance to comment on it. It was brought up at the last Board meeting, wasn't too long ago, but --

MR. LAPOINTE: But the chair of the Plan Review Team's looked at it?

MR. CARMICHAEL: Yes. The chair of the Plan Review Team has looked at it, and it seems to me that when the Board talked about this at the last Council meeting and the last time the Summer Flounder Board met, there was an interpretation that everyone kind of agreed that the intent of the plan was that when the federal waters were closed, the state waters should close, and that even though there's a question of whether "should" means "must," in what the specific compliance criteria stated, the intent was clear that the state waters should

be closed once the state had landed its quota.

And what I'm going to have the Plan Review Team try and recommend is that if the Board doesn't accept that, then if some members still have confusion on the issue, then perhaps the plan is amended or done through addenda to clarify what specifically the compliance criteria are.

MR. SCHAEFER: Well, clearly from a federal perspective, this is an important issue. Our position is very clear. We feel that just for the purposes, if no other reason, for efficacy of the plan, that it behooves the states to close at the same time the federal zone closes, if that's a component of the plan, no ifs, ands or buts that are subject to looser interpretation, if you will.

If somehow that has to be attained through more direct language, we obviously would welcome that, and there should be a clarification as to whether or not indeed that's a requirement for this body, for this Commission to look at in terms of individual states' compliance with quota management plans.

So we need, Mr. Chairman, some sort of

direction to the staff or the Board or whatever to see that this issue is straightened out so we can put it to rest.

CHAIRMAN SANDIFER: Dick, maybe I'm misunderstanding something. I thought we gave that direction last time.

MR. SCHAEFER: I didn't interpret that from what was just said. Now, maybe I read it wrong. But if that indeed is what you're the Service, that yes, indeed it is a requirement on the part of the states to close at the same time the federal zone is closed in those kinds of plans, then the matter is put to rest. And if that's on the record, the --

CHAIRMAN SANDIFER: I don't know that we have said that. I think we've told staff to go back to the management board and review the plan. But I'm not quite sure whether we've made such a statement. Now, if somebody wishes to make that kind of motion, now is the time to do it. Otherwise, I believe John has outlined his interpretation, and if there's misunderstanding, it will have to go through a plan amendment or addendum process.

MR. SCHAEFER: Well, I think this issue --

yes, fine. This issue extends beyond just summer flounder, obviously, extends to all plans in which there's a quota management required, either on the part of the states and/or the Federal Government that could anticipate closures at some time. And so it's a generic application of this standard.

CHAIRMAN SANDIFER: George.

MR. LAPOINTE: I'm quite sure that the motions passed by this Policy Board last fall say that's the intent of the Policy Board.

MR. SCHAEFER: If that's the case, then I stand corrected, and I'll be silent. I just want to make sure that it is on the record as a common understanding, that's all.

MR. LAPOINTE: And you directed staff, as plans were amended, to include that language into the plans.

MR. SCHAEFER: That's fine. We'll let it rest.

CHAIRMAN SANDIFER: Dave Borden, and then I've got Gordon.

VICE-CHAIRMAN BORDEN: Thank you, Mr.

Chairman. Actually, I think the issue is slightly more complicated than it appears here. There are two components of it. One is the situation where you have a federal waters closure. In the case -- and I use Rhode Island as an example. When federal waters close, anyone with a federal permit is eliminated from fishing within state waters. What we have chosen to do in our case, though, is we have small boat fisheries that still operate within state waters. Any fish that they land gets deducted from the quota, so it's not a quota overage type of situation.

Then you've got a different situation where you now have plans that call for state allocations that are administered within the states similar to the situation we have with scup. And I think, if I'm not mistaken, I think that's the point that Dick's making is that when that summer allocation is caught, the state should close its waters.

But I'm not trying to put words into your mouth.

CHAIRMAN SANDIFER: Let me get Gordon Colvin first, then I'll get back to you, Andy in just a

second.

MR. COLVIN: I'm not sure what all the issues are here, but Dave is right. I mean, there's a practical question. I think last year's direction from the Policy Board to the species boards that are administering management programs that include individual state quotas was pretty clear.

I'm looking now at the plan review for scup, and it says when a state lands its summer allocation, it is expected to close its fishery, and NMFS will close the state for landings by federally permitted vessels. Perhaps what it needs to say is the state must close its fishery.

But let's take it the next step. If a state must close its fishery as a compliance measure and does not, the year will end before there could be a sanction under ACFCMA. I have been saying for a long time that we have not yet properly addressed the issue of sanctions as they apply to failure to comply with in-season actions that need to be taken as a contingency in the event that some threshold like a quota, but there could be others, are crossed.

Now, with quotas, we do have the option, and I believe it's built into all these management plans, to handle it by deduction from the following year's quota as the vice-chairman indicated. I'm assuming that that's the case. But let me ask, because I did hear somebody whisper in my ear during this meeting that it might not be the case in the case of scup. It certainly is for summer flounder. Is that not the case for scup?

MR. CARMICHAEL: It's my understanding that any overages by a state during the state quota period will be subtracted from that state's allocation the following year.

MR. COLVIN: That's clear then.

MR. CARMICHAEL: That's what the plan states, yes.

MR. COLVIN: That being the case, I think we're probably in a place which is at least in a practical sense consistent with the Policy Board's direction from the preceding year, Mr. Chairman.

CHAIRMAN SANDIFER: Thank you.

Andy Rosenberg.

DR. ROSENBERG: Thank you, Mr. Chairman.



I thought that the directions in the Policy Board were clear. There was a series of motions, and I believe I actually made two or three of them. And, as I recall, Mr. Colvin seconded a couple of them. And I thought it was very clear that the states will close upon a closure, federal closure.

I also thought that one of those motions -- and I don't have them in front of me, but if memory serves, one of those motions said we'll do everything we can to avoid overages. My recollection of that one was it was either made by me and seconded by North Carolina or made by North Carolina and seconded by me; I'm not sure which one.

So that I believe Mr. Colvin's correct, that there is a provision for -- in the following year, there is a penalty in terms of deduction of overage, but we also agreed, I thought quite clearly, that we were going to try to avoid that situation, and the way to avoid it is to close.

Now, having said that it seemed to me that the direction from the Policy Board was very clear, apparently it was not, because we ran into a situation

this year where we were arguing whether we actually had to close or whether you just had the ability to close, which frankly I probably, you know, should have gone to law school to understand that argument. I can't imagine why we would have the ability to close and not actually want people to close. But I may just be missing something.

So apparently it was not clear, and maybe the matter is simply the Board reiterating that it's not a matter of the ability to close, it's not a matter of it would be a nice idea if you did, but that in terms of judging compliance with the plan, we're assuming that when the quota is taken, the area will close, and the state waters will close for the appropriate species, as Mr. Borden pointed out.

I'm not sure whether that requires change in the language. I think it only requires a change in the language if anybody wants to play the legal -- you know, look for legal room within the language of things like ability to close rather than you must. And I don't really know whether it's really necessary to have an addendum to the plan to clarify that.

I would hope that it isn't, but in good

faith, I can't believe that it's really necessary to make that language change. But if it is, because people feel it's difficult to close state waters, then we should make the change. I don't think it should go another year. The intent of the Board seemed to me to be very clear.

CHAIRMAN SANDIFER: Thank you.

John.

MR. CARMICHAEL: The intent of the Policy Board when they made those motions is clear, I would say, at least from staff's perspective. The issue with scup is that the Scup Plan was already approved before those motions were made, so if some of that language is not as clear in scup as it should be, I don't think that issue will be as much of an issue in the plans that are approved after those motions were made.

And the real question on the Scup Plan simply came down to, does the phrase, "the states should close their fishery once their share is landed," does that mean that the states must. And we talked about that at the board, like I said, and the board wanted a little more guidance from the Plan Review Team. I think they can probably resolve it at their next meeting if they agree

that "should" means "must."

CHAIRMAN SANDIFER: Mr. Coates.

MR. COATES: Yes. I think John has hit the nail on the head. The Scup Plan was a pre-approved plan, and I think if you look at the language of those motions that were made last year, you'll find that there is some question about whether or not this is applicable to the scup fishery. And I would certainly indicate that, you know, we are supportive of that kind of a procedure and have utilized it in the past.

There's no question about the Flounder Plan, the Summer Flounder Plan. That was very clear that the states had a role of equal obligation to take whatever action necessary to make sure that the quotas within their waters weren't overrun, and toward that end we developed a recording system that allowed us to get accurate information and close at the appropriate time and not create an overage which would have been created had we used NMFS data at the time to base the closure on.

CHAIRMAN SANDIFER: Mr. Colvin.

MR. COLVIN: Nonetheless, I find it interesting in reading the plan review for summer

flounder, Section 6, Compliance Requirements of the Summer Flounder Plan, Commercial, not to find on that list of measures closing the fishery when the quota's taken. It's not there. I think it ought to be.

And I guess I offer that as an expression of concern to the Plan Review Team and ask them, if it ain't there, is it because it's not in the plan after all?

Because if it's not, it ought to be there.

MR. CARMICHAEL: It's in the plan. So if it's not in the plan review, it should be corrected.

CHAIRMAN SANDIFER: It sounds to me that we have two choices here. One is to refer this to the management board, which I believe, John, you've mentioned, is meeting very shortly, with the sense of the Policy Board to fix this, or we send them a directive by perfecting a motion here today that cleans up any of the misunderstanding from our previous action. And unfortunately, I don't have the minutes of that fall meeting before us.

So what is the pleasure of the Policy Board at this point? Indecision is the pleasure I see. Mr. Coates.

MR. COATES: Well, in view of what Gordon said, it would seem to be appropriate to make a motion that the Policy Board charges each management board with the responsibility of evaluating the issues inherent on state water quota implications and take the necessary action to assure that there will be consistency with regard to the reaching of quotas, and that the states will close when the need arises. That's kind of an awkward motion, but I think it could be --

MR. LAPOINTE: Is that not a reiteration of last year's motions, Phil? I mean, my sense --

MR. COATES: I don't think we -- did we charge the boards so there was not -- the boards basically haven't responded in the case of scup or fluke?

CHAIRMAN SANDIFER: One moment. A matter of procedure. We have a somewhat rambling motion but a motion put forward. Is there a second to it before we get into a lot of discussion?

MR. COATES: I withdraw it.

CHAIRMAN SANDIFER: You're going to withdraw the motion?

Then I've got Mr. Borden, Mr. Colvin and

then Mr. Schaefer.

VICE-CHAIRMAN BORDEN: I'm not sure we need a motion at this point. I think what we clearly have is the sense of the Commission on this issue, and each one of the boards should review each one of the plans to make sure that the terminology in the document is consistent with the sense of the discussion here today.

CHAIRMAN SANDIFER: Mr. Colvin.

MR. COLVIN: I agree with Mr. Borden. I think it is very clear that there's an expectation that the Summer Flounder Plan Review Team will revise this draft plan review to reflect the actual requirements, and that there is a need for the board to address more specifically the issues with respect to scup and black sea bass in their next amendment to the plan.

Mr. Chairman, I'd like to just point out that there is another side to this, and while I clearly supported the motions that were passed last year and believe that these are necessary actions, I just want to kind of point for the record that there are additional impacts when one state closes its fishery that may affect other states, if that state, as has certainly been the

practice in New York, and we've talked about it a lot here, chooses to prohibit possession of that fish during its closure to ensure that its closure is fully enforceable and enforced and that fish are not landed illegally and then immediately misidentified as having been landed somewhere else.

If I go home and close my fluke fishery, which I understand I may need to do, since I got a phone call here saying I got a letter from Andy while I was here, that means Fulton Market closes, gang. Sorry, Dave. Sorry, Rhode Island. Sorry, Virginia. And let's just remember that, okay? I just want to make sure everybody's well aware of that. And if there are concerns about it, I'd like to hear them before I leave.

CHAIRMAN SANDIFER: Mr. Schaefer.

MR. SCHAEFER: Well, the point I was going to make is, you know, I think what we're all seeking here is simply assurance that we're all playing by the same understood rules, if you will. And I don't want to overly formalize the requirement or the process.

But I think that given what I heard the executive director say, simply because I forgot the action



that was taken a year ago on this, that if each board chairman would report back to this Board and give us the assurance that this issue which has been discussed now for the last 15 or 20 minutes has been dealt with and is clearly identified as a responsibility of each of the states operating under these quota type plans, to close their fishery at the same time the Federal Zone closes, I'm satisfied.

I don't think it takes another motion or anything like that. It just takes action on the part of those who have to take the action.

CHAIRMAN SANDIFER: Mr. Schaefer, what I'll do, I think, is instruct staff to send a memorandum to the chairs of the management boards where there are such quotas in place for those fishery management plans and carry that message, a specific written charge requiring those management board chairs to report back to us on the status.

MR. SCHAEFER: That would be wonderful, Mr. Chairman. I'd appreciate that. That would take care of my problem. Thank you.

CHAIRMAN SANDIFER: Mr. Lapointe says he'll

take care of it.

Any further items to come before us? Ms. Shipman.

MS. SHIPMAN: Just very quickly, this issue of the plan reviews that's come up in several points of discussion. I do think these are very important. I realize the burden they place on staff to get them together. Under the Charter, we're supposed to have a Plan Review Team, and if it would help with this process that the team chair be someone other than staff, I think that would really help.

And George and I did talk a little bit about this, and if they are to become a part of this plan status review, I think that's fine, too. But I think all the elements that are identified in the Charter for the plan reviews, they need to be addressed, they need to be addressed annually, and they need to be done in a timely fashion.

CHAIRMAN SANDIFER: Susan, are you suggesting any specific action at this time?

MS. SHIPMAN: No. I just think we need to clearly indicate, I guess, our sentiment to staff and a

suggestion that if this is an obligation or a task that cannot be handled by staff, that the team chair be someone other than staff and that these be done.

CHAIRMAN SANDIFER: I think what I'll do on that one is ask for staff to evaluate, get back to me, and if we need to appoint someone else to run that team, then I'll be looking for volunteers or volunteering someone.

MR. LAPOINTE: I'll meet with my staff to look at how this process is run, because it has been a pain in our backsides. I don't think it's a function of who chairs the Plan Review Team; I think it's a function of the work required to get the plan reviews done. And if there was, you know, an independent Plan Review Team chair and my staff still doesn't have time to do the work -- because, if somebody else chairs the committee and then they just give us a lot of work to do to do the Plan Review Teams, we're in the same soup we're in, Susan. So I will talk to Paul about it, and I'll meet with my staff to get their suggestions on how to get it done more efficiently.

CHAIRMAN SANDIFER: Any other items of business? I'll adjourn this meeting of the ISFMP Policy

Board.

And for everybody's notification, please, the Executive Committee meeting will start at 10:15 in this room. That gives us about half an hour to finish packing and check out.

(Whereupon, the meeting adjourned at 9:50 o'clock a.m., October 23, 1997.)

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